

STATE INTEREST ON ESCROW LAWS FOR RESIDENTIAL MORTGAGE LOANS¹

Prepared for the
MORTGAGE BANKERS ASSOCIATION
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This memorandum summarizes state requirements to pay interest on escrow accounts that are established by the lender to pay insurance, taxes and similar charges in connection with real estate loans on behalf of the borrower. The states that are included in this memorandum are Alaska, California, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Utah, Vermont and Wisconsin.

ALASKA

A bill has been recently introduced in the Alaska legislature which would require certain lenders to pay borrowers interest on required reserve accounts at the rate of 2% per year. See HB 33 at http://www.legis.state.ak.us/basis/get_fulltext.asp?session=25&bill=HB33. Interest would be required to be credited to reserve accounts on December 31 of each year. The bill does not apply to banks, savings institutions, or credit unions authorized under the laws of the United States or to subsidiaries or affiliates of such institutions if they are subject to regulation by an agency of the federal government. The bill is currently in committee.

CALIFORNIA

Relevant Law and Rules:

Cal. Civ. Code § 2954.8 (being part of California Civil Code Division 3 “Obligations,” Title 14 “Lien,” Chapter 2 “Mortgage,” Article 2 “Mortgage of Real Property”).

Residential Mortgage Lending Act, Cal. Fin. Code §50000 *et seq.* (being part of California Financial Code Division 20 “Residential Mortgage Lending Act”).

Real Estate Law, Cal. Bus. & Prof. Code §10000 *et seq.* (being part of California Business and Professions Code Division 4 “Real Estate Law”).

¹ This survey is limited to the obligation under state law for a mortgage lender to pay interest on escrows held for the payment of taxes, insurance and other recurring charges on a residential mortgage loan. It does not cover related issues in connection with escrow administration, including, but not limited to the mortgagee’s obligation to provide escrow statements to the borrower.

Institutions Required to Pay Interest on Escrows/Exceptions:

These institutions must pay interest on escrows:

1. Financial institutions² or any other person or organization making loans upon the security of 1-4 family California real property;
2. Purchasers of obligations secured by 1-4 family California real property if they receive money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property.

[Cal. Civ. Code §2954.8.]

Loans Covered by Interest on Escrow Law:

Loans for which the security (mortgaged property) consists of only 1-4 family residential real property located in California. [Cal. Civ. Code §2954.8.]

Requirement to pay interest is not applicable to loans made prior to 1/1/1980. [Cal. Civ. Code §2954.8(d)(1).]

The requirement to pay interest under the California Civil Code section does not apply if escrows are required by federal or state law to be placed in a non-interest-bearing account. (Escrows are required by state law to be placed in non-interest bearing accounts by California licensed real estate brokers and residential mortgage lenders, unless the borrower or another entitled person requests the funds be deposited in interest-bearing accounts; see below.)

How Must the Interest be Paid or Credited?

Interest on escrow must be credited to the borrower's account annually or upon termination of the account, whichever is earlier.

Interest Rate (and period to which applicable):

2%. See <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=09180726348+8+0+0&WAIAction=retrieve>.

Notes and Comments:

Escrow account maintenance fees may not be charged if, as a result of such fees, interest paid is less than 2%. [Cal. Civ. Code § 2954.8(b).]

² "Financial institution" is defined as "financial institution" means a bank, savings and loan association or credit union chartered under the laws of this state or the United States, or any other person or organization making loans upon the security of real property containing only a 1-4 family residence. [Cal. Civ. Code §2954.8(c).]

Lenders other than banks are not required to pay interest on escrowed funds if such funds are required by state or federal law to be placed in a non-interest-bearing demand trust fund account of a bank. California law requires escrows to be placed in a non-interest bearing account by licensed California residential mortgage lenders and licensed California real estate brokers, unless the borrower in the loan transaction (or the principals to a transaction in which the escrowed funds are received by the real estate broker) requests the funds be placed in an interest-bearing account and certain other conditions are met. Therefore, in situations where the borrower does not request his escrows be placed in an interest-bearing account and his 1-4 family loan is being serviced by a licensed California real estate broker, for example, the requirement for 2% interest on escrows is not applicable.

(1) Special rules for licensed California real estate brokers:

A real estate broker collecting payments or performing services for investors or note owners in connection with first-lien loans may deposit trust funds in an out-of-state FDIC-insured depository institution if the investor or note owner is among a specific category of investor identified by statute. [Cal. Bus. & Prof. Code §10145(a)(2).] The real estate broker may, at the request of the owner of the trust funds or of the principals to a transaction from whom he has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, whose accounts are FDIC-insured if all the following requirements are met:

1. The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions;
2. All of the funds in the account are covered by insurance provided by an agency of the United States;
3. The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust;
4. The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to him at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

The broker has no obligation to place trust funds into an interest-bearing account unless requested to do so and all of the above conditions are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account. [Cal. Bus. & Prof. Code §10145(e).]

The broker must maintain a separate record of the receipt and disposition of all trust funds, including any interest earned on the funds. [Cal. Bus. & Prof. Code §10145(g).]

Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker. [Cal. Bus. & Prof. Code §10145(d)(5).]

See <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=09240829268+0+0+0&WAISaction=retrieve>.

