

HOUSE BILL 1038

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By: **Delegates Olszewski and Kach**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Residential Mortgage Loans – Escrow Amounts**

3 FOR the purpose of prohibiting certain lenders and lending institutions from including
4 certain increases in the amount of certain escrow payments in calculating the
5 amount of interest or any fee due under certain residential mortgage loans
6 under certain circumstances; providing for the construction of certain provisions
7 of this Act; and generally relating to residential mortgage loans and escrow
8 amounts.

9 BY repealing and reenacting, without amendments,
10 Article – Commercial Law
11 Section 12–109 and 12–109.2(c)
12 Annotated Code of Maryland
13 (2005 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Commercial Law
16 Section 12–109.1 and 12–1026
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2010 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Commercial Law**

22 12–109.

23 (a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Lending institution” means a bank, savings bank, or savings and
2 loan association doing business in Maryland.

3 (3) “Escrow account” means an expense or escrow account which tends
4 to protect the security of a loan by the accumulation of funds for the payment of taxes,
5 insurance premiums, or other expenses.

6 (b) (1) After May 31, 1974, a lending institution which lends money
7 secured by a first mortgage or first deed of trust on any interest in residential real
8 property and creates or is the assignee of an escrow account in connection with that
9 loan shall pay interest to the borrower on the funds in the escrow account at the
10 greater of:

11 (i) A rate of 3 percent per annum simple interest; or

12 (ii) The rate of interest regularly paid by the lending institution
13 on regular passbook savings accounts.

14 (2) Interest on these funds shall be:

15 (i) Computed on the average monthly balance in the escrow
16 account; and

17 (ii) Paid annually to the borrower by crediting the escrow
18 account with the amount of interest due.

19 (3) The lending institution shall annually provide the borrower with a
20 statement of the escrow balance.

21 (c) The provisions of this section do not apply to a lending institution which
22 provides for the payment of taxes, insurance, or other expenses under the direct
23 reduction method by which these expenses, when paid by the lender, are added to the
24 outstanding principal balance of the loan.

25 (d) This section does not apply if the loan is purchased by an out-of-state
26 lender through the Federal National Mortgage Association, the Government National
27 Mortgage Association, or the Federal Home Loan Mortgage Corporation and the
28 out-of-state lender as a condition of purchase elects to service the loan. However, this
29 section shall apply if the out-of-state lender sells the loan to a Maryland lender or
30 places the loan with a Maryland lender for servicing.

31 12-109.1.

32 (a) The provisions of this section do not apply to escrow accounts maintained
33 in connection with loans described in § 12-103(e)(1) of this subtitle.

1 (b) Except in a foreclosure, release, or as provided in subsection (c) of this
2 section, funds in any escrow account for use in paying taxes, insurance premiums and
3 ground rents may not be used to:

4 (1) Reduce the principal; or

5 (2) Pay interest or other loan charges.

6 (c) If there is periodically a balance in the escrow account that exceeds the
7 amount provided for in the note, loan agreement, or security instrument, the borrower
8 shall be given at least annually the option of:

9 (1) Receiving a refund of the excess amount;

10 (2) Applying the excess amount to the payment of principal and
11 interest; or

12 (3) Leaving the excess amount in the escrow account.

13 (d) A refund of any excess amount shall be made:

14 (1) Within 60 days after the receipt by the lender of the borrower's
15 request for a refund; or

16 (2) If the borrower has not notified the lender of the option chosen by
17 the borrower under subsection (c) of this section, within 60 days after the date the
18 lender mailed notice of the excess amount to the borrower.

19 **(E) (1) IF, AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED**
20 **TO BE MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF**
21 **TRUST ON RESIDENTIAL REAL PROPERTY, A LENDER DETERMINES THAT THE**
22 **AMOUNT THAT A BORROWER IS REQUIRED TO PAY MUST INCREASE, THE**
23 **LENDER MAY NOT INCLUDE THE AMOUNT OF THE INCREASE IN ESCROW**
24 **PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF INTEREST OR ANY FEE**
25 **DUE UNDER THE LOAN.**

26 **(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE**
27 **ABILITY OF A LENDER TO IMPOSE A LATE FEE FOR ANY ESCROW PAYMENT THAT**
28 **IS DUE AND NOT TIMELY PAID.**

29 12-109.2.

30 (c) A lender may not impose a collection fee or service charge on the
31 maintenance of an escrow account on a first mortgage.

32 12-1026.

1 (a) (1) In this section the following words have the meanings indicated.

