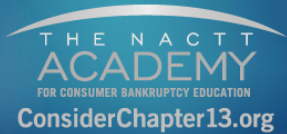


RESPA, Reg. X and Payment Changes after the first 12 months

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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.



Background

- ▶ Using the Form B410A, the pre-petition arrearage calculation is composed of 4 parts
 1. The principal and interest due and owing as of the date the bankruptcy was filed
 2. The pre petition costs and fees paid/assessed prior to the date of filing that remain outstanding as of the date the bankruptcy was filed
 3. The escrow account deficiency balance, if negative, of the taxes and insurance paid by the servicer prior to the date of filing that remains outstanding as of the date the bankruptcy was filed.
 4. The escrow shortage as calculated as of the date of filing to include the amount needed to comply with RESPA/Reg. X to fund the escrow disbursements for the 12 months after the date of filing.



Background

Mortgage Proof of Claim Attachment (FORM B410A)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information		Part 2: Total Debt Calculation		Part 3: Arrearage as of Date of the Petition		Part 4: Monthly Mortgage Payment	
Case Number	Principal balance	Principal & interest due	Principal & interest	Prepetition fees due	Escrow deficiency for funds advanced	Monthly escrow	Monthly mortgage insurance
Debtor 1	Interest due	Projected fees due	Escrow deficiency for funds advanced	Projected escrow shortage	Less funds on hand	Total prepetition arrearage	
Debtor 2	Fees, costs due	Escrow deficiency for funds advanced	Projected escrow shortage	Less funds on hand	Total prepetition arrearage		
Land 4: rights to identify	Escrow deficiency for funds advanced	Projected escrow shortage	Less funds on hand	Total prepetition arrearage			
Debtor	Less total funds on hand	Total prepetition arrearage					
Spouse							
Proof accountability (circle one)							

Part 5: Loan Payment History from First Date of Default

Account Activity		How Funds Were Applied/Amount Incurred				Balance After Amount Received or Incurred										
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Date	Contribution	Funds Received	Amount Applied	Description	Principal	Interest	Escrow	Unapplied	Principal	Account	Escrow	Payments	Unapplied	Balance	Balance	Balance
					principal	interest	escrow	charges	balance	balance	balance	charges	balance	balance	balance	balance

Background

Part 3: Arrearage as of Date of the Petition

Principal & interest due: _____

Prepetition fees due: _____

Escrow deficiency for funds advanced: _____

Projected escrow shortage: _____

Less funds on hand: _____

Total prepetition arrearage: _____

Background

Mortgage Proof of Claim Attachment (FORM)

Part 1: Mortgage and Case Information Part 2: Total Debt Calculation Part 3: Arrears as of Date of the Petition Part 4: Monthly Mortgage Payment

Case number: _____ Principal balance: _____ Principal & interest due: _____ Monthly arrear: _____
 Debit 1: _____ Interest due: _____ Prepetition fees due: _____ Prepaid mortgage: _____
 Debit 2: _____ Fees, costs due: _____ Escrow deficiency for funds advanced: **500.00** Escrow deficiency for funds advanced: **500.00** Total monthly payment: _____
 Lender's rights to identify: _____ Escrow deficiency for funds advanced: _____ Total escrow shortage: _____
 Creditor: _____ Less funds on hand: _____ Funds on hand: _____
 Debtor: _____ Total debt: _____ Total arrearage: _____
 Prior accountancy: _____
 State in bankruptcy: _____

Part 5: Loan Payment History from First Date of Default

Agreed Interest				Total Funds (from Acquisition/Rescue)				Balance After Paid Received or Insured								
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Date	Contractual payment amount	Funds received	Amount incurred	Description	Contractual due date	Prp. Int. received	Amount principal	Amount interest	Contractual principal	Contractual interest	Change	Balance	Change	Funds received	Change	Balance
																-500

Background

- ▶ Insert the projected escrow shortage as of the date the bankruptcy petition was filed (should be based on and consistent with escrow analysis performed as of the date of the petition under Rule 3001)
 - ▶ The calculation should include 1/6 of the anticipated annual charges against the escrow account or 2 months of the monthly pro rata installments due by the borrower as calculated under RESPA guidelines
 - ▶ The escrow portion of missed prepetition mortgage payments will not be recovered as a separate line item
- Part 3: Arrears as of Date of the Petition**
- Principal & interest due: _____
 Prepetition fees due: _____
 Escrow deficiency for funds advanced: **500.00**
 Projected escrow shortage: _____
 Less funds on hand: _____
 Total prepetition arrearage: _____

Background

- ▶ This webinar will discuss the escrow shortage as calculated pursuant to Fed. R. Bankr. P. 3001 and Regulation X, and its impact on subsequent annual escrow analyses during the Chapter 13 bankruptcy case.



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.



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.



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.



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.

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

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



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McCormick



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Miller

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 $(\$250 \text{ a month} * 2 \text{ months})$

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.**

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.

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.

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

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	<u>\$1,100.00</u>

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.

Escrow Shortage Calculation					
Beginning balance of escrow account					\$1,100.00
Homeowner's insurance	12	months @ \$116.67 per month	\$1,400.00		
Property Taxes	12	months @ \$108.33 per month	\$1,300.00		
Required Starting Balance					\$1,600.00
Calculated Escrow Shortage					\$500.00
	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					

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

ACADEMY

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This and other resources can be found at

ConsiderChapter13.org

