

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1038
Economic Matters

(Delegates Olszewski and Kach)

Finance

Commercial Law - Residential Mortgage Loans - Escrow Amounts

This bill prohibits specified lenders, credit grantors, and loan servicers in the event they recalculate the amount that is required to be maintained in an escrow account under a first mortgage or first deed of trust on residential real property and determine that the amount that a borrower is required to pay must increase, from charging any interest or fee on the amount of the increase for a one-year period after the determination. The bill does not prohibit lenders, credit grantors, or loan servicers from imposing a late fee for any escrow payment that is not timely paid.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: A lender, credit grantor, or loan servicer may, however, charge interest to a borrower on amounts advanced to pay taxes, insurance premiums, or other expenses owed by the borrower in order to protect the security of the loan. The bill authorizes the collection of interest on these amounts only if:

- the lender, credit grantor, or loan servicer advances its own funds because funds of the borrower were not available to pay the taxes, insurance premiums, or other expenses owed by the borrower;
- the need for the advance was not caused by any error of the lender, credit grantor, or loan servicer;
- the lender, credit grantor, or loan servicer provides notice to the borrower that the advance was made and that interest will be charged on the advance;
- the interest does not start to accrue until 60 days after this notice has been provided;
- the interest is charged only on the amount of funds actually advanced after the lender, credit grantor, or loan servicer has used all available funds of the borrower to pay taxes, insurance premiums, or other expenses owed by the borrower; and
- the borrower is permitted to repay the advance as permitted by the federal Real Estate Settlement Procedures Act (RESPA).

Current Law: If a specified lending institution creates, or is the assignee of, an escrow account in connection with a loan, including a closed-end credit transaction, secured by a first mortgage or first deed of trust on any interest in residential real property, the lending institution must pay interest to the borrower on the funds in the escrow at the greater of 3% per annum simple interest or the rate of interest regularly paid by the lending institution on regular passbook accounts. The lending institution must provide the borrower with an escrow account statement each year and pay annual interest, computed on the account's average monthly balance, by crediting the escrow account with the amount due.

If the purpose of the escrow account is to pay taxes, insurance premiums, and ground rents, the account funds may not be used to reduce principal or pay interest or other loan charges, except in a foreclosure, release, or situation in which the escrow account balance exceeds the amount provided for in the note, loan agreement, or security instrument. If the balance does periodically exceed the amount provided for in the note, loan agreement, or security instrument, the lending institution must give the borrower the option of (1) receiving a refund of the excess amount; (2) applying the excess amount to the payment of principal and interest; or (3) leaving the excess amount in the escrow account. Any refund of an excess amount must be made within 60 days after the receipt by the lender of the borrower's request for a refund. However, if the borrower has not yet notified the lender of the option chosen, the lender must refund any excess amount within 60 days after the date the lender mailed notice of the excess amount to the borrower.

There is no provision in Maryland law concerning the payment of interest by a borrower in the event of a shortage or deficiency in escrow amounts.

Background: A loan servicer may require borrowers of loans secured by mortgaged property to place funds into an escrow account. The funds maintained in the escrow account are then used to pay annual taxes and insurance on the mortgaged property. While the servicer generally determines whether the borrower must maintain an escrow account, servicers are required to establish escrow accounts for some federal programs, including any Federal Housing Administration-insured loans, RESPA allows a loan servicer to collect escrow payments one-sixth greater than the estimated year-end tax and insurance amounts. However, if state law or mortgage documents allow for a lesser amount, the lending institution may only collect the lesser amount. RESPA further requires the lender to perform an annual escrow account analysis and provide the borrower with initial and annual escrow account statements. If the annual escrow account analysis reveals a shortage or a deficiency, RESPA provides a loan servicer with several options in order to collect repayment from a borrower.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Michigan Department of Consumer and Industry Services; U.S. Department of Housing and Urban Development; Department of Legislative Services

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