This is the eighth in a series of articles from NCLC that provide advice for families in financial difficulty. Other articles address debt collection harassment, medical debt, reverse mortgages, car repossessions, wage and bank account garnishment, criminal justice debt, and debts owed to the IRS. Click here [1] for a list linking to all the articles in this series.

This is also the first in a series of three articles dealing with home mortgages. This article covers how to obtain information about your mortgage payments, what happens if you make only a partial payment, disputing the amount due, and key information about escrow, property taxes, and insurance. The next article will cover new guidelines to modify mortgage loan payments, and the third article will explain rights to defend or delay a foreclosure. All of these topics are examined in detail in NCLC's Foreclosures and Mortgage Servicing [2].

**First Considerations**

Mortgage problems tend to have a snowballing effect if not resolved quickly. Small issues grow into big problems that can eventually lead to foreclosure—always act sooner rather than later.

If you are having trouble resolving mortgage-related problems on your own, try a nonprofit housing counselor or attorney. The Department of Housing and Urban Development (HUD) certifies housing counseling agencies and you can locate such an agency by calling HUD at 800-569-4287 (TDD 800-877-8339) or by going to www.hud.gov. If a housing counselor cannot help, the counselor may refer you to a local attorney or legal services program. Do not wait too long to get assistance. An experienced advocate in your corner may help you fix the trouble before it grows.

**Your Mortgage Servicer Plays the Key Role.** To resolve an issue with your mortgage, do not contact the lender owning your mortgage loan. Always contact your mortgage servicer who has been hired by whoever owns your mortgage loan. The servicer receives your mortgage payments, applies them to your mortgage balance, and deals with other day-to-day activities on your account. If you have any questions about your mortgage—always contact your mortgage servicer.

Occasionally the owner of your mortgage, the servicer, and the original lender are the same entity, but more often they are three different companies. For example, Acme Mortgage Company may have given you a loan, and then sold your loan to Best Bank that has hired ABC Servicing Company as its mortgage servicer.

You may have several different servicers during the life of your loan. Your servicer changes if the owner of your mortgage loan decides to hire a new servicer, or if the owner sells your loan to someone who uses a different servicer. Whenever your mortgage loan is sold to a new owner, you will get notice of the contact information for the new owner and your new servicer. You also can request in writing that the servicer tell you the name and contact information for the owner of your mortgage loan.

**Your Rights When Your Servicer Changes.** Federal law requires that you get notice whenever your servicer changes, including the effective date of transfer and the new servicer’s contact information, including a toll-free number to call with questions. You also get notice as to the date when you should start sending payments to the new servicer instead of the old one.

You can keep sending on-time payments to the old servicer for up to 60 days after that date, and the new servicer must treat it as a timely payment, and cannot charge a late fee, claim your account is in default, or report the payment as late on your credit report. This applies even if the old servicer does not forward the payment in a timely way to the new servicer.

**Surprising Facts About Partial Mortgage Payments**

Try not to make a mortgage payment for less than the amount due (a partial payment). The servicer typically does not apply a partial payment to your mortgage. Instead the servicer may return your partial payment check back to you un-cashed. If so, you should set the money aside and not use it to pay other bills, so you can use it later to help with your mortgage payments. In the worst case scenario, if foreclosure becomes inevitable, you will have some money saved for moving expenses.

Other servicers keep your partial payment in a “suspense account” until you pay the remaining amount due for that one monthly payment and instead assess you a late fee. As a result, it is easy to get confused as to how much you owe. To avoid problems, check your most recent mortgage statement for the monthly payment amount, since it can change over time. Also check your statement each month to be sure last month’s payment was applied correctly. If a partial payment is put in a suspense account, the statement must explain what you must do for the payment to be applied.

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How to Determine the Status of Your Mortgage Loan

You receive monthly statements from your mortgage servicer or a coupon book with similar information. The statements include the amount due for the billing period; an explanation of the total amount due on the account including fees; a breakdown of how your last payment was applied; transaction activity; partial payment information; and contact and account information.

