

## **CHAPTER 47-10.2 ESCROW ACCOUNTS**

### **47-10.2-01. Definitions.**

In sections 47-10.2-01 through 47-10.2-03, unless the context or subject matter otherwise requires:

1. "Borrower" means the obligor under a residential mortgage held by a secondary mortgagee.
2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year.
3. "Secondary mortgagee" means a successor mortgagee not residing or domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments, and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home.
4. "Servicer" means a person or entity maintaining an escrow account for a secondary residential mortgagee.

### **47-10.2-02. Notice of excess escrow payments.**

If an escrow account is maintained by the servicer of a secondary residential mortgage for a secondary mortgagee, and the account contains an excess amount, the servicer shall provide written notice to the borrower, on or before March first of the following year, of the escrow account status. The information provided to the borrower must include the balance in the escrow account after the annual payment of taxes and special assessments.

### **47-10.2-03. Application of excess escrow payments.**

Upon receipt of the written notice under section 47-10.2-02, the borrower may, within thirty days after the date of the notice, elect in a written request to the servicer one of the following options:

1. Refund of all or part of the excess amount; or
2. Retention of all or part of the excess amount in the escrow account.

If the borrower does not advise the servicer in writing within the time provided in this section, the servicer may continue maintenance of the escrow account in the same manner until the next report to the borrower under sections 47-10.2-01 through 47-10.2-03. If the borrower advises the servicer of an election within the time prescribed in sections 47-10.2-01 through 47-10.2-03, the servicer must comply with the borrower's election within thirty days of the election.

### **47-10.2-04. Payments from escrow - Notice - Liability of lender or escrow agent.**

1. If the borrower notifies the escrow agent as provided in subsection 2, is current in loan payments, and funds in the escrow account are sufficient, the borrower may direct the escrow agent under the borrower's loan to do any of the following:
  - a. Pay the property taxes by December thirty-first, if the escrow agent has received a tax statement for that property by December twentieth.
  - b. Pay the property taxes on or before February fifteenth to qualify for the discount for early payment under section 57-20-09.
  - c. Pay the property taxes when due.
2. To require the escrow agent to make payments in any of the manners specified in subsection 1, the borrower shall send, by December first, written notice to the escrow agent specifying the manner in which the borrower wants the escrow agent to make payments under subsection 1. Once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in loan payments, unless funds in the escrow account are not sufficient, or unless otherwise notified in writing by

the borrower by December first. If the borrower has never provided a written notice to the escrow agent, the escrow agent shall pay property taxes as provided in subdivision b of subsection 1.

3. An escrow agent who fails to comply with a directive of a borrower under subsection 1 made within the time limitations under subsection 2 is liable to the borrower for five hundred dollars plus actual damages, costs, and reasonable attorney fees.
4. In this section, unless the context or subject matter otherwise requires:
  - a. "Escrow agent" means a person who receives escrow payments on behalf of itself or another person.
  - b. "Loan" means a loan under which an escrow is required by the lender to assure payment of property taxes and which is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence, not including a mobile home.

**47-10.2-05. Annual escrow account statement.**

Each residential mortgagee, including any insurance company with articles of incorporation filed under section 26.1-01-03 or which is required to obtain a certificate of authority under section 26.1-01-05, intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall furnish annually each mortgagor with a detailed statement showing all debits and credits to the account.