

2023 SENATE INDUSTRY AND BUSINESS

SB 2263

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

SB 2263
1/24/2023

A bill relating to escrow accounts.

9:45 AM Chairman Larsen opened the meeting. Members Present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Boehm, Senator Klein.

Discussion Topics:

- Escrow Accounts
- Real Estate Settlement Procedures Act (RESPA) Terminology
- Ongoing Maintenance
- Committee Action

9:46 AM Senator Meyer introduced SB 2263 and testified in favor. # 16150

9:49 AM Barry Haugen, President, Independent Community Banks of ND, testified in favor of SB 2263. #15626

9:54 AM Brandon Dettlaff, Homeowner Division Director, ND Housing Finance Agency, testified in favor of SB 2263. (verbal)

9:56 AM John Ward, ND Land Title Association, testified in favor of SB 2263. (verbal)

9:57 AM Chairman Larsen closed the hearing on SB 2263.

9:57 AM Senator Klein moved to adopt the Amendment to SB 2263. #23.0608.01001

9:58 AM Senator Barta seconded the motion to adopt the Amendment to SB 2263. #23.0608.01001

Roll Call Vote: Adopt the Amendment

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed: 5-0-0

9:58 AM Senator Barta moved to Do Pass SB 2263 AS AMENDED.

9:58 am Senator Kessel seconded the motion to DO PASS SB 2263 AS AMENDED.

Roll Call Vote: DO PASS AS AMENDED SB 2263

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Motion Passed: 5-0-0 DO PASS AS AMENDED. Senator D. Larsen will carry the bill.

9:59 AM Chairman D. Larsen closed the meeting.

Brenda Cook, Committee Clerk

23.0608.01001
Title.03000

Adopted by the Senate Industry and Business
Committee

January 24, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2263

Page 1, line 9, overstrike "secondary"

Renumber accordingly

BR
1 of 1
1-24-2023

REPORT OF STANDING COMMITTEE

SB 2263: Industry and Business Committee (Sen. Larsen, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2263 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 9, overstrike "secondary"

Renumber accordingly

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2263

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2263
3/7/2023

Relating to escrow accounts.

Chairman Louser called meeting to order 8:59 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Refund to borrower or escrow
- Lender interpretation
- Ongoing maintenance

In Favor:

Senator Scott Meyer, District 18 Grand Forks, ND Primary bill sponsor with proposed amendment, #22692, LC #23.0608.03002

Barry Hagen, President, Independent Community Banks of North Dakota, #22170

Nick Hacker, Former Legislator, American Land Title Association and President of the Title Team, (no written testimony)

Brandon Dettlaff, ND Housing Finance Agency, (no written testimony)

Rick Clayburgh, President, CEO of the ND Bankers Association (no written testimony)

Representative Thomas moves to adopt the amendment, 23.0608.03002.

Representative Dakane, seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	y

Representative Jonathan Warrey	Y
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Motion passed 14-0-0

Representative Thomas moved a do pass as amended.
Representative Schauer seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 14-0-0

Representative DaKane will carry the bill.

Chairman Louser adjourned the meeting 9:22 AM

Diane Lillis, Committee Clerk

March 6, 2023

off
3-7-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2263

Page 1, line 11, remove "Surplus"

Page 1, line 11, overstrike "amount" and insert immediately thereafter "Servicer"

Page 1, line 11, remove "from the annual escrow account analysis."

Page 1, line 11, overstrike "any"

Page 1, line 12, overstrike "amount"

Page 1, line 14, remove "greater than or equal"

Page 1, line 15, replace "to fifty dollars, excluding any escrow cushion required by the servicer"
with "a person or entity maintaining an escrow account for a residential mortgagee"

Page 1, line 23, overstrike "Servicer" and insert immediately thereafter "Surplus amount"

Page 1, line 23, overstrike "a person or entity maintaining an escrow account for a"

Page 1, line 24, overstrike "residential mortgagee" and insert immediately thereafter "from the
annual escrow account analysis, any amount greater than or equal to fifty dollars,
excluding any escrow cushion required by the servicer"

Re-number accordingly

REPORT OF STANDING COMMITTEE

SB 2263, as engrossed: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2263 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "Surplus"

Page 1, line 11, overstrike "amount" and insert immediately thereafter "Servicer"

Page 1, line 11, remove "from the annual escrow account analysis."