(2) Special rules for California licensed residential mortgage lenders:

Residential mortgage lenders licensed under the California Residential Mortgage Lending Act, Cal. Fin. Code §50000 *et seq.*, must place escrow funds in non-interest bearing account unless the borrower requests the lender to transfer the funds into an interest-bearing account. [Cal. Fin. Code §§ 50202 (b), 50202(f).] If the escrows (referred to as “trust funds” in the statute) are transferred into an interest-bearing account at the borrower’s request, the account must be:

1. in a federally insured depository institution;
2. in the name of the licensee in trust for the specified beneficiary;
3. federally insured;
4. kept separate and distinct from the funds of the licensee or funds of any other person for whom the licensee holds funds in trust.

Moreover, the licensee must disclose to the person from whom the funds are received and to the beneficiary of the account (1) how interest will be calculated and paid, (2) whether service charges will be paid to the depository and by whom, and (3) possible notice requirements or penalties for withdrawal of funds from the account. All interest earned on the account must be paid to the owner of the trust funds or the beneficiary. See <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=09219628230+2+0+0&WAISaction=retrieve>.

CONNECTICUT

Relevant Law and Rules:

Conn. Gen. Stat. § 49-2a (being part of Connecticut General Statutes Title 49 “Mortgages and Liens,” Chapter 846 “Mortgages”) (pertaining to interest on escrow accounts).

Institutions Required to Pay Interest on Escrows/Exceptions:

These institutions must pay interest on escrows:

State bank and trust companies, national banking associations, state or federally chartered savings and loan associations, savings banks, insurance companies and other mortgagees or mortgage servicing companies holding funds of a mortgagor in escrow for the payment of taxes and insurance premiums with respect to mortgaged property located in Connecticut. [Ct. Stat. Ann. §49-2a(a).]

Interest is not required to be paid: (1) for loans made before 10/1/75, if loan documents expressly disclaim an obligation to pay interest; (2) if payment of interest would violate federal law; (3) if escrow accounts are maintained with a mortgage servicing company unaffiliated with the mortgagee, under pre-10/1/75 contract which does not permit servicer to earn a return from investment of escrow funds; (4) loans were made between 10/1/77 and 1/1/89, if serviced and held for sale for not more than one year by servicer unaffiliated with purchaser of loans; (5) loans were made on or after 1/1/89 and were serviced and held for sale for not more than 6 months by servicing company (unless servicing company continues to service loans after the sale, in which case interest must be paid). [Conn. Gen. Stat. § 49-2c.]

Loans Covered by Interest on Escrow Law:

Mortgage loans on owner-occupied residential property consisting of not more than four living units and housing cooperatives occupied solely by the shareholders thereof. [Ct. Gen. Stat. §49-2a(a).]

How Must the Interest be Paid or Credited?

Interest payments are credited on December 31 annually toward the payment of taxes or insurance premiums as the case may be, on the mortgaged property in the ensuing year. If the mortgage debt is paid prior to December 31 in any year, the interest to the date of payment shall be paid to the mortgagor. [Ct. Stat. Ann. §49-2a(a).]

Interest Rate (and period to which applicable):

Interest is set by law at not less than 1.5%. [Conn. Gen. Stat. § 49-2a(c).] Current rates are announced by the Department of Banking by December 15 for the following calendar year. The

interest on escrow rate for calendar year 2007 is 1.5%. See <http://www.ct.gov/dob/cwp/view.asp?a=2247&q=299048>.

Notes and Comments:

A mortgagee or mortgage servicing company violating the requirement to pay interest on escrows is subject to a fine up to \$100 for each offense. [Ct. Gen. Stat. §49-2a(a).]

IOWA

Relevant Law and Rules:

Iowa Banking Act, Iowa Code § 524.905(2) (being part of Iowa Code Title 13 “Commerce,” Subtitle 2 “Financial Institutions,” Chapter 524 “Banks,” Division IX “Investment and Lending Powers”). See <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=524>.

Savings and Loan Association Act, Iowa Code § 534.206(3) (being part of Title 13, Subtitle 2, Chapter 534 “Savings and Loan Associations”). See <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=534>.

Industrial Loan Companies Act, Iowa Code § 536A.20.3 (being part of Title 13, Subtitle 3 “Money and Credit,” Chapter 536A “Industrial Loans”). See <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=536A>.

Mortgage Bankers and Brokers Act, Iowa Code § 535B.11 (being part of Title 13, Subtitle 3, Chapter 535B “Mortgage Bankers and Brokers”). See <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=IowaCode&input=535B>.

Institutions Required to Pay Interest on Escrows/Exceptions:

Banks³ -- corporations or limited liability companies organized under Chapter 524 of the Iowa Code or under 12 U.S.C. § 21 (pertaining to national banks) receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan (see “Loans Covered,” below) must pay interest to the borrower on those funds, calculated on a daily basis, at the rate the bank pays to depositors of funds in ordinary savings accounts. [Iowa Code §524.905(2).]

Savings and loan associations -- associations receiving funds pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan (see “Loans Covered,” below) must pay interest to the borrower on those funds, calculated on a daily basis, at the rate the association pays to members depositing funds in ordinary savings accounts. [Iowa Code §534.206(3).]

Licensed industrial loan companies -- licensed industrial loan companies receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 and before July 1, 1983 or on or after July 1, 1984 in connection with a loan (see “Loans Covered,” below) must pay interest to the borrower on those funds, calculated on a daily basis, at the lowest rate the company pays to holders of thrift certificates issued by the company. [Iowa Code §536A.20(3).]

³ The term “bank” is defined in Iowa Code §524.103(8).

