

7-17-7 Limit on amount borrower required to pay into account -- Deficiency -- Method of recouping and remedies for default.

A lender in connection with a real estate loan may not require a borrower, the borrower's successors or assigns, or a prospective borrower:

- (1) to deposit in any reserve account established in connection with the loan, prior to or upon closing, a sum exceeding the estimated total payments for taxes, insurance premiums, or other charges which will be due and payable on the date of closing, and the pro rata portion thereof which has accrued, plus 1/6th of the estimated total taxes, insurance premiums, and other charges which will become due and payable during the 12-month period beginning on the date of closing; or
- (2) to deposit in any reserve account in any month beginning after closing a sum exceeding 1/12th of the total estimated taxes, insurance premiums, or other charges which will become due and payable during the 12-month period beginning on the first day of the month plus an amount necessary to maintain the additional balance permitted in Subsection (1) in the reserve account not to exceed 1/6th of the total estimated taxes, insurance premiums, or other charges that will become due and payable during the 12-month period beginning on the first day of the month, except that:
 - (a) if the lender determines there will be a deficiency on the due date, it may require additional monthly deposits in the reserve account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of the deficiency to the date upon which the charges become due and payable;
 - (b) if the lender determines there is a deficiency on or after the due date, it may:
 - (i) bill the borrower, the borrower's successors or assigns, for the deficiency, which bill shall promptly be paid;
 - (ii) add the deficiency to the principal; or
 - (iii) charge the reserve account, and require additional monthly deposits in the reserve account for up to 12 months to recoup the deficiency;
 - (c) if the borrower, the borrower's successors or assigns, fails to pay any amount billed by the lender to meet the deficiency as permitted under Subsection (2)(b)(i), the lender may exercise any remedies for default contained in the real estate loan document. If such failure to pay continues for 30 days after written notice to borrower, the lender may also terminate any obligation to pay interest or to otherwise pay compensation for the use of the funds in the reserve account.

Amended by Chapter 182, 1996 General Session