If you are more than forty-five days behind on your mortgage payments, the monthly mortgage statement also includes: the date when the account became delinquent; a notification of possible risks, such as foreclosure, and of the expenses that may be charged if the account is not brought current; an account history for the previous six months or the period since the last time the account was current; a notice indicating any loss mitigation program to which you have agreed, if applicable; a notice of whether the servicer has started foreclosure; the total payment amount needed to bring the account current; and a list of homeownership counselors and counseling organizations that you can contact.

Disputing the Amount Due

You can dispute the amount the servicer says is due in a monthly statement. For example, your servicer may have failed to or incorrectly credited your payment, neglected to make payments out of your escrow account and instead forced you to pay for extra insurance, charged unnecessary or duplicative fees, or improperly refused to accept a payment. Contact the servicer right away.

Dealing with your mortgage servicer can sometimes be frustrating. Many mortgage servicers are large companies that handle tens of thousands or even hundreds of thousands of mortgages. You may speak to a different person each time you call, and you may get conflicting or confusing information from one person to the next. Make a note in a notebook each time you talk to someone at the mortage servicing company, including the date, time, name of the person you spoke with, and what you talked about.

Provide any documentation that the servicer requests and keep copies for yourself. Make a note in your notebook of what you provided, when you provided it, and how you sent it to the servicer (email, fax, mail, overnight mail service). If the servicer does not provide you with the information you requested or if you dispute how the servicer is handling your account, you may send the servicer a more formal request, called a “notice of error” or “request for information,” to ensure that they respond in a timely manner and correct any errors.

Sending Your Servicer a Notice of Error or Request for Information. Your servicer must respond to a written request for information or investigate any claims of error concerning your account, including your escrow account. Your writing must identify your account, such as an account number, along with your name and the address of the property. Include the reasons you believe the account is in error. Be clear and as specific as possible about any question you have or information you are requesting. Your letter can both dispute an error and ask for more information.

Your request should not be written on a payment coupon or included with your payment, but should be in a separate letter to your servicer. Make a copy and send the letter return receipt requested, so that you have a record of when the servicer receives it.

You must send the notice to the address the servicer has identified as appropriate for such a request, which often is different than the address for mailing payments. Otherwise, the servicer may not respond or you may lose the legal right to force your servicer to correct the error. The servicer may have sent you a separate letter listing the address or it may be listed on a transfer of servicing statement, an annual escrow statement, or a monthly billing statement. You can also check the servicer’s website or call the servicer’s customer service center. Be sure to send your notice to the correct address as your servicer may have many different addresses listed on its website and statements.

Here is an example of such a letter to the servicer:

SAMPLE "REQUEST FOR INFORMATION/NOTICE OF ERROR"

Ken and Susan Consumer
12 Budding Bloom Lane  
Elizabeth, New Jersey  

January 23, 2019  

Last Dollar Mortgage Co.  
398 Rockefeller Drive  
St. Albans, WV 25177  
Attention: Borrower Inquiry Department  
RE: Account #123234  

Dear Last Dollar Mortgage Co.:  

We dispute the amount that you claim is owed on our monthly Mortgage Statement and request that you send us information about the fees, costs, and escrow charges on our loan. Please treat this letter as a “notice of error” and a “request for information” under the Real Estate Settlement and Procedures Act (section 2605(e)).  

Specifically, we are requesting the following information:  

• A payment history or schedule that can be easily read and understood listing the dates and amounts of all payments and transactions credited or debited to our account, including any escrow account and any suspense account, and showing how they have been applied or credited or, if not applied, showing how they have been treated;  

• A breakdown of the amount of claimed arrears or delinquencies on our account, including an itemization of all fees and charges you claim are currently due;  

• The current balance in any suspense account and the reason why such funds were deposited in the account;  

• The payment dates, purpose of payment, and recipient of all foreclosure fees and costs that have been charged to our account or have been advanced on our behalf since [insert date Last Dollar Mortgage took over the servicing];  

• The payment dates, purpose of payment, and recipient of all escrow items charged to our account in the last twenty-four months;  

• A breakdown of our current escrow payment showing how it was calculated and the reasons for any increase or decrease in the last twenty-four months (include a copy of any annual escrow statements prepared within the last twenty-four months); and  

• Any notes created by your personnel reflecting communications with us about our mortgage account.  

