

HOUSE BILL No. 5070

August 1, 1991, Introduced by Reps. Jondahl, DeBeaussaert, Martin, Leland, DeMars, Barns, Brown and Perry Bullard and referred to the Committee on Consumers.

A bill to define and regulate mortgage escrow accounts; to provide for the registration of mortgagees who require mortgage escrow accounts; to provide for the payment of interest on mortgage escrow accounts and to prohibit imposition of service fees; to provide for the powers and duties of certain departments; to provide penalties; and to repeal certain acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "mortgage escrow account act".

3 Sec. 2. As used in this act:

4 (a) "Assessment" means special assessment as that term is
5 defined in section 1 of Act No. 225 of the Public Acts of 1976,
6 being section 211.761 of the Michigan Compiled Laws.

7 (b) "Deficiency" means the amount by which property taxes,
8 an insurance premium, or an assessment due on the residential

1 property secured by the mortgage will exceed the projected
2 balance of the mortgage escrow account on the due date for the
3 payment of the taxes, insurance premium, or assessment.

4 (c) "Mortgagee" means an individual, partnership, corpora-
5 tion, association, or other legal entity authorized to make mort-
6 gage loans in this state.

7 (d) "Mortgage escrow account" means a sum of money accumu-
8 lated from periodic payments made to the mortgagee to pay taxes,
9 insurance premiums, or assessments on residential property
10 secured by a mortgage loan.

11 (e) "Mortgagor" means a person who mortgages residential
12 property.

13 (f) "Residential property" means real property intended as
14 the primary residence of the mortgagor. Residential property
15 does not include property specifically purchased for rental,
16 investment, or immediate resale unless the property also serves
17 as the mortgagor's residence.

18 Sec. 3. (1) A mortgagee shall not require a mortgage escrow
19 account as a condition of making a loan secured by a deed of
20 trust or mortgage on residential property, unless 1 or more of
21 the following apply:

22 (a) The mortgage escrow account is required by a state or
23 federal regulatory authority.

24 (b) The mortgagor fails to pay 2 consecutive property tax
25 installments on the property before the delinquency dates for the
26 payments.

1 (c) The original principal amount of the loan is 90% or more
2 of the purchased price of the property secured by the loan.

3 (d) The mortgage escrow account is established on terms
4 mutually agreeable to the parties to the loan and otherwise com-
5 plies with the requirements of this act, and before the execution
6 of the loan or sale agreement the seller or lender has furnished
7 to the mortgagor a statement in writing, which may be set forth
8 in the loan application, to the effect that the establishment of
9 the mortgage escrow account is not required as a condition of the
10 loan or sale agreement.

11 (2) A mortgage escrow account established in violation of
12 this section is voidable at any time at the option of the mortga-
13 gor, but shall not otherwise affect the validity of the loan or
14 sale.

15 Sec. 4. If the mortgagor has acquired equity in the mort-
16 gaged property of at least 20% of the original purchased price,
17 the mortgagor may terminate a mortgage escrow account established
18 in connection with the mortgage loan, unless the termination is
19 prohibited by 1 of the following:

20 (a) The mortgage escrow account is required by a government
21 loan insurance agency as a prerequisite to the loan.

22 (b) The mortgagor has failed to pay 2 consecutive property
23 tax installments on the property before the delinquency dates for
24 the payments.

25 Sec. 5. (1) A mortgagee shall not require that the amount
26 paid each month by a mortgagor into a mortgage escrow account
27 exceed 1/12 of the total of the taxes, insurance premiums, or

1 assessments paid on the property for the previous calendar year,
2 unless the payment is authorized by subsection (2).

3 (2) Deficiencies in the mortgage escrow account may be
4 recovered by the mortgagee after a negative balance occurs by 1
5 of the following methods, at the option of the mortgagor:

6 (a) The mortgagor pays amounts in excess of the amount
7 required under subsection (1) on a pro rata basis during the next
8 12 months after the deficiency.

