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HOUSE BILL NO. 2789

Offered January 19, 2001

A BILL to amend and reenact § 6.1-2.23 of the Code of Virginia, relating to escrow accounts; disbursement of funds.

Patrons—Blevins and Ware

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:**1. That § 6.1-2.23 of the Code of Virginia is amended and reenacted as follows:**

§ 6.1-2.23. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the next business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed ~~and, if applicable, in accordance with § 6.1-2.13. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 6.1-2.13, except:~~

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement ~~which~~ that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing; provided, however, that an attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of this Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

INTRODUCED

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