Loans Covered by Interest on Escrow Law:

Covered loans are those defined by Iowa Statute §535.8(1),⁴ which includes loans of money wholly or partly to be used for the purpose of purchasing a 1-2 family dwelling occupied or to be occupied by the borrower, including a loan to refinance a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

How Must the Interest be Paid or Credited?

Interest must be calculated on a daily basis and paid to the borrower. The statutes are silent on the manner of payment of interest on escrows. Presumably, lender may make an annual payment to the borrower or credit the interest to the borrower's escrow account or loan annually.

Interest Rate (and period to which applicable):

Banks -- the rate the bank pays to depositors of funds in ordinary savings accounts.

Savings and loan associations -- the rate the association pays to members depositing funds in ordinary savings accounts.

Licensed industrial loan companies -- the lowest rate the company pays to holders of thrift certificates issued by the company.

Notes and Comments:

Mortgage lenders other than the institutions named above are not required to pay interest on mortgage loan escrow accounts.

⁴ The term "loan" is defined in Iowa Code Title XIII, "Commerce," Subtitle 3, "Money and Credit," Chapter 535, "Money and Interest."

MAINE

Relevant Law and Rules:

Me. Rev. Stat. Ann. tit. 33, § 504 (being part of Maine Revised Statutes Annotated, Title 33 “Property,” Chapter 9 “Mortgages of Real Property,” Subchapter 1 “General Provisions”) (pertaining to interest on mortgage escrow accounts).

Me. Rev. Stat. Ann. tit. 9-A, §§ 3-312, 9-305 (Tit. 9-A “Consumer Credit Code”).

Me. Rev. Stat. Ann. tit. 9-B, § 429 (“Financial Institutions,” Chapter 42 “Deposits in General”).

Institutions Required to Pay Interest on Escrows/Exceptions:

All mortgagees, if the two requirements below are satisfied. Maine law does not identify which types of lenders must pay interest on escrows; rather, it states that the “mortgage deed resulting from a mortgage loan must contain provisions for payment of interest on the escrow balance.” This means that the interest on escrow requirement must be in the mortgage, regardless of the identity of the mortgagee. The conditions are:

- (1) the mortgage is on owner-occupied 1-4 family residential property;⁵ and
- (2) the loan requires payments into mandatory escrow account.

[Me. Rev. Stat. Ann. tit. 33, § 504(1).]

Interest is not required to be paid if the residential mortgage deed is dated before January 1, 1992. [Me. Rev. Stat. Ann. tit. 33, § 504(2).]

Supervised lenders are required to pay interest in accordance with Me. Rev. Stat. Ann. tit. 9-B, § 429 under the Maine Consumer Credit Code. See Me. Rev. Stat. Ann. tit. 9-A, § 3-312.

Loans Covered by Interest on Escrow Law:

Loans in which the mortgaged property is owner-occupied 1-4 family residential property, which require payments into a mandatory escrow account and that are dated on and after January 1, 1992.

How Must the Interest be Paid or Credited?

The mortgagee must pay the mortgagor, at least quarterly, dividends or interest on the account. The law does not specify whether the payment may be direct to the mortgagor, or applied as a credit to the loan or escrow account.

⁵ This section of law does not specify that the property must be in Maine, but the provision on the amount of interest to be paid does reflect the requirement that the mortgaged property be in Maine. See Me. Rev. Stat. Ann. tit. 9-B §429(2).

Interest Rate (and period to which applicable):

2.5% for calendar year 2007. See <http://www.maine.gov/pfr/financialinstitutions/escrow.htm>.

The mortgagee must pay the mortgagor, at least quarterly, dividends or interest on the account at a rate of not less than 50% of the 1-year Treasury Note rate (or rate of a comparable instrument if the 1-year Treasury Note is not offered), as published in a financial newspaper of national circulation, as of the first business day of the year in which the quarterly interest or dividend is paid. [Me. Rev. Stat. Ann. tit. 9-B §429(2).] The U.S. Treasury does not currently offer 1-Year Treasury Notes; therefore the Bureau of Financial Institutions has chosen the average yield on U.S. Treasury Securities, adjusted to a constant maturity of one year (1-Year Treasury Index), as the benchmark for determining the interest rate to be paid on escrows. See BFI Bulletin # 76 Interest on Escrow Accounts, December 19, 2006, at http://www.maine.gov/pfr/financialinstitutions/bulletins/bull76_2007.htm.

Notes and Comments:

The dividends or interest paid on the escrow funds may not be reduced by any charge for service or maintenance of the escrow account. [Me. Rev. Stat. Ann. tit. 9-B §429(2).]

MARYLAND

Relevant Law and Rules:

Md. Comm. Law Code Ann. § 12-109 (being part of Maryland Commercial Law Code Title 12 “Credit Regulations,” Subtitle 1 “Interest and Usury”). See http://mlis.state.md.us/asp/statutes_Respond.asp?article=gcl§ion=12-109&Extension=HTML.

Md. Comm. Law Code Ann. § 12-1026 (being part of Title 12, Subtitle 10 “Credit Grantor Closed End Credit Provisions”). See http://mlis.state.md.us/asp/statutes_Respond.asp?article=gcl§ion=12-1026&Extension=HTML.

Institutions Required to Pay Interest on Escrows/Exceptions:

Lending institutions that create or are the assignees of escrow accounts must pay the borrower interest on the funds in the account. A “lending institution” is defined as a bank, savings bank, or savings and loan association doing business in Maryland. [Md. Comm. Law Code Ann. § 12-1026(a).]

