

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 470

Short Title: Good Funds Settlement Act.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary II/Election Laws

March 23, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE GOOD FUNDS SETTLEMENT ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. The General Statutes are amended by adding a new Chapter to read:

5 **"CHAPTER 45A.**

6 **"GOOD FUNDS SETTLEMENT ACT.**

7 **"§ 45A-1. Short title.**

8 This Chapter shall be known as the Good Funds Settlement Act.

9 **"§ 45A-2. Applicability.**

10 This Chapter applies only to real estate transactions involving a one- to four-family
11 residential dwelling or a lot restricted to residential use.

12 **"§ 45A-3. Definitions.**

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

14 (1) 'Borrower' means the maker of the promissory note evidencing the loan
15 to be delivered at the closing.

16 (2) 'Closing' means the time agreed upon by the purchaser, seller, and
17 lender (if applicable), when the execution and delivery of the documents
18 necessary to consummate the transaction contemplated by the parties to
19 the contract occurs, and includes a loan closing.

- 1 (3) 'Closing funds' means the gross or net proceeds of the real estate
2 transaction, including any loan funds, to be disbursed by the settlement
3 agent as part of the disbursement of settlement proceeds on behalf of the
4 parties.
- 5 (4) 'Collected funds' means funds deposited and irrevocably credited to the
6 settlement agent's trust or escrow account used to fund the disbursement
7 of settlement proceeds.
- 8 (5) 'Disbursement of settlement proceeds' means the payment of all closing
9 funds from the transaction by the settlement agent to the persons or
10 entities entitled to that payment.
- 11 (6) 'Lender' means any person or entity engaged in making or originating
12 loans secured by mortgages or deeds of trust on real estate.
- 13 (7) 'Loan closing' means the time agreed upon by the borrower and lender,
14 as applicable, when the execution and delivery of loan documents by the
15 borrower occurs.
- 16 (8) 'Loan documents' means the note evidencing the debt due to the lender,
17 the deed of trust or mortgage to secure that debt to the lender, and any
18 other documents required by the lender to be executed by the borrower
19 as part of the loan closing transaction.
- 20 (9) 'Loan funds' means the gross or net proceeds of the loan to be disbursed
21 by the settlement agent as part of the disbursement of settlement
22 proceeds on behalf of the borrower and lender.
- 23 (10) 'Party' or 'parties' means the seller, purchaser, borrower, lender, and
24 settlement agent, as applicable to the subject transaction.
- 25 (11) 'Settlement' means the time when the settlement agent has received the
26 duly executed deed, deed of trust or mortgage, and other loan
27 documents and funds required to carry out the terms of the contracts
28 between the parties.
- 29 (12) 'Settlement agent' means the person or persons responsible for
30 conducting the settlement and disbursement of the settlement proceeds,
31 and includes any individual, corporation, partnership, or other entity
32 conducting the settlement and disbursement of the closing funds.

33 **"§ 45A-4. Duty of settlement agent.**

34 The settlement agent shall cause recordation of the deed, if any, the deed of trust or
35 mortgage, or other loan documents required to be recorded at settlement. The settlement
36 agent shall not disburse any of the closing funds prior to the recordation of any deeds or
37 loan documents required to be filed by the lender, if applicable, and verification that the
38 closing funds used to fund disbursement are deposited in the settlement agent's trust or
39 escrow account in one or more forms prescribed by this Chapter. Unless otherwise
40 provided in this Chapter, a settlement agent shall not cause a disbursement of settlement
41 proceeds unless those settlement proceeds are collected funds. Notwithstanding that a
42 deposit made by a settlement agent to its trust or escrow account does not constitute
43 collected funds, the settlement agent may cause a disbursement of settlement proceeds

1 from its trust or escrow account in reliance on that deposit if the deposit is in one or more
2 of the following forms:

- 3 (1) A certified check;
4 (2) A check issued by the State of North Carolina, the United States, or a
5 political subdivision of the State of North Carolina or the United States;
6 (3) A cashier's check, teller's check, or official bank check drawn on or
7 issued by a financial institution insured by the Federal Deposit
8 Insurance Corporation or a comparable agency of the federal or state
9 government;
10 (4) A check drawn on the trust account of an attorney licensed to practice in
11 the State of North Carolina;
12 (5) A check or checks in an aggregate amount not exceeding ten thousand
13 dollars (\$10,000) per closing, which check or checks are drawn on the
14 trust or escrow account of a real estate broker licensed under Chapter
15 93A of the General Statutes;
16 (6) A personal or commercial check or checks in an aggregate amount not
17 exceeding five thousand dollars (\$5,000) per closing if the settlement
18 agent making the deposit has reasonable and prudent grounds to believe
19 that the deposit will be irrevocably credited to the settlement agent's
20 trust or escrow account.

21 **"§ 45A-5. Duty of lender, purchaser, or seller.**

22 The lender, purchaser, or seller shall, at or before closing, deliver closing funds,
23 including the gross or net loan funds, if applicable, to the settlement agent either in the
24 form of collected funds or in the form of a negotiable instrument described in G.S. 45A-
25 4(1) through (6), provided that the lender, purchaser, or seller, as applicable, shall
26 cause that negotiable instrument to be honored upon presentment for payment to the bank
27 or other depository institution upon which the instrument is drawn. However, in the case
28 of a refinancing, or any other loan where a right of rescission applies, the lender shall, no
29 later than the business day after the expiration of the rescission period required under the
30 federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., cause disbursement of loan funds
31 to the settlement agent in one or more of the forms prescribed by provisions in this
32 Chapter.

33 **"§ 45A-6. Validity of loan documents.**

34 Failure to comply with the provisions of this Chapter shall not govern the validity or
35 enforceability of any document, including a deed or any loan document, executed and
36 delivered at any settlement occurring after October 1, 1995.

37 **"§ 45A-7. Penalty.**

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

1 Sec. 2. This act becomes effective on October 1, 1995, and applies to
2 settlements occurring on or after that date.