

March 23, 1999

Advisory Ruling #108
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Re: Real Estate Mortgage Escrow Accounts

To Supervised Lenders:

For many years, Maine lenders have originated real estate mortgage loans with escrow accounts in which the borrower sets aside funds, on an installment basis, to pay property taxes and insurance premiums. In some instances, such escrow accounts are established on a voluntary basis as a convenience to the borrower. In other cases involving a high loan to value relationship or to meet underwriting standards required by the secondary market, such escrow accounts are mandatory.

Both the Office of Consumer Credit Regulation and the Bureau of Banking have received complaints from individuals regarding timely payment of property taxes or insurance premiums, and perceived excess balance requirements. Constituent concern has also given rise to legislative scrutiny in this area.

Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 *et seq.*) limits the amount of money a lender may require a borrower to hold in an escrow account for payment of taxes, insurance, or other charges. RESPA also requires the lender to provide initial and annual escrow account statements and to conduct a periodic analysis of escrow requirements. Federal rules (24 CFR 3500 *et seq.*) issued in 1994, which took effect in May of 1995, required lenders to adopt the aggregate accounting method for newly established escrow accounts; lenders had until October 1997 to conform previously established accounts to this requirement. In final rules published January 1998, lenders received direction on what to do when a taxing jurisdiction offers a choice of payment on an installment basis or an annual basis.

In calculating maximum balances which can be maintained, lenders must utilize the values of actual disbursements from the account. If, for example, Maine's Homestead Exemption was credited to the homeowner in the previous tax year, the carryover balance in the escrow account from that year to the next would be slightly larger than expected, and the escrow assessments must be proportionally reduced.

To summarize, substantial federal rules exist governing the establishment and maintenance of escrow accounts, and these rules have changed over time. Maine's financial regulators remind lenders that adherence to the requirements of the Real Estate Settlement Procedures Act and the implementing regulations is essential to ensure adequate consumer protection in this area.

This Advisory Ruling is being issued in conjunction with the Bureau of Banking's Bulletin #68. Should you have any questions regarding this Advisory Ruling or the Bureau of Banking's Bulletin, please contact Will Lund (207-624-8527) or Colette Mooney, Deputy Superintendent of Banking (207-624-8574).

Sincerely,

William N. Lund
Director