Also, on October 1, 2018, we sent our October payment to First Dollar Mortgage Co., which had been servicing our mortgage before it was transferred to you. Our October payment was never credited to our account. Please correct this error.  

Thank you for taking the time to acknowledge and answer this request as required by the Real Estate Settlement Procedures Act (section 2605(e)).
Very truly yours,
Ken and Susan Consumer
[certified mail]

The servicer must acknowledge receipt of your request within five business days of receipt, and must respond within thirty business days (forty-five days if it notifies you of the extension). The response cannot simply state that it was right or that it has no information. Federal law requires that the servicer conduct a “reasonable investigation” based on your request. Its written response should show that it did this investigation. For sixty days after you send a notice of error about a payment dispute, the servicer cannot give any information to credit reporting agencies that a payment related to your inquiry is overdue.

Request Validation of the Debt. The first time an attorney for the lender or for the servicer sends you a letter demanding payment, that letter should include a notice of your right to dispute the mortgage debt. Sometimes the notice of your right to dispute will arrive separately within five days after the attorney first communicates with you about the debt. If you then dispute the debt in writing within the next thirty days, the attorney must stop collection efforts while your dispute is investigated.

Setting Up a “Tender” Defense. If you dispute the amount you are delinquent on your mortgage loan, you may want to offer the undisputed amount that is delinquent, while not paying the amount you dispute. This is called a “tender.” The letter should also state that the amount is offered in “full satisfaction of the dispute.” That way, if you are right about what is owed, you are not delinquent and the servicer should not be able to foreclose. On the other hand, if you also withhold the amounts that are not in disputed, the servicer can claim it has the right to foreclose.

Most often, your tender will be returned and then you may have the defense that the money was offered and refused, depending upon your state law. Keep your letter and the servicer’s response as proof. You should set the money aside, if possible in a bank account, while the dispute is being resolved. You can add the claim of tender to your defenses in the legal process, if the matter reaches foreclosure.

Escrow, Taxes, and Insurance

Your Rights Concerning Your Escrow Account. If your monthly mortgage payment includes an amount to cover property insurance and taxes on your home, you have a mortgage with an “escrow” or “impound” account. Your servicer is supposed to pay the insurance and tax bills for you when they are due.

Under federal law your servicer must give you an initial statement when your escrow account is first set up and periodic statements at least once per year after that. These statements must include the amount of your current escrow payment, the amount your escrow payment will be for the next year, the total amount you paid into the escrow account during the past year, and the total amount paid out of the escrow account during the past year for taxes, insurance premiums, and other escrow bills. However, the servicer is not required to send this statement if you are more than thirty days behind in payments.

If your annual escrow account statement shows that there is a balance of $50 or more from the previous year, you are entitled to a refund. If your statement shows that your account has a balance smaller than expected (a “shortage”) or a negative balance (a “deficiency”) your servicer will include this amount in your next annual escrow statement so that it is paid back in future escrow payments over the next year. If you want to spread out repayment of this shortage or deficiency for more months than the servicer is offering you, ask the servicer. If that does not work, ask for the supervisor in the escrow or collection department. On the other hand, as long as you pay what the servicer requests for escrow, the servicer must pay your property tax and insurance even if there is not enough money in your escrow account.

Servicers should pay from your escrow your taxes, property insurance, and other escrow bills on time, before the deadline for avoiding penalties such as interest or late fees. You should not have to pay for interest and late fees, and should ask the servicer for a refund if these are included in your escrow account statement. If the bill for interest or some other penalty is sent to you instead, send this bill to your servicer (keeping a copy) and insist that they pay it with their funds.

