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GOOD FUNDS LEGISLATION : HEA 1374 - Effective date July 1, 2009

Recent legislation that was signed into law requires “Good Funds” on escrow transactions in Indiana. See digest of HEA 1374 “Escrow transactions” here:

Provides that funds received in connection with an escrow transaction in a real estate transaction must be deposited in an escrow account unless the parties to the escrow transaction agree in writing to another arrangement. Prohibits a closing agent from making disbursements from an escrow account in connection with a real estate transaction unless any funds that: (1) are received from a single party to the transaction; and (2) in the aggregate are at least \$10,000; are wired funds that are unconditionally held by and irrevocably credited to the closing agent’s escrow account. Sets forth certain types of instruments and other forms of money that constitute “good funds” for purposes of an escrow transaction. Prohibits a closing agent from making disbursements from an escrow account in connection with a real estate transaction unless any funds that: (1) are received from a single party to the transaction; and (2) in the aggregate are less than \$10,000; are good funds. Provides that if: (1) the closing agent in a real estate transaction receives wired funds unconditionally held and irrevocably credited to the closing agent’s escrow account; and (2) a holder of a mortgage lien so requests; the lien holder is entitled to receive its proceeds from the real estate transaction through funds electronically transferred to an account specified by the holder. Provides that a closing agent may advance up to \$500 from an escrow account on behalf of a party to an escrow transaction for the purpose of paying certain incidental fees in connection with the real property that is the subject of the escrow transaction.

at closing—cashier’s checks and money orders will no longer be accepted by closing agents from the parties involved if the aggregate funds are \$10,000 or more.

- ◆ Principal Brokers holding more than \$10,000 in their escrow account for earnest money on a property will have to wire transfer this amount to the title company.
- ◆ Beware of back-to-back closings if they occur at different title companies. Some time will be required to wire transfer funds from one closing to another in this instance.
- ◆ It is also recommended that you contact your banking partners to verify their requirements for wired funds and what, if any, time constraints are involved.

On a positive note, remember that when “good funds” are available, real estate commissions get paid!

This guarantees that money is immediately available for disbursement at closing to all parties involved.

What does this mean to our REALTOR® members and how will this affect YOU?

- ◆ REALTORS® will need to educate their clients on this new requirement to wire transfer funds over \$10,000

Read the **Indiana Land Title Association** FAQs on how this statute will affect the day-to-day closing process.

Indiana Good Funds Law-FAQs

Provided by the
Indiana Land Title Association, Inc.

Effective July 1, 2009, House Enrolled Act 1374 requires that the money funding a real estate purchase and refinance transaction in Indiana is secure or "Good Funds". The Act primarily requires the following:

- Closing agents must deposit all funds received in connection with a real estate transaction into an escrow account unless all the parties involved agree to another arrangement.

- All funds in the amount of \$10,000.00 or more, in the aggregate, received from any party to a real estate transaction must be wired funds unconditionally held and irrevocably credited to the closing agent's escrow account. Checks for \$10,000.00 or more are prohibited; this guarantees that money is immediately available for disbursement at closing to all parties involved.

- Funds less than \$10,000.00, in the aggregate, received from any party to the transaction, must be in the form of "good funds" as defined by the Act.

- Closing agents are permitted to advance up to \$500.00 from an escrow account to pay off specified incidental fees to facilitate the real estate transaction.

- A lender whose mortgage is being paid off at closing may request that its payoff be in the form of wired funds as long as wired funds are deposited in the closing agent's escrow account in an amount sufficient to cover the payoff.

Why was HEA 1374 enacted by the Indiana Legislature?

HEA 1374 provides secure funds in real estate transactions for Indiana homeowners who are selling and buying a home or refinancing an existing mortgage on their home. Prior to the passage of HEA 1374,

homeowners had no assurance that the check deposited from a real estate transaction was good. The Act guarantees that the money funding a real estate transaction in Indiana is immediately available for disbursement and gives homeowners the assurance that the money that is supposed to be in their bank account is actually there. Thirty-two other states already have this type of legislation.

What is the benefit of requiring wired funds?

Wired funds are the most secure type of funds. Cashier's checks and certified checks may be subject to stop payment orders and uncollectible under certain circumstances. Bank checks may require several days to clear requiring a document escrow for several days prior to finalizing the closing and disbursement of funds. Wired funds that are irrevocably credited to an escrow account are not recallable and immediately available for disbursement.

When does a wire become irreversible for purposes of the new law?

