

SCR 20:1.15 Safekeeping property; trust accounts and fiduciary accounts.

(Effective, 1/1/10)

(e) Operational requirements for trust accounts.

(5) Availability of funds for disbursement.

b. **Exception: Real estate transactions.** In closing a real estate transaction, a lawyer's disbursement of closing proceeds from funds that are received on the date of the closing, but that have not yet cleared, shall not violate sub. (e)(5)a. if those proceeds are deposited no later than the first business day following the closing and are comprised of the following types of funds:

1. a certified check;
2. a cashier's check, teller's check, bank money order, official bank check or electronic transfer of funds, issued or transferred by a financial institution insured by the federal deposit insurance corporation or a comparable agency of the federal or state government;
3. a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state;
4. a check issued by the state of Wisconsin, the United States, or a political subdivision of the state of Wisconsin or the United States;
5. a check drawn on the account of or issued by a lender approved by the federal department of housing and urban development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. s. 202.2;
6. a check from a title insurance company licensed in Wisconsin, or from a title insurance agent of the title insurance company, if the title insurance company has guaranteed the funds of that title insurance agent;
7. a non-profit organization check in an amount not exceeding \$5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account; and
8. a personal check or checks in an aggregate amount not exceeding \$5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account.

bm. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for any funds described in sub. (e)(5)b. that are not collected and for any fees, charges, and interest assessed by the financial institution on account of the funds being disbursed before the related deposit has cleared and the funds are available for disbursement. The lawyer shall maintain a subsidiary ledger for funds of the lawyer that are deposited in the trust account to reimburse the account for uncollected funds and to accommodate any fees, charges, and interest.

WISCONSIN COMMENT

SCR 20:1.15(e)(5)b. Real estate transactions.

SCR 20:1.15(e)(5)b. establishes an exception to the requirement that a lawyer only disburse funds that are available for disbursement, i.e., funds that have been credited to the account. This exception was created in recognition of the fact that real estate transactions in Wisconsin require a simultaneous exchange of funds. However, even under this exception, the funds from which a lawyer disburses the proceeds of the real estate transaction, i.e., the lender's check, draft, wire transfer, etc., must be deposited no later than the first business day following the date of the closing. In refinancing transactions, the lender's funds must be deposited as soon as possible, but no later than the first business day after the loan proceeds are distributed. Proceeds are generally distributed three days after the closing date.