



**House
Legislative
Analysis
Section**

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ESCROW PAYMENT OF PROP. TAXES

**House Bill 5641 as passed by the House
Second Analysis (10-22-96)**

**Sponsor: Rep. Allen Lowe
Committee: Commerce**

THE APPARENT PROBLEM:

Public Act 125 of 1966 regulates persons who lend money for purposes of securing a mortgage on real property, known as "mortgagees," to those who are purchasing such property, known as "mortgagors." The act currently provides that if a mortgagor has paid sufficient funds into an escrow account for purposes of paying property taxes on mortgaged real property, and if the mortgagee "has not paid those property taxes," then the person to whom the mortgagor paid the funds is liable to the mortgagor for any penalties or fees resulting from taxes not being paid on time. Generally speaking, Michigan law requires winter property taxes owed to local taxing units for a given year to be paid by February 14 in order for late penalties to be avoided. However, homeowners who itemize on the federal income tax return usually want their property taxes to be paid before the end of the tax year so they can claim the property taxes as a deduction on their return. While the act makes a mortgagee liable for any penalties or interest that result because taxes are not paid on time, nothing within the act requires payment of taxes before the end of the current tax year. Moreover, sometimes errors are made, either by tax-paying units or by mortgagees, which lead to wrong amounts being paid out of mortgagors' escrows for property taxes. Some people believe these problems could be resolved both by requiring mortgagees to pay property taxes owed by mortgagors by December 31, and by establishing a process that would have to be followed by mortgagors and mortgagees when they suspect that an error has occurred.

THE CONTENT OF THE BILL:

The bill would amend Public Act 125 of 1966 to require a mortgagee to pay property taxes owed on mortgaged real property by December 31 of the year in which they were levied if sufficient funds were available in the escrow account to pay them. A mortgagee, however, would not be obligated to pay a bill by this date if it had not been received by December 5.

If a mortgagor believed the mortgagee had made an escrow account error, he or she could submit a written

request for a correction to the mortgagee. The request would have to contain the following information:

- * The mortgagor's name and telephone number;
- * The mortgaged property's address;
- * The mortgage account number; and
- * A statement of the alleged error.

Within 30 days after receiving the written request, the mortgagee would have to inform the mortgagor in writing what, if any, action would be taken to correct the error, and would have to pay all penalties, fees or other costs actually incurred by the mortgagor as a result of the error. If, within 90 days after the mortgagee received the written request, the two parties were unable to agree either that an error had occurred or on the mortgagee's proposed action to correct an error, the mortgagee would have to submit to its regulatory agency a copy of the mortgagor's request and a statement of the efforts made, if any, to resolve the dispute. A copy of all communications between the mortgagee and its regulatory agency would have to be provided to the mortgagor.

A regulatory agency that received a copy of the mortgagor's request and mortgagee's statement would, within 30 days, have to investigate and make such findings and orders that were necessary to resolve the dispute. If an escrow account error had been made by a mortgagee, the mortgagor could terminate the escrow account without being charged a cost or fee. If the mortgagor, however, failed to pay the property tax when due, the mortgagee could require the escrow account to be reinstated.

MCL 565.163

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (10-22-96)

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ARGUMENTS:

For:

The bill would resolve a problem that some mortgagors occasionally experience regarding payment of their property taxes via the mortgage escrow account. Current law merely requires the mortgage servicer to pay property taxes out of an escrow before they are due, which--in the case of winter property taxes--is February 14. But most homeowners expect the winter property tax bill which mortgagees receive in December to be paid before the end of the calendar year so they can increase their itemized deductions on their federal income tax return. In most cases, mortgage servicers do pay mortgagors' winter property taxes before December 31, but for whatever reason this is not always the case. In other instances, even if winter taxes are paid before the end of the year, the amount paid is wrong due to a mistake on the part of the mortgagee or because the tax-paying unit sent the mortgagee an improper tax bill. The bill should correct these problems by, first, requiring mortgagees to pay the taxes before December 31 and, second, giving mortgagors the opportunity to take corrective action if an error is discovered. This not only ensures that property taxes would be paid on time, but would give mortgagors recourse when--after an error has occurred--the mortgagee fails to correct a problem in a manner acceptable to the mortgagor.

Response:

Requiring mortgagees to always pay mortgagors' property taxes before December 31 would not be wise since homeowners occasionally may wish to have their taxes paid in the following year if, for instance, they expect to owe more federal taxes then and want to offset that liability by "bunching" tax deductions into that tax year.

Against:

The bill might solve a problem that a few mortgagors experience regarding the payment of property taxes via their escrow accounts--but at a cost to all mortgage servicers and, ultimately, to their customers. (Mortgagees no doubt would pass their costs to comply with the bill onto mortgagors.) In fact, some problems the bill intends to resolve are not even the fault of mortgagees--for instance, when there are errors on the tax statement the mortgagee receives from a taxing unit. Other problems could be related to passage of Proposal A in 1994, which generally reduced property taxes; perhaps local governments and mortgagees simply need a little more time to adjust to this change. And finally, maybe some mortgagors need to be more active in advising those who service their mortgages how and when they want

property taxes to be paid out of the escrow. The bill, however, implies that mortgagees are entirely responsible for most if not all errors involving the payment of property taxes through escrow accounts; it would not solve the problem and could make matters worse by driving mortgagees away from doing business in the state.

Against:

A spokesman for the Financial Institutions Bureau says the bill contains language that may conflict with federal mortgage laws and existing state statutes. In addition, the bureau indicates the bill may not apply to out-of-state mortgage servicers and could result in state-chartered mortgagees that were located in the state being treated differently than federally-chartered ones located here.

POSITIONS:

The Michigan Consumer Federation supports the bill. (10-17-96)

The Michigan Bankers Association does not oppose the bill. (10-17-96)

The Financial Institutions Bureau has no position on the bill. (10-17-96)

The Michigan League of Savings Institutions opposes the bill. (10-22-96)

Analyst: T. Iversen

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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