

Senate Bill 355

By: Senators Smith of the 52nd, Hamrick of the 30th, Cowser of the 46th, Harp of the 29th, Meyer von Bremen of the 12th and others

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,  
2 relating to general provisions concerning mortgages, conveyances to secure debt, and liens,  
3 so as to provide for the disbursement of certain settlement funds after closing even though  
4 such funds are not collected funds; to provide that lenders shall provide loan funds in the  
5 form of collected funds at or prior to closing; to provide for related matters; to provide an  
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to  
10 general provisions concerning mortgages, conveyances to secure debt, and liens, is amended  
11 by revising subsections (c) and (d) of Code Section 44-14-13, relating to disbursement of  
12 settlement proceeds, as follows:

13 "(c) Except as otherwise provided in this Code section, a settlement agent shall not cause  
14 a disbursement of settlement proceeds unless such settlement proceeds are collected funds.  
15 ~~Notwithstanding that a deposit made by a settlement agent to its escrow account does not~~  
16 ~~constitute collected funds, the~~ A settlement agent may cause a disbursement of disburse  
17 settlement proceeds from the its escrow account ~~in reliance on such deposit under any of~~  
18 ~~the following circumstances~~ after receipt of any of the following negotiable instruments  
19 even though the same are not collected funds:

20 (1) ~~The deposit is either~~ Either (A) a certified check, cashier's check, or treasurer's check  
21 issued by or drawn on, or (B) other similar primary obligation of a federally insured bank,  
22 savings bank, savings and loan association, or credit union, provided that such funds are  
23 immediately available and cannot be dishonored or refused when negotiated or presented  
24 for payment ~~or of any holding company or wholly owned subsidiary of any of the~~  
25 ~~foregoing~~;

26 (2) ~~The deposit is either a check or draft issued by a lender approved by the United States~~  
27 ~~Department of Housing and Urban Development (HUD);~~

1 ~~(3) The deposit is a check issued by a lender qualified to do business in Georgia;~~

2 ~~(4)(2) The deposit is a A check drawn on the escrow account of an attorney licensed to~~  
 3 practice law in the State of Georgia or on the escrow account of a real estate broker  
 4 licensed under Chapter 40 of Title 43, if the settlement agent has reasonable and prudent  
 5 grounds to believe that the ~~deposit~~ check will constitute collected funds in the settlement  
 6 agent's escrow account within a reasonable period;

7 ~~(5)(3) The deposit is a A check issued by the United States of America or any agency~~  
 8 thereof or the State of Georgia or any agency or political subdivision of the State of  
 9 Georgia; or

10 ~~(6)(4) The deposit is a personal A check or checks in an aggregate amount not exceeding~~  
 11 \$5,000.00 per loan closing.

12 For purposes of this Code section, ~~disbursement of settlement proceeds shall only be made~~  
 13 ~~from the proceeds of any of the instruments described in paragraphs (1) through (6) (4) of~~  
 14 this subsection ~~if such instruments are negotiable instruments~~ if they are negotiable in  
 15 accordance with the provisions of Code Section 11-3-104.

16 (d) The lender shall at or before the loan closing deliver loan funds to the settlement agent  
 17 ~~either in the form of collected funds or in the form of a negotiable instrument described in~~  
 18 ~~any of paragraphs (1) through (3) of subsection (c) of this Code section, provided that the~~  
 19 ~~lender must cause such instrument to be honored upon presentment for payment to the bank~~  
 20 ~~or other depository institution upon which such instrument was drawn."~~

## 21 SECTION 2.

22 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 23 without such approval.

## 24 SECTION 3.

25 All laws and parts of laws in conflict with this Act are repealed.