

Double trouble

Duplicate property-tax charges create big hassles for homeowners. Learn why this error happens and what can be done about it.

by Joe K. Longley



Do you know any homeowners who enjoy paying property taxes so much that they happily pay twice their share? Me neither. Unfortunately, a growing number of duplicate property-tax payments involving non-escrowing borrowers are occurring—apparently as a result of lender insecurity during these recessionary times.

What's going on here?

Where the home borrower has elected not to escrow taxes, the lender may fear the imposition of a superior tax lien if and when the borrower fails to pay accrued property taxes

on the mortgaged real estate.

If the lender jumps the gun and pays taxes when they are not yet due, a duplicate tax payment can result.

Here's the likely scenario: A homeowner receives her property-tax bill in October but defers payment until the following year. Perhaps she doesn't want to pay such a large bill right away, or she delays the payment to defer the IRS deduction to the following year. This by itself poses no problem, since the deadline to pay property taxes is January 31.

However, the lender, trying to avoid a superior tax lien, pays the property taxes and attempts to add

the duplicate payment onto the homeowner's next scheduled monthly payment—thereby resulting in a significant (and erroneous) increase in its amount. I know of one case where the homeowner's monthly payment jumped from \$1,587 to \$3,357!

You can imagine the unwelcome emotional jolt felt by the homeowner. When this lender-made payment occurs *after* the homeowner has already paid property taxes—or even when the taxes are not yet due—that person may become seriously grumpy.

More widespread than you think

Recent public-information requests

to the Travis County Tax Assessor/Collector's Office revealed more than 4,000 instances of duplicate tax payments made by lenders for the years 2009-2011. More than 2,100 duplicate payments occurred in Williamson County in 2009-2010. When factoring in spouses on many of these notes, we're talking about duplicate payments affecting many thousands of people in the Austin-Round Rock metropolitan area alone.

There's reason to suspect substantial duplicate property-tax problems in other Texas cities, too, as the problem originates with lenders rather than appraisal districts or tax assessors.

Money isn't the only problem

This unwelcome surprise immediately results in the borrower attempting to get the lender to reverse the erroneous charges, which often turns into a gigantic hassle.

Picture the following situations, all of which have actually occurred:

- A Kafkaesque adventure into the world of protracted telephone calls to customer-service representatives who have no experience or authority to reverse the duplicate payment
- A seemingly endless stream of collection letters and "robo" calls demanding payment of the erroneous charges. These often include a demand to pay additional charges, interest, and penalties
- Threats of adverse credit reporting, possibly resulting in damage to the borrower's credit standing
 - Threats of accelerating the mortgage note that would declare the entire loan to be due.

When borrowers' attempts to resolve their problems fall on deaf ears, some lenders threaten the nuclear option: foreclosure.

What's a double-taxed property owner to do?

Suffice it to say that these illustrated attempts by lenders to collect duplicate tax payments can result in violations of the Texas Debt Collection Practices Act, thereby triggering its remedies for actual damages, court costs, and attorneys' fees.

Damages and attorneys' fees resulting from these violations can be significant and may ultimately be recovered by blameless borrowers should they decide to go to court.

Tips you can share with blameless borrowers

1. Immediately contact the lender in writing, notifying them of their mistake. Request that they immediately correct their error.
2. Immediately call the lender's customer-service contact and verbally advise the customer-service representative of the lender's error.
 - Request that they record the call and inform them that you may do the same.
 - Get the name and/or employee code number of the representative with whom you are speaking.
3. Immediately respond to any "collection" correspondence received, disputing the false charges and requesting that such charges be reversed. Keep copies of all e-mails and correspondence.
4. Check your credit reports until the false charges get resolved. Keep copies where adverse reports have been made.
5. If necessary, complain to the Consumer Protection Division of the Texas Attorney General's Office, seeking its assistance.

If all else fails, contact an attorney familiar with the Texas Debt Collection Practices Act to determine if legal assistance is necessary.

Property taxes can be unpleasant enough without double charges and unwarranted collection demands. Now that you know how this frustrating situation occurs and what property owners can do about it, you can share your knowledge to help your clients and contacts make the best of a bad experience. ★

Austin lawyer Joe K. Longley (JoeLongley.com) drafted the borrower remedies contained in the 1973 Texas Debt Collection Practices Act. *Texas Lawyer* has named him to its exclusive list of "100 Texas Legal Legends" for his pioneering efforts in creating and developing Texas consumer law. His untiring efforts on behalf of Texas consumers have earned him the moniker of *The Number One Enemy of the Fine Print*.

Watch your refi

Refinance closings sometimes result in a duplicate payment with a refund being due to the borrower. Borrowers need to check their closing statements to see if this has occurred, and if so, determine what they need to do to get their refund.