A lending institution is not required to pay interest on escrows if the expenses are added to the outstanding principal balance of the loan. [Md. Comm. Law Code Ann. §§ 12-109(c), 12-1026(b)(4).] Payment of interest on escrows is not required if the loan (1) is purchased by an out-of-state lender through Fannie Mae, Ginnie Mae or Freddie Mac; and (2) the out-of-state lender elects to service the loan as a condition of purchase. However, interest will be payable if the out-of-state lender sells the loan to a Maryland lender or places the loan with a Maryland lender for servicing. [Md. Comm. Law Code Ann. §§ 12-109(d), 12-1026(5).]

Loans Covered by Interest on Escrow Law:

Residential (1-4 family) real property loans secured by a first mortgage or first deed of trust. [Md. Comm. Law Code Ann. § 12-1026(b)(1).]

How Must the Interest be Paid or Credited?

Interest must be computed on the average monthly balance in the account and paid annually to the borrower by crediting the escrow account with the interest due. [Md. Comm. Law Code Ann. § 12-1026(b)(2).]

Interest Rate (and period to which applicable):

Either (i) 3% per year simple interest; or (ii) rate of interest regularly paid by lending institution on passbook savings accounts. [Md. Comm. Law Code Ann. § 12-1026(b)(1).]

Notes and Comments:

The lending institution must provide the borrower with a statement of the escrow balance annually. [Md. Comm. Law Code Ann. § 12-1026(b)(3).]

A lender (which includes the assignee of the lender) must keep funds in escrow accounts separate from the funds of the lender. However, a lender may place escrow funds received in connection with more than one mortgage into a single escrow account. A lender may not impose a collection fee or service charge on the maintenance of an escrow account on a first mortgage. [Md. Comm. Law Code Ann. §§ 12-109.2, 12-1026.]

MASSACHUSETTS

Relevant Law and Rules:

Mass. Gen. L. ch. 183, § 61 (being part of Massachusetts General Laws chapter 183 “Alienation of Land,” Section 61 “Payment of Interest by Mortgagee”). See <http://www.mass.gov/legis/laws/mgl/183-61.htm>.

Institutions Required to Pay Interest on Escrows/Exceptions:

All institutions that are mortgagees on loans secured by residential real property. [Mass. Gen. L. ch. 183, § 61.]

Loans Covered by Interest on Escrow Law:

Loans secured by first liens on 1-4 family owner-occupied real property.

How Must the Interest be Paid or Credited?

Interest must be paid to the borrower at least once a year, as determined by the mortgagee. Only interest on tax escrows must be paid, not insurance or other escrowed funds. [Mass. Gen. L. ch. 183, § 61; Division of Banks Opinion Letter 99-095.]

Interest Rate (and period to which applicable):

The rate to be paid is determined by the mortgagee. [Mass. Gen. L. ch. 183, § 61; Division of Banks Opinion Letter 99-095.] A mortgagee that shows a net loss from the investment of escrowed tax funds may apply to the Division of Banks for an exemption from the requirement to pay interest.

Notes and Comments:

If a mortgagee requires the borrower to pay taxes into escrow, the mortgagee must pay the taxes on or before their due date if the borrower has paid the amounts due to the mortgagee. If the borrower has not advanced the entire amount due, the mortgagee must pay the taxing authorities the amount paid to mortgagee by the borrower. [Mass. Gen. L. ch. 183, § 62.]

MINNESOTA

Relevant Law and Rules:

Minn. Stat. Ann. § 47.20, subd. 9 (being part of Minnesota Statutes Annotated Chapter 47 “Financial Corporations”).

Institutions Required to Pay Interest on Escrows/Exceptions:

“Mortgagees,” which means all state banks and trust companies, national banking associations, state and federally chartered savings associations, mortgage banks, savings banks, insurance companies, credit unions or their assignees. [Minn. Stat. Ann. § 47.20, subd. 9.]

Loans Covered by Interest on Escrow Law:

Loans on 1-4 family, owner-occupied residences located in Minnesota, unless the escrow account is required by federal law or maintained in connection with a conventional loan in an original principal amount in excess of 80% of the lender’s appraised value of the residential unit at the time the loan is made or maintained in connection with loans insured or guaranteed by HUD, the VA, or the Farmers Home Administration. [Minn. Stat. Ann. § 47.20, subd. 9(a).]

How Must the Interest be Paid or Credited?

Interest is computed on the average monthly balance in the account on the first of each month for the immediately preceding 12 months of the calendar year (or any other fiscal year that is uniformly adopted by the mortgagee) and credited annually to the remaining principal balance on the mortgage, or at the election of the mortgagee, paid to the mortgagor or credited to the mortgagor’s account. The requirement to pay interest applies only to escrow accounts created in conjunction with mortgage loans made prior to July 1, 1996. [Minn. Stat. Ann. § 47.20, subd. 9(a).]

Interest Rate (and period to which applicable):

3% per year. If the interest exceeds the remaining balance, the excess is paid to the mortgagor. [Minn. Stat. Ann. § 47.20, subd. 9(a).] See http://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP_SEC&year=current§ion=47.20.

