
A BILL FOR AN ACT

RELATING TO INTEREST ON INSURANCE PROCEEDS RELATED TO A MORTGAGE
LOAN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 412, Hawaii Revised Statutes, is
2 amended by adding to article 14 a new section to be
3 appropriately designated and to read as follows:

4 "§412:14- Interest on insurance proceeds related to a
5 mortgage loan. (a) In the event of a state of emergency
6 declared by the governor pursuant to section 127A-13, a Hawaii
7 financial institution shall comply with the following
8 requirements concerning the handling, processing, and
9 disbursement of insurance proceeds paid to satisfy a claim
10 associated with the damage or destruction of a residential
11 property that is the subject of a mortgage, including but not
12 limited to hazard insurance of any kind:

13 (1) No later than thirty days after the Hawaii financial
14 institution receives the insurance proceeds, the
15 financial institution shall contact the borrower to
16 determine whether the proceeds should be applied to



1 the unpaid principal balance of the existing mortgage
2 loan or placed in an escrow account if the homeowner
3 intends to use the insurance proceeds to rebuild or
4 disburse funds in excess of the loan balance; provided
5 that:

6 (A) If the insurance proceeds are sufficient to pay
7 off the mortgage loan, the financial institution,
8 with the borrower's consent, shall pay off the
9 mortgage loan and disburse any excess funds to
10 the borrower; provided further that, in
11 accordance with investor guidelines, if the funds
12 exceed the amount of the mortgage loan balance, a
13 mortgage servicer shall disburse to a borrower any
14 amount of insurance proceeds in excess of the
15 remaining amount that the borrower owes on the
16 mortgage; or

17 (B) If the funds are not sufficient to pay off the
18 mortgage loan or the borrower intends to use the
19 insurance proceeds to rebuild, the proceeds shall
20 be placed in an escrow account as set forth in
21 paragraph (2);



- 1 (2) A Hawaii financial institution shall hold in an
2 interest-bearing account, for the benefit of the
3 borrower, any insurance proceeds that the financial
4 institution does not immediately disburse to a
5 borrower pending rebuild of a residential property.
6 The financial institution shall ensure that the
7 interest that accrues to the account is credited to
8 the borrower's account monthly; and
9 (3) A financial institution shall not charge the borrower
10 a fee for the maintenance or disbursement of interest
11 earned on the insurance proceeds, as set forth in
12 paragraph (2), held by the financial institution for
13 the benefit of the borrower."

14 SECTION 2. Section 454M-5, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§454M-5, Additional duties of a mortgage servicer; good**
17 **faith and fair dealing; disclosures; payments, accounting, and**
18 **records; assignment of servicing rights.** (a) A mortgage
19 servicer licensed or acting under this chapter, has a duty of
20 good faith and fair dealing in its communications, transactions,



1 and course of dealings with each borrower in connection with the
2 servicing of the borrower's mortgage loan.

3 (b) In addition to any other duties imposed by law, a
4 mortgage servicer shall:

5 (1) Safeguard and account for any money handled for the
6 borrower;

7 (2) Follow reasonable and lawful instructions from the
8 borrower consistent with the underlying note and
9 mortgage;

10 (3) Act with reasonable skill, care, timeliness,
11 promptness, and diligence;

12 (4) Disclose to the commissioner in the servicer's license
13 application and each yearly renewal a complete,
14 current schedule of the ranges of costs and fees it
15 charges borrowers for its servicing-related
16 activities;

17 (5) File a report with each yearly renewal statement in a
18 form and format acceptable to the commissioner
19 detailing the servicer's activities in [~~this~~] the
20 State, including:



