

Fund availability in real estate transactions

SCR 20:1.15(e)(5)a. explicitly indicates that lawyers are not permitted to disburse funds from a trust account until those funds are available, i.e., until the deposits have “cleared.”

However, since real estate transactions in Wisconsin require a simultaneous exchange of funds at the closing, the trust account rule includes an exception to the availability requirement with respect to real estate transactions. Under [SCR 20:1.15\(e\)\(5\)b.](#) , lawyers can disburse certain types of funds, despite the fact that those funds are not yet available, so long as the funds are deposited within one business day of the closing. The types of funds that qualify for disbursement prior to availability include, among others, lenders' checks, cashier's checks and broker's checks.

Please note that, while personal checks are acceptable, the maximum amount of all personal checks per closing is limited to \$5,000. Pursuant to SCR 20:1.15(e)(5)bm., a lawyer who makes disbursements from his/her trust account is responsible for reimbursing that trust account for any uncollected funds, including personal checks. This does not limit the lawyer's right to seek reimbursement from the party that issued the uncollected check, but it does make the lawyer responsible for assuring that other clients' funds are not used to cover the shortfall relating to the disbursement of uncollected funds in a real estate transaction.