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Opinion No. 06-048

The Residential Closing Funds Distribution Act, 2005 Tennessee Public Acts, Chapter 273[1]

QUESTIONS

As to the Residential Closing Funds Distribution Act ("the Act"), Tenn. Code Ann. §§ 47-32-101, *et seq.*:

1. What is the meaning of the phrase "Federal Reserve check processing region"?

2. Under the Act, what instruments are acceptable, and in which parts of Tennessee are they acceptable, under Tenn. Code Ann. § 47-32-102(2)(E)?

3. May a settlement agent conduct a loan closing[2] if the lender has not disbursed funds to the settlement agent at or prior to the loan closing as required by Tenn. Code Ann. § 47-32-104?

4. If a settlement agent has a borrower begin to sign documents without funds present, may the closing be adjourned or recessed until funds arrive?

OPINIONS

1. The Act does not define "Federal Reserve check processing region." In a recently issued opinion, we concluded that a teller's check must be issued by a financial institution and either drawn on or payable through a bank assigned a number in the same Federal Reserve check

[1] This Act is now codified at Tenn. Code Ann. §§ 47-32-101, *et seq.*

[2]The Act's defines the term "loan closing" as the time and date the seller and buyer have agreed on for executing all documents necessary to the transaction. In the context of your questions, however, we believe you use the term to mean the actions necessary to conclude the transaction. In case law, we find that the term "closing" generally refers to the final steps of a transaction at which time consideration is paid. "Closing date" normally means the date arranged for the final exchange of performance by the parties to a contract. *See In re Popkin & Stern*, 196 F.3d 933, 939 (8th Cir. 1999); *Karakehian v. Boyer*, 900 P.2d 1273, 1278 (Colo. App. 1994), *affirmed in part and reversed in part* (on grounds not relevant to this discussion), 915 P.2d 1295 (Colo.1996).

processing region as the location of the settlement agent. Op. Tenn. Att'y Gen. 06-014 (January 19, 2006).

2. Under Tenn. Code Ann. § 47-32-102(2)(E), a teller's check or other official check is acceptable. The teller's check must be drawn on or payable through a bank assigned a number in the same Federal Reserve check processing region as the location of the settlement agent. For discussion, please see Op. Tenn. Att'y Gen. 06-014 (January 19, 2006).

3. Mortgage lenders are required under the Act to disburse the loan funds to the settlement agent prior to or at closing.

4. The settlement agent must have the loan funds to conclude the transaction. Assuming the mortgage lender has not disbursed the loan funds to the settlement agent, the settlement agent is not prohibited by the Act from recessing or adjourning the closing until he receives the funds.

ANALYSIS

1. Federal Reserve Check Processing Region

As noted in a recent opinion of this Office, the Residential Closing Funds Distribution Act[3] does not define the term "Federal Reserve check processing region." We think a court would conclude that, "in order to meet the requirements of the Good Funds Act, a teller's check must be drawn on or payable through a bank whose checks are processed through the same Federal Reserve check processing region. As a practical matter, this requirement would be met if the check is drawn on or payable through a bank assigned a number in the same Federal Reserve check processing region as the locale of the settlement agent." Op. Tenn. Att'y Gen. 06-014 (January 19, 2006). As explained in our earlier opinion, each such region has a distinctive routing number assigned by the Federal Reserve System.

2. Instruments Acceptable Under the Act

The Act defines acceptable forms of loan funds to include a teller's check or other official check. Tenn. Code Ann. § 47-32-102(2)(E). The teller's check must be drawn on or payable through a bank assigned a number in the same Federal Reserve check processing region as the location of the settlement agent. Opinion 06-014. This requirement necessarily dictates whether a teller's check would be acceptable in a particular geographic location. For discussion, please see Op. Tenn. Att'y Gen. 06-014 (January 19, 2006).

[3] Also known as the "Good Funds Act."

3. Mortgage Lender To Disburse Loan Funds Prior to or at the Loan Closing

Funds are required to complete a residential sales transaction where the funds are proceeds of a loan secured by a mortgage. Tenn. Code Ann. § 47-32-104 states that the mortgage lender[4] **must** disburse loan funds to the settlement agent before or at the loan closing. Assuming the mortgage lender abides by the law, the settlement agent will have funds to disburse at closing.

4. Adjourning or Recessing Closing Until Funds Arrive

Tenn. Code Ann. § 47-32-105 prohibits the settlement agent from disbursing funds from the escrow or settlement account until certain steps have been completed. This statutory section reads, in pertinent part, as follows:

> (a) No settlement agent shall disburse any funds from an escrow or settlement account in connection with a mortgage loan transaction identified in Tenn. Code Ann. § 47-32-103(a) until:
>
> (1) Disbursement of loan funds, designated for said mortgage loan, has been received by the settlement agent; and
>
> (2) Such additional funds necessary to be provided by the borrower or other third party to fully fund the transaction have been received. All additional funds required by this subdivision (a)(2) in excess of one thousand dollars ($1,000), shall be provided to the settlement agent in the one (1) of the forms identified in Tenn. Code Ann. § 47-32-102(2); and
>
> (3) All documents required to complete the transaction have been executed and are deemed suitable for recording.

Tenn. Code Ann. § 47-32-105.

Nothing in the Act prohibits the settlement agent from adjourning or recessing the closing pending disbursement of the loan funds to the settlement agent. Thus, the settlement agent may adjourn or recess a closing until he has received the loan funds.

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[4] A "mortgage lender" includes a "mortgage loan broker" and a "mortgage loan servicer." Tenn. Code Ann. § 47-32-102(2)(10).

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