

NEWS



Independent Insurance Agents of Virginia

Incorporated

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Mortgage Escrow Accounts – Prompt Payment Requirements

When purchasing their home many consumers also set up escrow accounts with the mortgage company to pay for taxes and/or homeowners insurance. Mortgage companies, by law, must pay these escrow accounts on time.

For a number of years IIAV has received numerous complaints by member agencies that mortgage companies have not paid these accounts on a timely basis and consumers have had their insurance forced placed with other insurance companies – sometimes at a higher cost. As long as the consumer pays their mortgage on time this is not legal and the purpose of this report is to provide guidance to the consumer on when, where and to whom complaints could be filed.

It is important to note that virtually all mortgage companies are regulated by the US Department of Housing and Urban Development – HUD. The law that specifically regulates how escrow payments are to be handled is called the *Real Estate Settlement Procedures Act* or RESPA. Here are some common questions and answers related to RESPA and escrow accounts:

Dealing with Your Lender or Insurance Company: Taxes, Insurance, RESPA and Escrow

I got a notice from the county that my lender did not pay my taxes on time and the county is assessing a penalty. Do I have to pay this bill?

Send the bill to the lender. The lender should pay the penalty for failing to pay the taxes on time as long you were current in your mortgage payments. If the lender refuses, you may wish to follow the guidelines for filing a complaint.

What steps should I take if the lender does not pay my hazard insurance on time or at all and my insurance is canceled?

Lenders are required by Section 6 to make escrow account disbursements on time. If a lender fails to do so, a borrower may bring a private law suit under this Section. Therefore, if you incur any damages due to the lender's negligence, you may wish to consult an attorney.

You should also contact your lender immediately and send a copy of the bill. Some lenders list a special address and/or FAX number for insurance and tax bills. Keep checking with the insurance company to make certain the bill is paid. You may wish to pay the insurance company directly to avoid cancellation of your policy and then seek a refund from your lender. Keep copies of all your correspondence and payments. If you incur any damages due to the lender's negligence, you may wish to consult an attorney.

I got a notice that my hazard insurance has been canceled. My lender force-placed hazard insurance with a different company and it costs a lot more. Can a lender do this?

As long as your mortgage payment is not more than 30 days late, Section 6 of RESPA requires the lender to make escrow payments, for taxes, insurance, etc., in a timely manner. You should write to your lender and complain. If your lender does not refund the difference or otherwise resolve your complaint satisfactorily, you may wish to file a complaint with HUD or the Consumer Protection Office of your State Attorney General's Office. You may also wish to consult an attorney.

[NOTE: Consumers may have other rights and responsibilities related to their mortgage servicing. For details we would encourage consumers to go to the www.HUD.gov website for additional details and information.]

Where did my mortgage company go?

Another complaint that IIAV receives relates to the issue of the sale of mortgages. While there are requirements that consumers be notified on a timely basis of the sale of a mortgage, anecdotal evidence demonstrates that timely notification may not occur in all cases. If the consumer is not notified, or the insurance company is not notified of the mortgage sale, then insurance renewals may go to the wrong mortgage company and payments are delayed. If you receive notice that your loan has been transferred, please contact your independent insurance agent immediately to ensure that premium notices are mailed to the new mortgage servicer.

HUD provides this guidance if your loan is transferred to new servicer.

Your loan servicer is required to notify you in writing at least 15 days before the servicing of your loan is transferred to a new servicer. The notice must include the following information:

- *The effective date of the transfer, the date your current servicer will stop accepting payments and the date the new servicer will begin accepting them.*
- *The name, address, and toll-free or collect call telephone number for the new servicer.*
- *Information that tells whether you can continue any optional insurance, such as mortgage life or disability insurance, and what action, if any, you must take to maintain coverage.*
- *A statement that the transfer of servicing does not affect any term or condition of your mortgage documents other than the terms directly related to the servicing of the loan.*

Treatment of Payments During Transfer Period. *During the 60-day period beginning on the effective date of the transfer, the payment may not be treated as late if you mistakenly send it to the old mortgage servicer instead of the new one.*

Virginia passed legislation in 2001 requiring mortgage holders to notify insurance companies of changes of address within 30 days. This section of the Code applies to Virginia chartered banks/mortgage servicing companies. The appropriate section of the Virginia Banking & Finance Code follows:

§ [6.1-423](#). Escrow accounts.

All moneys required by a mortgage lender required to be licensed under this chapter to be paid by borrowers in escrow to defray future taxes or insurance premiums, or for other

lawful purposes, shall be kept in accounts segregated from accounts of the lender, and shall not be commingled with other funds of the lender. No licensed mortgage lender shall require any borrower to pay any moneys in escrow to defray future taxes and insurance premiums, or for any other purpose, in connection with a subordinate mortgage loan as referred to in Chapter 7.3 (§ [6.1-330.49](#) et seq.) of this title, except where escrows for such purposes are not being maintained in connection with the mortgage loan superior to such subordinate mortgage loan. Mortgage lenders holding money in escrow for insurance premiums shall notify the insurer in writing within thirty days of a change of the mortgage lender's billing address, or sixty days prior to the renewal date of the insurance policy, whichever is later.

(1987, c. 596; 2001, c. 504.)

RESPA enforcement

Civil law suits

Individuals have one (1) year to bring a private law suit to enforce violations of Section 8 or 9. A person may bring an action for violations of Section 6 within three years. Lawsuits for violations of Section 6, 8, or 9 may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred.

HUD, a State Attorney General or State insurance commissioner may bring an injunctive action to enforce violations of Section 6, 8 or 9 of RESPA within three (3) years.

Loan servicing complaints

Section 6 provides borrowers with important consumer protections relating to the servicing of their loans. Under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.

A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.

Other enforcement actions

Under Section 10, HUD has authority to impose a civil penalty on loan servicers who do not submit initial or annual escrow account statements to borrowers. Borrowers should contact HUD's Office of Consumer and Regulatory Affairs to report servicers who fail to provide the required escrow account statements.

Filing a RESPA complaint

Persons who believe a service provider has violated RESPA in an area in which the Department has enforcement authority (primarily sections 6, 8 and 9), may wish to file a complaint. The complaint should outline the violation and identify the violators by name, address and phone number. Complainants should also provide their own name and phone number for follow up questions from HUD. Requests for confidentiality will be honored. Complaints should be sent to:

Director, Office of RESPA and Interstate Land Sales
US Department of Housing and Urban Development
Room 9154
451 7th Street, SW
Washington, DC 20410

In addition, the Independent Insurance Agents of Virginia highly recommends that copies of complaints be mailed to the Virginia Bureau of Insurance and the State Attorney General's office. As noted above, HUD indicates that the a State Attorney General or State insurance commissioner may bring an injunctive action to enforce violations of Section 6 of RESPA. Given this, IIAV encourages consumers to also file their complaints with these state offices:

Bureau of Insurance
Commonwealth of Virginia
Consumer Services Section
P.O. Box 1157
Richmond, VA 23218

Office of the Attorney General
900 East Main Street
Richmond, VA 23219
(804) 786-2071
mail@oag.state.va.us

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Founded in 1897, IIAV is a non-profit trade association representing independent insurance agents throughout the Commonwealth of Virginia. IIAV is part of the nation's oldest and largest associations of independent insurance agents, representing a network of more than 300,000 agents and agency employees nationwide. Its members are small, medium, and large businesses that offer customers a choice of policies from a variety of insurance- property, casualty, life and health. For more information concerning the association contact IIAV, 8600 Mayland Dr. Richmond, Va. 23294. Phone 804-747-9300 Web address: www.iiav.com and nationally www.independentagent.com