

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 790
House Committee Substitute Favorable 8/28/01**

Short Title: Good Funds Settlement Act Revisions.

(Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO REVISE THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THE
3 AUTHORITY OF A SETTLEMENT AGENT TO DISBURSE SETTLEMENT
4 PROCEEDS IN RELIANCE ON A DEPOSIT IN THE FORM OF A CHECK
5 ISSUED BY AN AGRICULTURAL CREDIT ASSOCIATION OR IN THE FORM
6 OF A CHECK DRAWN ON THE ACCOUNT OF OR ISSUED BY A LICENSED
7 MORTGAGE BANKER.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 45A-4 reads as rewritten:

10 "**§ 45A-4. Duty of settlement agent.**

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

23 (1) A certified check;

24 (2) A check issued by the ~~State of North Carolina, State,~~ the United States,
25 ~~or a political subdivision of the State of North Carolina or the United~~
26 ~~States;~~ State, or an agency or instrumentality of the United States,
27 including an agricultural credit association;

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

1 Insurance Corporation or a comparable agency of the federal or state
2 government;

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

5 (5) A check or checks drawn on the trust or escrow account of a real estate
6 broker licensed under Chapter 93A of the General Statutes;

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

12 (7) A check drawn on the account of or issued by a ~~lender which is~~
13 ~~approved by the United States Department of Housing and Urban~~
14 ~~Development as either a supervised or nonsupervised mortgagee as~~
15 ~~defined in 24 C.F.R. section 202.2.~~ mortgage banker registered under
16 Article 19 of Chapter 53 of the General Statutes that has posted with
17 the Commissioner of Banks a surety bond in the amount of at least
18 three hundred thousand dollars (\$300,000). The surety bond shall be in
19 a form satisfactory to the Commissioner and shall run to the State for
20 the benefit of any settlement agent with a claim against the licensee for
21 a dishonored check."

22 **SECTION 2.** G.S. 45A-4, as amended by Section 1 of this act, reads as
23 rewritten:

24 "**§ 45A-4. Duty of settlement agent.**

25 The settlement agent shall cause recordation of the deed, if any, the deed of trust or
26 mortgage, or other loan documents required to be recorded at settlement. The settlement
27 agent shall not disburse any of the closing funds prior to the recordation of any deeds or
28 loan documents required to be filed by the lender, if applicable, and verification that the
29 closing funds used to fund disbursement are deposited in the settlement agent's trust or
30 escrow account in one or more forms prescribed by this Chapter. Unless otherwise
31 provided in this Chapter, a settlement agent shall not cause a disbursement of settlement
32 proceeds unless those settlement proceeds are collected funds. Notwithstanding that a
33 deposit made by a settlement agent to its trust or escrow account does not constitute
34 collected funds, the settlement agent may cause a disbursement of settlement proceeds
35 from its trust or escrow account in reliance on that deposit if the deposit is in one or
36 more of the following forms:

37 (1) A certified check;

38 (2) A check issued by the State, the United States, a political subdivision
39 of the State, or an agency or instrumentality of the United States,
40 including an agricultural credit association;

41 (3) A cashier's check, teller's check, or official bank check drawn on or
42 issued by a financial institution insured by the Federal Deposit

- 1 Insurance Corporation or a comparable agency of the federal or state
2 government;
- 3 (4) A check drawn on the trust account of an attorney licensed to practice
4 in the State of North Carolina;
- 5 (5) A check or checks drawn on the trust or escrow account of a real estate
6 broker licensed under Chapter 93A of the General Statutes;
- 7 (6) A personal or commercial check or checks in an aggregate amount not
8 exceeding five thousand dollars (\$5,000) per closing if the settlement
9 agent making the deposit has reasonable and prudent grounds to
10 believe that the deposit will be irrevocably credited to the settlement
11 agent's trust or escrow account;
- 12 (7) A check drawn on the account of or issued by a mortgage banker
13 ~~registered under Article 19~~ licensed under Article 19A of Chapter 53
14 of the General Statutes that has posted with the Commissioner of
15 Banks a surety bond in the amount of at least three hundred thousand
16 dollars (\$300,000). The surety bond shall be in a form satisfactory to
17 the Commissioner and shall run to the State for the benefit of any
18 settlement agent with a claim against the licensee for a dishonored
19 check."

20 **SECTION 3.** Section 1 of this act becomes effective January 1, 2002.
21 Section 2 of this act becomes effective July 1, 2002. The remainder of this act is
22 effective when it becomes law.