
SENATE BILL 6389

State of Washington

52nd Legislature

1992 Regular Session

By Senators Moore and Rasmussen

Read first time 01/28/92. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to real estate loan servicing; adding a new chapter
2 to Title 19 RCW; prescribing penalties; and providing an effective
3 date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Borrower" means any person who becomes obligated on a real
9 estate loan agreement, either directly or indirectly, and includes, but
10 is not limited to, mortgagors, grantors under trust deeds, vendees
11 under conditional land sales contracts, and persons who purchase real
12 property securing a real estate loan agreement, whether the persons
13 assume the loan or purchase the property subject to the loan.

1 (2) "Direct reduction provision" or "capitalization provision"
2 means any provision which is part of a real estate loan agreement,
3 whether incorporated into the agreement or as part of a separately
4 executed document, whereby the borrower makes periodic prepayment of
5 property taxes, insurance premiums, and similar charges to the lender
6 or the designee of the lender, who applies such prepayments first to
7 accrued interest and then to the principal amount of the loan, and upon
8 payment of such charges, adds the amount of such payment to the
9 principal amount of the loan.

10 (3) "Escrow account" means any account that is a part of a real
11 estate loan agreement, whether incorporated into the agreement or as
12 part of a separately executed document, whereby the borrower makes
13 periodic prepayment to the lender or the designee of the lender of
14 taxes, insurance premiums, and similar charges, and the lender or the
15 designee of the lender pays the charges out of the account at the due
16 dates.

17 (4) "Lender" means any person who makes, extends, or holds a real
18 estate loan agreement and includes, but is not limited to, mortgagees,
19 beneficiaries under trust deeds, and vendors under conditional land
20 sales contracts.

21 (5) "Lender's security protection provision" means any provision
22 that is a part of a real estate loan agreement, whether incorporated
23 into the agreement or as part of a separately executed document,
24 whereby the borrower prepays, pledges or otherwise commits cash or
25 other assets owned by the borrower in advance of due dates for payments
26 of property taxes, insurance premiums, and similar charges relating to
27 the property securing the loan in order to assure timely payment of the
28 charges and protect the lender's security interest in the property, and
29 includes, but is not limited to, escrow accounts, direct reduction
30 provisions, capitalization provisions, and pledges of savings accounts.

1 (6) "Person" means individuals, corporations, associations,
2 partnerships and trusts, and includes, but is not limited to, banks,
3 trust companies, national banks, savings banks, savings and loan
4 associations, private bankers, credit unions, investment companies,
5 insurance companies, pension funds, and mortgage companies.

6 (7) "Real estate loan agreement" or "real estate loan" means any
7 agreement providing for a loan on residential property, including
8 multifamily, occupied by the borrower in the amount of one hundred
9 thousand dollars or less, secured in whole or in part by real property,
10 or any interest therein, located in this state, and includes, but is
11 not limited to, mortgages, trust deeds, and conditional land sales
12 contracts.

13 NEW SECTION. **Sec. 2.** A lender may require a lender's security
14 protection provision under this chapter either as a direct reduction
15 provision, an escrow account, or a pledge of an interest-bearing
16 savings account in an amount not to exceed the maximum amount that a
17 lender may require a borrower to deposit in a lender's security
18 protection provision under section 3 of this act and bearing interest
19 at a rate not less than the rate required on lender's security
20 protection provisions by section 5 of this act.

21 NEW SECTION. **Sec. 3.** A lender, in connection with a real
22 estate loan agreement, may not require a borrower or prospective
23 borrower to deposit in any escrow account that may be established in
24 connection with the agreement:

25 (1) Prior to or upon the date of settlement, a sum in excess of the
26 estimated total amount of property taxes, insurance premiums, and
27 similar charges which actually will be due and payable on the date of
28 settlement, and the pro rata portion thereof which has accrued, plus

1 one-twelfth of the estimated total amount of the charges that will
2 become due and payable during the twelve-month period beginning on the
3 date of settlement; or

4 (2) In any month beginning after the date of settlement, a sum in
5 excess of one-twelfth of the total amount of estimated property taxes,
6 insurance premiums, or similar charges that will become due and payable
7 during the twelve-month period beginning on the first day of the month,
8 except that in the event the lender determines there will be a
9 deficiency on the due date, the lender may not be prohibited from
10 requiring additional monthly deposits in the escrow account of pro rata
11 portions of the deficiency corresponding to the number of months from
12 the date of the lender's determination of the deficiency to the date
13 upon which the charges become due and payable.

14 NEW SECTION. **Sec. 4.** (1) Except as provided in subsections
15 (2) and (4) of this section, any lender who requires a lender's
16 security protection provision in connection with a real estate loan
17 agreement shall pay interest to the borrower on funds deposited in the
18 account at a rate not less than four and one-half percent. Interest
19 shall be computed on the average monthly balance in the account and
20 shall be paid quarterly to the borrower by crediting to the escrow
21 account the amount of the interest due.

22 (2) Except as provided in subsection (3) of this section, this
23 section does not apply to real estate loan agreements entered into
24 prior to September 1, 1992, or on which the payment of interest on a
25 lender's security protection provision violates any state or federal
26 law or regulation.

