S T A T E O F N E W Y O R K

2918

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to the power of the banking board to regulate mortgage escrow accounts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 14-b of the banking law, as amended by chapter 342 of the laws of 1986, subdivisions 1 and 5 as amended by chapter 267 of the laws of 1987 and subdivision 6 as amended by chapter 440 of the laws of 1989, is amended to read as follows:

S 14-b. Power of the banking board to [prescribe minimum rate of interest on] REGULATE mortgage escrow accounts. 1. The banking board shall [have the power to prescribe, from time to time but not more often than once in every three month period] PRESCRIBE ANNUALLY PRIOR TO OCTOBER FIRST FOR EACH SUCCEEDING YEAR, by a three-fifths vote of all its members, by regulation a minimum rate of, and method or basis of computing, interest that a mortgage investing institution shall be required to pay on each escrow account maintained with respect to a mortgage on a one to six family residence occupied by the owner or on any property owned by a cooperative apartment corporation, as defined in subdivision twelve of section three hundred sixty of the tax law, (as such subdivision was in effect on December thirtieth, nineteen hundred sixty), and located in this state, which rate shall be greater than the rate of interest required to be paid under section 5-601 or 5-602 of the general obligations law.

2. THE BANKING BOARD SHALL PRESCRIBE BY REGULATION BY A THREE-FIFTHS VOTE OF ALL ITS MEMBERS THE METHOD BY WHICH A MORTGAGE INVESTING INSTITUTION SHALL BE REQUIRED TO CALCULATE THE MINIMUM AMOUNTS REQUIRED TO BE MAINTAINED IN EACH ESCROW ACCOUNT MAINTAINED WITH RESPECT TO A MORTGAGE ON A ONE TO SIX FAMILY RESIDENCE OCCUPIED BY THE OWNER OR ANY PROPERTY OWNED BY A COOPERATIVE APARTMENT CORPORATION AS DEFINED IN SUBDIVISION

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TWELVE OF SECTION THREE HUNDRED SIXTY OF THE TAX LAW, (AS SUCH SUBDIVISION WAS IN EFFECT ON DECEMBER THIRTIETH, NINETEEN HUNDRED SIXTY), AND LOCATED IN THIS STATE.

3. In making [such determination] THE DETERMINATIONS REQUIRED IN SUBDIVISIONS ONE AND TWO OF THIS SECTION, the banking board shall consider pertinent economic and cost factors including, but not limited to: (i) current yields on short term investments, (ii) current dividend rates paid on regular savings accounts throughout this state, (iii) currently prevailing interest rates on conventional and insured or guaranteed mortgage loans in this state, (iv) cost factors in maintaining escrow accounts and (v) such other pertinent economic or cost factors that the banking board shall deem to be appropriate. Prior to the banking board's prescription of any such minimum rate of interest, OR METHOD OF CALCULATING ESCROW BALANCES, the superintendent shall make a written recommendation to the banking board as to such minimum rate of interest, OR METHOD OF CALCULATING MINIMUM ESCROW BALANCES, reciting the economic and cost data and criteria upon which such recommendation is based. IN PRESCRIBING THE METHOD FOR CALCULATING THE MINIMUM AMOUNTS REQUIRED TO BE MAINTAINED IN SUCH ESCROW ACCOUNTS THE BANKING BOARD SHALL PRESCRIBE A METHOD WHICH RESULTS IN SUCH BALANCES BEING REDUCED TO AS NEAR AS ZERO AS PRUDENTLY POSSIBLE AFTER REQUIRED PAYMENTS ARE MADE OUT OF SUCH ACCOUNTS. Prior to making such recommendation, the superintendent may invite presentation, by interested persons, of information and data relating to economic and cost factors relevant to such minimum rate of interest.

[3.] 4. The banking board may promulgate such regulations as it deems necessary and proper to implement and define the provisions of this section. The banking board may prescribe the minimum rate of interest from time to time, but not more often than once in any three-month period, and shall provide reasonable notice to the public of any change in the rate of interest, of the effective date of such change, which shall be not less than seven days following the adoption of such change by the banking board, and of any rule or regulation adopted pursuant to this subdivision.

[4.] 5. In no event shall interest be required to be paid on escrow accounts OR THE METHOD OF CALCULATING MINIMUM ESCROW BALANCES BE PRESCRIBED where (i) there is a contract between the mortgagor and the mortgage investing institution, entered into before the date this subdivision shall have become a law which contains an express disclaimer of an obligation on the part of the mortgage investing institution to pay interest on such accounts OR WHICH CONTAINS AN EXPRESS PROVISION SETTING FORTH THE METHOD FOR CALCULATING MINIMUM ESCROW BALANCES, or (ii) the payment of such interest would violate any federal law or regulation, or (iii) such accounts are maintained with a mortgage servicing company, neither affiliated with nor owned in whole or in part by the mortgage investing institution, under a written contract, entered into before the date this subdivision shall have become a law, which contract does not permit the mortgage investing institution to earn or receive a return from the investment of such accounts OR WHICH CONTAINS AN EXPRESS PROVISION SETTING FORTH THE METHOD FOR CALCULATING MINIMUM ESCROW BALANCES.

[5.] 6. "Mortgage investing institution" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean and include any bank, trust company, national bank, savings bank, savings and loan association, federal savings and loan association, private banker, credit union, investment company, insurance company, pension

fund, mortgage company or other entity which makes, extends or holds a mortgage on any one to six family residence occupied by the owner or any property owned by a cooperative apartment corporation, as defined in subdivision twelve of section three hundred sixty of the tax law, (as such subdivision was in effect on December thirtieth, nineteen hundred sixty), and located in this state.

[6.] 7. "Escrow account" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean any account established pursuant to an agreement between a mortgagor and a mortgage investing institution whereby the mortgagor pays to the mortgage investing institution or his designee amounts to be used for the payment of insurance premiums, water rents or any similar charges, and shall also include real property tax escrow accounts as defined in title three-A of article nine of the real property tax law.

[7.] 8. "One to six family residence" as used in this section and in section 5-601 or 5-602 of the general obligations law shall mean property used primarily for residential purposes for one to six families, including property held in condominium form, and which is occupied in whole or in part by the owner.

[8.] 9. If any provision of this section, or the application of such provision to any individual, company, corporation or circumstance, shall be held invalid, the remainder of this section, and the application of such section to individuals, companies, corporations, or circumstances other than those to which it is held invalid, shall not be affected thereby.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing section of this act on its effective date are authorized to be made on or before such effective date.