

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2174

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2174

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2174

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		0 .6-18.0
Committee Clerk Signature <i>Jant James</i>			

Minutes:

Senator Duane Mutch, Chairman of the Senate Industry, Business and Labor brought the meeting to order.

Attendance was taken indicating all members of the committee were present except **Senator Joel Heitkamp** who latter attending the hearing.

Senator Mutch opened the hearing on SB 2174 relating to escrow accounts.

Jim Schlosser representing the North Dakota Bankers Association testified in support of SB 2174 (See attached testimony including amendments) He further stated this is not a huge issue in the state but it is for the servicers. The point is the money in the escrow account is the borrowers money and the plan here is to match the amount in the escrow account to match the payments that are due for taxes and insurance paid out of that account.

Senator Duaine Espegard asked for clarification that the proposed amendment does not repeal the section but only changes the excess amount.

Senator Karen Krebsbach asked if this bill would conforming with RESPA and if so this would now be "hog house" amendment.

Jim Schlosser confirmed this.

Senator Jerry Klein asked how this would effect the consumer and if there might be an out cry from them.

Jim Schlosser stated that probably most would prefer to have the cushion instead of the fluctuation in the escrow account because of insufficient funds to cover the taxes and insurance.

Senator April Fairfield (9.9) asked if the cushion would continue to grow and grow every year.

Jim Schlosser answered that the idea is not to carry a large cushion but only enough to cover taxes and insurance and federal law through RESPA recognizes there should be this cushion.

Greg Tschider representing the North Dakota Credit Union League testified in support of SB 2174 stating that because it is not an exact science but only an estimate of taxes and insurance the only thing that can be done is to estimate relatively close to the amount for each year. The intent is not to rip off the consumer but to simply have a two month cushion that would not go any higher than that amount. This will also supply uniformity.

Tim Karsky (13.7) Commissioner for the North Dakota Department of Financial Institutions testified in support of SB 2174 as amended.

Senator Mutch asked for opposing testimony and hearing none closed the hearing on SB 2174.

Senator Espegard made a motion for acceptance of the "Schlosser" amendment.

Senator Klein second the motion.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2174

Hearing Date January 17, 2005

Senator Mutch called for a voice vote that indicated 6 YEAS 0 NAYS AND 1 ABSENT.

Senator Espegard made a motion for a DO PASS as AMENDED of SB 2174.

Roll call vote #2 was taken indicating 6YEAS, 0 NAYS AND 1 ABSENT.

Senator Krebsbach will carry SB 2174.

REPORT OF STANDING COMMITTEE

SB 2174: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2174 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 47-10.2-01 of the North Dakota Century Code, relating to escrow account excess amounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of ~~three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ one-sixth of the estimated total annual payments from the account.

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2174

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2174

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-28-05

Tape Number	Side A	Side B	Meter #
1		x	20.2-end
2	x		0-30.5
Committee Clerk Signature <i>Joey Rouke</i>			

Minutes:

Chairman Keiser: Opened the hearing on SB 2174. All committee members were present.

Jim Schlosser, North Dakota Bankers Association: Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Representative Kasper: An insurance premium at \$1500.00 per year and real estate taxes at \$4000.00 per year that is \$5500.00 amount for taxes and insurance 1/6 of that would be about \$910.00 so if these were my numbers I'd be escrowing an additional \$910.00 over and above what is normally coming out of the monthly cash flow for the annual payment for those taxes and insurance, that is correct?

Jim Schlosser: That may or may not be, I'm assuming now and maybe you know better then I, whether the amount that had collected in your escrow account each year is exactly the amount that's paid for taxes and insurance or whether you have may become surplus in that amount paid on average

Representative Keiser: In your testimony, someone could have up to \$915.00 in their escrow account at any one time, they could not exceed 1/6 of what ever that amount was that could be documented at any one time, at the end of the year, if you happen to have \$915.00 in there, that doesn't stay in there, that has to be paid back and you start over. \

Jim Schlosser: It allows a cushion, the cushion will remain there, the issue here is, with the software, lets say your taxes are paid in February and insurance may have to be paid in March, April, June, so you have to build that up again, and you start again for the taxes come February, if there is a cushion in there, the cushion would be retained, in that account because you do not know whether your taxes or your insurance is increasing until you get the bill.

