



Tips on Handling Folding Lenders, Unfunded Loans & Collected Funds

What Is North Carolina's "Good Funds Settlement Act" – NCGS Chapter 45A?

NCGS § 45A-3 defines "collected funds" as "funds deposited and irrevocably credited to a settlement agent's account used to fund the disbursement of settlement proceeds which account is a trust account, escrow account, or an account held by a company or its subsidiary which is licensed and supervised by the North Carolina Commissioner of Banks." There are limited exceptions to the "collected funds" rule. Those limited exceptions **permit** Agents to exercise their discretion and disburse on funds that are not "collected funds" (i.e., finally settled and credited to the agent's account) where the Agent deposits certain types of funds, which NCGS § 45A-4 defines as:

- (1) A certified check;
- (2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;
- (3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;
- (4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;
- (5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;
- (6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;
- (7) A check drawn on the account of or issued by a mortgage banker licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars (\$300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

However, Agents are advised to safeguard themselves by only closing on "collected funds". It should be noted that these rules on collected funds apply to any person or persons responsible for conducting the settlement and disbursement of the settlement proceeds, and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of the closing funds.

What Are LandAmerica's Recommendations for Avoiding Funding Problems?

1. Adhere to the "collected funds" rule.
2. Don't rely on just the sender's Federal Reference Number. Even if you have been supplied with the number by the sender – a wire can still be withdrawn by the sender. Thus, you should confirm the wired monies were actually received and credited to your account by their bank.
3. Prior to the closing, check the lender's website to determine if the lender in your particular transaction is still funding loans.
4. Keep in close contact with the mortgage broker for lender updates.
5. Pay attention to media reports about lender funding problems.
6. One helpful website is www.mortgageimplode.com.

How Should "Settlement Agents" Handle Current Transactions Involving Lenders in Trouble?

If you have already closed the transaction, then forward the policy to the lender's address provided in the lender's closing instructions. For other situations, please refer to the chart on the following page for guidance.

Situation	New Closings	Payoff of Existing Mortgages
Lender has ceased operations, but is not bankrupt.	New closings should not occur unless Settlement Agent has already received "collected funds". For closings that have occurred, but are in the middle of rescission period, contact your local Lawyers Title counsel.	Paying in full - Operate as normal. Short pays - Check directly with the lender verbally to confirm the prior short pay authorization. Do not accept any short pay letters that pre-date the lender ceasing operations.
Lender has ceased operations and filed for bankruptcy.	New closings should not occur unless Settlement Agent has already received "collected funds". For closings that have occurred but are in the middle of rescission period, contact your local Lawyers Title counsel.	Paying in full - Operate as normal. Short pays - Require Underwriting approval.
Lender is still operating, but has filed for bankruptcy.	New closings may occur. Settlement Agent should only disburse after confirming receipt of "collected funds".	Paying in full - Operate as normal. Short pays - Require Underwriting approval.