

Real Estate Closings and the Effect of Recent “Good Funds Legislation”

Effective July 1, 2009, House enrolled Act 1374 requires that funding for a real estate purchase or refinance of Indiana property be in the form of secure or “good funds.”

Why the enactment by the Indiana Legislature?

The Act requires the use of secure funds for real estate transactions for Indiana residents in a purchase, sale or refinance. Prior to the passage of this Act, purchasers, sellers, creditors, lenders, and closing agents had no assurance that the funding check or checks deposited with the closing agent to be disbursed at closing were good funds. The Act now requires that the money funding a real estate transaction in Indiana be immediately available for disbursement as collected funds. Also, the Act provides the assurance to all parties to the real estate transaction that the money deposited into their respective accounts is available for use by the depositing party.

Why wired funds?

Wired funds tendered electronically by Clearing House Interbank Payments Systems (“CHIPS”) or Federal Reserve Bank are the most secure. Cashier’s checks and certified checks may be subject to “stop payment” orders or under some circumstances uncollectable. Most bank checks require several days to clear before monies deposited become available for use. Funds transferred by wire through the Automated Clearing House (ACH) are not acceptable since these funds, although wired, can be recalled by the originator up to 90 days after transmission. Wired funds, irrevocably credited to a closing agent’s escrow account, are immediately available to the closing agent for disbursement upon confirmation by the closing agent that funds are received and credited to the closing agent’s escrow account.

Who is subject to the Act?

The Act is applicable to any party required to be licensed by the Indiana Department of Insurance that closes a purchase (whether for cash or lender-financed,) or a refinance. Lenders that close in their location and disburse funds provided by that lender for a refinance of that lender’s existing mortgage are not subject to the provisions defined in the Act. However, a lender that closes on a purchase loan provided by that lender in its own office is required to comply with the funding requirements as defined in the Act.

Are all funds to be wired?

No, only funds in the amount of \$10,000.00 or more in the aggregate from any single party must be wired as defined by the Act. “Good funds” may be received for amounts less than \$10,000.00. The following are examples of “good funds” as defined under the Act: wired funds, certified checks, cashiers checks, a check drawn on the

escrow account of another closing agent or a check issued by the State, United States or a political subdivision of the same.

What about earnest money?

Earnest money to be applied to the purchase price by the closing agent in excess of \$10,000.00 must be deposited into the closing agent's escrow account prior to the closing by wired "good funds" as defined above. Earnest money less than \$10,000.00 must be deposited into the escrow account of the closing agent, prior to the closing and must be fully cleared and collected prior to disbursement at closing.

Are closing agents required to wire funds out at closing to payoff existing mortgages?

No, a lender being paid off at closing is required to submit this request prior to closing in its payoff letter or in other documentation.

What about back-to-back closings?

Back-to-back closings for a sale of one property and a purchase of a different property can occur provided the Federal Reserve Bank or CHIPS, as defined above, through which the wired "good funds" are transferred, is capable of handling the volume. Banks typically have incoming and outgoing wire transfer cut-off times which vary. Realtors, lenders, owners, purchasers, and closing agents will need to work together in scheduling a closing to accommodate the receipt of wired funds.

In conclusion, the new Act clearly defines what acceptable "good funds" are in Indiana, and how they are to be sent to and received by the closing agent.

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