Page 1, line 11, overstrike "any"

Page 1, line 12, overstrike "amount"

Page 1, line 14, remove "greater than or equal"

Page 1, line 15, replace "to fifty dollars, excluding any escrow cushion required by the servicer" with "a person or entity maintaining an escrow account for a residential mortgagee"

Page 1, line 23, overstrike "Servicer" and insert immediately thereafter "Surplus amount"

Page 1, line 23, overstrike "a person or entity maintaining an escrow account for a"

Page 1, line 24, overstrike "residential mortgagee" and insert immediately thereafter "from the annual escrow account analysis, any amount greater than or equal to fifty dollars, excluding any escrow cushion required by the servicer"

Renumber accordingly

TESTIMONY

SB 2263



Senate Bill 2263

Presented by: Barry Haugen
 President
 Independent Community Banks of North Dakota (“ICBND”)

Before: Senate Industry and Business Committee
 Senator Doug Larsen, Chairman

Date: January 24, 2023

Chairman Larsen and members of the Senate Industry and Business Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. ICBND supports SB 2263 and requests a “Do Pass” recommendation from the Committee.

Senate Bill 2263 seeks to bring North Dakota Century Code in line with the Federal Real Estate Settlement Procedures Act (RESPA) with respect to the real estate mortgage escrow accounts and any surplus amounts in those accounts. Real estate mortgage lenders and servicers are required to follow RESPA and the amendments proposed through this bill would clear up any confusion and would ensure that any surplus amounts in escrow accounts are refunded to the borrower as they should be.

First, it’s probably best to explain some terms that are used in relation to escrow:

- **Escrow account** means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay.
- **Cushion** means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account. As defined by RESPA and for purposes of this bill, this amount can be up to two months of the estimated annual disbursements.
- **Surplus** means an amount by which the current escrow account balance exceeds the target balance for the account.. As defined by RESPA and for purposes of this bill, this amount is \$50 or more above the cushion amount.

Section 1 of the bill replaces the definition of “excess” with “surplus” to more align with RESPA terminology and states that any amount greater than or equal to \$50 is considered surplus. It further removes “calendar year” reference as escrow account analysis are to be completed according to RESPA on an annual basis (typically on the anniversary of the loan) for each escrow account rather than tying it to calendar year.

Section 1 also eliminates any references to Secondary mortgagee as it's obsolete and unnecessary language. A mortgage servicer dealing with an escrow account must follow RESPA regardless of whether it was sold on the secondary market or kept in-house.

Section 2 of the bill further eliminates calendar references in lieu of the escrow account computation year as servicers typically do their escrow analysis on each account on the anniversary of the loan. The changes in this section further state, in accordance with RESPA, that the servicer must provide written notice to the borrower within 30 days following the computation year if the account has a surplus (\$50 or more above what's needed as a cushion).

Section 3 of the bill provides that the servicer must refund any surplus amount to the borrower along with the notification referenced in Section 2.

Finally, in Section 4 language is eliminated that references section 26.1-01-05 of the North Dakota Century Code. It seems that this is an error as NDCC 26.1-01-05 specifically relates to the reporting and review of medical malpractice claims, settlements, and judgments.

Chairman Larsen and members of the Senate Industry and Business Committee, ICBND strongly supports Senate Bill 2263 and requests the Committee give the bill a "Do Pass" recommendation.

Thank you for your time and attention.



North Dakota Senate

#16150



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Scott Meyer
District 18

Grand Forks, ND
scottmeyer@ndlegis.gov

COMMITTEES:
Appropriations

January 24, 2023

Mr. Chairman,

SB 2263 is a bill that was brought to me through banking industry leaders, many of whom happen to be in the room.