27 (3) If federal law or regulation does not prohibit the payment of
28 interest on a lender's security protection provision by federally
29 chartered or organized lenders, then this section applies to the

1 federally chartered or organized lenders and the state-chartered or
2 organized lenders that are similar to the federally chartered or
3 organized lenders with respect to a lender's security protection
4 provision executed in connection with a real estate loan agreement
5 entered into prior to and in existence on September 1, 1992.

6 NEW SECTION. **Sec. 5.** A lender requiring a lender's security
7 protection provision with respect to which interest is required to be
8 paid by the lender under section 4 of this act may not impose a service
9 charge in connection with such a provision.

10 NEW SECTION. **Sec. 6.** In any real estate loan agreement when
11 a lender does not require a lender's security protection provision, the
12 parties may mutually agree to any arrangement whereby the borrower
13 prepays, pledges, or otherwise commits assets in advance of due dates
14 for payment of property taxes, insurance premiums, and similar charges
15 relating to the real property in order to assist the borrower in making
16 timely payments of the charges. Prior to entering any such
17 arrangement, the lender shall furnish the borrower a statement in
18 writing, which may be set forth in the loan application:

19 (1) That the arrangement is not a condition to the real estate loan
20 agreement;

21 (2) If it is an escrow account, whether or not the lender will pay
22 interest and if interest is to be paid, the rate of interest; and

23 (3) Whether or not the borrower must pay the lender a charge for
24 the service. If a charge is agreed to, the charge may not exceed the
25 amount of interest income earned under subsection (2) of this section.

26 NEW SECTION. **Sec. 7.** (1) If a lender has a requirement that
27 the borrower pay funds into a lender's security protection provision

1 for the payment of property taxes on property that is the security for
2 the real estate loan agreement, insurance premiums, and similar
3 charges, and there are funds in the account, the lender shall pay the
4 taxes or the amount in the account if less than the taxes due and all
5 other charges on or before the due dates for payments.

6 (2)(a) If the lender fails to pay the taxes in accordance with
7 subsection (1) of this section resulting in a loss to the borrower, the
8 lender shall credit the lender's security protection provision in an
9 amount equal to the amount of loss for such failure, together with any
10 interest that has accrued on the unpaid property taxes to the date the
11 property taxes are finally paid.

12 (b) If the failure of the lender to comply with subsection (1) of
13 this section is willful and results in the loss to the borrower, or if
14 the failure to comply was not willful but upon discovery of the failure
15 to comply, the lender fails to credit the lender's security protection
16 provision required by (a) of this subsection, the borrower shall have
17 a cause of action against the lender to recover an amount equal to
18 fifteen times the amount left unpaid, together with any interest that
19 accrued on the unpaid property taxes to the date of recovery. Any
20 borrower recovering damages under this section is entitled to
21 reasonable attorneys' fees at trial and on appeal as determined by the
22 court in addition to costs and necessary disbursements.

23 NEW SECTION. **Sec. 8.** A violation of this chapter by a lender
24 shall render the lender's security protection provision voidable at the
25 option of the borrower, and the lender shall be liable to the borrower
26 in an amount equal to:

27 (1) The borrower's actual damages or one hundred dollars, whichever
28 is greater; and

1 (2) In the case of any successful action to enforce the liability,
2 the court costs of the action together with reasonable attorneys' fees
3 at trial and on appeal as determined by the court if the court finds
4 that written demand for the payment of the borrower's claim was made on
5 the lender not less than ten days before the commencement of the
6 action. Attorneys' fees may not be allowed to the borrower if the
7 court finds that the lender tendered to the borrower, prior to the
8 commencement of the action, an amount not less than the damages awarded
9 to the borrower.

10 NEW SECTION. **Sec. 9.** This chapter does not apply to a real
11 estate loan agreement that is serviced or held for sale within one
12 year by a mortgage servicing company neither affiliated with nor owned
13 in whole or in part by the purchaser and which is made, extended or
14 held by a purchaser whose principal place of business is outside this
15 state. However, if the purchase agreement required a lender's security
16 protection provision, then prior to entering into such an agreement,
17 the mortgage servicing company shall furnish the borrower a statement
18 in writing, which may be set forth in the loan application, that the
19 mortgage servicing company is not required by the laws of this state to
20 pay interest on the lender's security protection provision, and
21 specifically informing the borrower why the borrower is not entitled to
22 interest on the account.

23 NEW SECTION. **Sec. 10.** (1) To the extent not inconsistent with
24 existing real estate loan agreements and provided such agreements are
25 not silent with regard to a lender's security protection provision,
26 sections 2 and 4 of this act apply to real estate loan agreements
27 entered into prior to, on, and after.

1 (2) To the extent that the existing real estate loan agreements are
2 inconsistent with the effect of sections 2 and 4 of this act, the
3 existing real estate loan agreements are silent as to a lender's
4 security protection provision, or any part of sections 2 and 4 of this
5 act is declared unconstitutional as to real estate loan agreements
6 existing prior to September 1, 1992, this chapter otherwise applies.

7 NEW SECTION. **Sec. 11.** This act shall take effect September 1,
8 1992.

9 NEW SECTION. **Sec. 12.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 13.** Sections 1 through 12 of this act shall
14 constitute a new chapter in Title 19 RCW.