

A synopsis of the "Good Funds Law"

If a lender lends money in a real estate transaction that involves a mortgage, the mortgage shall not be recorded until the lender has forwarded to either the mortgagor, the mortgagor's attorney, or the mortgagee's attorney the proceeds of the loan in the form of a certified check, bank treasurer's check, cashier's check, or wired funds, but the attorneys, once they receive the money, do not have to disburse the funds in that form.

The "Good Funds Law" is contained in G.L.c. 183, §63B. The full text of the statute is as follows:

No mortgagee who makes a loan to be secured by a mortgage or lien on real estate located in the commonwealth in conjunction with which, a mortgage deed evidencing the same is to be recorded in a registry of deeds or registry district in the commonwealth, shall deliver said deed or cause the same to be delivered into the possession of such registry of deeds or registry district for the purpose of the recording thereof unless prior to the time said deed is so delivered for recording, said mortgagee has caused the full amount of the proceeds of such loan due to the mortgagor pursuant to the settlement statement relevant thereto given to said mortgagor or in the instance of any such loan in which the full amount of the proceeds due to the mortgagor pursuant to the terms thereof are not to be advanced prior to said recording, so much thereof as is designated in the loan agreement, to be transferred to the mortgagor, the mortgagor's attorney or the mortgagee's attorney in the form of a certified check, bank treasurer's check, cashier's check or by a transfer of funds between accounts within the same state or federally chartered bank or credit union, or by the funds transfer system owned and operated by the Federal Reserve Banks, or by a transfer of funds processed by an automated clearinghouse; provided, however, that neither the mortgagor's attorney or the mortgagee's attorney shall be required to make disbursements or deliver said proceeds to the mortgagor in such form; provided, however, that the provisions of this section shall not apply to the commonwealth, its agencies, or political subdivisions.

The "Good Funds" Statute

The Good Funds Statute was enacted in 1994 to address the situation most infamously demonstrated in the Abbey Financial case, where a lender failed to fund a loan which had already closed, leaving attorneys in the precarious position of either having closed the loan and refusing to record the papers or having recorded the papers and not having the funds to pay off the seller and existing liens. In the case of Abbey Financial, several of the attorneys representing Abbey closed the loan and recorded the papers, including the mortgage, without having the necessary funds to payoff the seller or the existing liens.

The Good Funds Statute M.G.L. c.183, § 63b provides that no mortgagee who makes a loan to be secured by a mortgage, shall deliver the mortgage into the possession of the Registry of Deeds or Registry District for the purpose of recording unless prior to the

time the mortgage is so delivered, the mortgagee has caused the full amount of the proceeds of such loan due to the mortgagor, the mortgagor's attorney or the mortgagee's attorney in the form of a certified check, bank treasurer's check, cashier's check or transfer of funds. The statute further provides that neither the mortgagor's attorney or the mortgagee's attorney shall be required to make disbursements or deliver said proceeds to the mortgagor in such form. The primary purpose of the "Good Funds" statute was to allow consumers and conveyancers to rely on funds at a closing.

Joel A. Stein, Esq.
Friedman & Stein
25 Braintree Hill Office Park Suite 204
Braintree, Massachusetts 02184

Tel: (781) 848-8411
Fax: (781) 843-1573
E-Mail: jastein@friedmanstein.com

(Joel Stein is a past president of the Massachusetts Conveyancers Association <<http://www.massconveyancers.org/>>. He presently serves as director emeritus.)