

Title

FREQUENTLY ASKED ^ QUESTIONS

August 2011

We have just been presented with a check drawn on a foreign (non-US) bank. Is there anything about which I should be concerned with this check?

Yes. While banking policies vary between institutions, it can take weeks and even months for a foreign check to clear or be rejected. In the latter case (rejection), the funds can be removed from the depository account despite its having been “posted” and any disbursements made against those funds become the account holder’s problem.

It is important to remember that New Jersey’s Good Funds Law (NJSA 17:46B-10.1) prohibits title producers from disbursing closing proceeds unless those funds are “collected funds” which include attorneys’ and title producers’ trust or escrow account checks, cash, wire transfer, or certified, cashier’s, teller’s or bank checks.

Forewarned is forearmed – the real estate industry has experienced a series of scams involving foreign checks which seem to follow a similar pattern: a “buyer” contacts an attorney, realtor or title producer asking them to hold the deposit funds in connection with a potential real estate transaction. Those funds come in the form of a foreign check. Sometimes the “buyer” later asks to supplement the deposit with the funds they anticipate they will need to close and again provide a foreign check. Later, the deal “falls through” or in the alternative the “buyer” asks for release of some or all of the funds. The unwary escrow holder checks with his or her bank and is told that funds from the foreign check ‘are available.’ He or she then complies with the withdrawal request only to find out several months later that the foreign bank has rejected the check for any number of reasons (insufficient funds, account closed, etc.) and the funds are deducted from the escrow account leaving the escrow holder’s account underfunded.

When it comes to foreign funds, the best practice is to require that they be wired in to your account.

As always, feel free to address any questions you may have to a member of our underwriting staff.