



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
(207)289-3731

ADVISORY RULING #86
DECEMBER 31, 1985

December 31, 1985

Re: Fees Charged for Servicing Mortgage Escrow Accounts, §3-312

The Bureau has recently learned of the practice of certain mortgage lenders charging customers a fee for the servicing of escrow accounts. Typically, the fee is paid to third parties whose duty is to ensure local property taxes are paid when due. It is the Bureau's position such fees are illegal under State law. Consequently, any company now charging such fees should cease the practice immediately.

9-A M.R.S.A. §3-312 directs mortgagees and their assignees to pay interest on any escrow accounts of tax or insurance funds that have been established for their customers. The statute further directs that calculation and payment of interest will be in accordance with §429 of Title 9-A (the Maine Banking Code).

Section 429 provides in pertinent part:

Each mortgagee holding funds of a mortgagor in an escrow account on behalf of itself or another mortgagee for the payment of taxes or insurance with respect to mortgaged property located in this State shall pay the mortgagor, at least quarterly, dividends or interest on the account at a rate of not less than 3% per year. The dividends or interest paid under this subsection may not be reduced by any charge for service or maintenance of the account.

(Emphasis added.)

While there is no legislative history on the bill that enacted §429, it is clear from the context of its enactment (i.e., the complete repeal of an earlier, ineffectual version of §429 and the increased practice of mortgagees mandating the escrowing of funds), that the Legislature intended to establish a watertight system for the payment of interest on funds held in escrow. The imposition of a fee for escrow servicing clearly has the effect of reducing the interest a mortgagor is entitled to receive, and is thus contrary to §429's dictates. If §429 was given an interpretation other than that ascribed to it by the Bureau the intent of the statute would be easily frustrated by simply charging large fees at the origination of the relationship between borrower and third party servicer.

The Bureau reserves the right to order refunds of any escrow service fees it determines to have been assessed in violation of §429.

The Bureau takes this opportunity to remind mortgagees of the recent amendment to §429. P.L. 1985, c. 327 (effective October 1, 1985) requires interest to be paid on all funds held in escrow on or after October 1, 1985, regardless of when the mortgage relationship began.

/s/ Robert A. Burgess
Robert A. Burgess
Superintendent

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