- 1 (A) The number of mortgage loans the servicer is
2 servicing;
- 3 (B) The type and characteristics of loans serviced in
4 this State;
- 5 (C) The number of serviced loans in default, along
6 with a breakdown of thirty-, sixty-, and ninety-
7 day delinquencies;
- 8 (D) Information on loss mitigation activities,
9 including details on workout arrangements
10 undertaken;
- 11 (E) Information on foreclosures commenced in [~~this~~]
12 the State;
- 13 (F) The affiliations of the mortgage servicer,
14 including any lenders or mortgagees for which the
15 mortgage servicer provides service, any
16 subsidiary or parent entities of the mortgage
17 servicer, and a description of the authority held
18 by the mortgage servicer through its
19 affiliations; and
- 20 (G) Any other information that the commissioner may
21 require; and



1 (6) Maintain an office in the State that is staffed by at
2 least one agent or employee for the purposes of
3 addressing consumer inquiries or complaints and
4 accepting service of process; provided that the
5 mortgage servicer's business constitutes at least a
6 twenty per cent share of the portion of the total
7 mortgage loan service market in the State that was
8 serviced by mortgage servicers licensed under this
9 chapter within the previous calendar year; [~~and~~]
10 provided further that nothing in this section shall
11 prohibit a mortgagee as defined by section 667-1 or a
12 mortgage servicer from contracting with a licensee
13 that maintains an office in this State in conformity
14 with this section for the purposes of addressing
15 consumer inquiries or complaints and accepting service
16 of process.

17 (c) A mortgage servicer shall comply with the following
18 requirements concerning handling and processing of mortgage
19 payments:

20 (1) Except as provided in paragraph (4), all payments
21 received by a mortgage servicer on a mortgage loan at



1 the address where the borrower has been instructed in
2 writing to make payments shall be accepted and
3 credited, or treated as credited, on the business day
4 received, to the extent that the borrower has provided
5 sufficient information to credit the account. For all
6 mortgage loans originated after July 1, 2015, except
7 where inconsistent with federal law or regulation,
8 payments shall be credited to the principal and
9 interest due on the home loan before crediting the
10 payments to taxes, insurance, or fees;

11 (2) Methods of payment and payment instruments shall be
12 reasonable;

13 (3) If a mortgage servicer specifies in writing
14 requirements for the borrower to follow in making
15 payments, but accepts a payment that does not conform
16 to the requirements, the mortgage servicer shall
17 credit the payment as soon as commercially
18 practicable, but in no event later than three business
19 days after receipt;

20 (4) Late payments of principal and interest shall be
21 credited before any late charge is collected; and



1 (5) If the mortgage servicer receives any payment on a
2 mortgage loan and suspenses the payment, does not
3 credit the payment, or does not treat the payment in
4 accordance with this section, the mortgage servicer,
5 within ten days of receipt, shall send the borrower
6 notice by mail at the borrower's last known address
7 indicating the reason the payment was suspended or was
8 not credited or treated as credited to the account,
9 and specifying any actions by the borrower necessary
10 to make the loan current.

11 (d) A mortgage servicer shall comply with the following
12 requirements concerning escrows for the payment of taxes and
13 insurance:

14 (1) Any mortgage servicer who receives funds from a
15 borrower to be held in escrow for payment of taxes and
16 insurance premiums shall pay the taxes and insurance
17 premiums of the borrower to the appropriate taxing
18 authority and insurance company in the amount required
19 and at the time the taxes and insurance premiums are
20 due, in accordance with the requirements of the Real
21 Estate Settlement Procedures Act, including title 12



1 [~~C.F.R.~~] Code of Federal Regulations section 1024.17,
2 and shall be liable to the borrower as provided
3 therein;

4 (2) If the amount held in the escrow account as of the
5 date the taxes and insurance premiums are due is
6 insufficient to pay the taxes and insurance premiums,
7 the mortgage servicer shall pay the taxes and
8 insurance premiums from the mortgage servicer's own
9 funds; provided that the borrower has paid to the
10 mortgage servicer the amounts required to be paid into
11 the escrow account, as determined by the mortgage
12 servicer, for all amounts scheduled to be paid to the
13 mortgage servicer [~~prior to~~] before the date the taxes
14 and insurance premiums are due; and

