

Mar 27, 1991

Re: Taxes; Escrow Funds Held by Mortgagee

Dear :

Senator W.G. Bankhead referred to me the correspondence concerning the difficulties you state you are having with the property tax and insurance premium funds held in escrow by Sears Mortgage Corporation.

The jurisdiction of the Department of Revenue in ad valorem tax matters is limited to oversight of the assessment and collection process conducted at the local level. We concur in your conclusion that a tax certificate will have been sold on your property in the event that the 1990 taxes are not paid in the five month period following your letter of February 15. Regrettably, the tax statutes do not contain a provision authorizing relief from the inexorable tax collection process where funds are properly placed in escrow but not timely paid over to the tax collector by the escrow agent/trustee. Fortunately when a tax certificate is sold the property owner may redeem the certificate within two years and thus prevent issuance of a tax deed.

The Department's authority does not encompass regulation or oversight of mortgage brokers or mortgage lenders. However, in response to Senator Bankhead's request, the Division of Ad Valorem Tax investigated to determine which governmental agency, if any, might be contacted to assist in resolution of your problem. Two provisions of the Florida Statutes address the handling of escrow accounts.

Section 501.137, Florida Statutes, in pertinent part, states: "... if the lender, as a result of neglect, fails to pay any tax or insurance premium when the tax or premium is due and there are sufficient escrow funds on deposit to pay the tax or premium, and if the property owner suffers a loss as a result of

such failure, then the lender will be liable for such loss...."

This provision might prove helpful should you be forced to retain an attorney and seek relief through civil litigation.

Next, Section 494.055, Florida Statutes specifies several acts which constitute cause for disciplinary action against mortgage brokers. Contact was made with the Department of Banking and Finance which has some authority pursuant to Chapter 494 to determine whether that department had jurisdiction in your circumstances. The employee who furnished helpful information is:

Mark S. Canning
Senior Financial Examiner
Comptroller of Florida
Division of Finance
The Capitol
Tallahassee, Florida 32399-0350
(904) 488-4348

He informed our staff that the difficulties you are experiencing which pertain to the servicing of your mortgage are not within the jurisdiction of that department.

However, he further stated that the Comptroller's office nonetheless had in some prior cases sent letters to mortgage holders in circumstances similar to those you state and some success had been achieved by this means. Accordingly, I am forwarding a copy of the correspondence file with a copy of this letter to Mr. Canning asking that he initiate similar or other appropriate action in your case. He readily agreed to accommodate this request.

We trust the foregoing will lead to a satisfactory resolution of your problem.

Sincerely,

Bebe Blount
Legislative Affairs Director

BB/FJS/bso

cc: Senator W.G. Bankhead

Mark S. Canning w/enclosures

Document No. 2515C