Representative Dietrich: when you close on a home, the taxes are pro rated to that point, your obligated for the taxes from that point on, the taxes that are collected from the first of the year to the point you close you receive that as a credit, I've found from experience that immediately when you close on a home you have to have your insurance pre paid, also they collect in your escrow account additional 3 months of insurance premiums, 2-3 months, they are also collecting upfront three months worth, 1/12 of your taxes are paid in escrow from that point, one year your insurance is due, if there is more in the account, you'll be given that back, iv not you've run into situations where taxes do go up, and you may have a shortage in the escrow account, point of my concern is on closing date, most buyers today struggle the down payment money, closing cost money to get into a home, its a hardship.

Representative Keiser: Are banks requiring escrow accounts, can you get financing without an escrow account?

Jim Schlosser: It is so competitive out there right now, yes you can negotiate that, can a first time home buyer, no I don't think so, because they want to make sure that you have sufficient funds in the account. I think where the confusion comes in is, payments are being made monthly, large payments are being paid periodically, and so you are trying to match all this stuff so you have sufficient funds.

Representative Keiser: When I buy the home the bank wants me to buy insurance, in fact requires it, and I pay 4 years in advance, your either going to put that in your financing that first year or your going to hold the money yourself and make the payments, ultimately your going to pay one time up front.

Greg Tschider, North Dakota Credit Unions: Appeared in support of the bill, basically the intent of this bill is to do one thing, to raise it from \$300.00 to 2 months we can have all the discussions about closing costs, that is not the scope of this bill, we are talking about going from a cushion of \$300.00 to \$900.00 we are talking \$600.00, now in the interest rate environment that we are having now, the \$600.00 you might get 1% or 2% on the money market, so effectively the consumer (you) it could be costing you from \$6.00 to \$12.00 which you have to pay income tax on, to pay for someone to do all the servicing.

Tim Karsky, Commissioner, Department of Financial Institutions: Appeared in support of bill.

No opposition.

Hearing closed

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2174

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-05

Tape Number	Side A	Side B	Meter #
2		x	24.2-34.1
Committee Clerk Signature <i>Joey Benke</i>			

Minutes:

Chairman Keiser: Reconvened on SB 2174.

Representative Thorpe: Presented amendment .0201 to committee. On line 9 it changes 1/6 in the bill to 1/12.

Representative Keiser: On line 9 so instead of 2 months escrow it is 1 month escrow amount in reserves.

Representative Thorpe: If we pass the bill as it was, and I understood the reason, take the dollar amount and go to the 2 months to meet their national code, areas like Minot, Grand Forks, Bismarck areas where we have a lot of the \$300,000.00, \$400,000.00 homes and if they are carrying a large mortgage, they would not be talking very nice about us.

Representative Kasper: Now we have a problem on the bottom side I think, because 1/12 of a small number gets you maybe substantially below \$300.00 and I do have sympathy for the

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2174

Hearing Date 3-2-05

institutions that have to come up with the dollars and that might mean \$60.00 or \$80.00, I wonder if we should consider putting \$300.00 or 1/12 which ever is the greater.

Representative Thorpe: We were wondering how this would meet this national criteria, they were talking about.

Representative Dietrich: I move to **ADOPT** the amendments for **SB 2174**.

Representative Ekstrom: I **SECOND** the motion to **ADOPT** amendments.

Motion carried.

Representative Nottestad: I move a **DO PASS** as **AMENDED** on **SB 2174**.

Representative Vigesaa: **SECOND** the **DO PASS** as **AMENDED** on **SB 2174**.

Motion carried. **VOTE: 13-YES 0-NO 1-Absent (DOSCH).**

Representative Thorpe will carry the bill on the floor.

Meeting adjourned.

VR
3/2/05

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2174

Page 1, line 9, replace "one-sixth" with "one-twelfth"

Renumber accordingly

Date: 3-2-06
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2174

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendments by Dosch & Thorpe

Motion Made By Rep. Dietrich Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman		X	Rep. T. Boe		X
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	A				
Rep. G. Froseth		X			
Rep. J. Kasper		X			
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 9 No 4

Absent (1) Rep. Dosch

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-2-06
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2174

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 58249.0201 • 0300

Action Taken Do Pass As Amended

Motion Made By Rep. Nottestad Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	A				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 13 No 0

Absent (1) Rep. Dosch

Floor Assignment Representative Thorpe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 3, 2005 9:32 a.m.

Module No: HR-39-4040
Carrier: Thorpe
Insert LC: 58249.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2174, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2174 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "one-sixth" with "one-twelfth"

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2174

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2174

Senate Industry, Business and Labor Committee

xxxx Conference Committee

Hearing Date 4-04-05

Tape Number	Side A	Side B	Meter #
1		xxxx	280-2150
Committee Clerk Signature <i>Lisa Van Berkorn</i>			

Minutes: **Chairman Krebsbach called the conference committee to order. Members present were:** Chairman Krebsbach, Senator Mutch, Senator Heitkamp, Rep. Dosch, Rep. Dietrich, and Rep. Thorpe.

