

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1316
(Representatives Louser, Beadle, Becker, Streyle, Wieland)
(Senators Krebsbach, J. Lee, Poolman)

AN ACT to create and enact two new sections to chapter 47-34 of the North Dakota Century Code, relating to good funds and disclosures for real estate transactions; and to amend and reenact sections 47-34-01 and 47-34-02 of the North Dakota Century Code, relating to good funds for real estate transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-34-01 of the North Dakota Century Code is amended and reenacted as follows:

47-34-01. Definitions.

As used in this chapter:

1. "Closing agent" means a person that closes a real estate transaction in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a lender or an employee of a lender that conducts a settlement or closing of a real estate secured loan provided by the lender in the office of the lender.
2. "Collected funds" means a cash deposit or a check that has been presented for payment and for which payment has been irrevocably credited to the closing agent's escrow account.
3. "Escrow account" means:
 - a. A checking account established by a closing agent with a bank, savings and loan association, credit union, or savings bank that is chartered under the laws of a state or the United States and which is used exclusively for the deposit and disbursement of funds for a real estate transaction; or
 - b. A trust account maintained by an attorney under the North Dakota Rules of Professional Conduct.
- ~~3.4.~~ "Good funds" means funds in any one or more of the following forms:
 - a. United States currency.
 - b. Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
 - c. A check that has been presented for payment and for which payment has been ~~received~~collected. As used in this subdivision, the term check includes a certified check and a cashier's check.
 - d. ~~A check not to exceed three thousand dollars which~~that is drawn on the trust account of a real estate broker licensed under chapter 43-23 or on the trust account maintained by an attorney under the North Dakota Rules of Professional Conduct, ~~if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the trust account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow~~ for which funds are collected funds by the real estate broker or the attorney's trust account.

- e. A cashier's check not to exceed ~~ten~~^{fifty} thousand dollars in the aggregate ~~that~~which is received by the closing agent and which is drawn on an existing account at a bank, savings and loan association, credit union, or savings bank chartered under the laws of a state or the United States located in this state, Minnesota, Montana, or South Dakota.
- f. A check drawn on the escrow account of another closing agent, ~~if the closing agent in the real estate transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the real estate transaction in this state, Minnesota, Montana, or South Dakota.~~
- g. Funds transferred to the closing agent's escrow account by the bank, savings and loan association, credit union, or savings bank that is the host institution of the closing agent's escrow account.

4.5. "Real estate transaction" means a transaction in which a person deposits with a closing agent funds that are to be held until a specified event occurs or the performance of a prescribed condition in connection with the purchase, sale, or financing of an interest in real estate; or a settlement or closing conducted in connection with the purchase, sale, or financing of an interest in real estate. The term does not include a loan financing if the only parties to the loan transaction are the lender and the borrower, and the lender is responsible for disbursing all of the funds to the borrower or to a third party in order to pay fees and charges associated with the loan transaction.

SECTION 2. AMENDMENT. Section 47-34-02 of the North Dakota Century Code is amended and reenacted as follows:

47-34-02. Real estate transaction disbursements.

A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless funds that are received ~~from any single party to the real estate transaction which in the aggregate are at least ten thousand dollars~~ are good funds.

SECTION 3. A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

Disclosures.

In a prominent manner in the closing documents, a closing agent shall disclose to the seller the anticipated closing date and all of the dates through which any loan payoffs are calculated.

SECTION 4. A new section to chapter 47-34 of the North Dakota Century Code is created and enacted as follows:

Civil damages.

In addition to any other cause of action that may exist, a person may bring a cause of action against a person that violates section 47-34-02. In addition to any actual damages a plaintiff may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred dollars per violation in the first action. In any subsequent action for violation of section 47-34-02, a person is liable for one thousand dollars per violation.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1316.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State