

American Land Title Association (ALTA) Model Good Funds Law

Section 1. Short Title. This Act may be cited as the “Model Real Estate Transactions Good Funds Act.”

Section 2. Definitions. In this Act:

(a) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, trust company, and a bank as defined in [cite to state statute]. The term does not include a person engaged in the business of banking if the person is not subject to regulation as a bank under federal law or the law of a state.

(b) “Banking day” means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(c) “Depository bank” means the bank at which an escrow account is maintained.

(d) “Escrow account” means a demand deposit account maintained at a bank by an escrow agent to hold segregated funds in escrow or in trust for or on behalf of one or more third persons.

(e) “Escrow agent” means a person authorized under the laws of this state to receive, hold, and disburse funds, or otherwise provide escrow or settlement services, for or on behalf of one or more third persons with respect to a real estate transaction. The term includes a person that provides such escrow or settlement services and is designated as a settlement or closing agent. The term does not include a person that makes, originates, or services a mortgage loan for the transaction or a bank.

(f) “Good funds” means funds denominated in United States dollars directly deposited or received in the form of:

(i) United States currency;

(ii) a wire transfer through the Fedwire Funds Service or the Clearing House Interbank Payments System (CHIPS);

(iii) a credit transfer through the automatic clearing house system governed by the rules of the National Automated Clearing House Association and operated by the Federal Reserve's FedACH service or The Clearing House Payment Company's Electronic Payments Network (EPN);

(iv) a real-time or instant payment through the FedNow Service operated by the Federal Reserve Banks or The Clearing House Payment Company's Real-time Payments (RTP) system;

(v) a debit entry to another account on the books of the depository bank, and a credit entry in the same amount to the escrow account on the books of the depository bank, other than by check;

[**(vi) a cashier's check, certified check, teller's check, check drawn on the United States Treasury, check drawn on a Federal Reserve Bank, check drawn on a Federal Home Loan Bank, or check drawn by a state or a unit of general local government;

(vii) any other check, whether commercial or personal, drawn on a bank, if (A) the check is in an amount of [\$5,000] or less and the escrow agent has reasonable grounds to believe that the check is properly payable; (B) the check is drawn on the depository bank and disbursement is made no earlier than the [second] banking day after the banking day on which the check was deposited; or (C) disbursement is made no earlier than the [sixth] banking day after the banking day on which the check was deposited;]** or

(viii) any other funds credited to the escrow account if the depository bank confirms to the escrow agent in a record that the funds are finally settled or that there has been final settlement of the funds.

(g) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(h) “Real estate transaction” means a transaction involving the sale, lease or other disposition of [**residential**] real property [**designed principally for the occupancy of one to four families, including individual condominium or cooperative housing units and manufactured housing defined as real property under other law of this state,**] or the financing or refinancing thereof.

(i) “Record” means information (i) inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in perceivable form.

(j) “State” means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k) “Unit of general local government” means any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

Section 3. Disbursement of Funds. An escrow agent may not disburse funds relating to a real estate transaction from an escrow account unless the funds:

- (a) have been credited by the depository bank to the escrow account;
- (b) are in an amount at least equal to the amounts to be disbursed for the transaction;
- (c) are good funds; and
- (d) are available for immediate use or withdrawal from the escrow account.

Section 4. Scope. This Act does not require an escrow agent to accept or receive funds in any form or manner, make a disbursement of funds from an escrow account even if the funds are good funds, or comply with any duty or standard of care not expressly provided in this Act.

Section 5. Bona Fide Error. An escrow agent is not liable for a violation of this Act if the violation was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adopted to avoid the error.

Section 6. Enforcement. Any right or obligation declared by this Act may be enforced by **[**insert the applicable regulator**]**.

Section 7. Transitional Provision. This Act applies to any disbursement to be made by an escrow agent from an escrow account on or after the effective date of this Act.

Section 8. Repeals. The following acts and parts of acts are repealed: ...

Section 9. Effective Date. This Act takes effect ...

Legislative Notes:

- (1) The Act should be inserted in the appropriate chapter of the state's legislative code governing escrow agents. Frequently, this appropriate chapter will be within a state's insurance code or insurance regulations.
- (2) Inclusion of payment by check in the definition "good funds" raises questions concerning the finality of payment. Each state may vary in deciding whether and to what extent to include payment by check in the definition.
- (3) The state should decide in the definition of "real estate transaction" whether the Act should cover commercial transactions in addition to residential transactions.
- (4) The title of the applicable regulator should be inserted in Section 6. Often the regulator will be the regulator supervising escrow agents.
- (5) If the state already has in effect a good funds law, care should take in Section 9 to repeal the law or the parts of the law covered by the Act.