

# RESPA, Reg. X and Payment Changes after the first 12 months

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# RESPA, Reg. X and Payment Changes after the first 12 months



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## Background

- ▶ Changes made to Fed. R. Bankr. P. 3001 included a requirement that a mortgage servicer include an escrow statement, run as of the date of the bankruptcy filing, be included with the attachments to a proof of claim.
- ▶ This escrow analysis provides critical information that is needed to properly calculate the pre-petition arrearage due and owing on the mortgage as of the date of filing.



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## RESPA and Reg. X

- ▶ Under the Real Estate Settlement Procedures Act, mortgage servicers that have an escrow account for a mortgage are required to perform an Annual Analysis of the Account no later than every 12 months.




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This analysis is to review 2 things:  
Analyze the loan looking back at the prior period

- ▶ Review the account from the date of current analysis to the date of the prior analysis by:
  - ▶ Take the beginning balance of the escrow account
  - ▶ Add all the actual payments to the account since that date
  - ▶ Subtract all of the disbursements to the account since that date
  - ▶ Determine the ending balance of the escrow account for the time frame.




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## Analyze the loan looking backwards

- ▶ The post petition ongoing payments received during the bankruptcy should be applied to the first payment due post petition, with the proper escrow component shown in the analysis.
- ▶ The escrow calculation is done on a post petition basis- NOT a contractual analysis.
- ▶ That requires the first payment due after the date of filing is the starting date of the subsequent analysis, with the payments being applied as delineated in the escrow statements and Form B410A as to principal and interest and escrow.




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### This analysis is to do 2 things: Analyze the loan projecting forward

- ▶ The purpose of the analysis is to determine the monthly escrow amount for the 12 months following the analysis.
- ▶ To determine the new escrow contribution payment component:
  - ▶ Take the escrow beginning balance
  - ▶ Add the proposed payments to the escrow account for the next year
  - ▶ Subtract the estimated payments from the escrow account for the next year
  - ▶ Determine the estimated balance of the account each month given the estimated payments to and from the escrow account
  - ▶ Determine the estimated ending balance of the account at the end of the 12 month period.

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### RESPA cushion and shortage

- ▶ RESPA allows a servicer to keep a cushion in the escrow account
- ▶ The cushion may be equivalent to 1 or 2 months escrow payment, and may include amounts for PMI.
- ▶ The amount of the cushion may be limited by state law.
- ▶ A two month cushion is calculated by aggregating the estimated taxes and insurance to be paid for the year, divided by 12 (the monthly escrow amount) and then doubled to equal 2 months

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### RESPA cushion and shortage

- ▶ RESPA allows a servicer to keep a cushion in the escrow account
- ▶ If the estimated balance of the escrow account goes below that 2 month cushion, the escrow account has an escrow shortage
- ▶ If the estimated balance of the escrow account is always above that 2 month cushion, the escrow account has an escrow surplus



Mike McCormick



Deb Miller

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### Example- 2 month cushion

- ▶ The mortgage has the following escrow disbursements for the coming year:
  - ▶ Insurance \$1800 a year
  - ▶ Taxes \$600 twice a year.
- ▶ Total escrow monthly payment would be \$250 a month  $(\$1800 + \$600 + \$600)/12$  months
- ▶ Total cushion (minimum balance in escrow account) would be \$500  $(\$250 \text{ a month} * 2 \text{ months})$

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### We know how RESPA works- what does that have to do with subsequent escrow analysis?

- ▶ Remember that the amount of negative escrow that has been paid as of the date of filing is to be included in the pre petition arrearage amount
  - ▶ This is shown as the Escrow Balance, Column O in Part 5 of the POC attachment.
- ▶ The Initial Escrow Analysis determines the actual balance amount in the escrow account **as of the date of filing.**

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### Why is this important?

- ▶ This balance is the projected AND actual balance in the escrow account for the first "Lookback" (i.e., historical) escrow calculation in the subsequent escrow analysis.
- ▶ The escrow analysis is NOT to use the actual; contractual escrow balance as those amounts have already been included in the pre petition arrearage amount due.

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Example:

- ▶ Debtor files Chapter 13 on January 1, 2016.
- ▶ The escrow analysis performed on the date of filing projects \$1200 for insurance and \$600 every six months for property taxes and requires an escrow contribution of \$200 per month.
- ▶ Included in the arrearage calculation in proof of claim is the negative escrow balance (escrow deficiency) of \$5000 and the escrow shortage of \$1400.

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Example

- ▶ During the 12 months following the filing of the bankruptcy, the Trustee makes 12 payments on the mortgage, each with the \$200.00 a month escrow contribution.
- ▶ During the 12 months following the filing of the bankruptcy, insurance of \$1400 is paid and property taxes of \$1300 are paid.
- ▶ The RESPA cushion was 2 months, and required a minimum balance in the escrow account of \$400 a month

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MONTH	PAY IN	PAY OUT	BALANCE
Date of BK filing	\$1,400.00		\$1,400.00
February	\$200.00	\$0.00	\$1,600.00
March	\$200.00	\$0.00	\$1,800.00
April	\$200.00	\$1,400.00	\$600.00
May	\$200.00	\$650.00	\$150.00
June	\$200.00	\$0.00	\$350.00
July	\$200.00	\$0.00	\$550.00
August	\$200.00	\$0.00	\$750.00
September	\$200.00	\$0.00	\$950.00
October	\$200.00	\$0.00	\$1,150.00
November	\$200.00	\$650.00	\$700.00
December	\$200.00	\$0.00	\$900.00
January	\$200.00	\$0.00	<b><u>\$1,100.00</u></b>

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**Step 2- perform the escrow projection for the next 12 months**

- ▶ Next determine the escrow component needed to fund the ongoing mortgage payment.
  - ▶ Taxes \$1300 a year Insurance \$1400 a year requires \$225.00 a month
- ▶ Next determine if there is an escrow shortage or surplus
  - ▶ Minimum balance for the escrow account- 2 months cushion \$450.00
- ▶ Using the "actual post petition escrow balance" determined by the lookback calculation- of \$1100.00, you run the analysis.

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Escrow Shortage Calculation					
<b>Beginning balance of escrow account</b>					<b>\$1,100.00</b>
Homeowner's insurance	12	months @ \$116.67	per month	\$1,400.00	
Property Taxes	12	months @ \$108.33	per month	\$1,300.00	
<b>Required Starting Balance</b>					<b>\$1,600.00</b>
<b>Calculated Escrow Shortage</b>					<b>\$500.00</b>
		Select Cushion	Monthly		
	Payment	months (0,1,2)	Payment	Cushion	Month Due
Annual Hazard Ins:	\$1,400.00	2	\$116.67	\$233.33	April
1st Half County Taxes:	\$650.00	2	\$54.17	\$108.33	May
2nd Half County					

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PAY IN	PAY OUT	BALANCE NEEDED
\$1,100.00		\$1,600.00
\$225.00	\$0.00	\$1,825.00
\$225.00	\$0.00	\$2,050.00
\$225.00	\$1,400.00	\$875.00
\$225.00	\$650.00	** RESPA LOW POINT \$450.00
\$225.00	\$0.00	\$675.00
\$225.00	\$0.00	\$900.00
\$225.00	\$0.00	\$1,125.00
\$225.00	\$0.00	\$1,450.00
\$225.00	\$0.00	\$1,675.00
\$225.00	\$650.00	\$1,150.00
\$225.00	\$0.00	\$1,375.00
\$225.00	\$0.00	\$1,600.00

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This and other resources can be found at

[ConsiderChapter13.org](http://ConsiderChapter13.org)



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