

FTC FACTS for Consumers

Mortgage Servicing: Making Sure Your Payments Count



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hen you apply for a home mortgage, you may think that the lender will hold and service your loan until you pay it off or you sell your house. That's often not the case. In today's market, loans and the rights to service them often are bought and sold.

A home may be one of the most expensive purchases you ever make, so it's important to know who is handling your payments and that your mortgage account is properly credited. The Federal Trade Commission (FTC) wants you to know what a mortgage servicer does and what your rights are.

Mortgage Servicers: Their Responsibilities to You

A mortgage servicer is responsible for collecting your monthly loan payments and crediting your account. A servicer also handles your escrow account, if you have one.

Escrow Accounts

An escrow account is a fund held by your servicer into which you pay money to cover charges like property taxes and homeowners insurance. The escrow payments typically are included as part of your monthly mortgage payments. The servicer pays your taxes and insurance as they become due during the year. If you do not have an escrow account, you are responsible for paying your taxes and insurance and budgeting accordingly.

The Real Estate Settlement Procedures Act (RESPA), enforced by the Department of Housing and Urban Development, is the major law covering escrow accounts. If your mortgage servicer administers an escrow account for you, the servicer is generally required to make escrow payments for taxes, insurance, and any other charges in a timely manner. Within 45 days of establishing the account, the servicer must give you a statement that clearly itemizes the estimated taxes, insurance premiums, and other anticipated charges to be paid over the next 12 months, and the expected dates and totals of those payments.

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Under RESPA, the mortgage servicer also is required to give you a free annual statement that details the activity of your escrow account. This statement shows your account balance and reflects payments for your property taxes, homeowners insurance, and other charges.

Transfer of Servicing

If your loan is about to be sold, you generally get two notices: one from your current mortgage servicer; the other from the new servicer. Usually, your current servicer must notify you at least 15 days before the effective date of the transfer, unless you received a written transfer notice at settlement. The effective date is when the first mortgage payment is due at the new servicer's address. The new servicer must notify you within 15 days after the transfer has occurred.

The notices must include:

- the name and address of the new servicer.
- the date the current servicer will stop accepting your mortgage payments.
- the date the new servicer will begin accepting your mortgage payments.
- toll-free or collect-call telephone numbers, for the current and new mortgage servicer, for information about the transfer.
- whether you can continue any optional insurance, such as credit life or disability insurance; what action, if any, you must take to maintain coverage; and whether the insurance terms will change.
- a statement that the transfer will not affect any terms or conditions of your mortgage, except those directly related to the servicing of the loan. For example, if your contract says you were allowed to pay property taxes and insurance premiums on your own, the new servicer cannot demand that you establish an escrow account.

There is a 60-day grace period after the transfer: during this time you cannot be charged a late fee if you mistakenly send your mortgage payment to the old servicer. In addition, the fact that your new servicer may have received your payment late as a result cannot be reported to a credit bureau.

Posting Payments

Some consumers have complained that they've been charged late fees, even when they know they made their payments on time. To help protect yourself, keep good records of what you've paid, including any billing statements, canceled checks, or bank account statements. You also may check your account history online if your servicer's Web site has this feature. If you have a dispute, continue to make your mortgage payments, but challenge the servicing in writing (see Sample Complaint Letter to Lender), and keep a copy of the letter and any enclosures for your records. Send your correspondence by certified mail, and request a return receipt. Or send it by fax, and keep a copy of the transmittal confirmation.

Force Placed Insurance

It's important to maintain the required property insurance on your home. If you don't, your servicer can buy insurance on your behalf. This type of policy is known as force placed insurance; it usually is more expensive than typical insurance; and it provides less coverage. The primary purpose of a force placed policy is to protect the mortgage holder, not the property owner.

Review all correspondence you receive from your mortgage servicer. Your mortgage servicer may request that you provide a copy of your property insurance policy. Respond promptly to requests regarding property insurance, and keep copies of all documents you send to your mortgage servicer.

If you believe there's a paperwork error and that your coverage is adequate, provide a copy of your insurance policy to your servicer. Once the servicer corrects the error, removes the force placed coverage, and refunds the cost of the force placed policy, make sure that any late fees or interest you were charged as a result of the coverage also are removed.

Fees

Review your billing statements carefully to make sure that any fees the servicer charges are legitimate. For example, the fees may have been authorized by the mortgage contract or by you to pay

Sample Complaint Letter to Lender

The following is a sample qualified written request from you, the borrower, to a lender. Use this format to address complaints under the Real Estate Settlement Procedures Act (RESPA).

Attention Customer Service:

Subject: Your loan number
Your Name
Your Address
Your City, State, Zip Code

This is a “qualified written request” under Section 6 of the Real Estate Settlement Procedures Act (RESPA).

I am writing because:

Describe the issue or the question you have and/or what action you believe the lender should take.

Attach copies of any related written materials.

Describe any conversations with customer service regarding the issue and to whom you spoke.

Describe any previous steps you have taken or attempts to resolve the issue.

List a day time telephone number in case a customer service representative wishes to contact you.

I understand that under Section 6 of RESPA you are required to acknowledge my request within 20 business days and must try to resolve the issue within 60 business days.

Sincerely,

Your name

for a service. If you do not understand what the fees are for, send a written inquiry and ask for an itemization and explanation of the fees. Also, if you call your mortgage servicer to request a service, such as faxing copies of loan documents, make sure you ask whether there is a fee for the service and what it is.