Chairman Krebsbach: This bill came to us to repeal the chapter of code wherein it required three hundred dollars plus the amount necessary for taxes etc. That was the old language. In visiting, we determined that it was wise to leave the language in the bill. Reason for removing it was because the federal would supersede the state or would be applicable to the federal. Therefore, they felt it wasn't necessary. Then they determined that it would be necessary and made it compatible with the federal legislation. Wherein one-sixth was reserved. Primary reason is that on the secondary market, this is a necessity to have compatible statute.

Rep. Dosch: The primary reason that we are going to a three hundred dollar escrow deposit up to one-sixth. And when you look at the average real-estate taxes on a home, probably three hundred dollars is the average monthly escrow, maybe low. With the one-sixth, we are basically doubling

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2174

Hearing Date 4-04-05

the escrow requirements. I personally felt that doubling that was pretty substantial. I understand why the three-hundred dollars didn't make much sense in the current law.

Rep. Thorpe: When this was in the House, we had the same feeling the one-sixth was going to hurt some people with contracts with escrow because it would be so much higher.

No Action was taken at this time. The conference went into recess.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2174

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 4-08-05

Tape Number	Side A	Side B	Meter #
1	XXXX		579
Committee Clerk Signature <i>Rica Van Berkom</i>			

Minutes: Chairman Krebsbach called the conference committee to order. Members present were: Chairman Krebsbach, Senator Mutch, Senator Heitkamp, Rep. Dosch, Rep. Dietrich, Rep. Thorpe.

Chairman Krebsbach: We have decided that we can try and live with the amendment that the House put on. Even though we prefer the one-sixth.

There was no discussion from the committee.

Senator Heitkamp moved that the Senate accede to the House amendment.

Senator Mutch seconded. Roll Call Vote: 6 yes. 0 no. 0 absent.

Carrier: Senator Krebsbach

(Bill Number) 2174 (, as (re)engrossed):

Your Conference Committee

For the Senate:	Attend	Vote
Chair Krebsbach	P	Y
Sen. Mutch	P	Y
Sen. Heitkamp	P	Y

For the House:	Attend	Vote
Rep. Dosch	P	Y
Rep. Dietsch	P	Y
Rep. Thorpe	P	Y

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
the (Senate/House) amendments on (SJ/HJ) page(s) _____ - _____

and place 2174 on the Seventh order.
727

, adopt (further) amendments as follows, and place
_____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 04.07.05

CARRIER: _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2174, as engrossed: Your conference committee (Sens. Krebsbach, Mutch, Heitkamp and Reps. Dosch, Dietrich, Thorpe) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 771 and place SB 2174 on the Seventh order.

Engrossed SB 2174 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2174

SB2174
Jim Schlosser
North Dakota Bankers Association

SB2174 was introduced at the request of a member institution that sells a good number of their loans on the secondary market. All loans made by financial institutions are governed by the Real Estate Procedures Settlement Act (RESPA). Section 3500.17(c) in RESPA limits the payments that are required to be deposited into an escrow account. This section of federal law allows the lender or servicer to have a cushion that shall be no greater than one-sixth (or 2 months) of the estimated total annual payments from the escrow account. The RESPA limitations on amounts collected in escrow accounts protect consumers from having too much in the escrow account than required to pay taxes and insurance. Chapter 47-10.2-01(2) of the NDCC defines 'excess amount' as \$300 over the amount necessary to pay real estate taxes, special assessments and insurance premiums during the calendar year. Some who purchase mortgages on the secondary market such as CITIMORTGAGE (see exhibit A), treat North Dakota differently because the state law does not conform with the RESPA dealing with the cushion in the escrow account.

The software used by purchasers of loans on the secondary market conforms with RESPA and can calculate a cushion of one or two months of the estimated total annual payments. However, servicers are unable to calculate a set amount, such as in North Dakota law. Therefore, servicers in many cases do not have sufficient funds in the escrow account if there is an increase in either insurance or taxes. The amendment offered would allow the servicers to be governed by RESPA relative to a cushion in the escrow account, the same as in 47 other states.

