

2022 Regular Session

SENATE BILL NO. 446

BY SENATOR FRED MILLS

BANKS/BANKING. Provides relative to banking provisions regarding damage to mortgaged residential property. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 6:337 and 338(A), (B), and (C), relative to insurance settlement
3 monies paid for damages to property or contents; to require placement of certain
4 insurance settlement monies in segregated accounts; to provide for disbursement of
5 certain insurance settlement monies to the borrower-payee; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 6:337 and 338(A), (B), and (C) are hereby amended and reenacted
9 to read as follows:

10 §337. Duty of secured party upon payment of insurance claim for damage to
11 mortgaged residential property

12 A. ~~If payment in settlement of a damage claim on residential property in~~
13 ~~which another person holds a mortgage is by check or draft, of an insurer, made~~
14 ~~payable jointly to the claimant and the person holding the mortgage, then such~~
15 ~~"settlement proceeds," as defined in Subsection C of this Section, shall be placed in~~
16 ~~escrow and shall earn interest payable to the claimant in accordance with the~~
17 ~~provisions of Subsection C of this Section.~~

1 The following provisions shall apply to a mortgagee or mortgage
2 servicer, servicing residential mortgage loans in this state:

3 (1) The mortgagee or mortgage servicer shall promptly endorse a check,
4 draft, or other negotiable instrument for insurance settlement proceeds payable
5 jointly to the mortgagee or mortgage servicer and the borrower-payee by the
6 insurance company. However, the mortgagee or mortgage servicer is not
7 required to endorse such instrument if the borrower-payee refuses to endorse
8 the instrument.

9 (2) Insurance settlement proceeds received by a mortgagee or mortgage
10 servicer that relate to compensation for damage to property or contents
11 insurance coverage in which the mortgagee or mortgage servicer has mortgage
12 or security interest shall be promptly deposited into a segregated account of a
13 federally insured financial institution, unless the mortgagee or mortgage
14 servicer returns such insurance settlement proceeds to the borrower-payee or
15 the check, draft, or negotiable instrument is missing the borrower-payee's
16 endorsement.

17 (3) Insurance settlement proceeds received by a mortgagee or mortgage
18 servicer that relate to contents insurance coverage in which the mortgagee or
19 mortgage servicer does not have a security interest in the contents shall be
20 promptly distributed to the borrower-payee.

21 (4) Insurance settlement proceeds received by a mortgagee or mortgage
22 servicer that relate to additional living expenses shall be promptly distributed
23 to the borrower-payee.

24 B. Notwithstanding the provisions of Subsection A of this Section, the
25 mortgagee or mortgage servicer is not required to remit the portion of the
26 insurance settlement proceeds relating to additional living expenses and
27 contents insurance if the mortgagee or mortgage servicer is not able to
28 determine which part of the proceeds relates to additional living expenses and
29 contents insurance.

1 C. This Section shall not prevent an insurance company from paying the
2 borrower-payee directly for additional living expenses or paying the borrower-
3 payee directly for contents insurance coverage if the mortgagee or mortgage
4 servicer does not have a mortgage or security interest in the contents.

5 D.(1) If a mortgagee or mortgage servicer holds all or part of the
6 insurance settlement proceeds pending completion of all or part of the repairs
7 to the damaged property, the mortgagee or mortgage servicer shall notify the
8 borrower-payee of each requirement with which the borrower-payee shall
9 comply for the mortgagee or mortgage servicer to release the insurance
10 settlement proceeds. The notice required by this Paragraph shall be provided
11 not later than the twentieth day after the date the mortgagee or mortgage
12 servicer receives payment of the insurance settlement proceeds.

13 (2) Not later than the twentieth day after the date a mortgagee or
14 mortgage servicer receives from the borrower-payee a request for release of all
15 or part of the insurance settlement proceeds held by the mortgagee or mortgage
16 servicer, the mortgagee or mortgage servicer shall do either of the following:

17 (a) If the mortgagee or mortgage servicer has received sufficient
18 evidence of the borrower-payee's compliance with the requirements specified
19 by the mortgagee or mortgage servicer pursuant to Paragraph (1) of this
20 Subsection for release of the insurance settlement proceeds, release to the
21 borrower-payee, as requested, all or part of the proceeds.

22 (b) Provide notice to the borrower-payee that explains specifically both
23 of the following:

24 (i) The reason for the mortgagee or mortgage servicer's refusal to
25 release the insurance settlement proceeds to the borrower-payee.

26 (ii) Each requirement with which the borrower-payee shall comply for
27 the mortgagee or mortgage servicer to release the insurance settlement
28 proceeds.