9 (b) The mortgagor pays a lump sum sufficient to meet the
10 deficiency.

11 (3) If a mortgagee pays property taxes, insurance premiums,
12 or assessments when there is a deficiency in a mortgage escrow
13 account and the mortgagee notifies the mortgagor in writing of
14 the deficiency at least 30 days before the mortgagee makes the
15 payment of the taxes, insurance premiums, or assessments, the
16 mortgagee may charge interest on the deficiency at a rate not to
17 exceed 8% per year.

18 (4) Money in the mortgage escrow account at the end of any
19 calendar year shall, at the option of the mortgagor, be refunded
20 to the mortgagor or credited against the principal balance of the
21 mortgage loan.

22 Sec. 6. If changes in the amount of property taxes, insur-
23 ance premiums, or assessments that are the subject of a mortgage
24 escrow account require an increase in the amount of the escrow
25 account payments, the mortgagee shall transmit to the mortgagor,
26 not less than 30 days before the effective date of the increased

1 payments, written notice of the new payment amount and the
2 reasons for the increase.

3 Sec. 7. (1) A mortgagee shall not impose a charge or fee
4 for maintaining or servicing a mortgage escrow account.

5 (2) A mortgagee shall not impose a penalty or late charge
6 for a payment made by the mortgagor which is postmarked on or
7 before the due date of the payment.

8 (3) A mortgagee shall pay interest to the mortgagor on a
9 mortgage escrow account at a rate of 8% per year. The interest
10 shall be paid on the balance accrued in the mortgage escrow
11 account from date of deposit to date of withdrawal. The mortga-
12 gee shall pay the mortgagor at least annually by crediting the
13 mortgage escrow account or by reducing the unpaid principal bal-
14 ance of the mortgage loan.

15 Sec. 8. (1) If a mortgagor is required to make periodic
16 payments to a mortgage escrow account, the mortgagee or agent
17 servicing the mortgage escrow account shall furnish the mortgagor
18 with a statement within 60 days after the close of the calendar
19 year, containing all of the following:

20 (a) The beginning balance of the mortgage escrow account.

21 (b) Total receipts received in the mortgage escrow account
22 during the calendar year.

23 (c) An itemized statement of all expenditures from the mort-
24 gage escrow account during the calendar year.

25 (d) The balance in the mortgage escrow account at the end of
26 the calendar year.

1 (2) The annual statement required by subsection (1) is not
2 required if the mortgagor is provided with a monthly billing form
3 or mortgagor passbook that provides the mortgage escrow account
4 balance and record of expenditures from the mortgage escrow
5 account.

6 Sec. 9. (1) The mortgagee shall make the payments for
7 taxes, insurance premiums, or assessments when due to avoid pen-
8 alties, late charges, interest, or damages.

9 (2) Penalties, late charges, interest, or damages incurred
10 because of the mortgagee's failure to make payments when due
11 shall be charged to and paid for by the mortgagee or his or her
12 agent and shall not be paid from the mortgagor's funds or charged
13 to the mortgagor.

14 Sec. 10. The money held in a mortgage escrow account is the
15 property of the mortgagor and is held in trust by the mortgagee.

16 Sec. 11. This act applies to each mortgage escrow account
17 created, entered into, or maintained after the effective date of
18 this act. This act does not apply to a mortgage escrow account
19 existing on the effective date of this act until January 1,
20 1992.

21 Sec. 12. A mortgagee who violates this act is liable to the
22 mortgagor for \$500.00 or actual damages suffered by the mortga-
23 gor, whichever is greater, plus court costs and reasonable attor-
24 ney fees.

25 Sec. 13. A person who violates this act is guilty of a mis-
26 demeanor, punishable by imprisonment for not more than 6 months,
27 or by a fine of not more than \$1,000.00, or both.

1 Sec. 14. Act No. 125 of the Public Acts of 1966, being
2 sections 565.161 to 565.163 of the Michigan Compiled Laws, is
3 repealed.