Notes and Comments:

A mortgagee must allow a mortgagor to discontinue escrowing for taxes and insurance after the 5th anniversary of the date of the mortgage, unless the mortgagor has been more than 30 delinquent in the previous 12 months. This provision applies to escrow accounts created both before July 1, 1996 and on and after that date. For loans made on and after August 1, 1997, a mortgagee must provide the mortgagor with the following disclosure at the closing:

STATE INTEREST ON ESCROW LAWS FOR RESIDENTIAL MORTGAGE LOANS (February 20, 2007)

NOTICE OF RIGHT TO DISCONTINUE ESCROW

If your mortgage loan involves an escrow account for taxes and homeowner's insurance, you may have the right in five years to discontinue the account and pay your own taxes and homeowner's insurance. If you are eligible to discontinue the escrow account, you will be notified in five years.

The mortgagee must notify the mortgagor of his right to discontinue the escrow within 60 after the 5th anniversary.

A mortgagee may not charge a fee for the administration or discontinuance of the escrow account. [Minn. Stat. Ann. § 47.20, subd. 9(g).]

NEW HAMPSHIRE

Relevant Law and Rules:

N.H. Rev. Stat. Ann. § 384:16-a *et seq.* (being part of New Hampshire Revised Statutes Title 35 “Banks and Banking; Loan Associations; Credit Unions,” Chapter 384 “General Provisions as to Savings Banks, Trust Companies, and Depositories”).

N.H. Rev. Stat. Ann. § 397-B:5 (being part of Title 35, Chapter 397-B “Regulation of Mortgage Loan Services”).

Institutions Required to Pay Interest on Escrows/Exceptions:

Banks and mortgage companies. [N.H. Rev. Stat. Ann. §§ 384:16-c, 384:16-e.]

Loans Covered by Interest on Escrow Law:

Loans on single family homes secured by real estate mortgages. [N.H. Rev. Stat. Ann. §§ 384:16-c, 384:16-e.]

How Must the Interest be Paid or Credited?

The bank or mortgage company must credit the escrow account with interest, but the statute does not provide for when such interest should be credited. Under the Banking Department regulations for mortgage bankers and brokers, a mortgage company must credit the borrower with interest earned on escrow funds to the date of an assignment, transfer or discharge of a mortgage. [N.H. Code Admin. R. Ban 2506.01.]

Interest Rate (and period to which applicable):

Rate set for a 6-month period by the Bank Commissioner on February 1 and August 1 of each year at rate that is 1% below the mean interest rate paid by New Hampshire chartered banks on regular savings accounts. [N.H. Rev. Stat. Ann. §§ 384:16-c, 384:16-e.]

The rate that applies to escrow accounts from February 1, 2007 through July 31, 2007 is 1.16%. See <http://www.nh.gov/banking/>.

Notes and Comments:

A mortgage servicing company must pay taxes and insurance premiums when due, provided the company has received the tax or insurance bills at least 15 days prior to the date they are due, and the mortgagor has paid to the company the amounts required to be paid into the escrow account. If the amount held in the escrow account is insufficient to pay the taxes and insurance premiums when due, despite payment by the mortgagor of the required amounts to the company, the company must pay them from its own funds. The servicing company must then give the

mortgagor the option of paying the deficiency over 12 months. The servicing company may not charge interest on the deficiency during the 12-month period. [N.H. Rev. Stat. Ann. § 397-B:5.]

NEW YORK

Relevant Law and Rules:

NY Gen. Oblig. Law § 5-601 (being part of New York General Obligations Law, Chapter 24-A, Article 5 “Creation, Definition and Enforcement of Contractual Obligations,” Title 6 “Interest on Certain Deposits.”)

NY Banking Law § 6-k (being part of New York Banking Law, Chapter 2, Article I “Short Title; Definitions; Miscellaneous Provisions.”)

NY Banking Law § 14-b (being part of Chapter 2, Article II “Banking Department; Superintendent of Banks; Supervisory and Regulatory Powers.”)

NY Real Prop. Tax Law §§ 952, 953 (being New York Real Property Tax Law, Chapter 50-A, Article 9 “Levy and Collection of Taxes;” Title 3-A “Real Property Tax Escrow Accounts.”)

3 NYCRR §§ 10.1, 10.2 (being the “Official Compilation of Codes, Rules and Regulations of the State of New York;” Title 3 “Banking Department;” Chapter I “General Regulations of the Banking Board;” Part 10 “Payment of Interest on Mortgage Escrow Accounts and Insurance Draft Escrow Accounts.”)

Institutions Required to Pay Interest on Escrows/Exceptions:

Any “mortgage investing institution,” which means any bank, trust company, national bank, savings bank, savings and loan association, federal savings bank, federal savings and loan association, private banker, credit union, federal credit union, investment company, pension fund, licensed mortgage banker or any other entity which maintains a real property insurance and/or tax escrow account for real property located in New York State. [NY Banking Law § 6-k(1)(a); NY Real Prop. Tax Law § 952(1).]

Interest is not required to be paid on escrow accounts where (i) there is a contract between the mortgagor and the mortgage investing institution, entered into before April 1, 1974, which contains an express disclaimer of an obligation on the part of the mortgage investing institution to pay interest on such accounts; (ii) payment of interest would violate federal law; or (iii) such accounts are maintained with a mortgage servicing company that is not affiliated with the mortgage investing institution, under a pre- April 1, 1974 contract, which does not permit the mortgage investing institution to earn or receive a return from the investment of such accounts. [NY Banking Law § 14-b(4).]

For escrow accounts in connection with mortgages on cooperative property, no interest is required to be paid where there is a contract between the mortgagor and the mortgage investing institution, entered into before March 30, 1979, which contains an express disclaimer of an

obligation on the part of the mortgage investing institution to pay interest on such accounts. [3 NYCRR § 10.2(b).]

