

From: Fullington, Bonnie [mailto:Bonnie.Fullington@illinois.gov]

Sent: Tuesday, July 27, 2010 4:17 PM

Subject: FW: Statement Regarding Disbursements by Escrow Agents Before Escrow Deposits Have Cleared

The attached Statement will be posted shortly on the DFI Title Insurance Section website and each title insurance company with registered title insurance agents in Illinois should take immediate affirmative steps to assure that every registered title insurance agent receives a copy of the Statement, and understands and complies with the terms of it. In addition, you should assure that each independent contractor performing closing, escrow or settlement services on your behalf is also sent a copy of the Statement.

You are also free to refer others to the Statement to explain why you are unable to disburse escrow funds prior to the time escrow deposits clear and funds are available in the escrow account. Please do not hesitate to contact me if there are any questions concerning the Statement. Thank you.

Michael J. Rooney
Supervisor, Title Insurance Section
Department of Financial and Professional Regulation
100 W. Randolph, Room 9-143
Chicago, IL 60601
Office Phone: 312-814-6187
Cell Phone: 312-401-3454



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

PAT QUINN
Governor

BRENT E. ADAMS
Secretary

ROBERT E. MEZA
Director

Statement Regarding Disbursements by Escrow Agents **Before Escrow Deposits Have Cleared**

The Department has received numerous inquiries about the Illinois requirements concerning so-called “good funds” and how those requirements apply to disbursements by escrow agents before escrow deposits have cleared. While the Department neither issues “advisory opinions” nor dispenses legal advice, the public’s interest in this topic merits this statement from the Department. Parties seeking a legal opinion should consult their own attorney.

The Illinois Title Insurance Act, 215 ILCS 155, provides that escrow agents that conduct closings are required to comply with (1) provisions of the Act that deal with sound escrow practices and (2) any rules adopted by the Secretary. The statutory language and rules make it clear that an escrow agent may not disburse funds from any escrow account prior to the time that a deposit into that escrow account has cleared and the money has been made available in the escrow account.

This conclusion is not changed by the Act’s “good funds” provision. See 215 ILCS 155/26. That section sets forth exceptions to the rule prohibiting disbursement before deposits have cleared. If none of the exceptions applies, disbursement must not be made until the deposit check clears and the funds are available in the escrow account.

Moreover, an escrow agent that advances funds on a lender’s check before the deposit check clears is essentially making an interest-free, unsecured loan to the lender. An interest-free, unsecured loan could be deemed to be an unlawful referral fee, which violates the Act and federal law.