

# **Ohio Good Funds**

## **QUESTIONS and ANSWERS**

**Q:** Does the law only regulate funds collected from the consumer (buyer/borrower/seller)?

**A:** No. This aspect of the law has not changed, the law regulates any and all funds collected by an escrow or closing agent in connection with an escrow transaction involving residential real property. So, it also regulates the funds collected from a lender as well as from a consumer.

**Q:** Is it permissible to use cash over \$1,000 if it is deposited in the escrow account of the closing agent in advance of closing?

**A:** No. The law only permits cash if it is in the amount of \$1,000 or less AND it is physically received by the escrow agent prior to disbursement AND intended to be deposited no later than the next banking day after the date of disbursement.

**Q:** Does an "internal transfer" of funds from one account to another at the same institution qualify as "electronically transferred fund" under the law?

**A:** No. All electronically transferred funds must be sent vi the real time gross settlement system provided by the federal reserve banks (i.e. wire transfer) and must be immediately available for withdrawal and disbursement. Electronically transferred funds may also be sent via the automated clearing house (ACH) system only if they are initiated by the United States, State of Ohio, or by an agency, instrumentality of political subdivision of the United State or the State of Ohio.

**Q:** If the buyer needs to bring \$1,200 to close, is it acceptable if they bring a \$1,000 cashier's check and \$200 in cash?

**A:** No. Cash, personal checks, business checks (other than those drawn on a real estate broker's trust account), certified checks, cashier's checks, official checks, or money orders must be in an aggregate amount not exceeding \$1,000. Any checks or money orders must also be drawn on a federally insured bank, savings bank, savings and loan, or credit union.

**Q:** If the buyer has given the real estate broker \$2,000 in earnest money, and the broker brings these funds to closing, can they be used?

**A:** Yes. As long as the broker brings these funds in the form of a business check drawn on the broker's special or trust bank account (as defined under ORC 4735.18(A)(26)) these funds can be presented at closing. There is no limit on the amount of a check from the broker's account.

**Q:** Can an escrow or closing agent accept a cashier's or certified check over \$1,000 if it is deposited in time to "clear" the bank before disbursement?

**A:** No. The law only permits cashier's or certified checks in an aggregate amount of \$1,000 or less.

**Q:** If the buyer needs to bring \$1,500 to closing and has given the real estate broker \$1,000 in earnest money, can the buyer use the earnest money and bring the difference in the form of a personal check?

**A:** Yes. As long as the broker draws the \$1,000 on the broker's special or trust account, the consumer can bring the difference in the form of a personal check. The broker's trust account check does not count toward the aggregate limitation of \$1,000 for cash, personal checks, business checks, certified checks, cashier's checks, official checks or money orders.

**Q:** Is the law only applicable to residential transactions?

**A:** Yes. This aspect of the law has not changed. The only applies to residential real property transactions which are defined as any real property improved or to be improved with a one-to-four family dwelling.

**Q:** If all parties to a residential real property transaction agree and instruct that other forms of funds are acceptable in the transaction, can the escrow or closing agent follow this separate instruction?

**A:** No. The terms of the law must be strictly followed and does not permit the consumer, lender, or escrow or closing agent to alter the types of acceptable funds in a residential real property transaction.

**Q:** Is a check from another title company for great than \$1,000.—exempt from the rule. In other words, can a title company which takes seller's proceeds for seller to buy new send those funds by check to the new title company. In other words, are title company to title company checks exempt regardless of the amount of the check?

**A:** The answer was no, we came to the conclusion that the statute is clear that title company checks are not exempt from the rule.

**Q:** Does the Good Funds statute apply to refinances?

**A:** Yes. It applies to all residential transactions.

**Q:** Does it apply to cash deals?

**A:** Yes. It applies to all residential transactions.

**Q:** What about a bank funding into a bank account, for instance a mortgage lender that funds their refinances into the Escrow Account of the Title Agency that is an IOTA Account set up at the same bank.

**A:** The lender will not be able to do an ACH into a settlement agent's account. They will have to send the funding by wire via the real-time gross settlement system provided by the Federal Reserve banks, as outlined in the code.

**Q:** With the increase in wire fraud, doesn't this make it riskier for the consumer?

**A:** If the proper procedures are put into place to make sure that any wire instructions are provided in person or verified by the parties prior to being sent, the risk of not having funds available for disbursement or being told they did not clear, post-closing, stop the consumer from being harmed. Fraudulent Certified Checks and Cashier's Checks pose a greater risk to the consumer than a wire.

**Q:** Bank branches set limits on the amounts that can be wired from a consumer account.

**A:** It seems like mobile banking limits the amount that can be wired from an account but not an actual branch visit in order to initiate the wire, although this may vary by bank. Title agents have been instructed to let their customers know when the order is opened, that the money needed from all parties will need to be in the form of a wire for any amount over \$1,000 so they need to check with their bank to see what that bank's policy is on sending wires. If they will only be able to send increments of the total each day, they will need to start the process early in order to have the full amount of any funds needed on the day of disbursement

**Q:** Is the law applicable to only residential transactions?

**A:** Yes.

**Q:** Does the new law apply to escrow funds pertaining to out of state transactions?

**A:** If the money for this transaction will be received and disbursed from the Ohio IOTA account, then it will have to follow this law. The only exception to the would be for a Commercial transaction, as this does not apply to commercial deals.

**Q:** Does the statute totally prohibit the taking of all but the enumerated checks or can we take checks as long as no disbursement is made from the escrow account until that check has cleared, in other words, if an earnest money deposit of \$10,000 in check form is received but the transaction is not closing for 60 days, and there will be no disbursement on that file for 60 days, can that \$10,000 check be accepted?

**A:** Unless the funds are for Earnest Money and those funds were sent from the Real estate Broker from the Real estate Brokers Trust account, all deposits will need to be in the form a a wire. The above scenario is most likely to happen in a commercial transaction though, which would not be covered by this rule.

**Q:** How does this affect "back-to-back" closings in round-table areas?

**A:** Back-to-back closings currently come with many challenges and the change to the Good Funds law will not meaningfully change the structure. For many reasons (title defects, underwriting issues with new loan, slow deliver of documents, delay in delivery of remotely-signed documents, delay in receipt of lender's funds on the day of closing, etc.), it can be difficult to synchronize two closings to happen within a few hours on the same day. Such a structure is discouraged because it can lead to additional complications for a seller (soon to be buyer) when a variable on the first transaction causes delay in

closing and/or disbursement and impacts their ability to close on the second transaction. For various reasons, many title companies already require that the funds from the first closing be wired for the second closing. For all residential transactions, this will now be required (unless such proceeds are \$1000 or less). Title professionals have already been discussing ways to efficiently verify and securely wire funds from one company to another and closings should be scheduled to allow reasonable time for the funds to be wired from one company to the next.

**\*ORC 1349.20-1349.22 and the changes to ORC 1349.21 effective April 6, 2017**