

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

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 for
6 an effective date and applicability; 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 (A) a certified check, A cashier's check, as defined in subsection~~
21 ~~(g) of Code Section 11-3-104, or treasurer's check issued by or drawn on, or (B) other~~
22 ~~similar primary obligation of~~ from a federally insured bank, savings bank, savings and
23 loan association, or credit union and issued by a lender for a closing or loan transaction,
24 provided that such funds are immediately available and cannot be dishonored or refused
25 when negotiated or presented for payment ~~or of any holding company or wholly owned~~
26 ~~subsidiary of any of the foregoing;~~

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

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

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

9 ~~(5)(3) The deposit is a A check issued by the United States of America or any agency~~
 10 ~~thereof or the State of Georgia or any agency or political subdivision, as such term is~~
 11 ~~defined in Code Section 50-15-1, of the State of Georgia; or~~

12 ~~(6)(4) The deposit is a personal A check or checks in an aggregate amount not exceeding~~
 13 ~~\$5,000.00 per loan closing.~~

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

18 (d) The lender shall at or before the loan closing deliver loan funds to the settlement agent
 19 ~~either~~ in the form of collected funds or in the form of a negotiable instrument described in
 20 ~~any of paragraphs (1) through (3) of subsection (c) of this Code section, provided that the~~
 21 ~~lender must cause such instrument to be honored upon presentment for payment to the bank~~
 22 ~~or other depository institution upon which such instrument was drawn; provided, however,~~
 23 ~~that in the case of refinancing, or any other loan where a right of rescission applies, the~~
 24 ~~lender shall, prior to the disbursement of the settlement proceeds and no later than~~
 25 ~~11:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, of the~~
 26 ~~next business day following the expiration of the rescission period required under the~~
 27 ~~federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.), deliver loan funds to the~~
 28 ~~settlement agent in one or more of the forms set forth in this Code section."~~

29 SECTION 2.

30 This Act shall become effective on July 1, 2008, and shall apply to all loans closed on or
 31 after July 1, 2008.

32 SECTION 3.

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