Simply put this bill looks to align North Dakota Century Code with the Federal Real Estate Settlement Procedures Act, more commonly known as RESPA, when dealing with mortgage escrow accounts and any surplus in those accounts. This bill would ensure that any surplus funds sitting in escrow are returned to the borrower, and not stuck in a zero percent interest account with their lender.

Section 1 – it replaces “excess” with “surplus”, this is to align with RESPA, and it states anything over \$50 is considered surplus when reviewing the escrow balance. The second thing this section does is removes calendar year. This is because escrow account reviews are done typically on the anniversary of the loan closing.

We also removed the reference to secondary mortgagee or secondary market, as it’s no longer needed. Most already likely know, but secondary market is companies like Freddie Mac or Fannie Mae. Mortgage servicers with an escrow account are required to follow RESPA whether it’s on the secondary market or held in house.

Section 2 is still removing calendar references, and that the loan servicer must provide notice to the borrower within 30 days following the escrow account review that there is indeed a surplus.

Section 3 states the loan servicer must return any surplus to the borrower.

The last section is language that really had no reason being here, and it’s just being removed.

As stated, this bill is straightforward, and it looks to get NDCC to align with RESPA. I ask for a do pass recommendation and will stand for any questions.



Senate Bill 2263

Presented by: Barry Haugen
 President
 Independent Community Banks of North Dakota (“ICBND”)

Before: House Industry, Business and Labor Committee
 Representative Scott Louser, Chairman

Date: March 7, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. ICBND supports SB 2263 and requests a “Do Pass” recommendation from the Committee.

Senate Bill 2263 seeks to bring North Dakota Century Code in line with the Federal Real Estate Settlement Procedures Act (RESPA) with respect to the real estate mortgage escrow accounts and any surplus amounts in those accounts. Real estate mortgage lenders and servicers are required to follow RESPA and the amendments proposed through this bill would clear up any confusion and would ensure that any surplus amounts in escrow accounts are refunded to the borrower in a timely fashion.

First, it’s probably best to explain some terms that are used in relation to escrow:

- **Escrow account** means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay.
- **Cushion** means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account. As defined by RESPA and for purposes of this bill, this amount can be up to two months of the estimated annual disbursements.
- **Surplus** means an amount by which the current escrow account balance exceeds the target balance for the account.. As defined by RESPA and for purposes of this bill, this amount is \$50 or more above the cushion amount.

Section 1 of the bill replaces the definition of “excess” with “surplus” to more align with RESPA terminology and states that any amount greater than or equal to \$50 is considered surplus. It further removes “calendar year” reference as escrow account analysis are to be completed according to RESPA on an annual basis (typically on the anniversary of the loan) for each escrow account rather than tying it to calendar year.

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Section 2 of the bill further eliminates calendar references in lieu of the escrow account computation year as servicers typically do their escrow analysis on each account on the anniversary of the loan. The changes in this section further state, in accordance with RESPA, that the servicer must provide written notice to the borrower within 30 days following the computation year if the account has a surplus (\$50 or more above what's needed as a cushion).

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Finally, in Section 4 language is eliminated that references section 26.1-01-05 of the North Dakota Century Code. It seems that this is an error as NDCC 26.1-01-05 specifically relates to the reporting and review of medical malpractice claims, settlements, and judgments.

Chairman Louser and members of the House Industry, Business and Labor Committee, ICBND strongly supports Senate Bill 2263 and requests the Committee give the bill a "Do Pass" recommendation.

Thank you for your time and attention.