15 (3) Where an escrow account has been established and a
16 mortgage servicer advances funds in paying a
17 disbursement that is not the result of a borrower's
18 payment default under the underlying mortgage
19 document, the mortgage servicer shall conduct an
20 escrow account analysis to determine the reasons for
21 and extent of the deficiency and shall provide a



1 written explanation to the borrower before seeking
2 repayment of the funds from the borrower. The
3 mortgage servicer shall then give the borrower the
4 option of paying the shortage over a period of not
5 less than one year. The mortgage servicer shall not
6 charge or collect interest on any shortage during the
7 payment period.

8 Any mortgage servicer who violates any provision of this
9 subsection shall be liable to the borrower: for any penalties,
10 interest, or other charges levied by the taxing authority or
11 insurance company as a result of any violation; any actual
12 damages suffered by the borrower as a result of the violation,
13 including any amount that would have been paid by an insurer for
14 a casualty or liability claim had the insurance policy not been
15 canceled for nonpayment by the mortgage servicer; and, in the
16 case of any successful action to enforce the foregoing
17 liability, the costs of the action together with reasonable
18 attorney's fees as determined by the court.

19 (e) A mortgage servicer shall comply with the following
20 requirements concerning the handling, processing, and
21 disbursement of insurance proceeds paid to satisfy a claim



1 associated with the damage or destruction of a residential
2 property that is the subject of a mortgage, including but not
3 limited to hazard insurance of any kind:

4 (1) No later than thirty days after the mortgage servicer
5 receives the insurance proceeds, a mortgage servicer
6 shall contact the borrower to determine whether the
7 proceeds should be applied to the unpaid principal
8 balance of the existing mortgage loan or placed in an
9 escrow account if the homeowner intends to use the
10 insurance proceeds to rebuild or disburse funds in
11 excess of the loan balance; provided that:

12 (A) If the insurance proceeds are sufficient to pay
13 off the mortgage loan, the servicer, with the
14 borrower's consent, shall pay off the mortgage
15 loan and disburse any excess funds to the
16 borrower; provided further that, in accordance
17 with investor guidelines, if the funds exceed the
18 amount of the mortgage loan balance, a mortgage
19 servicer shall disburse to a borrower any amount
20 of insurance proceeds in excess of the remaining
21 amount that the borrower owes on the mortgage; or



1 (B) If the funds are not sufficient to pay off the
2 mortgage loan or the borrower intends to use the
3 insurance proceeds to rebuild, the proceeds shall
4 be placed in an escrow account in accordance to
5 paragraph (2);

6 (2) A mortgage servicer shall hold in an interest-bearing
7 account, for the benefit of the borrower, any
8 insurance proceeds that the mortgage servicer does not
9 immediately disburse to a borrower pending rebuild of
10 a residential property. A mortgage servicer shall
11 ensure that the interest that accrues to the account
12 is credited to the borrower's account monthly; and

13 (3) A mortgage servicer shall not charge the borrower a
14 fee for the maintenance or disbursement of interest
15 earned from an interest-bearing account established
16 pursuant to paragraph (2).

17 ~~(e)~~ (f) A mortgage servicer shall comply with the
18 following requirements concerning statements of account:

19 (1) At least once annually, within thirty days of the end
20 of the computation year, a mortgage servicer shall
21 deliver to the borrower a plain language statement of



1 the borrower's account showing the unpaid principal
2 balance of the mortgage loan at the end of the
3 immediately preceding twelve-month period, the
4 interest paid during that period, and the amounts
5 deposited into escrow and disbursed from escrow during
6 the period. The annual escrow statement may be
7 provided separately from the annual statement showing
8 the unpaid principal and interest paid. The format
9 and content of the annual escrow statement shall
10 comply with the Real Estate Settlement Procedures Act,
11 including title 12 [~~C.F.R.~~] Code of Federal
12 Regulations section 1024.17;