29 E.(1) When the damaged property is replaced or otherwise repaired to the

1 satisfaction of the claimant **borrower-payee** and the ~~person holding the mortgage~~
 2 ~~on the property~~ **mortgagee or mortgage servicer**, then any remaining balance in the
 3 ~~escrow~~ **segregated** account shall be paid to the claimant **borrower-payee** together
 4 with all interest that accrued while the funds were in ~~escrow~~ **the segregated account**
 5 **as provided in Paragraph (2) of this Subsection.** ~~The person holding the security~~
 6 ~~interest in the property shall cooperate fully with the claimant and the claimant's~~
 7 ~~insurer in releasing funds in a timely manner to replace or repair the damaged~~
 8 ~~property.~~

9 ~~C. As used in this Section, "settlement proceeds" means funds paid on an~~
 10 ~~insurance claim for damage to residential immovable property as a result of~~
 11 ~~Hurricane Katrina or Hurricane Rita, and where the funds equal twenty-five thousand~~
 12 ~~dollars or more. These funds shall be held in escrow by the lender or loan servicer.~~

13 **(2)** Interest shall accrue on **insurance** settlement proceeds **where the funds**
 14 **equal twenty-five thousand dollars or more** after being held in ~~escrow~~ **by the**
 15 **mortgagee or mortgage servicer in a segregated account** for more than thirty
 16 days. For purposes of this Subsection, compliance with Fannie Mae or Freddie Mac
 17 servicing guidelines for payment of interest on property damage claim funds held in
 18 ~~escrow~~ by the ~~lender or loan servicer~~ **mortgagee or mortgage servicer** constitutes
 19 compliance with this Section.

20 ~~D~~**F.** The provisions of this Section shall be applicable to state chartered
 21 federally insured financial institutions and their affiliates to the same extent that such
 22 provisions are applicable to federally chartered financial institutions.

23 §338. Insurance settlement proceeds; return of excess funds; enforcement

24 A. If a ~~mortgage holder~~ **mortgagee or mortgage servicer** is presented with
 25 a jointly payable insurance proceeds check ~~or draft,~~ **draft, or other negotiable**
 26 **instrument** for residential immovable property damage ~~resulting from either~~
 27 ~~Hurricane Katrina or Hurricane Rita, or both,~~ which contains the mortgagor's
 28 **borrower-payee's** endorsement, and the ~~mortgage holder~~ **mortgagee or mortgage**
 29 **servicer** receives a written request from the borrower-**payee** to release excess funds,

1 then ~~all mortgage holders~~ **the mortgagee or mortgage servicer** shall have thirty
 2 days after receiving such request and such check ~~or draft~~, **draft, or other negotiable**
 3 **instrument** to provide their endorsements and return all excess funds provided for
 4 in Subsection B of this Section.

5 B. The ~~mortgage holder~~ **mortgagee or mortgage servicer** holding funds in
 6 ~~escrow~~ **a segregated account** shall return to the ~~mortgagor~~ **borrower-payee** all
 7 funds considered to be excess funds. For purposes of this Section, the term "excess
 8 funds" shall mean insurance funds in excess of **both of** the following:

9 (1) All loan balances of any ~~mortgage holder~~ **mortgagee or mortgage**
 10 **servicer** named as payee on the insurance claim check ~~or draft~~, **draft, or other**
 11 **negotiable instrument** calculated as of the thirtieth day following receipt of the
 12 request and check or draft as outlined in Subsection A of this Section; ~~and,~~

13 (2) Six months of future accrued interest as calculated pursuant to the terms
 14 of the mortgage loans and calculated from the date of the payoff explained in
 15 ~~Paragraph (B)(1) of this Section.~~ **Paragraph (1) of this Subsection.**

16 C.(1) The commissioner may impose civil money penalties of up to one
 17 hundred fifty dollars per day of each day a ~~mortgage holder~~ **mortgagee or mortgage servicer** fails to comply with the requirements of
 18 Subsection B of this Section.

19 (2) Penalties shall be due and payable upon notice of their assessment to the
 20 ~~mortgage holder~~ **mortgagee or mortgage servicer**, unless set aside after
 21 administrative hearing pursuant to the provisions of the Administrative Procedure
 22 Act. The assessment of civil money penalties shall be final and definitive and subject
 23 to enforcement by the commissioner through judicial proceedings.
 24

25 * * *

The original instrument was prepared by Xavier Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tyler McCloud.

DIGEST

SB 446 Reengrossed

2022 Regular Session

Fred Mills

Present law provides that if payment of an insurance check or draft in settlement of a property damage claim involving residential property in which another holds a mortgage on the property is paid jointly to the claimant and the holder of the mortgage, then such settlement proceeds are to be placed in an interest-bearing account and the interest accruing to the benefit of the claimant.

Proposed law replaces the term "claimant" with "borrower-payee".

Proposed law replaces the phrase "person holding the mortgage on the property" with "mortgagee or mortgage servicer".

Proposed law provides that a mortgagee or mortgage servicer shall promptly endorse a check, draft, or other negotiable instrument for insurance settlement proceeds payable jointly to the mortgagee or mortgage servicer and the borrower-payee.