Loans Covered by Interest on Escrow Law:

Loans secured by a mortgage on 1-6 family owner-occupied real property or a mortgage on any property owned by a cooperative apartment corporation. [3 NYCRR § 10.2.]

How Must the Interest be Paid or Credited?

Interest must be computed on the daily balances in the escrow account from the date the funds are received to the date the funds are disbursed and must be credited to the escrow account as of the last business day of each quarter of a calendar year or each quarter of a fiscal year. In computing the interest to be credited, debit balances resulting from advances made by the mortgage investing institution may be taken into account. [3 NYCRR § 10.1(b).]

In computing the interest, a mortgage investing institution must either take into account the actual number of days in each quarter, as well as the actual number of days in each calendar year, or elect to compute the interest on the basis of a 30-day month and 360-day year. [3 NYCRR § 10.1(d).]

Interest Rate (and period to which applicable):

2% per year. [NY Gen. Oblig. Law § 5-601.] See <http://public.leginfo.state.ny.us/menugetf.cgi>.

Notes and Comments:

A mortgage investing institution may not impose a service charge or any other fee in connection with the maintenance of an escrow account. [NY Gen. Oblig. Law § 5-601; NY Real Prop. Tax Law § 953(4).]

Every mortgage investing institution must deposit funds from an escrow account of a mortgagor in a banking institution whose deposits are insured by a federal agency or a licensed branch of a foreign banking corporation whose deposits are insured by a federal agency. However, the banking board may exempt from this requirement any banking organization which does not receive deposits or share accounts from the general public. [NY Banking Law § 6-k(2)(c); NY Real Prop. Tax Law § 953(3).]

Every mortgage investing institution must, at least annually, provide to the mortgagor an analysis of the escrow account. The analysis must contain, for the 12-month period, at least: (1) interest earned; (2) the amount of insurance premiums or taxes paid from the escrow account; and (3) the account balance as of the beginning of the period covered by the analysis and the ending account balance as of a specified date within 45 days preceding the date of the analysis. Upon request by the mortgagor, the mortgage investing institution must provide to the mortgagor the date or dates of payment of insurance premiums and taxes from the escrow account. This information may be

provided in notices required to be sent by federal or state law. [NY Banking Law § 6-k(2)(e); NY Real Prop. Tax Law § 953(6); 3 NYCRR § 10.1(b).]

At the time of the establishment of the escrow account, and with each annual analysis, the mortgage investing institution must provide, without charge, a written disclosure to the mortgagor in at least 8-point bold face type that contains substantially the following language:

- (1) The mortgage investing institution is obligated to make all payments of insurance and taxes for which the escrow account is maintained. If any such payments are not timely, the mortgage investing institution is responsible for making such payments including any penalties and interest and shall be liable for all damages to the mortgagor resulting from its failure to make timely payment.
- (2) In the event that a real property insurance premium notice is sent directly to the mortgagor by the insurer, the mortgagor shall have the obligation to promptly transmit such premium notice to the mortgage investing institution, or such other institution or agent as may be designated in writing by the mortgage investing institution, for payment. Failure to do so may jeopardize the mortgagor's insurance coverage and may excuse the mortgage investing institution from liability for failure to timely make such real property insurance payments.
- (3) The mortgagor is obligated to pay one-twelfth of the insurance premiums and/or taxes each month to the mortgage investing institution for deposit into the escrow account, unless there is a deficiency or surplus in the account, in which case a greater or lesser amount may be required.
- (4) Unless the mortgage investing institution is exempt, it must deposit the escrow payments made by the mortgagor in a banking institution or a licensed branch of a foreign banking corporation whose deposits are insured by a federal agency.
- (5) The mortgage investing institution cannot impose any fees relating to the maintenance of the escrow account.

[NY Banking Law § 6-k(2)(f); NY Real Prop. Tax Law § 953(6).]

Every mortgage investing institution must provide a notice of transfer of servicing to the mortgagor no later than 10 business days after the transfer. [NY Banking Law § 6-k(2)(g); NY Real Prop. Tax Law § 953(7).]

No later than the 25th day of each month, every mortgage investing institution must report to the county director of real property tax services, or the commissioner of finance for property located in the city of New York, on a form prescribed or approved by the state board, the creation of a real property tax escrow account, or any change of a tax billing address, occurring during the prior month with respect to real property located such county or city. [NY Real Prop. Tax Law § 953(9).]

STATE INTEREST ON ESCROW LAWS FOR RESIDENTIAL MORTGAGE LOANS (February 20, 2007)

OREGON

Relevant Law and Rules:

Or. Rev. Stat. §§ 86.205, 86.245 (being part of Oregon Revised Statutes Title 9 “Mortgages and Liens,” Chapter 86 “Mortgages, Trust Deeds, Security Protection and Real Estate Loans”).

Institutions Required to Pay Interest on Escrows/Exceptions:

Any “lender,” which means any person who makes, extends, or holds a loan on residential real property. [Or. Rev. Stat. § 86.205(4).] The term “person” means individuals, corporations, associations, partnerships and trusts, and includes, but is not limited to, financial institutions, investment companies, insurance companies, pension funds, and mortgage companies. [Or. Rev. Stat. § 86.205(4).]

If federal law or regulation does not prohibit the payment of interest on escrow accounts by federally chartered lenders, interest must be paid by federally chartered lenders and state chartered lenders that have created escrow accounts in connection with loans made prior to September 1, 1975. [Or. Rev. Stat. § 86.245(6).]

