

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 470
House Committee Substitute Favorable 5/30/96

Short Title: Good Funds Settlement Act.

(Public)

Sponsors:

Referred to:

March 23, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE GOOD FUNDS SETTLEMENT ACT, AND TO AMEND
3 THE DEFINITIONS UNDER THE REGISTRATION REQUIREMENTS ACT FOR
4 CERTAIN MAKERS OF MORTGAGES AND DEEDS OF TRUST ON
5 RESIDENTIAL REAL PROPERTY.

6 The General Assembly of North Carolina enacts:

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

8 **"CHAPTER 45A.**

9 **"GOOD FUNDS SETTLEMENT ACT.**

10 **"§ 45A-1. Short title.**

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

12 **"§ 45A-2. Applicability.**

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

15 **"§ 45A-3. Definitions.**

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

- 17 (1) 'Bank' means a financial institution, including but not limited to a
18 national bank, state chartered bank, savings bank, or credit union that is

- 1 insured by the Federal Deposit Insurance Corporation or a comparable
2 agency of the federal or state government.
- 3 (2) 'Borrower' means the maker of the promissory note evidencing the loan
4 to be delivered at the closing.
- 5 (3) 'Cashier's check' means a check that is drawn on a bank, is signed by an
6 officer or employee of the bank on behalf of the bank as drawer, is a
7 direct obligation of the bank, and is provided to a customer of the bank
8 or acquired from the bank for remittance purposes.
- 9 (4) 'Certified check' means a check with respect to which the drawee bank
10 certifies by signature on the check of an officer or other authorized
11 employee of the bank that (i) the signature of the drawer on the check is
12 genuine and the bank has set aside funds that are equal to the amount of
13 the check and will be used to pay the check or (ii) the bank will pay the
14 check upon presentment.
- 15 (5) 'Closing' means the time agreed upon by the purchaser, seller, and
16 lender (if applicable), when the execution and delivery of the documents
17 necessary to consummate the transaction contemplated by the parties to
18 the contract occurs, and includes a loan closing.
- 19 (6) 'Closing funds' means the gross or net proceeds of the real estate
20 transaction, including any loan funds, to be disbursed by the settlement
21 agent as part of the disbursement of settlement proceeds on behalf of the
22 parties.
- 23 (7) 'Collected funds' means funds deposited and irrevocably credited to the
24 settlement agent's trust or escrow account used to fund the disbursement
25 of settlement proceeds.
- 26 (8) 'Disbursement of settlement proceeds' means the payment of all closing
27 funds from the transaction by the settlement agent to the persons or
28 entities entitled to that payment.
- 29 (9) 'Lender' means any person or entity engaged in making or originating
30 loans secured by mortgages or deeds of trust on real estate.
- 31 (10) 'Loan closing' means the time agreed upon by the borrower and lender,
32 as applicable, when the execution and delivery of loan documents by the
33 borrower occurs.
- 34 (11) 'Loan documents' means the note evidencing the debt due to the lender,
35 the deed of trust or mortgage to secure that debt to the lender, and any
36 other documents required by the lender to be executed by the borrower
37 as part of the loan closing transaction.
- 38 (12) 'Loan funds' means the gross or net proceeds of the loan to be disbursed
39 by the settlement agent as part of the disbursement of settlement
40 proceeds on behalf of the borrower and lender.
- 41 (13) 'Party' or 'parties' means the seller, purchaser, borrower, lender, and
42 settlement agent, as applicable to the subject transaction.

1 (14) 'Settlement' means the time when the settlement agent has received the
2 duly executed deed, deed of trust or mortgage, and other loan
3 documents and funds required to carry out the terms of the contracts
4 between the parties.

5 (15) 'Settlement agent' means the person or persons responsible for
6 conducting the settlement and disbursement of the settlement proceeds,
7 and includes any individual, corporation, partnership, or other entity
8 conducting the settlement and disbursement of the closing funds.

9 (16) 'Teller's check' means a check provided to a customer of a bank or
10 acquired from a bank for remittance purposes, that is drawn by the bank,
11 and drawn on another bank or payable through or at a bank.

