



DIGITAL FUNDS TRANSFER

PRINCIPLES FOR STATE GOOD FUNDS LAWS



Background

The title insurance and settlement services industries are supportive of efforts to modernize the process for the handling of funds transferred for escrow.

Many new digital solutions for funds transfer have emerged that expand the available options beyond traditional payment options of wires, checks, credit cards, debit cards and automated clearing house (ACH) transactions. Payment services such as Venmo, Zelle and PayPal are new alternatives. Today, real estate transactions in the United States are paid for in US dollars, but cybercurrencies are moving closer to mainstream. For example, Chase and Facebook both have announced their own forms of cybercurrencies, similar to Bitcoin.

Digital Funds Transfer is an emerging trend offered by title agents that provide settlement services for real estate transactions.

Good Funds Laws

Good Funds laws are designed to protect consumers and ensure a real estate transaction can be completed. Under most state laws, Good Funds are irrevocable and immediately dispersible on receipt. Updates to Good Funds laws should ensure new funds transfer methods have the same level of security, stability, payment assurance and consumer protection as the ones the industry currently relies upon. Introduction of new transfer methods that do not provide the same features as the existing methods run the risk of rescission of funds leading to loss of consumer funds and title company defaults or bankruptcies. The ability to reverse funds for up to 90 days under current Federal Consumer Financial Protection laws, may cause delays for consumers in closing times due to the risk of fraud or dispute (eg. ACH or credit card). Under federal law, consumers cannot waive their right to reverse a transaction, even for a real estate purchase. ***Widespread use of reversals could cause instability of liquidity for title companies, title underwriters and banks.***

Principles

The following principles should be considered when amending or modernizing Good Funds laws:

Bank-to-Bank Transfer – Each transaction should be considered a bank-to-bank transfer or deposit of funds and not treated as a consumer payment that includes protections allowing for reversals or is governed by the federal Electronic Funds Transfer Act and its implementing regulations. Transfers should not be considered as a consumer to business payment for goods or services (eg. ACH or credit card).

Linked to Consumer's Funds – Funds should be directly linked to and transferred from the consumer's demand deposit account. Funds may not be sourced from a consumer's credit card, cybercurrency, or any other non-depository source.

Backed by U.S. Dollar – Funds should be transferred in USD or converted to USD prior to transfer.

Escrow Account Destination – Funds should be transferred from a consumer's account at a depository institution directly into the settlement service provider's escrow account. Funds shouldn't move through other bank accounts or be transferred to cybercurrency payment ledgers before deposit in an escrow account.

Finality of Transfer – All funds transfer methods must be final with no ability to claw back or reverse the transaction.