Loans Covered by Interest on Escrow Law:

Loans on owner-occupied residential property, including multifamily, in the amount of \$100,000 or less, secured in whole or in part by real property, or any interest in real property, located in Oregon. [Or. Rev. Stat. § 86.205(7).]

Except as provided above, interest on escrow accounts is not required to be paid on real estate loans entered into prior to September 1, 1975, or if the payment of interest on an escrow account established by the lender would violate state or federal law. [Or. Rev. Stat. § 86.245(5).]

The interest requirement does not apply to a real estate loan which is serviced or held for sale within one year by a mortgage servicing company that is not affiliated with the purchaser and which is made or held by a purchaser whose principal place of business is outside Oregon. However, if the purchaser requires an escrow account prior to entering into the loan agreement, the mortgage servicing company must furnish the borrower a statement in writing, which may be set forth in the loan application, that the mortgage servicing company is not required by Oregon law to pay interest on the lender’s escrow account, and specifically informing the borrower why the borrower is not entitled to interest on the account. [Or. Rev. Stat. § 86.270.]

How Must the Interest be Paid or Credited?

Interest is computed on the average monthly balance in the escrow account, and the amount of interest due is credited to the borrower’s escrow account on a quarterly basis.

Interest Rate (and period to which applicable):

Lender must pay interest at a rate not less than the discount rate. The “discount rate” is the auction average rate on 91-day U.S. Treasury bills, as established by the most recent auction of such Treasury bills, and published by the U.S. Department of the Treasury, Bureau of the Public Debt, less 100 basis points. The rate of interest payable is adjusted semiannually to reflect changes in the discount rate. The adjustments are calculated on May 15 and November 15 each year and determined with reference to the most recent auction date before such dates. Adjustments calculated on May 15 take effect on the following July 1, and adjustments calculated on November 15 take effect on following January 1. [Or. Rev. Stat. § 86.245.]

The interest rate from January 1, 2007 through June 30, 2007 is 3.955% per year. See <http://www.treasurydirect.gov/instit/annceresult/query/query.htm>

Notes and Comments:

A lender may not impose a service charge in connection with an escrow account requirement. [Or. Rev. Stat. § 86.250.]

RHODE ISLAND

Relevant Law and Rules:

R.I. Gen. Laws § 19-9-2 (being part of Rhode Island General Laws Title 19 “Financial Institutions,” Chapter 9 “Community Obligations and Banking Offenses”).

<http://www.rilin.state.ri.us/Statutes/TITLE19/19-9/19-9-2.HTM>

R.I. Banking Regulation, § 98-9.

http://www.dbr.state.ri.us/divisions/banking_securities/banks.php

Institutions Required to Pay Interest on Escrows/Exceptions:

All mortgagees holding funds of a mortgagor in escrow for the payment of taxes and insurance premiums with respect to mortgaged property located in Rhode Island. [R.I. Gen. Laws § 19-9-2.]

Mortgages insured or guaranteed by the Farmer’s Home Loan Administration, Federal Housing Administration, or the Veterans’ Administration, or a private mortgage insurer licensed to do business in the state of Rhode Island or made pursuant to the Rhode Island Housing and Mortgage Finance Corporation Act, R.I. Gen. Laws § 42-55-1, are exempt from these provisions.

Loans Covered by Interest on Escrow Law:

Mortgage loans on 1-4 family owner-occupied residential property. [R.I. Gen. Laws § 19-9-2.]

How Must the Interest be Paid or Credited?

Interest must be computed based on the aggregate average daily balance in the escrow account as computed by the mortgagee in its usual course of business. Interest must be credited annually on December 31 of each year. If the mortgage debt is paid prior to December thirty-first in any year, the mortgagee must pay interest to the date of payment. Mortgagees must report to the mortgagors the amount of interest earned on a form of notice as required by the Internal Revenue Service, such as Form 1099-INT. [R.I. Gen. Laws § 19-9-2; R.I. Banking Regulation § 98-9-5.]

Interest Rate (and period to which applicable):

4% per year. [R.I. Gen. Laws § 19-9-2.]

Notes and Comments:

A mortgagee holding funds in escrow may not charge an annual “tax service fee” or other annual fee for ascertaining whether or not real estate taxes have been paid. [R.I. Gen. Laws § 19-9-2.]

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However, a one-time charge to pay the cost of a tax reporting service, which is paid by the mortgagor at or before closing, is permitted. [R.I. Banking Regulation § 98-9-4.]

UTAH

Relevant Law and Rules:

Utah Code Ann. § 7-17-1 *et seq.* (being part of Utah Code Title 7 “Financial Institutions,” Chapter 17 “Interest on Mortgage Loan Reserve Accounts”). See http://www.le.state.ut.us/~code/TITLE07/htm/07_0B004.htm.

Institutions Required to Pay Interest on Escrows/Exceptions:

Any lender that requires the establishment or continuance of a reserve account in connection with a real estate loan. [Utah Code Ann. § 7-17-3(1).]

Loans Covered by Interest on Escrow Law:

All real estate loans, except as set forth below.

Interest on a reserve account is not required to be paid:

- (1) On a reserve account required by a governmental insurer or guarantor of the loan as a condition of insurance or guaranty;
- (2) A reserve account maintained in connection with a real estate loan in an original principal amount exceeding 80% of the lender’s appraised value of the property at the time the loan is made, until the principal balance of the loan is paid down to 80% of the lender’s appraised value at the time of the loan; or
- (3) Payment of interest or other compensation to the borrower if payment is prohibited by federal law or regulations.