12 **"§ 45A-4. Duty of settlement agent.**

13 The settlement agent shall cause recordation of the deed, if any, the deed of trust or
14 mortgage, or other loan documents required to be recorded at settlement. The settlement
15 agent shall not disburse any of the closing funds prior to the recordation of any deeds or
16 loan documents required to be filed by the lender, if applicable, and verification that the
17 closing funds used to fund disbursement are deposited in the settlement agent's trust or
18 escrow account in one or more forms prescribed by this Chapter. Unless otherwise
19 provided in this Chapter, a settlement agent shall not cause a disbursement of settlement
20 proceeds unless those settlement proceeds are collected funds. Notwithstanding that a
21 deposit made by a settlement agent to its trust or escrow account does not constitute
22 collected funds, the settlement agent may cause a disbursement of settlement proceeds
23 from its trust or escrow account in reliance on that deposit if the deposit is in one or more
24 of the following forms:

25 (1) A certified check;

26 (2) A check issued by the State of North Carolina, the United States, or a
27 political subdivision of the State of North Carolina or the United States;

28 (3) A cashier's check, teller's check, or official bank check drawn on or
29 issued by a financial institution insured by the Federal Deposit
30 Insurance Corporation or a comparable agency of the federal or state
31 government;

32 (4) A check drawn on the trust account of an attorney licensed to practice in
33 the State of North Carolina;

34 (5) A check or checks in an aggregate amount not exceeding fifteen
35 thousand dollars (\$15,000) per closing, which check or checks are
36 drawn on the trust or escrow account of a real estate broker licensed
37 under Chapter 93A of the General Statutes;

38 (6) A personal or commercial check or checks in an aggregate amount not
39 exceeding five thousand dollars (\$5,000) per closing if the settlement
40 agent making the deposit has reasonable and prudent grounds to believe
41 that the deposit will be irrevocably credited to the settlement agent's
42 trust or escrow account;

1 (7) A check drawn on the account of or issued by a lender which is
2 approved by the United States Department of Housing and Urban
3 Development as either a supervised or nonsupervised mortgagee as
4 defined in 24 C.F.R. section 202.2.

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

6 The lender, purchaser, or seller shall, at or before closing, deliver closing funds,
7 including the gross or net loan funds, if applicable, to the settlement agent either in the
8 form of collected funds or in the form of a negotiable instrument described in G.S. 45A-
9 4(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall
10 cause that negotiable instrument to be honored upon presentment for payment to the bank
11 or other depository institution upon which the instrument is drawn. However, in the case
12 of a refinancing, or any other loan where a right of rescission applies, the lender shall, no
13 later than the business day after the expiration of the rescission period required under the
14 federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan
15 funds to the settlement agent in one or more of the forms prescribed by provisions in this
16 Chapter.

17 **"§ 45A-6. Validity of loan documents.**

18 Failure to comply with the provisions of this Chapter shall not govern the validity or
19 enforceability of any document, including a deed or any loan document, executed and
20 delivered at any settlement occurring after October 1, 1996.

21 **"§ 45A-7. Penalty.**

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

28 Sec. 2. G.S. 53-234(6) reads as rewritten:

29 "(6) 'Exempt person or organization' means:

- 30 (a) Any supervised or any nonsupervised institution, as these terms
31 are defined in 24 C.F.R. section 202.2, approved by the United
32 States Department of Housing and Urban Development, or any
33 ~~Any~~—lender authorized to engage in business as a bank, a farm
34 credit system, life insurance company, savings institution, or
35 credit union, or HUD-approved mortgagee—under the laws of the
36 United States or the State of North Carolina and subsidiaries and
37 affiliates of such lenders, which subsidiaries and affiliates are
38 subject to the general supervision or regulation of the lender or
39 subject to audit or examination by a regulatory body or agency of
40 the United States or the State of North Carolina; the entities listed
41 in this sub-subdivision, and their officers and employees, are not
42 subject to any of the provisions of this Article; or

- 1 (b) Any licensed real estate agent or broker, who is performing those
2 activities subject to the regulation of the North Carolina Real
3 Estate Commission. Notwithstanding the above, an exempt
4 person does not include a real estate agent or broker who receives
5 direct compensation or income in connection with the placement
6 of a mortgage loan; or
7 (c) Any person who, as seller, receives in one calendar year no more
8 than ten mortgages, deeds of trust, or other security instruments
9 on real estate as security for a purchase money obligation; or
10 (d) The North Carolina Housing Finance Agency as established by
11 Chapter 122A of the General Statutes and the North Carolina
12 Agricultural Finance Authority as established by Chapter 122D
13 of the General Statutes; or
14 (e) Any agency of the federal government or any state or municipal
15 government granting first mortgage loans under specific
16 authority of the laws of any state or the United States."

17 Sec. 3. This act becomes effective October 1, 1996, and applies to settlements
18 occurring on or after that date.