

Chapter 611

(House Bill 1038)

AN ACT concerning

Commercial Law – Residential Mortgage Loans – Escrow Amounts

FOR the purpose of prohibiting certain lenders ~~and lending institutions~~, credit grantors, and servicers of loans from including, for a certain period of time, certain increases in the amount of certain escrow payments in calculating the amount of interest or any fee due under certain residential mortgage loans under certain circumstances; providing for the construction of certain provisions of this Act; authorizing a lender, a credit grantor, or a servicer of a loan to charge interest to a borrower on certain funds under certain circumstances; defining a certain term; and generally relating to residential mortgage loans and escrow amounts.

BY repealing and reenacting, without amendments,

Article – Commercial Law

Section 12–109 and 12–109.2(c)

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 12–109.1 and 12–1026

Annotated Code of Maryland

(2005 Replacement Volume and 2010 Supplement)

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

Article – Commercial Law

12–109.

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

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

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

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

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

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

(2) Interest on these funds shall be:

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

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

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

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

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

12-109.1.

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

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

(1) Reduce the principal; or

(2) Pay interest or other loan charges.

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

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

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

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

(E) (1) ~~IF~~ SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF, AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED TO BE MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF TRUST ON RESIDENTIAL REAL PROPERTY, A LENDER OR A SERVICER OF A LOAN DETERMINES THAT THE AMOUNT THAT A BORROWER IS REQUIRED TO PAY MUST INCREASE, THE LENDER OR SERVICER MAY NOT INCLUDE, FOR A 1-YEAR PERIOD AFTER THE DETERMINATION IS MADE, THE AMOUNT OF THE INCREASE IN ESCROW PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF INTEREST OR ANY FEE DUE UNDER THE LOAN.

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

(3) (I) IN THIS PARAGRAPH, "OTHER EXPENSES" DOES NOT INCLUDE MONEY REQUIRED BY A LENDER OR A SERVICER OF A LOAN FOR AN ESCROW ACCOUNT CUSHION AS PERMITTED BY THE FEDERAL REAL ESTATE SETTLEMENT PROCEDURES ACT.

(II) A LENDER OR A SERVICER OF A LOAN MAY CHARGE INTEREST TO A BORROWER ON THE AMOUNT OF FUNDS THE LENDER OR SERVICER ADVANCES TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER

EXPENSES OWED BY THE BORROWER IN ORDER TO PROTECT THE SECURITY OF THE LOAN.

(III) INTEREST MAY BE CHARGED BY A LENDER OR A SERVICER OF A LOAN UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH ONLY IF:

1. THE LENDER OR 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;

2. THE NEED FOR THE ADVANCE WAS NOT CAUSED BY AN ERROR OF THE LENDER OR SERVICER IN SERVICING THE LOAN;

3. THE LENDER OR SERVICER PROVIDES NOTICE TO THE BORROWER THAT THE ADVANCE WAS MADE AND THAT INTEREST WILL BE CHARGED ON THE ADVANCE;

4. INTEREST DOES NOT BEGIN TO ACCRUE UNTIL 60 DAYS AFTER NOTICE HAS BEEN PROVIDED TO THE BORROWER IN ACCORDANCE WITH ITEM 3 OF THIS SUBPARAGRAPH;

5. INTEREST IS CHARGED ONLY ON THE AMOUNT OF FUNDS ACTUALLY ADVANCED BY THE LENDER OR SERVICER AFTER THE LENDER OR SERVICER HAS USED ALL AVAILABLE FUNDS OF THE BORROWER TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE BORROWER; AND

6. THE BORROWER IS PERMITTED TO REPAY THE ADVANCE AS PERMITTED BY THE FEDERAL REAL ESTATE SETTLEMENT PROCEDURES ACT.

12-109.2.

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

12-1026.

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

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

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

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

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

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

(2) Interest on these funds shall be:

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

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

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

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

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

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

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

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

1. Sells the loan to a Maryland lender; or

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

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

- (i) To reduce the principal; or
- (ii) To pay interest or other loan charges.

