

## **Chapter 45A.**

### **Good Funds Settlement Act.**

#### **§ 45A-1. Short title.**

This Chapter shall be known as the Good Funds Settlement Act. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

#### **§ 45A-2. Applicability.**

This Chapter applies only to real estate transactions involving a one-to four-family residential dwelling or a lot restricted to residential use. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

#### **§ 45A-3. Definitions.**

As used in this Chapter, unless the context otherwise requires:

- (1) "Bank" means a financial institution, including but not limited to a national bank, state chartered bank, savings bank, or credit union that is insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government.
- (2) "Borrower" means the maker of the promissory note evidencing the loan to be delivered at the closing.
- (3) "Cashier's check" means a check that is drawn on a bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, is a direct obligation of the bank, and is provided to a customer of the bank or acquired from the bank for remittance purposes.
- (4) "Certified check" means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that (i) the signature of the drawer on the check is genuine and the bank has set aside funds that are equal to the amount of the check and will be used to pay the check or (ii) the bank will pay the check upon presentment.
- (5) "Closing" means the time agreed upon by the purchaser, seller, and lender (if applicable), when the execution and delivery of the documents necessary to consummate the transaction contemplated by the parties to the contract occurs, and includes a loan closing.
- (6) "Closing funds" means the gross or net proceeds of the real estate transaction, including any loan funds, to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the parties.
- (7) "Collected funds" means funds deposited and irrevocably credited to a settlement agent's account used to fund the disbursement of settlement proceeds which account is a trust account, escrow account, or an account held by a company or its subsidiary which is licensed and supervised by the North Carolina Commissioner of Banks.
- (8) "Disbursement of settlement proceeds" means the payment of all closing funds from the transaction by the settlement agent to the persons or entities entitled to that payment.
- (9) "Lender" means any person or entity engaged in making or originating loans secured by mortgages or deeds of trust on real estate.

- (10) "Loan closing" means the time agreed upon by the borrower and lender, as applicable, when the execution and delivery of loan documents by the borrower occurs.
- (11) "Loan documents" means the note evidencing the debt due to the lender, the deed of trust or mortgage to secure that debt to the lender, and any other documents required by the lender to be executed by the borrower as part of the loan closing transaction.
- (12) "Loan funds" means the gross or net proceeds of the loan to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the borrower and lender.
- (13) "Party" or "parties" means the seller, purchaser, borrower, lender, and settlement agent, as applicable to the subject transaction.
- (14) "Settlement" means the time when the settlement agent has received the duly executed deed, deed of trust or mortgage, and other loan documents and funds required to carry out the terms of the contracts between the parties.
- (15) "Settlement agent" means the person or persons responsible for conducting the settlement and disbursement of the settlement proceeds, and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of the closing funds.
- (16) "Teller's check" means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

#### **§ 45A-4. Duty of settlement agent.**

(a) The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Chapter. A settlement agent may disburse funds from the settlement agent's trust or escrow account (to either the applicable register of deeds or directly to a private company authorized to electronically record documents with the office of the register of deeds) as necessary to record any deeds, deeds of trust, and any other documents required to be filed in connection with the closing, including excise tax (revenue stamps) and recording fees, but the settlement agent may not disburse any other funds from its trust or escrow account until the deeds, deeds of trust, and other required loan documents have been recorded in the office of the register of deeds. Unless otherwise provided in this Chapter, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

- (1) A certified check;

- (2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;
- (3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;
- (4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;
- (5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;
- (6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;
- (7) A check drawn on the account of or issued by a mortgage banker licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars (\$300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

(b) If the settlement agent receives information from the lender as provided in G.S. 45A-5(b) or otherwise has actual knowledge that a mortgage broker or other person acted as a mortgage broker in the origination of the loan, the settlement agent shall place an entry on page 1 of the deed of trust showing the name of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan. Information pertaining to the identity of the mortgage broker or other person who acted as a mortgage broker in the origination of the loan shall not be considered confidential information. The terms "mortgage broker" and "act as a mortgage broker" shall have the same meaning as provided in G.S. 53-243.01. (1995 (Reg. Sess., 1996), c. 714, s. 1; 2001-420, ss. 1, 2; 2007-176, s. 1; 2014-115, s. 36.)

**§ 45A-5. Duty of lender, purchaser, or seller.**

(a) The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in G.S. 45A-4(a)(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq.,

cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Chapter.

(b) **(For applicability date, see note)** The lender shall include in the loan closing instructions to the settlement agent the name of the mortgage broker or other person, if any, who acted as a mortgage broker in the origination of the loan. (1995 (Reg. Sess., 1996), c. 714, s. 1; 2007-176, s. 2.)

#### **§ 45A-6. Validity of loan documents.**

Failure to comply with the provisions of this Chapter shall not govern the validity or enforceability of any document, including a deed or any loan document, executed and delivered at any settlement occurring after October 1, 1996. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

#### **§ 45A-7. Penalty.**

Any party violating this Chapter is liable to any other party suffering a loss due to that violation for that other party's actual damages plus reasonable attorneys' fees. In addition, any party violating this Chapter shall pay to the party or parties suffering a loss an amount equal to one thousand dollars (\$1,000) or double the amount of interest payable on any loan for the first 60 days after the loan closing, whichever amount is greater. (1995 (Reg. Sess., 1996), c. 714, s. 1.)

#### **§ 45A-8. Embezzlement of closing funds by settlement agent.**

(a) All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity.

(b) A settlement agent in the disbursement of settlement proceeds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction.

(c) Except as to such portions of the closing funds representing the settlement agent's fees and expenses, a settlement agent shall be subject to the embezzlement provisions of G.S. 14-90. (2009-348, s. 2.)

#### **§ 45A-9. Interest on settlement agent's real estate trust and escrow accounts.**

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds held in those accounts to the North Carolina State Bar to be used for the purposes authorized by the North Carolina State Bar under the Interest on Lawyers' Trust Account Program.

(b) The North Carolina State Bar shall adopt rules for the collection and disbursement of funds required to be paid to the North Carolina State Bar under subsection (a) of this section. (2011-336, s. 3.)