
The Mortgage Office
Escrow Administration Module

White Paper on Escrow Account Management & Administration

Jerry Delgado
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Applied Business Software, Inc.
2847 Gundry Ave Long Beach CA 90806
800.833.3343
<http://www.themortgageoffice.com>

About This Paper

Although general in scope, this paper is primarily intended to help users of the loan servicing module of [The Mortgage Office](#) become familiar with the requirements and procedures set forth by RESPA when maintaining escrow accounts on behalf of borrowers.

Most of the information contained in this document has been extracted from The Real Estate Settlement Procedures Act; Section 3500.17; Escrow Accounts. For additional information, please visit the official website of the U.S. Department of Housing and Urban Development (<http://www.hud.gov>).

Overview

Escrow Account

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums, or other charges with respect to a loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or any other term. The term escrow account excludes any account that is under the borrower's total control.

Establishing an Escrow Account

Before establishing an escrow account, the servicer shall conduct an escrow account analysis to determine the amount the borrower shall deposit into the account. After conducting the escrow account analysis, the servicer shall submit an initial escrow account statement to the borrower within 45 calendar days of establishment of the escrow account.

Record Retention

A servicer must retain the records of an escrow account for a period of five years after the servicer last serviced the account. The records must include payments to the account, disbursements from the account, and all escrow account statements. The records may be stored on electronic media.

Permissible Charges

Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account.

Aggregate Accounting

It's the accounting method the servicer must use when conducting an escrow account analysis. The servicer must compute the sufficiency of escrow account funds by analyzing the account as a whole. Under aggregate accounting rules, the servicer must use 'month-end' accounting. This means, that the timing of disbursements and payments within the month is irrelevant.

Annual Escrow Account Disclosure Statement

For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

Furthermore, the annual escrow statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year.

Short Year Statements

A servicer may issue a "short-year" annual escrow statement to a borrower at any time to change the escrow account computation year to another. The effect of issuing a short year statement is to end the prior computation year and establish the beginning date of a new computation year. Short year statements must be delivered to the borrower within 60 days of the end of the short year.

Transfer of Servicing. Upon the transfer of servicing, the old servicer shall submit a short year statement to the borrower within 60 days of the effective date of the transfer.

Loan Payoff. If a borrower pays off the loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

Cushion

Cushion means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account. The cushion amount shall not be greater than 1/6 of the estimated total annual disbursements from the escrow account or a lesser amount specified by State law or the loan document.

Estimating Annual Disbursements

To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the charge is known, the servicer shall use that amount; otherwise the servicer may base the estimate on the preceding year's charge or the preceding year's charge increased in proportion to the increase in the Consumer Price Index (CPI) since the date of the last escrow analysis.

Timely Payments

The servicer shall pay the disbursements in a timely manner, that is, by the disbursement date, so long as the borrower's payment is not more than 30 days overdue. In calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Discretionary Payments

Any borrower's discretionary payment such as credit life or disability insurance made as part of a mortgage payment should be noted on the annual escrow statement. Discretionary payments are not part of the escrow account unless the payment is required by the lender.

Surpluses

A surplus is the amount by which the current escrow account balance exceeds the required maximum cushion. If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to \$50. If the surplus is less than \$50, the servicer may refund the amount to the borrower, or credit such amount against the next year's escrow payments. If the borrower is 30 days late or more, the servicer may retain the surplus in the escrow account pursuant to the terms of the loan documents.

Shortages

A shortage is an amount by which a current escrow account balance falls short of the required cushion amount. If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

1. Do nothing.
2. Require the borrower to repay the shortage within 30 days.
3. Require the borrower to repay the shortage amount over a 12-month period.

If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

1. Do nothing.
2. Require the borrower to repay the shortage amount over a 12-month period.

Deficiency

A deficiency is the amount of a negative balance in the escrow account. If a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

If an escrow account analysis confirms a deficiency, the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

If the deficiency is less than one month's escrow account payment, then the servicer has three possible courses of action:

1. Do nothing.
2. Require the borrower to repay the deficiency within 30 days.
3. Require the borrower to repay the deficiency in 2 or more equal monthly payments.

If the deficiency is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

1. Do nothing.
2. Require the borrower to repay the deficiency in 2 or more equal monthly payments.

FAQ About Escrow Accounts

What is RESPA?

The Real Estate Settlement Procedures Act, commonly referred as RESPA, is a consumer protection statute, first passed in 1974. One of its purposes, and the focus of this document, is to set limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other related charges.

Any questions regarding RESPA should be directed to the Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 24410-8000.

Does RESPA require servicers to maintain an escrow account?

NO. It's the servicer's decision whether to maintain an escrow account for the purpose of paying taxes, insurance and other items. HUD regulations only limit the maximum amount that a servicer can require from a borrower to maintain in an escrow account.

Does RESPA require servicers to maintain a cushion?

NO. RESPA does not require the servicer to maintain a cushion. However, the maximum cushion allowed is 1/6 (approximately 2 months of escrow payments) of the reasonably anticipated total annual escrow disbursements.

Does RESPA require interest to be paid on escrow accounts?

NO. RESPA does not require the servicer to pay interest on escrow account funds.

What is an Escrow Account Projection?

It's a twelve-month projection showing anticipated deposits, disbursements, (with anticipated disbursement date) and an estimated account balance each month.

How is the annual statement projection prepared when the loan is scheduled to mature within the upcoming escrow account computation year?

The account may be analyzed and payments collected as if the account would be in existence for a full computation year. Alternatively, the account may be analyzed and payments collected and disbursed as if the account were terminating on the date of maturity. In either event, any balances are returned to the borrower following maturity of the loan. The judgment of the servicer as to which method to use may be based on the length of time the account will be open and the size of payments to be made within that period. The short-year statement after payoff should be furnished consistent with RESPA regulations.

Time of Submission for the Annual Escrow Account Disclosure Statement

The statement shall be submitted to the borrower not less than once for each 12-month period, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

If the borrower's escrow account includes a surplus greater than \$50 which HUD's rules require be refunded, may the servicer credit the surplus directly to the principal, rather than refund the surplus to the borrower?

NO. However, the servicer may inform the borrower in the information accompanying the return of the surplus that the borrower may elect to use the refund to reduce principal or have it credited against the next year's escrow payments.

If there is a surplus in the escrow account and the borrower is in default, may the servicer retain the surplus as payment towards the amount in default?

HUD's escrow rules are inapplicable to loans that are in default, which is defined under the RESPA rules as current payments which are more than 30 days delinquent. The parties should consult the mortgage documents or state law to resolve whether escrow funds are available for this purpose.

How should I report a violation of RESPA?

You should send a written complaint describing the practice that you believe violates RESPA. The complaint should include the names, addresses and phone numbers of the alleged violators. It is preferred that you include your name and phone number in case an investigator wishes to ask further questions. You may request confidentiality. Send the complaint to:

US Department of HUD
Office of Consumer and Regulatory Affairs
451 7th Street, SW, Room 9146
Washington, DC 20410

You may also wish to send a complaint to State and other Federal agencies that have the responsibility for regulating the settlement providers engaged in the referenced practice.