SB2174 originally repealed Chapter 47-10.2 with the intent that servicers of a secondary residential mortgage should comply with the RESPA regulations governing these accounts. After preparation of the bill and discussing the issue with Department of Financial Institutions Commissioner Tim Karsky, it was decided to only amend the definition of "excess amount" in 47-10.2-01 so that it is the same as RESPA.

The attached amendment proposes to replace the language in the bill with the Section 1 amendment, affecting only subsection 2 of 47-10.2-02 of NDCC.

PROPOSED AMENDMENT TO S.B. NO 2174

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 2 of section 47-10.2-01 of the North Dakota Century Code, relating to the amount which may be carried over in an escrow account from year to year.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of ~~three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year~~ one-sixth of the estimated total annual payments from the account.

Renumber accordingly



CORRESPONDENT MANUAL

PURCHASING

ESCROW 1002

States Restrictions on Escrow Cushions

CMI's interpretation of the statues indicates the following states restrict the collection of cushions on escrow accounts:

- ✓ Nevada No Cushion Allowed
- ✓ North Dakota No Cushion Allowed
- ✓ Vermont 1 Month Cushion Allowed

Therefore, if a cushion greater than the amount allowed is collected at closing, it will be refunded to the borrower in connection with CMI's initial escrow analysis. Correspondents in these states should contact their legal counsel if they have any questions concerning the collection of escrow cushions.

Completing the HUD-1

The HUD-1 should reflect the actual amount collected from the borrowers to be deposited into their escrow account. The information on the HUD-1 should agree with the information provided in the Initial Escrow Account Disclosure Statement. If the total reserves paid at closing on the HUD-1 does not match the starting escrow balance on the Initial Escrow Account Disclosure Statement, CMI relies on the information provided on the HUD-1 to determine the escrow balance to be transferred when we purchase your loan.

Escrow Account Disclosure Statement

After CMI purchases a loan, the Correspondent is required to provide the borrower within 60 days of the transfer date with a statement that shows the actual activity in their escrow account, beginning on the date the loan was closed, up to the date the servicing of the loan is transferred to CMI. This statement should list all payments made into the escrow account, all payments made from the escrow account, the items that were paid, the dates, and totals of all information, and advise the borrower that the escrow balance has been transferred to the new servicer.

The Escrow Account Disclosure Statement should be sent to CMI as a follow-up document.

New Loan Research

CMI uses the information on the HUD-1 to determine the amount of escrow funds to be transferred. If the Correspondent discovers the HUD-1 does not contain accurate information relating to the amount of money deposited into the borrower's escrow account, the Correspondent must notify CMI within ten (10) business days of the purchase date to request an adjustment.

A corrected HUD-1 and Initial Escrow Account Disclosure Statement must be prepared, signed by the borrower and forwarded to CMI. Requests for adjustments that are received by CMI more than ten (10) business days past the purchase date will not be processed unless there are unusual circumstances.

SB2174
Jim Schlosser
North Dakota Bankers Association

SB2174 was introduced at the request of a member institution that sells a good number of their loans on the secondary market. All loans made by financial institutions are governed by the Real Estate Procedures Settlement Act (RESPA). Section 3500.17(c) in RESPA limits the payments that are required to be deposited into an escrow account. This section of federal law allows the lender or servicer to have a cushion that shall be no greater than one-sixth (or 2 months) of the estimated total annual payments from the escrow account. The RESPA limitations on amounts collected in escrow accounts protect consumers from having too much in the escrow account than required to pay taxes and insurance. Chapter 47-10.2-01(2) of the NDCC defines 'excess amount' as \$300 over the amount necessary to pay real estate taxes, special assessments and insurance premiums during the calendar year, regardless of the amount due. Some who purchase mortgages on the secondary market such as CITIMORTGAGE (see exhibit A), treat North Dakota differently because the state law does not conform with the RESPA dealing with the cushion in the escrow account.

The software used by purchasers of loans on the secondary market conforms with RESPA and can calculate a cushion of one or two months of the estimated total annual payments. However, servicers are unable to calculate a set amount, such as in North Dakota law. Therefore, servicers in many cases do not have sufficient funds in the escrow account if there is an increase in either insurance or taxes. The amendment offered would allow the servicers to be governed by RESPA relative to a cushion in the escrow account, the same as in 47 other states.

SB2174 originally repealed Chapter 47-10.2 with the intent that servicers of a secondary residential mortgage should comply with the RESPA regulations governing these accounts. After preparation of the bill and discussing the issue with Department of Financial Institutions Commissioner Tim Karsky, it was decided to only amend the definition of "excess amount" in 47-10.2-01 so that it is the same as RESPA.