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

- (i) Receiving a refund of the excess amount;
- (ii) Applying the excess amount to the payment of principal and interest; or
- (iii) Leaving the excess amount in the escrow account.

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

- (i) Within 60 days after the receipt by the credit grantor of the consumer borrower's request for a refund; or
- (ii) If the consumer borrower has not notified the credit grantor of the option chosen by the consumer borrower, within 60 days after the date the credit grantor mailed notice of an excess amount.

(4) (I) ~~IF~~ SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, IF, AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED TO BE MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF TRUST ON RESIDENTIAL REAL PROPERTY, A ~~LENDING INSTITUTION~~ CREDIT GRANTOR OR A SERVICER OF A LOAN DETERMINES THAT THE AMOUNT THAT A CONSUMER BORROWER IS REQUIRED TO PAY MUST INCREASE, THE ~~LENDING INSTITUTION~~ LENDER CREDIT GRANTOR OR SERVICER MAY NOT INCLUDE, FOR A 1-YEAR PERIOD AFTER THE DETERMINATION IS MADE, THE AMOUNT OF THE INCREASE IN ESCROW PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF INTEREST OR ANY FEE DUE UNDER THE LOAN.

(II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT THE ABILITY OF A ~~LENDING INSTITUTION~~ CREDIT GRANTOR OR A SERVICER OF A LOAN TO IMPOSE A LATE FEE FOR ANY ESCROW PAYMENT THAT IS DUE AND NOT TIMELY PAID.

(III) 1. IN THIS SUBPARAGRAPH, "OTHER EXPENSES" DOES NOT INCLUDE MONEY REQUIRED BY A CREDIT GRANTOR OR A SERVICER OF A LOAN FOR AN ESCROW ACCOUNT CUSHION AS PERMITTED BY THE FEDERAL REAL ESTATE SETTLEMENT PROCEDURES ACT.

2. A CREDIT GRANTOR OR A SERVICER OF A LOAN MAY CHARGE INTEREST TO A CONSUMER BORROWER ON THE AMOUNT OF FUNDS THE CREDIT GRANTOR OR SERVICER ADVANCES TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE CONSUMER BORROWER IN ORDER TO PROTECT THE SECURITY OF THE LOAN.

3. INTEREST MAY BE CHARGED BY A CREDIT GRANTOR OR A SERVICER OF A LOAN UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH ONLY IF:

A. THE CREDIT GRANTOR OR SERVICER ADVANCES ITS OWN FUNDS BECAUSE FUNDS OF THE CONSUMER BORROWER WERE NOT AVAILABLE TO PAY THE TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE CONSUMER BORROWER;

B. THE NEED FOR THE ADVANCE WAS NOT CAUSED BY AN ERROR OF THE CREDIT GRANTOR OR SERVICER IN SERVICING THE LOAN;

C. THE CREDIT GRANTOR OR SERVICER PROVIDES NOTICE TO THE CONSUMER BORROWER THAT THE ADVANCE WAS MADE AND THAT INTEREST WILL BE CHARGED ON THE ADVANCE;

D. INTEREST DOES NOT BEGIN TO ACCRUE UNTIL 60 DAYS AFTER NOTICE HAS BEEN PROVIDED TO THE CONSUMER BORROWER IN ACCORDANCE WITH ITEM C OF THIS SUBSUBPARAGRAPH;

E. INTEREST IS CHARGED ONLY ON THE AMOUNT OF FUNDS ACTUALLY ADVANCED BY THE CREDIT GRANTOR OR SERVICER AFTER THE CREDIT GRANTOR OR SERVICER HAS USED ALL AVAILABLE FUNDS OF THE CONSUMER BORROWER TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE CONSUMER BORROWER; AND

F. THE CONSUMER BORROWER IS PERMITTED TO REPAY THE ADVANCE AS PERMITTED BY THE FEDERAL REAL ESTATE SETTLEMENT PROCEDURES ACT.

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

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

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

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

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

Approved by the Governor, May 19, 2011.