

# ACT No. 744

HOUSE BILL NO. 1064 (Substitute for House Bill No. 1023 by Representative Farnum)

BY REPRESENTATIVES FARNUM, BOURRIAQUE, WILFORD CARTER, DAVIS,  
GEYMANN, ROMERO, AND TARVER AND SENATORS FRED MILLS AND  
STINE

1 AN ACT

2 To amend and reenact R.S. 6:337 and 338, relative to the disbursement of insurance  
3 proceeds for damages to residential property; to provide for prompt endorsement; to  
4 require prompt payment to borrower-payees in certain circumstances; to require  
5 placement of settlement proceeds in a segregated account; to provide for  
6 requirements for a residential mortgagee or mortgage servicer; to provide for the  
7 payment of proceeds relative to additional living expenses and contents insurance;  
8 to provide for notice by a mortgagee or mortgage servicer in certain circumstances;  
9 to provide for the release of proceeds held by a mortgagee or mortgage servicer; to  
10 provide for civil money penalties; to provide for the payment of interest accrued on  
11 settlement proceeds; to provide for release of excess funds upon written request; to  
12 provide for applicability; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 6:337 and 338 are hereby amended and reenacted to read as follows:

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

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

1           ~~provisions of Subsection C of this Section.~~ All of the following provisions shall  
 2           apply to a mortgagee or mortgage servicer servicing residential mortgage loans  
 3           secured by a property that contains one to four residential dwelling units in this state:

4                     (1) The mortgagee or mortgage servicer shall promptly endorse a check,  
 5                     draft, or other negotiable instrument for insurance settlement proceeds payable  
 6                     jointly to the mortgagee or mortgage servicer and the borrower-payee by the  
 7                     insurance company. However, the mortgagee or mortgage servicer is not required  
 8                     to endorse such instrument if the borrower-payee refuses to endorse 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 insurance  
 11                    coverage in which the mortgagee or mortgage servicer has a mortgage or security  
 12                    interest shall be promptly deposited into a segregated account of a federally insured  
 13                    financial institution, unless the mortgagee or mortgage servicer returns such  
 14                    insurance settlement proceeds to the borrower-payee or the check, draft, or  
 15                    negotiable instrument is missing the borrower-payee's endorsement. The segregated  
 16                    account may at the discretion of the mortgagee or mortgage servicer be an individual  
 17                    deposit account for each borrower-payee or a master account containing subaccounts  
 18                    for each borrower-payee.

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

23                    (4) Insurance settlement proceeds received by a mortgagee or mortgage  
 24                    servicer that relate to additional living expenses shall be promptly distributed to the  
 25                    borrower-payee via traceable delivery or electronic transfer.

26                    B. ~~When the damaged property is replaced or otherwise repaired to the~~  
 27                    ~~satisfaction of the claimant and the person holding the mortgage on the property,~~  
 28                    ~~then any remaining balance in the escrow account shall be paid to the claimant~~  
 29                    ~~together with all interest that accrued while the funds were in escrow. The person~~  
 30                    ~~holding the security interest in the property shall cooperate fully with the claimant~~

1 and the claimant's insurer in releasing funds in a timely manner to replace or repair  
2 the damaged property. Notwithstanding the provisions of Subsection A of this  
3 Section, the mortgagee or mortgage servicer is not required to remit the portion of  
4 the insurance settlement proceeds relating to additional living expenses and contents  
5 insurance if the mortgagee or mortgage servicer is not able to determine which part  
6 of the proceeds relate to additional living expenses and contents insurance.

7 C.(1) ~~As used in this Section, "settlement proceeds" means funds paid on an~~  
8 ~~insurance claim for damage to residential immovable property as a result of~~  
9 ~~Hurricane Katrina or Hurricane Rita, and where the funds equal twenty-five thousand~~  
10 ~~dollars or more. These funds shall be held in escrow by the lender or loan servicer.~~  
11 ~~Interest shall accrue on settlement proceeds after being held in escrow for more than~~  
12 ~~thirty days. For purposes of this Subsection, compliance with Fannie Mae or Freddie~~  
13 ~~Mac servicing guidelines for payment of interest on property damage claim funds~~  
14 ~~held in escrow by the lender or loan servicer constitutes compliance with this~~  
15 ~~Section.~~

16 ~~D:~~ If a mortgagee or mortgage servicer holds all or part of the insurance  
17 settlement proceeds pending completion of all or part of the repairs to the damaged  
18 property, the mortgagee or mortgage servicer shall notify the borrower-payee of each  
19 requirement with which the borrower-payee shall comply for the mortgagee or  
20 mortgage servicer to release the insurance settlement proceeds. The notice required  
21 by this Paragraph shall be provided not later than the tenth business day after the date  
22 the mortgagee or mortgage servicer receives payment of the insurance settlement  
23 proceeds.

24 (2) Not later than the tenth business day after the date a mortgagee or  
25 mortgage servicer receives from the borrower-payee a request for release of all or  
26 part of the insurance settlement proceeds held by the mortgagee or mortgage  
27 servicer, the mortgagee or mortgage servicer shall do either of the following:

28 (a) If the mortgagee or mortgage servicer does not require a property  
29 inspection be conducted and has received sufficient evidence of the borrower-payee's  
30 compliance with the requirements specified by the mortgagee or mortgage servicer

1 pursuant to Paragraph (1) of this Subsection for release of the insurance settlement  
 2 proceeds, release to the borrower-payee, as requested, all or part of the proceeds.