Avoid Force-Placed Insurance. If you do not have an escrow account and the servicer believes you do not have homeowner’s insurance covering your home, it will purchase over-priced insurance providing you only limited protection, and then charge you for it or add it to your monthly payments. This is called “force-placed insurance” and you should avoid this at all costs.
If your own insurance company or servicer notifies you that you do not have homeowner’s insurance, take this seriously and act immediately. If you do have insurance, provide the servicer with proof—the policy number, the name of your insurance company or agent, and written proof you have the insurance. If you don’t have insurance, obtain your own insurance as soon as possible, and provide the servicer with proof and request that they cancel the insurance that they purchased for you.

If your insurance is being canceled for nonpayment and there is an escrow account on your mortgage, the servicer must pay your existing insurance policy rather than purchase force-placed insurance, even if there is not enough money in the escrow account to pay your policy. The servicer will then require that you repay any money it advanced to pay your policy, usually by adding the amount to your future escrow payments.

Private Mortgage Insurance. Most mortgage borrowers are required to purchase private mortgage insurance (PMI) protecting the lender against a mortgage loan default. This cost is included in your monthly payments. PMI is expensive and only protects the lender. Cancelling PMI brings down your mortgage payments and has no down-side for you. If you have PMI, the servicer must cancel it on your request if your remaining mortgage loan balance is less than 80% of your home’s purchase price. Also try to ask the servicer to cancel PMI whenever your home is worth a lot more than your mortgage balance.

Credit Life and Disability Insurance. Credit life, disability, and unemployment insurance coverage pays off some of your mortgage loan if you pass on, become disabled, or unemployed. This insurance is overpriced, expensive, and offers limited protection. Consider cancelling it, particularly when you are having trouble paying your mortgage. Look at your loan documents and monthly statement to see if it is listed there.

Reduced Mortgage Rates for Active Duty Military

When a homeowner entered into a mortgage loan prior to become active duty military, federal law requires that the homeowner while on active duty and for one year thereafter shall not pay an interest rate exceeding 6%. This includes any fees or other charges payable on the loan (late charges, for example). Any interest that you have been paying over 6% is eliminated while you are on active duty and for another year—the excess interest is not just put off until later.

If you are paying more than 6%, you not only can get your rate reduced, but the lender has to give you a credit for any interest charged to you above that rate while you were on active duty. One year after you leave active duty, the rate can be increased to the old rate.

To take advantage of this law, you must provide the lender or other creditor with written notice including a copy of the orders calling you to military service and any orders extending active duty. This must be done no later than 180 days after the date of the termination of military service. The interest rate reduction is then retroactive to the date active duty began.

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About Author:
John Rao is an attorney with the National Consumer Law Center, where he focuses on consumer credit, mortgage servicing, and bankruptcy issues. Mr. Rao frequently appears as a panelist and instructor at bankruptcy and consumer law trainings and conferences, and serves as an expert witness in court cases. He has testified in Congress on bankruptcy and mortgage servicing matters. Mr. Rao is a contributing author and editor of NCLC’s Consumer Bankruptcy Law and Practice; and a co-author of NCLC’s Foreclosures and Mortgage Servicing and Bankruptcy Basics. He is also a contributing author to Collier on Bankruptcy and the Collier Bankruptcy Practice Guide. Mr. Rao served as a member of the federal Judicial Conference Advisory Committee on Bankruptcy Rules from 2006 to 2012, appointed by Chief Justice John Roberts. He is a conferee of the National Bankruptcy Conference, fellow of the American College of Bankruptcy, member of the editorial board of Collier on Bankruptcy, board member of the National Association of Consumer Bankruptcy Attorneys, Commissioner on the American Bankruptcy Institute's Commission on Consumer Bankruptcy, and former board member of the National Association of Consumer Bankruptcy Attorneys and the American Bankruptcy Institute.