Typically, funds tendered electronically by wire (CHIPS or Fed wire) are considered unconditionally held by and credited to the escrow account of the title company upon confirmation by closing agent that the funds have been received and credited to the escrow account. To further protect wired funds, closing agents may elect to set up a separate trust or escrow account to receive all incoming wire transfers, and immediately upon receipt, re-transfer the funds into a secure escrow account or trust account. Because practices may vary by bank, closing agents should contact the bank or banks that hold their escrow account to discuss this issue and REALTORS® and other customers should discuss this issue with the closing agent handling their transaction.

Funds transferred electronically by wire through the Automated Clearing House (ACH) are not acceptable. Funds transferred through the ACH network can be recalled by the originator up to 90 days after the transfer. As a result, only funds wired electronically through the Federal Reserve Bank will satisfy the Act's requirements.

Does the new law require all funds to be wired into the closing agent's escrow account?

Only funds in the amount of \$10,000.00 or more must be wired funds.

Are there any alternatives to the wired funds requirement?

Yes, the law states that "good funds" may be received for amounts less than \$10,000.00. The following are considered good funds under the Act:

- United States Currency
- Wired funds
- Certified or cashier's check drawn on an existing account at a bank, savings & loan, credit union or savings bank chartered under the laws of a state or the United States
- A check drawn on the trust account of a real estate broker.
- A personal check not to exceed \$500 per closing
- A check issued by the State, the United States, or a political subdivision of the State or the United States
- A check drawn on the escrow account of another closing agent
- A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 USC 2001 et.seq.)

Indiana Good Funds Law-Q & A continued...

Is there an exception for incidental fees?

Yes. The Act allows the closing agent to advance up to \$500 from an escrow account to pay any incidental fees involved in a real estate transaction without requiring good or wired funds. Example of incidental fees may be fees for preparing and recording a deed necessary to clear title prior to closing. As stated above, funds are still required to be deposited into the closing agent's escrow account to cover incidental fees for a specific real estate transaction.

Who does the Act apply to?

The new law applies to any person closing a purchase or refinance transaction who is required to be licensed by the Indiana Department of Insurance. Lenders who close in the lender's office and disburse on a loan provided by the lender for the refinancing of a homeowner's existing mortgage with the same lender are not subject to the Act's funding requirements. However, a lender who closes and disburses on a purchase loan provided by the lender in its own office is required to comply with the funding requirements of the Act.

Does the new law require closing agents to wire out funds to payoff existing mortgages at closing in every transaction?

No. A closing agent is only required to wire out a mortgage payoff if the lender being paid off at closing requests in writing, in its payoff letter or separate document, that its payoff be in the form of wired funds as long as wired funds were deposited in the closing agent's escrow account in an amount sufficient to cover the payoff. If a closing agent is required to pay off a home equity line or line of credit in the form of wired funds, the borrower

will still need to sign a close-out account letter to be transmitted to lender by overnight mail or other means acceptable to closing agent and lender.

How will the new law affect back-to-back closings?

The speed of funds transferred electronically by wire depends on which Federal Reserve Bank the wire goes through and the volume the Reserve is handling at the time. Banks typically have a late afternoon cut-off time by which incoming and outgoing wires are no longer available. The cut-off time may vary by bank. Given the wiring variables mentioned above, scheduling back-to-back closings an hour apart may not be feasible unless the same closing agent is handling both closings. Realtors®, lenders, homeowners and closing agents will need to work together to schedule closings to accommodate the receipt of wired funds by the closing agent. With approval of all parties involved, the transaction can still "dry close" and disburse when the wire is credited to the closing agents escrow account.

Are individual cashier's checks from a buyer in amounts less than \$10,000.00 acceptable if the total amount of the checks exceed \$10,000.00?

No, the Act states that amounts \$10,000.00 or more, in the aggregate, from any single party must be wired funds. If, when added together, the amount of the cashier's checks from one party to the transaction exceed \$10,000.00, wired funds are required.

Are individual cashier's checks from multiple buyers in amounts less than \$10,000.00 acceptable if the total amount of the checks exceed \$10,000.00?

Yes, the threshold amounts in the Act apply to each single buyer individually.

How will earnest money be handled?

Earnest money to be applied to the purchase price in the amount of \$10,000.00 or more must be wired into the closing agent's escrow account for closing. Earnest money under \$10,000.00 brought to closing must be good funds as defined by the Act. An earnest money check deposited into a closing agent's escrow account prior to closing must be fully cleared and collected prior to disbursement at closing.

How can closing agents alert their customers to the change in law?

In addition to meeting with their customers, it is advisable for closing agents to start adding a note informing customers of the new funding requirements in any correspondence and title commitments issued by their office. □