

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 116

S.P. 45

In Senate, January 11, 1999

An Act to Protect Consumers in Real Estate Mortgage Transactions.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.
Cosponsored by Representative SAXL of Bangor and
Representatives: MADORE of Augusta, MAYO of Bath.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 33 MRSA c. 9, sub-c. I-A is enacted to read:**

6 **SUBCHAPTER I-A**
FUNDED SETTLEMENT ACT

8 **§521. Short title**

10 This subchapter may be known and cited as the "Funded
12 Settlement Act".

14 **§522. Definitions**

16 As used in this subchapter, unless the context otherwise
18 indicates, the following terms have the following meanings.

20 1. Disbursement of loan funds. "Disbursement of loan
22 funds" means the delivery of the loan funds by the lender to the
24 settlement agent in one or more of the following forms:

26 A. Cash;

28 B. Wired funds;

30 C. Certified check;

32 D. Checks issued by a state or political subdivision of a
34 state;

36 E. Cashier's check or teller's check with equivalent funds
38 availability in conformity with the federal Expedited Funds
40 Availability Act, 12 United States Code, Section 4001, et
42 seq.;

44 F. Checks issued by a state-chartered or federally
46 chartered financial institution;

48 G. Drafts issued by a state-chartered or federally
chartered credit union; or

H. Checks issued by an insurance company licensed and
regulated by the Bureau of Insurance.

2. Disbursement of settlement proceeds. "Disbursement of
settlement proceeds" means the payment of all proceeds of the
transaction by the settlement agent to the person entitled to the
proceeds.

2 3. Lender. "Lender" means a person regularly engaged in
making loans secured by mortgages on real estate and to whom the
debt is initially payable on the face of the loan documents.

4
6 4. Loan closing. "Loan closing" means that time agreed
upon by the borrower and lender when the execution of the loan
documents by the borrower occurs.

8
10 5. Loan documents. "Loan documents" means the note
evidencing the debt due the lender, the mortgage securing the
debt due to the lender and any other documents required by the
lender to be executed by the borrower as a part of the
transaction.

14
16 6. Loan funds. "Loan funds" means the gross or net
proceeds of the loan to be disbursed by the lender at loan
closing.

18
20 7. Settlement. "Settlement" means the time when the
settlement agent has received the duly executed deed, loan funds,
loan documents and other documents and funds required to carry
out the terms of the contract between the parties and the
settlement agent reasonably determines that prerecording
conditions of such contracts have been satisfied. "Parties" as
used in this subsection means the seller, purchaser, borrower,
lender and the settlement agent.

28
30 8. Settlement agent. "Settlement agent" means the person
responsible for conducting the settlement and disbursement of the
settlement proceeds and includes an individual, corporation,
partnership or other entity conducting the settlement and
disbursement of loan proceeds.

34 **§523. Applicability**

36 This subchapter applies to transactions:

38 1. Purposes. That are insured primarily for personal,
family or household purposes;

40
42 2. Not open-end credit. That are not open-end credit as
that term is defined in Title 9-A, section 1-301, subsection 26;
and

44
46 3. Secured by mortgages. That are secured by mortgages on
real estate containing not more than 4 residential dwelling units.

48 **§524. Duty of lender**

50 The lender shall cause, at or before loan closing,
disbursement of loan funds to the settlement agent; however, in

2 the case of a refinancing or any other loan when a right of
4 rescission applies, the lender shall cause, within one business
6 day after the expiration of the rescission period required under
8 the federal Truth-in-Lending Act, 15 United States Code, Section
1601, et seq, and the state truth-in-lending provisions, Title
9-A, article VIII, disbursement of loan funds to the settlement
agent. The lender is not entitled to receive or charge interest
on the loan until disbursement of loan funds and loan closing
have occurred.

10 **§525. Duty of settlement agent**

12 The settlement agent shall cause recordation of the deed,
14 mortgage or other documents required to be recorded and shall
16 cause disbursement of settlement proceeds within 2 business days
of settlement.

18 **§526. Penalty**

20 A lender or settlement agent who violates any provision of
22 this subchapter and causes actual damage to a consumer is subject
24 to a civil action by the aggrieved consumer in which the consumer
has the right to recover actual damages in an amount determined
by the court or \$5,000, whichever is greater, plus costs of the
action together with reasonable attorney's fees.

26 **§527. Enforcement**

28 With respect to lenders that are supervised financial
30 organizations as that term is defined in Title 9-A, section
32 1-301, subsection 38-A, a violation of this subchapter is deemed
34 an anticompetitive and deceptive practice and the Superintendent
of Banking may take appropriate action to ensure compliance with
36 this subchapter. With respect to all other supervised leaders,
as that term is defined in Title 9-A, section 1-301, subsection
39, the Director of Consumer Credit Regulation may take such
action.

38

40 **SUMMARY**

42 This bill requires that mortgage lenders provide closing
44 funds to settlement agents prior to or at the time of closing, to
prevent further situations in which consumers in the State close
on loans and then do not receive the funds.