Proposed law provides that a mortgagee or mortgage servicer is not required to endorse a check, draft, or other negotiable instrument for insurance settlement proceeds payable jointly to the mortgagee or mortgage servicer and borrower-payee if the borrower-payee refuses to endorse the instrument.

Proposed law provides that insurance settlement proceeds, related to damage of property or contents insurance coverage, received by a mortgagee or mortgage servicer, which the mortgagee or mortgage servicer has a security interest, shall be promptly deposited into a segregated account of a federally insured financial institution, unless the insurance settlement proceeds are returned to the borrower-payee or the instrument is missing the borrower-payee's endorsement.

Proposed law provides that insurance settlement proceeds, related to contents insurance coverage, received by a mortgagee or mortgage servicer, which the mortgagee or mortgage servicer has no security interest, shall be promptly distributed to the borrower-payee.

Proposed law provides that insurance settlement proceeds received by a mortgagee or mortgage servicer that is related to additional living expenses shall be promptly distributed to the borrower-payee.

Proposed law provides that a mortgagee or mortgage servicer is not required to remit the portion of the insurance settlement proceeds related to additional living expenses and contents insurance coverage unless it is determined which part of the settlement is related to additional living expenses and content insurance.

Proposed law provides that an insurance company can pay the borrower-payee directly for additional living expenses or contents insurance coverage if the mortgagee or mortgage servicer has no security interest in the contents.

Proposed law requires the mortgagee or mortgage servicer to give notice, within 20 days of receiving the insurance settlement proceeds, to the borrower-payee of the requirements for the release the proceeds.

Proposed law requires the mortgagee or mortgage servicer to release all or part of the insurance settlement proceeds within 20 days of receiving a request by the borrower-payee

if sufficient evidence of complying with requirements has been received by the mortgagee or mortgage servicer.

Proposed law requires if the insurance settlements proceeds are not released as requested, the mortgagee or mortgage servicer must explain the reason for the refusal to release the funds and each requirement the borrower-payee must comply with to receive the funds.

Present law provides that once the property is replaced or repaired to the satisfaction of the claimant and the person holding the mortgage, then any funds remaining in escrow shall be paid to the claimant with any interest accrued while in escrow. Present law further provides that the holder of the mortgage on the property is required to cooperate fully with the claimant and his insurer in releasing funds in a timely manner for such replacement or repair of the damaged property.

Proposed law provides that once the property is replaced or repaired to the satisfaction of the borrower-payee and mortgagee or mortgage servicer, then any funds remaining in a segregated account shall be paid to the borrower-payee with any interest that accrued while the funds were in the segregated account. Proposed law removes the requirement that the holder of the mortgage on the property is required to cooperate fully with the claimant and his insurer in releasing funds in a timely manner for such replacement or repair of the damaged property.

Present law defines "settlement proceeds" to be funds of \$25,000 or more paid on insurance claims for damage to residential immovable property as a result of Hurricane Katrina or Hurricane Rita which are held in interest-bearing accounts for 60 days or more by the lender or loan servicer. Present law further provides that interest shall accrue on settlement proceeds after being held in escrow for more than 30 days.

Proposed law provides that interest shall accrue on insurance settlement proceeds that are \$25,000 or more, after being held by the mortgagee or mortgage servicer segregated account for more than 30 days. Proposed law deletes the definition of "settlement proceeds" under present law.

Present law provides that compliance with Fannie Mae or Freddie Mac servicing guidelines for payment of interest on property damage claim funds held in escrow by the lender or loan servicer constitutes compliance. Proposed law retains this provision.

Present law provides that if a mortgage holder is presented with a jointly payable insurance proceed check or draft, that is endorsed by mortgagor and related to residential damage to immovable property resulting from Hurricane Katrina or Hurricane Rita, or both, and the mortgage holder receives a written request from the borrower to release excess funds then the mortgage holder shall have 30 days to return excess funds.

Proposed law retains present law but removes the provision that the damage must be a result of Hurricane Katrina or Hurricane Rita.

Present law defines "excess funds" and provides that the mortgage holder holding funds in escrow shall return all funds considered to be excess funds. Proposed law retains present law and replaces the term "mortgage holder" with "mortgagee or mortgage servicer".

Effective August 1, 2022.

(Amends R.S. 6:337 and 338(A), (B), and (C))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Makes technical change.

Senate Floor Amendments to engrossed bill

1. Requires the mortgagee or mortgage servicer to give notice, within 20 days of receiving the insurance settlement proceeds, to the borrower-payee of the requirements for the release the proceeds.
2. Requires the mortgagee or mortgage servicer to release all or part of the insurance settlement proceeds within 20 days of receiving a request by the borrower-payee if sufficient evidence of complying with requirements has been received by the mortgagee or mortgage servicer.
3. Requires if the insurance settlements proceeds are not released as requested, the mortgagee or mortgage servicer must explain the reason for the refusal to release the funds and each requirement the borrower-payee must comply with to receive the funds.