



1995 ASSEMBLY BILL 999

March 7, 1996 - Introduced by Representatives HUEBSCH, ALBERS, MEYER, BRANDEMUEHL, DOBYNS, HANSON and HAHN, cosponsored by Senators RUDE, JAUCH, SCHULTZ, DRZEWIECKI and COWLES. Referred to Committee on Financial Institutions.

1 **AN ACT to create** 708.10 of the statutes; **relating to:** loan funds availability at
2 real estate closings.

Analysis by the Legislative Reference Bureau

This bill establishes requirements for the delivery of loan funds at certain loan closings affecting an interest in real property. The bill covers transactions by which an interest in land is created, aliened, mortgaged, assigned or otherwise affected in law or in equity, including refinancings of debt secured by a mortgage, but excluding open end credit plans. Under the bill, if a settlement agent is to deliver qualified loan funds to a borrower in real estate transactions, or to a 3rd party on behalf of a borrower, a lender may not permit a borrower to complete the loan settlement unless the lender unconditionally delivers qualified loan funds to the settlement agent before or immediately upon completion of the loan settlement. If the lender and the borrower have agreed that less than all of the loan funds are to be disbursed at the loan settlement, the lender is only required to deliver that amount in qualified loan funds. The bill defines qualified loan funds as a wire transfer, a cashier's check, a negotiable check on which the lender or an affiliate of the lender is the payer, or the transfer of loan funds into an account maintained by the lender or an affiliate of the lender in favor of the settlement agent or the borrower. The bill defines a loan settlement as the execution of the loan documentation, the delivery of the proceeds of the loan to the borrower and the expiration of any right to rescind the loan under federal or state law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 708.10 of the statutes is created to read:

4 **708.10 Loan funds at closings. (1) DEFINITIONS.** In this section:

1 (a) "Affiliate" means, with respect to any lender, any person that controls, is
2 controlled by, or is under common control with, the lender.

3 (b) "Borrower" means a person who borrows money from a lender to finance a
4 transaction under a loan that is secured by a real estate mortgage.

5 (c) "Lender" means all lenders identified under s. 706.11 (1), loan solicitors, as
6 defined under s. 224.71 (2), and savings and loan associations organized under ch.
7 215, except that "lender" does not include any federal, state or local unit of
8 government or any agency, political subdivision or instrumentality of such a unit of
9 government.

10 (d) "Loan settlement" means the occurrence of all of the following:

11 1. The execution by the borrower of a promissory note, mortgage and any other
12 documents that are required by the lender to be signed as a condition to the granting
13 of a loan to the borrower.

14 2. The delivery of the proceeds of the loan to the borrower or to a 3rd party on
15 behalf of the borrower.

16 3. If the borrower has a right to rescind the loan under federal or state law, the
17 expiration of the borrower's right of rescission.

18 (e) "Qualified loan funds" means any of the following:

19 1. Wire transfer.

20 2. Cashier's check.

21 3. A check that is negotiable, as defined in s. 403.104 (1), and on which the
22 lender or an affiliate of the lender is the payer.

23 4. Transfer of the loan funds by the lender into an account maintained by the
24 lender or an affiliate of the lender in favor of the settlement agent or borrower.

1 (f) "Settlement agent" means a person retained by the lender who provides
2 services that benefit the lender and borrower in a transaction and who receives and
3 disburses money in connection with the transaction.

4 (g) "Transaction" means a transaction under s. 706.01 (1), including a
5 refinancing of an existing indebtedness that is secured by a mortgage on real
6 property, except that "transaction" does not include an open end credit plan as
7 defined under 15 USC 1602 (i).

8 (h) "Wire transfer" means the electronic funds transfer system of the federal
9 reserve banks. When funds are transferred by wire transfer, delivery of the funds
10 is complete when a transaction number has been assigned to the wire transfer.

11 **(2) LOAN FUND DISPERSAL.** (a) Except as provided in par. (b), if a settlement
12 agent is to deliver qualified loan funds to the borrower in a transaction, or to a 3rd
13 party on behalf of the borrower, a lender may not permit or require a borrower to
14 complete a loan settlement unless the lender unconditionally delivers qualified loan
15 funds to the settlement agent before or immediately on completion of the loan
16 settlement.

17 (b) If the lender and the borrower have agreed that less than all of the loan
18 funds are to be disbursed at the loan settlement, the lender shall deliver qualified
19 loan funds to the settlement agent only in the amount to be disbursed at the loan
20 settlement.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to transactions entered into on the effective date of this
23 subsection.

24 **SECTION 3. Effective date.**

1 (1) This act takes effect on July 1, 1996, or on the first day of the 3rd month
2 beginning after publication, whichever is later.

3 (END)