



1997 ASSEMBLY BILL 503

September 2, 1997 - Introduced by Representatives SCHAFER, DUFF, ALBERS, GROTHMAN, HAHN, JENSEN and WALKER, cosponsored by Senators FARROW and ROESSLER. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 708.10 (1) (c) and 708.10 (2) (a); and **to create** 708.10 (3) of the
2 **statutes; relating to:** loan funds availability at real estate closings and
3 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, if a settlement agent is to deliver qualified loan funds to the borrower in a certain real estate closings, or to a 3rd party on behalf of the borrower, the lender may not permit or require a borrower to complete a loan settlement unless the lender unconditionally delivers "qualified loan funds" to the settlement agent before or immediately on completion of the loan settlement. Current law defines "qualified loan funds" to mean one of the following: 1) a wire transfer; 2) a cashier's check; 3) a negotiable check on which the lender or an affiliate of the lender is the payer; or 4) a transfer of loan funds by the lender into an account maintained by the lender or an affiliate of the lender in favor of the settlement agent or borrower. 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 required to deliver qualified loan funds to the settlement agent only in the amount to be disbursed at the loan settlement.

This bill creates an exception from these requirements if the lender, the settlement agent and a financial institution, other than the lender, enter into a form agreement, established by the department of financial institutions (DFI) by rule, with respect to the transaction. The bill requires that DFI's form agreement contain provisions that require: 1) the lender to obtain a line of credit from the financial institution, under which the financial institution agrees to advance funds to the lender; 2) the settlement agent to obtain insurance, in a form acceptable to the financial institution, from a title insurance company insuring the lender and the financial institution against loss caused by dishonesty or fraud by the settlement agent or by the failure of the settlement agent to comply with written closing instructions; 3) the settlement agent to obtain, on or before the day of the loan

settlement, confirmation from the financial institution that the financial institution has allocated funds under the lender's line of credit to fund the loan; 4) the financial institution to provide the settlement agent with a code or identification number confirming that the financial institution has allocated funds under the lender's line of credit; and 5) the financial institution to honor checks drawn upon it in connection with a loan to which a code or identification number has been assigned and permitting the settlement agent to disburse funds based on those checks at a closing.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 708.10 (1) (c) of the statutes is amended to read:

2 708.10 (1) (c) "Lender" means all lenders identified under s. 706.11 (1), loan
3 solicitors, as defined under s. ~~440.71(2)~~ 224.71 (2), and savings and loan associations
4 organized under ch. 215, except that "lender" does not include any federal, state or
5 local unit of government or any agency, political subdivision or instrumentality of
6 such a unit of government.

7 **SECTION 2.** 708.10 (2) (a) of the statutes is amended to read:

8 708.10 (2) (a) Except as provided in par. (b) or sub. (3), if a settlement agent is
9 to deliver qualified loan funds to the borrower in a transaction, or to a 3rd party on
10 behalf of the borrower, a lender may not permit or require a borrower to complete a
11 loan settlement unless the lender unconditionally delivers qualified loan funds to the
12 settlement agent before or immediately on completion of the loan settlement.

13 **SECTION 3.** 708.10 (3) of the statutes is created to read:

14 708.10 (3) EXCEPTION FOR FORM LOAN CLOSING AGREEMENTS. (a) Subsection (2)
15 does not apply to a transaction if the lender, the settlement agent and a financial
16 institution other than the lender enter into a form agreement under par. (b) with
17 respect to that transaction.

1 (b) The department of financial institutions shall promulgate rules
2 establishing a form agreement that a lender, a settlement agent and a financial
3 institution other than the lender may choose to enter into with respect to a
4 transaction to avoid the application of sub. (2) to the transaction. The form
5 agreement established under this paragraph shall contain provisions requiring all
6 of the following:

7 1. The lender to obtain a line of credit from the financial institution, under
8 which the financial institution will advance funds to the lender for the purpose of
9 enabling the lender to loan money to the borrower. The funds advanced under this
10 provision shall be secured by the note and mortgage entered into in connection with
11 the loan for which the advance was made.

12 2. The settlement agent to obtain insured closing letters from a title insurance
13 company insuring the lender and the financial institution against actual loss in
14 connection with the transaction caused by the failure of the settlement agent to
15 comply with written closing instructions or caused by fraud or dishonesty of the
16 settlement agent in connection with the transaction, subject to the conditions and
17 exclusions contained therein. The insured closing letters under this provision shall
18 be in a form and content acceptable to the financial institution and may not be
19 cancelled except upon 10 days' prior written notice to the lender and the financial
20 institution. The insured closing letters under this subdivision shall be provided
21 before a request is made under subd. 3.

22 3. The settlement agent to obtain, on or before the day of the loan settlement,
23 confirmation from the financial institution that the financial institution has
24 allocated funds under the lender's line of credit to fund the loan.