- 13 (2) A mortgage servicer shall promptly provide a borrower
14 with an accurate accounting in plain English of the
15 debt owed when requested by the borrower or borrower's
16 authorized representative. Within thirty days of
17 receipt of a request from the borrower or the
18 borrower's authorized representative, a mortgage
19 servicer shall deliver to the borrower a payment
20 history for the last thirty-six months of the
21 borrower's account, unless a different period is



1 requested, showing the date and amount of all payments
2 made or credited to the account and the total unpaid
3 balance. The mortgage servicer shall have sixty days
4 to deliver a payment history where the request is for
5 a period longer than the last thirty-six months;

6 (3) A fee shall not be charged to the borrower for the
7 annual escrow statement or for one payment history
8 furnished to a borrower in a twelve-month period; and

9 (4) A shortage, surplus, or deficiency in the escrow
10 account shall be handled in accordance with the Real
11 Estate Settlement Procedures Act, including title 12
12 [~~C.F.R.~~] Code of Federal Regulations section 1024.17.

13 Alternatively, with the consent of the borrower, an
14 excess balance may be applied to the principal
15 balance.

16 [~~(f)~~] (g) Except where inconsistent with the automatic
17 stay provisions of the Bankruptcy Code with respect to a
18 borrower in a pending bankruptcy proceeding, a mortgage servicer
19 shall send a payment reminder notice to a borrower at the
20 borrower's last known address no later than seventeen days after
21 the payment becomes due and remains unpaid; provided that a



1 mortgage servicer is not required to send a separate payment
2 reminder notice for each consecutive month in which the mortgage
3 loan continues to remain unpaid.

4 ~~(g)~~ (h) A mortgage servicer shall provide a clear,
5 understandable, and accurate statement of the total amount that
6 is required to pay off the mortgage loan as of a specified date,
7 within a reasonable time, but in any event no more than five
8 business days after receipt of a request from the borrower or
9 borrower's authorized representative. No borrower shall be
10 charged a fee for being informed or receiving a payoff statement
11 or for being provided with a release upon full prepayment;
12 provided that a mortgage servicer may charge a reasonable fee
13 for providing a payoff statement after five or more requests in
14 any calendar year.

15 ~~(h)~~ (i) A mortgage servicer shall comply with the
16 following requirements concerning handling consumer complaints
17 and inquiries:

18 (1) A mortgage servicer shall follow the requirements of
19 the Real Estate Settlement Procedures Act, including
20 requests for error and information resolution



1 procedures under title 12 [~~C.F.R.~~] Code of Federal
2 Regulations sections 1024.35 and 1024.36;

3 (2) In addition to the requirements of the Real Estate
4 Settlement Procedures Act, a mortgage servicer shall
5 establish and maintain a system to respond to and
6 resolve borrower inquiries and complaints in a prompt
7 and appropriate manner;

8 (3) Within ten business days of receiving a request in
9 writing from a borrower or the borrower's authorized
10 representative, a mortgage servicer shall provide the
11 borrower with the name, address, phone number, or
12 electronic mail address, if available, and other
13 relevant contact information for the owner or assignee
14 of the mortgage loan; and

15 (4) In addition to the information required to be
16 disclosed under this section, a mortgage servicer may,
17 at its option, provide any other information regarding
18 the servicing of the loan that the mortgage servicer
19 believes would be helpful to a borrower; provided that
20 any additional information does not contradict or
21 obscure the required disclosures.