[Utah Code Ann. § 7-17-3(2).]

How Must the Interest be Paid or Credited?

Interest must be calculated and credited to the account on a yearly basis as of December 31, based on the average daily balance of funds deposited in the account. [Utah Code Ann. § 7-17-3(1).]

Interest Rate (and period to which applicable):

The interest rate must be one of the following:

- (1) 5½ % per year;
- (2) The average of the 11th District monthly weighted average cost of funds index as calculated and published by the Federal Home Loan Bank of San Francisco during the calendar year, less 1½%; or

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- (3) The statement savings rate or share account rate offered to the public for accounts of like size by the depository institution holding the reserve account.

[Utah Code Ann. § 7-17-3(1).]

Notes and Comments:

A lender may not impose a service charge for the administration of a reserve account. [Utah Code Ann. § 7-17-3(3).]

VERMONT

Relevant Law and Rules:

Vt. Stat. Ann. tit. 8, § 10404 (being part of Vermont Statutes Annotated Title 8 “Banking and Insurance,” Part 5 “Financial and Related Institutions,” Chapter 200 “Consumer Protection”) (pertaining to escrow accounts on home loans). See <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=08&Chapter=200&Section=10404>.

Institutions Required to Pay Interest on Escrows/Exceptions:

Lenders who service or hold the beneficial interest in a loan secured by residential real estate located in Vermont and who require periodic payments by a borrower into an escrow account in accordance with a loan agreement. [Vt. St. Ann. tit. 8, § 10404(a)(3).]

Loans Covered by Interest on Escrow Law:

Mortgage loans on owner-occupied residential real estate. [Vt. St. Ann. tit. 8, § 10404(a)(1).]

Interest is not required to be paid on an escrow account that lender has established because the borrower has failed, within the past year, to make timely payments of property taxes and insurance. [Vt. St. Ann. tit. 8, § 10404(b).]

How Must the Interest be Paid or Credited?

If the lender offers regular savings accounts, interest is calculated under the same conditions as the regular savings accounts. Otherwise, the lender must calculate interest on the basis of the average monthly balance in the account and credit it on the first day of each quarter. [Vt. St. Ann. tit. 8, § 10404(b).]

Interest Rate (and period to which applicable):

Interest must be paid into the escrow account at the same rate as under the lender’s regular savings accounts, if offered, or at a rate not less than the prevailing market rate of interest for regular savings accounts offered by local financial institutions. [Vt. St. Ann. tit. 8, § 10404(b).]

Notes and Comments:

The lender must maintain escrow account funds in a federally insured depository institution. [Vt. St. Ann. tit. 8, § 10404(e).] The lender must provide annually, or upon request of the borrower, financial statements relating to the borrower’s escrow account in a manner and on a form approved by the Banking Commissioner. The lender may not charge the borrower for the preparation and transmittal of the statements. [Vt. St. Ann. tit. 8, § 10404(g).]

WISCONSIN

Relevant Law and Rules:

Wis. Stat. § 138.052 (being part of Wisconsin Statutes Annotated Chapter 138 “Money and Rates of Interest”).

Institutions Required to Pay Interest on Escrows/Exceptions:

Banks, credit unions, savings banks, savings and loan associations and mortgage bankers. [Wis. Stat. Ann. § 138.052(5)(a).]

Loans Covered by Interest on Escrow Law:

Loans secured by a first lien real estate mortgage on, or an equivalent security interest in, a 1-4 family dwelling which the borrower uses as his or her principal residence. [Wis. Stat. Ann. § 138.052(1)(b).]

How Must the Interest be Paid or Credited?

Interest must be credited annually. [Wis. Stat. Ann. § 138.052(5).]

Interest Rate (and period to which applicable):

Except as provided below, for 2007, the interest rate is 0.94% per year. See <http://www.wdfi.org/fi/mortbank/default.htm>. For loans originated on or after January 1, 1994, the division of banking for banks, savings and loan associations, and savings banks, and the office of credit unions for credit unions, determine annually the interest rate that is the average of the interest rates paid, rounded to the nearest one-hundredth of a percent, on regular passbook deposit accounts by institutions under the division’s or office’s jurisdiction. The interest rate is published in the Wisconsin Administrative Register and on the Banking Department’s website. The published interest rate also applies to loans originated after January 31, 1983, and before January 1, 1994, if an interest rate is not specified in the loan agreement. [Wis. Stat. Ann. § 138.052(5)(am).]

Otherwise, the interest rate on escrow accounts is 5.25% per year for loans originated on or after January 31, 1983 and before January 1, 1994. [Wis. Stat. Ann. § 138.052(5)(a).]

No interest is required to be paid on escrow funds that are held by a 3rd party in a noninterest-bearing account. Furthermore, the parties may agree to waive payment of all or part of the required interest if more than 75% of the lender’s interest in the loan is sold to a 3rd party who is not a person related to the lender and the escrow funds are held by the 3rd party. [Wis. Stat. Ann. § 138.052(5)(b).]

Notes and Comments:

The requirement to pay interest on escrow accounts does not apply to:

- (1) A loan insured, or committed to be insured, or secured by mortgage or trust deed insured by the federal Department of Housing and Urban Development, the Veteran's Affairs Administration or the Department of Agriculture.
- (2) A loan to a corporation or a limited liability company.
- (3) A loan that is primarily for a business purpose or for an agricultural purpose.

[Wis. Stat. Ann. § 138.052(8), (10).]