2 (2) "Lending institution" means a bank, savings bank, or savings and
3 loan association doing business in Maryland.

4 (3) "Escrow account" means an expense or escrow account which tends
5 to protect the security of a loan by the accumulation of funds for the payment of taxes,
6 insurance premiums, or other expenses.

7 (b) (1) A lending institution that makes a loan to a consumer borrower
8 secured by a first mortgage or first deed of trust on residential real property and
9 creates or is the assignee of an escrow account in connection with that loan shall pay
10 interest to the consumer borrower on the funds in the escrow account at the greater of:

11 (i) A rate of 3 percent per annum simple interest; or

12 (ii) The rate of interest regularly paid by the lending institution
13 on regular passbook savings accounts.

14 (2) Interest on these funds shall be:

15 (i) Computed on the average monthly balance in the escrow
16 account; and

17 (ii) Paid annually to the borrower by crediting the escrow
18 account with the amount of interest due.

19 (3) The lending institution shall annually provide the consumer
20 borrower with a statement of the escrow balance.

21 (4) The provisions of this subsection do not apply to a lending
22 institution that provides for the payment of taxes, insurance, or other expenses under
23 the direct reduction method by which these expenses, when paid by the lending
24 institution, are added to the outstanding principal balance of the loan.

25 (5) (i) This subsection does not apply if the loan:

26 1. Is purchased by an out-of-state lender through the
27 Federal National Mortgage Association, the Government National Mortgage
28 Association, or the Federal Home Loan Mortgage Corporation; and

29 2. The out-of-state lender elects to service the loan as a
30 condition of purchase.

31 (ii) Notwithstanding subparagraph (i) of this paragraph, this
32 subsection shall apply if the out-of-state lender:

33 1. Sells the loan to a Maryland lender; or

1 2. Places the loan with a Maryland lender for servicing.

2 (c) (1) Except upon foreclosure, release, or as provided in paragraph (2) of
3 this subsection, funds in any escrow account maintained by a credit grantor on behalf
4 of a consumer borrower for use in paying taxes, insurance premiums, and ground rents
5 may not be used:

6 (i) To reduce the principal; or

7 (ii) To pay interest or other loan charges.

8 (2) If there is periodically a balance in the escrow account maintained
9 by a credit grantor on behalf of a consumer borrower which exceeds the amount stated
10 in the agreement, note, or other evidence of the loan, the consumer borrower shall be
11 given at least annually the option of:

12 (i) Receiving a refund of the excess amount;

13 (ii) Applying the excess amount to the payment of principal and
14 interest; or

15 (iii) Leaving the excess amount in the escrow account.

16 (3) A refund of any excess amount shall be made:

17 (i) Within 60 days after the receipt by the credit grantor of the
18 consumer borrower’s request for a refund; or

19 (ii) If the consumer borrower has not notified the credit grantor
20 of the option chosen by the consumer borrower, within 60 days after the date the credit
21 grantor mailed notice of an excess amount.

22 **(4) (I) IF, AFTER RECALCULATING THE AMOUNT THAT IS**
23 **REQUIRED TO BE MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST**
24 **DEED OF TRUST ON RESIDENTIAL REAL PROPERTY, A LENDING INSTITUTION**
25 **DETERMINES THAT THE AMOUNT THAT A CONSUMER BORROWER IS REQUIRED**
26 **TO PAY MUST INCREASE, THE LENDING INSTITUTION MAY NOT INCLUDE THE**
27 **AMOUNT OF THE INCREASE IN ESCROW PAYMENTS IN ANY CALCULATION OF THE**
28 **AMOUNT OF INTEREST OR ANY FEE DUE UNDER THE LOAN.**

29 **(II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT**
30 **THE ABILITY OF A LENDING INSTITUTION TO IMPOSE A LATE FEE FOR ANY**
31 **ESCROW PAYMENT THAT IS DUE AND NOT TIMELY PAID.**

32 (d) (1) Funds in any escrow account shall be kept separate from and may
33 not be commingled with the funds of the credit grantor.

1 (2) A credit grantor may place escrow funds received in connection
2 with more than one loan into a single escrow account.

3 (3) In the event of the bankruptcy of the credit grantor, any escrow
4 funds placed in any escrow account may not be considered to be part of the bankrupt
5 estate of the credit grantor.

6 (e) A credit grantor may not impose a collection fee or service charge on the
7 maintenance of an escrow account on a first mortgage or first deed of trust.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2011.