1 ~~(i)~~ (j) A mortgage servicer shall comply with the
2 following requirements concerning fees:

3 (1) A mortgage servicer shall maintain and keep current a
4 schedule of standard or common fees that the mortgage
5 servicer charges borrowers for the servicer's
6 servicing-related activities, such as nonsufficient
7 fund fees. The schedule shall identify each fee,
8 provide a plain English explanation of the fee, and
9 state the amount of the fee or range of amounts. If
10 there is no standard fee, the schedule shall explain
11 how the fee is calculated or determined. A mortgage
12 servicer shall make its schedule available on the
13 mortgage servicer's website and to the borrower or the
14 borrower's authorized representative upon request;

15 (2) A mortgage servicer may only collect a fee if the fee
16 is for services actually rendered and one of the
17 following conditions is met:

18 (A) The fee is clearly and conspicuously disclosed by
19 the loan instruments and not prohibited by law;

20 (B) The fee is expressly permitted by law and not
21 prohibited by the loan instruments; or



1 (C) The fee is not prohibited by law or the loan
2 instruments and is a reasonable fee for a
3 specific service requested by the borrower that
4 is assessed only after clear and conspicuous
5 disclosure of the fee is provided to the borrower
6 and the borrower expressly consents to pay the
7 fee in exchange for the services;

8 (3) In addition to the limitations in paragraph (2),
9 attorneys' fees charged in connection with a
10 foreclosure action shall not exceed reasonable and
11 customary fees for the work. If a foreclosure action
12 or proceeding is terminated [~~prior to~~] before the
13 public sale because of a loss mitigation option, a
14 reinstatement, or payment in full, the borrower shall
15 only be liable for reasonable and customary fees for
16 work actually performed; and

17 (4) A mortgage servicer shall not impose any late fee or
18 delinquency charge when the only delinquency is
19 attributable to late fees or delinquency charges
20 assessed on an earlier payment and the payment is
21 otherwise a full payment for the applicable period and



1 is paid on its due date or within any applicable grace
2 period. Late charges shall not be:

3 (A) Based on an amount greater than the past due
4 amount;

5 (B) Collected from the escrow account or from escrow
6 surplus without the approval of the borrower; or

7 (C) Deducted from any regular payment.

8 ~~(j)~~ (k) Each mortgage servicer licensee shall maintain
9 adequate records of each residential mortgage loan transaction
10 at the office named in the mortgage servicer license for seven
11 years.

12 ~~(k)~~ (l) Upon assignment of servicing rights on a
13 residential mortgage loan, the mortgage servicer shall disclose
14 to the borrower:

15 (1) Any notice required by the Real Estate Settlement
16 Procedures Act, including title 12 ~~[C.F.R.]~~ Code of
17 Federal Regulations section 1024.33, within the time
18 periods prescribed therein; and

19 (2) A schedule of the ranges and categories of the
20 mortgage servicer's costs and fees for the servicer's
21 servicing-related activities, which shall comply with



1 state and federal law and, if the disclosure is made
2 by a mortgage servicer licensee, shall not exceed
3 those reported to the commissioner in accordance with
4 this chapter.

5 ~~[(1)]~~ (m) At the time a servicer accepts assignment of
6 servicing rights for a mortgage loan, the servicer shall
7 disclose to the borrower all of the following:

8 (1) Any notice required by the Real Estate Settlement
9 Procedures Act;

10 (2) A schedule of the ranges and categories of its costs
11 and fees for its servicing-related activities, which
12 shall comply with this chapter and which shall not
13 exceed those reported to the commissioner; and

14 (3) A notice in a form and content acceptable to the
15 commissioner that the servicer is licensed by the
16 commissioner and that complaints about the servicer
17 may be submitted to the commissioner.

18 ~~[(m)]~~ (n) Where this chapter requires a person to comply
19 with procedures, actions, standards, disclosures, notices,
20 format, content, or other requirements of the Real Estate
21 Settlement Procedures Act, the required compliance applies to any



1 person subject to this chapter, whether or not the Real Estate
2 Settlement Procedures Act applies to that person or
3 transaction."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Interest on Insurance Proceeds; Mortgage Loans; Mortgage
Servicers Financial Institutions

Description:

Requires licensed mortgage servicers and financial institutions to pay interest on insurance proceeds held for the benefit of consumers. Provides that a fee shall not be charged to the borrower in connection with the maintenance or disbursement of interest earned from interest-bearing accounts. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

