

**CS FOR HOUSE BILL NO. 13(FIN) am**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 5/4/99**

**Offered: 3/11/99**

**Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST, Foster**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the characterization of, use of, segregation of, deposit of,  
2 interest on, and disbursement of escrow money; relating to the recording, filing,  
3 and delivery of escrow documents; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* **Section 1.** LEGISLATIVE PURPOSE. The purpose of this Act is to provide maximum  
6 assurance to the public that their money will not be placed in jeopardy when entrusted to a  
7 settlement agent in the course of residential real property transactions.

8 \* **Sec. 2.** AS 21.66.250 is amended to read:

9 **Sec. 21.66.250. Trust funds. Except as provided in AS 34.80, trust**  
10 **[TRUST] funds or assets held in a fiduciary capacity by a title insurance company that**  
11 **is authorized to do a trust business shall be invested in accordance with AS 06.25.**

12 \* **Sec. 3.** AS 34 is amended by adding a new chapter to read:

13 **Chapter 80. Escrow Transactions for Residential Real Property.**

14 **Sec. 34.80.010. Characterization of escrow money.** The money that is

received by a settlement agent for an escrow transaction is not the property of the settlement agent and is not subject to execution, attachment, or other form of collection for a claim against the settlement agent. Escrow money may not be used for a purpose other than to fulfill the terms of the escrow transaction agreement.

**Sec. 34.80.020. Segregation and deposit of escrow money.** (a) A settlement agent shall segregate on the records of the settlement agent the escrow money from one escrow transaction from all other money, including the escrow money of other escrow transactions. Escrow money from more than one escrow transaction may be deposited into a single depository escrow account.

(b) A settlement agent shall deposit escrow money in a depository escrow account of a financial institution located in this state.

**Sec. 34.80.030. Interest on escrow money.** Notwithstanding any other provision of law, interest may not be collected or paid by a settlement agent on money held for an escrow transaction unless authorized in writing by the parties to the escrow transaction, including the settlement agent.

**Sec. 34.80.040. Disbursement of escrow money.** (a) A settlement agent may not disburse escrow money unless items that are at least equal in value to the proposed disbursements have been received by the settlement agent for the escrow transaction, have been deposited as required by AS 34.80.020(b), and are available for withdrawal as a matter of right from the depository escrow account.

(b) A settlement agent may not disburse escrow money on the same business day as the items are deposited under AS 34.80.020(b) unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made.

(c) A settlement agent may not disburse escrow money on the business day after the business day on which the items are deposited under (a) of this section unless the deposit is made by

(1) a cashier's check or a certified check and the cashier's check or certified check is payable in the state and drawn on a financial institution located in the state;

(2) a cashier's check, a negotiable order of withdrawal, a money order,

1 or another item and the check, order of withdrawal, money order, or other item has  
2 been finally paid before the disbursement; or

3 (3) a depository check, including a cashier's, certified, or teller's check,  
4 that is governed by 12 U.S.C. 4001 - 4010 (Expedited Funds Availability Act).

5 (d) In (a) of this section, "available for withdrawal as a matter of right" means

6 (1) when the item has been submitted for collection and payment for  
7 the item has been received;

8 (2) when the financial institution where an item has been deposited  
9 considers the money represented by the item available for withdrawal; or

10 (3) unless written notification has been received from the financial  
11 institution where the item was deposited establishing a longer period for an item drawn  
12 on an out-of-state financial institution, after a reasonable time has passed for  
13 prohibiting customers from drawing on the item.

14 **Sec. 34.80.050. Recording, filing, or delivery of escrow transaction**  
15 **documents.** A settlement agent may not record in the office of the recorder in this  
16 state or record in an office in another state that is equivalent to the office of the  
17 recorder, file under AS 45.09 in this state or file under an equivalent statute in another  
18 state, or deliver a conveyance of property, loan documents, documents establishing a  
19 security interest in property, or other documents from an escrow transaction until the  
20 money required by the escrow transaction agreement to be disbursed at the same time  
21 is available for disbursement under AS 34.80.040.

22 **Sec. 34.80.090. Definitions.** In this chapter,

23 (1) "depository escrow account" means an account that holds escrow  
24 money pending completion of an escrow transaction and that is in a financial  
25 institution;

26 (2) "escrow money" means the money that is received by a settlement  
27 agent for an escrow transaction;

28 (3) "escrow transaction" means a transaction where, for the purpose of  
29 effecting and closing the sale, purchase, exchange, transfer, encumbrance, leasing, or  
30 other disposition of an interest in a single piece of residential real property, persons  
31 agree that

1 (A) money, written documents, evidence of title to real or  
 2 personal property, or other things of value will be delivered to a person for  
 3 retention until the happening of a specific event or the performance of a  
 4 prescribed condition; and

5 (B) upon the happening of the event or performance of the  
 6 condition, the person holding the things of value will deliver them to the  
 7 persons entitled to them under the escrow transaction agreement;

8 (4) "financial institution" means a financial institution

9 (A) whose accounts are insured by an agency of the federal  
 10 government;

11 (B) that is located in this state and does not meet the  
 12 requirements of (A) of this paragraph, but is subject to regulation by the  
 13 division of banking, securities and corporations in the Department of  
 14 Commerce and Economic Development; or

15 (C) that is located in another state and does not meet the  
 16 requirements of (A) of this paragraph, but is subject to regulation in the other  
 17 state by an agency comparable to the division of banking, securities and  
 18 corporations in the Department of Commerce and Economic Development;

19 (5) "item" means cash, a check, a negotiable order of withdrawal, a  
 20 share draft, a traveler's check, a money order, or an interbank electronic transfer; in  
 21 this paragraph, "check" includes a cashier's check;

22 (6) "residential real property" means real property on which there are  
 23 one to four attached or detached dwelling units, or any number of apartments if the  
 24 apartments are in a horizontal property regime formed under AS 34.07 or any number  
 25 of units if the units are in a common interest community created under AS 34.08;

26 (7) "settlement agent" means a person who handles an escrow  
 27 transaction for compensation, but does not mean a financial institution or other person  
 28 when the financial institution or other person collects money for the sole purpose of  
 29 applying the money to the payment of an indebtedness; "settlement agent" includes an  
 30 employee of a person who handles an escrow transaction for compensation when the  
 31 employee is carrying out employment duties related to the escrow transaction.

- 1                   **Sec. 34.80.095. Short title.** This chapter may be cited as the Good Funds Act.
- 2       \* **Sec. 4.** This Act applies to escrow transactions that begin on or after the effective date
- 3 of this Act. In this section, "escrow transaction" has the meaning given in AS 34.80.090,
- 4 enacted by sec. 3 of this Act.
- 5       \* **Sec. 5.** This Act takes effect July 1, 1999.