Inquiries and Disputes

Under RESPA, your mortgage servicer must respond promptly to written inquiries, known as qualified written requests (see Sample Complaint Letter to Lender). If you believe you’ve been charged a penalty or late fee that you don’t owe, or if you have other problems with the servicing of your loan, contact your servicer in writing. Be sure to include your account number and clearly explain why you believe your account is incorrect. Your inquiry should not be just a note on the payment coupon supplied by your servicer, but should be sent separately to the customer service address.

Within 20 business days of receiving your inquiry, the servicer must send you a written response acknowledging it. Within 60 business days, the servicer either must correct your account or determine that it is accurate. The servicer must send you a written notice of the action it took and why, along with the name and telephone number of someone you can contact for additional assistance.

Do not subtract any disputed amount from your mortgage payment. Some mortgage servicers might refuse to accept what they consider to be partial payments. They might return your check and charge you a late fee, or claim that your mortgage is in default and start foreclosure proceedings.

Fair Debt Collection

By law, a debt collector is a person who regularly collects debts owed to others. Your mortgage servicer is considered a debt collector only if your loan was in default when the servicer acquired it. If that’s true, you have additional rights that you can read about in the FTC’s brochure “Fair Debt Collection.”

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Your Credit Report

Many mortgage companies provide information about your payment history to credit bureaus, companies that maintain and sell consumer credit reports — which contain information about your credit payment history — to other creditors, employers, insurers, and businesses. Both the credit bureaus and the information provider have responsibilities for correcting inaccurate or incomplete information.

If you believe that your mortgage servicer has provided inaccurate information to a credit bureau, contact the credit bureau *and* the servicer. Tell the credit bureau in writing (see Sample Dispute Letter to Credit Bureau) what information you believe is inaccurate. Include copies (NOT originals) of documents that support your position. In addition to providing your complete name and address, your letter should clearly identify each item in your report you dispute, state the facts, and explain why you dispute the information, and request deletion or correction. You may want to enclose a copy of your report with the items in question circled. Send your letter by certified mail, return receipt requested, so you can document what the credit bureau received. Keep copies of your dispute letter and enclosures.

Credit bureaus must re-investigate the items in question — usually within 30 days — unless they consider your dispute frivolous. They also must forward all relevant information you provide about the dispute to the information provider. After the information provider receives notice of a dispute from the credit bureau, it must investigate, review all relevant information provided by the credit bureau, and report the results to the credit bureau. If the information provider finds the disputed information to be inaccurate, it must notify all national credit bureaus so they can correct this information in your file. Disputed information that cannot be verified must be deleted from your file.

- If your report contains erroneous information, the credit bureau must correct it.
- If an item is incomplete, the credit bureau must complete it. For example, if your file showed that you were late making payments,

Sample Dispute Letter to Credit Bureau

Date

Your Name
Your Address
Your City, State, Zip Code

Complaint Department
Name of Credit Reporting Agency
Address
City, State, Zip Code

Dear Sir or Madam:

I am writing to dispute the following information in my file. The items I dispute also are encircled on the attached copy of the report I received. (Identify item(s) disputed by name of loan servicer and loan number.)

This item is (inaccurate or incomplete) because (describe what is inaccurate or incomplete and why). I am requesting that the item be deleted (or request another specific change) to correct the information.

Enclosed are copies of (use this sentence if applicable and describe any enclosed documentation, such as payment records, court documents) supporting my position. Please re-investigate this (these) matter(s) and (delete or correct) the disputed item(s) as soon as possible.

Sincerely,
Your name

Enclosures: (List what you are enclosing)

but failed to show that you were no longer delinquent, the credit bureau must show that you're current.

- If your file shows an account that belongs to another person, the credit bureau must delete it.

When the re-investigation is complete, the credit bureau must give you the written results and a free copy of your report if the dispute results in a change. If an item is changed or removed, the credit bureau cannot put the disputed information back in your file unless the information provider verifies its accuracy and completeness, and the credit bureau gives you a written notice that includes the name, address, and phone number of the provider.

Also, if you request it, the credit bureau must send notices of corrections to anyone who received your report in the past six months. If a re-investigation does not resolve your dispute, ask the credit bureau to include your statement of the dispute in your file and in future reports.

In addition to writing to the credit bureau, tell the servicer in writing that you dispute an item. Include copies (NOT originals) of the documents that support your position. If a servicer specifies an address for disputes, it is important to send your dispute to that address. If the provider then reports the item to any credit bureau, it must include a notice of your dispute. If you are correct — that is, if the disputed information is inaccurate — the information provider may not report it again.

If You Have a Complaint

If you believe your mortgage servicer has not responded appropriately to your written inquiry, contact your local or state consumer protection office. You also should contact the Department of Housing and Urban Development (HUD) to file a complaint under the RESPA regulations. Write: Office of RESPA and Interstate Land Sales, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 9146, Washington, DC 20410.

In addition, you may want to contact an attorney to advise you of your legal rights. Under certain sections of the RESPA, consumers can initiate lawsuits and obtain actual damages, plus additional damages, for a pattern or practice of noncompliance. In successful actions, consumers also may obtain court costs and attorney's fees.

You may want to contact a housing counselor to discuss your situation. You can call HUD's hotline at 1-800-217-6970 for a referral to a local HUD-approved housing counselor.

You also may wish to contact the FTC. The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION	FOR THE CONSUMER
1-877-FTC-HELP	www.ftc.gov

Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer and Business Education