



Senate Bill 2263

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota (“ICBND”)

Before: Senate Industry and Business Committee
Senator Doug Larsen, Chairman

Date: January 24, 2023

Chairman Larsen and members of the Senate Industry and Business Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. ICBND supports SB 2263 and requests a “Do Pass” recommendation from the Committee.

Senate Bill 2263 seeks to bring North Dakota Century Code in line with the Federal Real Estate Settlement Procedures Act (RESPA) with respect to the real estate mortgage escrow accounts and any surplus amounts in those accounts. Real estate mortgage lenders and servicers are required to follow RESPA and the amendments proposed through this bill would clear up any confusion and would ensure that any surplus amounts in escrow accounts are refunded to the borrower as they should be.

First, it’s probably best to explain some terms that are used in relation to escrow:

- **Escrow account** means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay.
- **Cushion** means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account. As defined by RESPA and for purposes of this bill, this amount can be up to two months of the estimated annual disbursements.
- **Surplus** means an amount by which the current escrow account balance exceeds the target balance for the account.. As defined by RESPA and for purposes of this bill, this amount is \$50 or more above the cushion amount.

Section 1 of the bill replaces the definition of “excess” with “surplus” to more align with RESPA terminology and states that any amount greater than or equal to \$50 is considered surplus. It further removes “calendar year” reference as escrow account analysis are to be completed according to RESPA on an annual basis (typically on the anniversary of the loan) for each escrow account rather than tying it to calendar year.

Section 1 also eliminates any references to Secondary mortgagee as it's obsolete and unnecessary language. A mortgage servicer dealing with an escrow account must follow RESPA regardless of whether it was sold on the secondary market or kept in-house.

Section 2 of the bill further eliminates calendar references in lieu of the escrow account computation year as servicers typically do their escrow analysis on each account on the anniversary of the loan. The changes in this section further state, in accordance with RESPA, that the servicer must provide written notice to the borrower within 30 days following the computation year if the account has a surplus (\$50 or more above what's needed as a cushion).

Section 3 of the bill provides that the servicer must refund any surplus amount to the borrower along with the notification referenced in Section 2.

Finally, in Section 4 language is eliminated that references section 26.1-01-05 of the North Dakota Century Code. It seems that this is an error as NDCC 26.1-01-05 specifically relates to the reporting and review of medical malpractice claims, settlements, and judgments.

Chairman Larsen and members of the Senate Industry and Business Committee, ICBND strongly supports Senate Bill 2263 and requests the Committee give the bill a "Do Pass" recommendation.

Thank you for your time and attention.