

CS FOR HOUSE BILL NO. 13(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/11/99

Referred: Rules

Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST

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; authorizing civil actions for violations of
4 certain escrow requirements; and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

9 * **Sec. 2.** AS 21.66.250 is amended to read:

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

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

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

1 **Sec. 34.80.010. Characterization of escrow money.** The money that is
2 received by a settlement agent for an escrow transaction is not the property of the
3 settlement agent and is not subject to execution, attachment, or other form of collection
4 for a claim against the settlement agent. Escrow money may not be used for a purpose
5 other than to fulfill the terms of the escrow transaction agreement.

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

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

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

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

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

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

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

1 (2) a cashier's check, a negotiable order of withdrawal, a money order,
2 or another item and the check, order of withdrawal, money order, or other item has
3 been finally paid before the disbursement; or

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

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

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

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

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

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

23 **Sec. 34.80.060. Civil action.** A person who suffers a loss of money or other
24 property as a result of a settlement agent's violation of this chapter may bring a civil
25 action against the agent to recover monetary damages that equal the value of the
26 money or other property lost. A court may not award punitive damages to the person.
27 In this section, "settlement agent" does not include an employee of a person who
28 handles an escrow transaction for compensation.

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

30 (1) "depository escrow account" means an account that holds escrow
31 money pending completion of an escrow transaction and that is in a financial

1 institution;

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

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

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

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

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

16 (A) whose accounts are insured by an agency of the federal
17 government;

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

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

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

29 (6) "residential real property" means real property on which there are
30 one to four attached or detached dwelling units, or any number of apartments if the
31 apartments are in a horizontal property regime formed under AS 34.07 or any number

1 of units if the units are in a common interest community created under AS 34.08;

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

8 **Sec. 34.80.095. Short title.** This chapter may be cited as the Good Funds Act.

9 * **Sec. 4.** This Act applies to escrow transactions that begin on or after the effective date
10 of this Act. In this section, "escrow transaction" has the meaning given in AS 34.80.090,
11 enacted by sec. 3 of this Act.

12 * **Sec. 5.** This Act takes effect July 1, 1999.