3 (b) Provide notice to the borrower-payee that explains with specificity both  
 4 of the following:

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

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

9 (3)(a) Property inspections related to residential mortgage loans covered by  
 10 this Section shall be conducted not later than the fifteenth business day after receipt  
 11 by the mortgagee or mortgage servicer of both a request by the borrower-payee for  
 12 a property inspection and receipt of sufficient evidence of the borrower-payee's  
 13 compliance with the requirements specified by the mortgagee or mortgage servicer  
 14 pursuant to Paragraph (1) of this Subsection, provided that the borrower-payee is  
 15 cooperative and that the premises are accessible.

16 (b) A mortgagee or mortgage servicer may, at their discretion, allow property  
 17 inspections to be conducted in person, through photographic or video evidence  
 18 submitted by the borrower-payee, through a servicer-directed video call with the  
 19 borrower-payee, or by any other means to document the progress or completion of  
 20 repairs of the property.

21 (c) Photographic or video evidence shall also clearly identify the repairs that  
 22 are being documented and confirm the repairs were completed in accordance with  
 23 the repair plan. Any photographic or video evidence provided to a mortgagee or  
 24 mortgage servicer may not be accepted if it does not allow the mortgagee or  
 25 mortgage servicer to determine the repairs are from the location of the property  
 26 subject to the mortgage loan, does not authenticate when it was taken, or if it is  
 27 believed by the mortgagee or mortgage servicer to have been altered in any way.

28 (4)(a) The commissioner may impose civil money penalties of up to five  
 29 hundred dollars per day for each day that a mortgagee or mortgage servicer fails to  
 30 comply with the requirements of Paragraphs (1) or (2) of this Subsection. The

1 penalties provided by this Paragraph shall not exceed five thousand dollars per  
 2 violation.

3 (b) Penalties shall be due and payable upon notice of their assessment to the  
 4 mortgagee or mortgage servicer, unless such penalties are set aside after an  
 5 administrative hearing pursuant to the provisions of the Administrative Procedure  
 6 Act. The assessment of civil money penalties shall be final and definitive and  
 7 subject to enforcement by the commissioner through judicial proceedings.

8 D.(1) When the damaged property is replaced or otherwise repaired to the  
 9 satisfaction of the borrower-payee and the mortgagee or mortgage servicer, then any  
 10 remaining balance in the segregated account shall be paid to the borrower-payee  
 11 together with all interest that accrued while the funds were in the segregated account  
 12 in accordance with Paragraph (2) of this Subsection.

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

19 E. The provisions of this Section and R.S. 6:338 shall be applicable to state  
 20 chartered federally insured financial institutions and their affiliates to the same extent  
 21 that such provisions are applicable to federally chartered financial institutions.

22 F. The provisions of this Section shall apply only to residential mortgage  
 23 loans secured by a property that contains one to four residential dwelling units.  
 24 However, the provisions of this Section shall not apply to a mortgagee or mortgage  
 25 servicer when the borrower-payee is in default on his mortgage loan, past due with  
 26 payments on his mortgage loan, or in foreclosure related to his mortgage loan.

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

28 A. If a ~~mortgage holder~~ mortgagee or mortgage servicer is presented with a  
 29 jointly payable insurance proceeds check, ~~or draft,~~ or other negotiable instrument for  
 30 residential immovable property damage ~~resulting from either Hurricane Katrina or~~

1           Hurricane Rita, or both, which contains the mortgagor's borrower-payee's  
 2           endorsement, and the ~~mortgage holder~~ mortgagee or mortgage servicer receives a  
 3           written request from the ~~borrower~~ borrower-payee to release excess funds, then ~~all~~  
 4           ~~mortgage holders~~ the mortgagee or mortgage servicer shall have ~~thirty~~ fifteen  
 5           business days after receiving such request and such check, ~~or draft, or other~~  
 6           negotiable instrument to provide ~~their~~ its endorsements and return all excess funds  
 7           provided for in Subsection B of this Section. The fifteen-business day timeline for  
 8           releasing excess funds provided by this Section shall not apply when the insurance  
 9           proceeds check, draft, or other negotiable instrument requires the endorsement of  
 10          multiple mortgagees or lien holders.

11                     B. ~~The mortgage holder holding funds in escrow shall return to the~~  
 12          ~~mortgagor all funds considered to be excess funds.~~ For purposes of this Section, the  
 13          term "excess funds" shall mean insurance funds in excess of both of the following:

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

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

21                     C.(1) The commissioner may impose civil money penalties of up to ~~one~~ five  
 22          hundred ~~fifty~~ dollars per day of each day a ~~mortgage holder~~ subject to his jurisdiction  
 23          mortgagee or mortgage servicer fails to comply with the requirements of Subsection  
 24          B of this Section. The penalties provided in this Paragraph shall not exceed five  
 25          thousand dollars per violation.

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

1           D. The provisions of this Section shall ~~be applicable to state-chartered~~  
2           ~~federally insured financial institutions and their affiliates to the same extent that such~~  
3           ~~provisions are applicable to federally chartered financial institutions~~ apply only to  
4           residential mortgage loans secured by a property that contains one to four residential  
5           dwelling units. However, the provisions of this Section shall not apply to a  
6           mortgagee or mortgage servicer when the borrower-payee is in default on his  
7           mortgage loan, past due with payments on his mortgage loan, or in foreclosure  
8           related to his mortgage loan.

9           E. ~~The commissioner shall have the power to enact and promulgate rules and~~  
10          ~~regulations as may be necessary or appropriate to implement the provisions of this~~  
11          ~~Section.~~ The provisions of this Section shall not impair the contractual rights of a  
12          mortgagee or mortgage servicer related to all loan balances and accrued interest as  
13          described in Paragraphs (B)(1) and (2) of this Section.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_