23.0608.03002
Title.

Prepared by the Legislative Council staff for
Senator Meyer

March 6, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2263

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annual escrow account analysis, any amount greater than or equal to fifty dollars,
excluding any escrow cushion required by the servicer"

Renumber accordingly

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2263

Introduced by

Senators Meyer, Lee

Representative Louser

1 A BILL for an Act to amend and reenact sections 47-10.2-01, 47-10.2-02, 47-10.2-03, and
2 47-10.2-05 of the North Dakota Century Code, relating to escrow accounts.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 47-10.2-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **47-10.2-01. Definitions.**

7 In sections 47-10.2-01 through 47-10.2-03, unless the context or subject matter otherwise
8 requires:

- 9 1. "Borrower" means the obligor under a residential mortgage held by a secondary
10 mortgagee.
- 11 2. "~~Excess Surplus amount~~ Servicer" means ~~from the annual escrow account analysis,~~
12 ~~any amount received in an escrow account during a calendar year in excess of three~~
13 ~~hundred dollars plus the amount necessary to pay real estate taxes, special~~
14 ~~assessments, and insurance premiums during that calendar year~~ greater than or equal
15 to fifty dollars, excluding any escrow cushion required by the servicer a person or entity
16 maintaining an escrow account for a residential mortgagee.
- 17 3. "Secondary mortgagee" means ~~a successor mortgagee not residing or domiciled in~~
18 ~~this state who purchased the interest originally belonging to the mortgagee who~~
19 ~~originated a loan, under which an escrow is required to assure payment of obligations~~
20 ~~including property taxes, special assessments, and insurance premiums, if that loan is~~
21 ~~secured by a first lien real estate mortgage or equivalent security interest in a dwelling~~
22 ~~that the borrower uses as a principal place of residence in this state, not including a~~
23 ~~mobile home.~~

1 4. "~~Servicer~~Surplus amount" means ~~a person or entity maintaining an escrow account for~~
2 ~~a secondary residential mortgagee~~from the annual escrow account analysis, any
3 amount greater than or equal to fifty dollars, excluding any escrow cushion required by
4 the servicer.

5 **SECTION 2. AMENDMENT.** Section 47-10.2-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **47-10.2-02. Notice of ~~excess~~surplus escrow payments.**

8 If an escrow account is maintained by the servicer of a ~~secondary~~ residential mortgage for a
9 ~~secondary~~ mortgagee, and the account contains an ~~excess~~surplus amount, the servicer shall
10 provide written notice to the borrower, ~~on or before March first of the following year, of the~~
11 ~~escrow account status~~ within thirty calendar days following the end of the escrow account
12 computation year. The information provided to the borrower must include the balance in the
13 escrow account after the annual payment of taxes and special assessments.

14 **SECTION 3. AMENDMENT.** Section 47-10.2-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **47-10.2-03. Application~~Refunding~~ of ~~excess~~surplus escrow payments.**

17 Upon ~~receipt~~creation of the written notice under section 47-10.2-02, ~~the borrower may,~~
18 ~~within thirty days after the date of the notice, elect in a written request to the servicer one of the~~
19 ~~following options:~~

- 20 1. ~~Refund of all or part of the excess amount; or~~
21 2. ~~Retention of all or part of the excess amount in the escrow account.~~

22 ~~If the borrower does not advise the servicer in writing within the time provided in this section,~~
23 ~~the servicer may continue maintenance of the escrow account in the same manner until the~~
24 ~~next report to the borrower under sections 47-10.2-01 through 47-10.2-03. If the borrower~~
25 ~~advises the servicer of an election within the time prescribed in sections 47-10.2-01 through~~
26 ~~47-10.2-03, the servicer must comply with the borrower's election within thirty days of the~~
27 ~~election~~the servicer shall refund any surplus amount to the borrower within thirty calendar days
28 following the end of the escrow account computation year. The notice required under section
29 47-10.2-02 must be included when surplus escrow funds are refunded under this section.

30 **SECTION 4. AMENDMENT.** Section 47-10.2-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **47-10.2-05. Annual escrow account statement.**

2 Each residential mortgagee, including any insurance company with articles of incorporation
3 filed under section 26.1-01-03 ~~or which is required to obtain a certificate of authority under~~
4 ~~section 26.1-01-05~~, intending to maintain an escrow account for the payment of taxes,
5 assessments, insurance premiums, and other charges upon the mortgagor's residence shall
6 furnish annually each mortgagor with a detailed statement showing all debits and credits to the
7 account.