

1987 Assembly Bill 705

Date of enactment: April 22, 1988  
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## 1987 Wisconsin Act 360

AN ACT to amend 138.052 (5) (a) and 138.052 (12) (a); and to create 138.052 (5m) and (7m) of the statutes, relating to escrow accounts required in connection with a residential mortgage loan and sale of the servicing of a residential mortgage loan.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 138.052 (5) (a) of the statutes is amended to read:

138.052 (5) (a) Except as provided in par. (b), a bank, credit union, ~~mutual~~ savings bank, savings and loan association or mortgage banker which originates a loan after January 31, 1983, and which requires an escrow to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest-bearing account.

SECTION 1m. 138.052 (5m) and (7m) of the statutes are created to read:

138.052 (5m) (a) In this subsection, "escrow agent" means a person who receives escrow payments on behalf of itself or another person.

(b) 1. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes, a bank, credit union, savings bank, savings and loan association or mortgage banker which originates a loan on or after the effective date of this subdivision .... [revisor inserts date], shall, before the loan closing, provide the borrower with a written notice clearly stating that the borrower may require the escrow agent to make payments in any manner specified in subd. 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4 and 5.

2. Except as provided in par. (e), if an escrow is required to assure the payment of property taxes for a loan originated before the effective date of this subdivision .... [revisor inserts date], the escrow agent shall send, by November 15, 1988, written notice to the borrower clearly stating that the borrower may require

the escrow agent to make payments in any manner specified in subd. 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in subds. 4 and 5.

3. Except as provided in par. (e), a borrower may require an escrow agent who receives escrow payments to assure the payment of the borrower's property taxes to do any of the following, if the borrower notifies the escrow agent as provided in subd. 4 and if the borrower is current in his or her loan payments:

a. By December 18, send to the borrower a check in the amount of the funds held in escrow for the payment of property taxes, made payable to the borrower and the town, city or village treasurer authorized to collect the tax.

b. Pay the property taxes by December 31, if the escrow agent has received a tax statement for that property by December 20.

c. Pay the property taxes when due.

4. To require the escrow agent to make payments in any of the manners specified in subd. 3, the borrower shall send, by December 1, written notice to the escrow agent specifying the manner, from the 3 choices under subd. 3, that the borrower wants the escrow agent to make payments. Except as provided in subd. 5. b, once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in his or her loan payments or unless otherwise notified in writing by the borrower by December 1.

5. a. If the borrower chooses to receive payments as provided in subd. 3. a, the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments a copy of the receipt for paid property taxes.

b. If the borrower fails to comply with subd. 5. a, the borrower loses the option of receiving payments that year in the manner specified in subd. 3. a. During the next year, the borrower may again receive payments under subd. 3. a if the borrower renotifies the escrow agent by sending written notice to the escrow agent by December 1 of the next year and if the borrower is current in his or her loan payments.

6. If the borrower sends the check received under subd. 3. a to the town, city or village treasurer after the county has assumed responsibility for collecting property taxes, the town, city or village treasurer shall accept the check and pay over to the county treasurer the amount of the check. If the amount of the check sent by the borrower to the town, city or village treasurer exceeds the amount of property taxes owed by the borrower, the town, city or village treasurer shall refund the excess amount to the borrower and, if the county has assumed responsibility for collecting property taxes, pay over to the county treasurer the remaining amount of the check.

(c) A borrower may establish an escrow account required for the payment of taxes and insurance in a

financial institution, as defined in s. 710.05 (1) (c), of the borrower's choice if the escrow agent fails to comply with par. (b) 3, unless the lender or person to whom the loan is sold or released demonstrates that the financial institution is incapable of servicing the escrow account.

(d) If a borrower establishes an escrow account under par. (c), the borrower shall annually, by March 31, send to the person to whom the borrower makes his or her loan payments verification of the amounts which the borrower deposited in the escrow account during the previous 12 months and copies of receipts for taxes and insurance paid during the previous 12 months.

(e) Paragraphs (b) to (d) do not apply to an escrow required in connection with a loan to assure the payment of property taxes, whether the loan is originated before, on or after the effective date of this paragraph .... [revisor inserts date], if it is the practice of the escrow agent to, by December 18, pay to the borrower the amount held in escrow for the payment of property taxes. If the escrow agent in any year chooses not to make the payment by December 18 for any reason other than because the borrower is not current in his or her loan payments, the escrow agent shall send, by November 15 of that year, written notice to the borrower clearly stating that the borrower may require the escrow agent to make payments in any manner specified in par. (b) 3 from the amount escrowed to pay property taxes and the responsibilities of the borrower and escrow agent as provided in par. (b) 4 and 5.

(7m) (a) A lender shall notify the borrower as provided in par. (b) if on or after the effective date of this paragraph .... [revisor inserts date], the payment, collection or other loan or escrow services related to the loan are sold or released.

(b) The notice required under par. (a) shall be in writing and shall include the name, address and telephone number of the party to whom servicing of the loan is sold or released. The lender shall deliver the notice to the borrower by mail or personal service within 15 working days after servicing of the loan is sold or released.

SECTION 2. 138.052 (12) (a) of the statutes is amended to read:

138.052 (12) (a) Any lender violating sub. (2) (b), (5), ~~(5m) (b) 1~~, (6) ~~or~~, (7) or (7m), or an escrow agent, as defined in sub. (5m) (a), violating sub. (5m) (b) 2, is liable to the borrower for \$500 plus actual damages, costs and reasonable attorney fees.

SECTION 3. **Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 138.052 (5m) (b) 1 and 2 of the statutes takes effect on the first day of the 2nd month beginning after publication.