

## ALTA Model Good Funds Law FAQs

### ***What is the purpose and scope of this Model Law?***

The purpose of this Model is to provide an easy-to-use framework governing escrow disbursements and to enable the use of modern payment rails, including “real-time” or “instant” payments, while providing strong protections for both consumers and regulated escrow agents.

This Model Law governs what is often referred to as a “good funds” requirement for escrow agents who perform escrow services for real estate transactions. Its focus is the regulation of acceptable forms of funds received into an escrow account and the basic conditions that must be satisfied before an escrow agent is authorized to disburse funds from an escrow account.

### ***Why does an escrow agent need to be concerned with having “good funds”?***

Escrow agents need to be concerned with making sure they have received “good funds” into their escrow account because if the funds are not “good” the payment may be reversed. The finality of real estate transactions, the protection of consumers’ money entrusted to escrow agents, and the stability of the real estate economy are all dependent on the use of “good funds.”

### ***How does the Model work to protect consumers, escrow agents, and the real estate economy?***

Section 3 establishes four basic conditions before an escrow agent may disburse funds from an escrow account. These four requirements are intended to establish a framework that, if followed, will result in strong protections for both consumers and escrow agents.

- **Deposited and Credited:** Funds must be deposited with a federally insured depository institution and credited by the institution to an escrow account.
- **Balanced Ledger:** Deposited funds must be at least equal to transaction disbursements.
- **“Good Funds”:** Funds must be directly received by the escrow agent’s federally insured depository institution in a form deemed to be “good funds” under state statute.
- **Availability:** The federally insured depository institution must make the funds available for immediate use or withdrawal.

### ***What about disbursements from escrow? Are those also governed by this Model Legislation?***

No. The risks associated with disbursing funds are unique to that process and do not implicate the same general public policy concerns as the receipt of funds.

***What are the consequences of disbursing funds that are not “good funds”?***

It is assumed that this Model will be incorporated into an existing regulatory framework that governs title insurance companies, title insurance agents, or escrow agents. The Act would therefore most likely be enacted as part of a state’s existing insurance code or statutes.

***Who is an “escrow agent” subject to good funds requirements?***

The term “escrow agent” in Section 2(e) is intended to be broadly defined as anyone authorized under the law of the jurisdiction to provide escrow services in a real estate transaction. In some states, an escrow agent under this Model might need to be a licensed “escrow company” or “title insurance producer” under other applicable law. The authorization could also be inherent, for example a lawyer performing escrow functions in a real estate transaction by virtue of a license to practice law in a jurisdiction. However, this Model expressly excludes mortgage lenders, mortgage servicers, and banks. Any disbursement by a bank from an account held by the bank, whether via check or funds transfer, is backed by the general credit of the bank.

***What does it mean for funds to be “good funds”?***

In this Model, the term “good funds” is a statutory term referring exclusively to the form of payments described in the definition. If an escrow agent receives funds in one of the specified forms, such funds will constitute “good funds” for purposes of compliance with this Model’s requirements. This Model has been carefully designed to provide a reasonably high level of assurance that any payments received into escrow will not likely be subject to later reversal.

***What is the significance of funds being “denominated in United State dollars”?***

One of the core principles of the Model is that the only funds acceptable for use in a U.S. real estate transaction are those commonly known as commercial bank money (*i.e.*, money held in a deposit account at a commercial bank) denominated in U.S. dollars. The convertibility of commercial bank money to physical currency is what makes “one dollar” have a singular legal meaning of “one dollar”—whether the “dollar” is physically held in your hand or deposited in a bank. Receipt of U.S. dollars into an escrow account is necessary to account for receipts and disbursements, pay transactions proceeds, pay off lienholders, pay any required taxes and insurance premiums, and make other required disbursements in a real estate transaction.

By contrast, other forms of “money”—such as money denominated in foreign currencies or various forms of “cryptocurrency”—are not appropriate for use in real estate transactions under the Model. Indeed, some of these other forms of “money” that have been promoted in recent years may not be legally “money” at all but may instead constitute another type of personal property, such as a commodity or a security. Numerous additional regulatory, tax, exchange rate, money laundering, fraud, security, and other related risks may be associated with these alternative mediums of exchange.

***What is a “real-time” or “instant” payment?***

A core purpose of this Model Law is to authorize expressly the use of modern “real-time” or “instant” payment rails. A real-time payment system operates like a traditional wire transfer in that it functions as a real-time gross settlement (RTGS) service. That is, each payment is individually processed with each individual payment settled between banks handled on a gross basis.

The main differences are that real-time payments provide for nearly *instantaneous* final settlement and funds availability, and the systems operate *continuously* without processing cutoff times or other delays. In other words, they offer round-the-clock final payments every day of the year (24x7x365).

Two major real-time payment systems are now in operation. The RTP® System operated by The Clearing House has been in use since its launch in 2017. More recently, the FedNow® Service operated by the Federal Reserve Banks was launched in mid-2023.

***What is an ACH credit transfer?***

This Model expressly permits ACH “credit” transfers as “good funds.” An “automated clearing house” (ACH) payment is an electronic payment made over the ACH network governed by the Nacha® Operating Rules along with other applicable federal and state laws. There are two major ACH network operators, the Federal Reserve Banks (FedACH) and the Electronic Payments Network (EPN) privately operated by The Clearing House. Although FedACH processes most ACH payments, EPN handles nearly half of all commercial ACH payment transactions.

Only ACH credit transfers are permitted under this Model. This approach mirrors that of industry regulators *See, e.g.*, National Association of Insurance Commissioners (NAIC), Title Insurance Agent Model Act, Model #230, § 10 (2003).

A “credit” transfer is sometimes called a “push” payment because it is initiated by the payor “pushing” payment from its account to the payee’s account. As such, the instructions initiating the payment are communicated from the payor/originator to its bank through a credit “Entry” that results in payment to the payee/receiver’s bank. Consumer and non-consumer ACH credit transfers carry with them different information in their accompanying payment messages and are subject to some differences in applicable Nacha® Rules and other governing law.

***Do ACH credit transfers result in final payment similar to wire transfers?***

Not exactly. Unlike wire transfers and real-time payments, ACH credit transfers carry with them some risk of reversal for at least 5 banking days after the settlement date. *See* Nacha® Operating Rules § 2.10. This is true even for non-consumer payments because the ACH rules expressly override UCC Article 4A’s receiver finality rule by making all payments initially provisional. *Id.* §§ 2.3.3.2(d), (e); 3.1.6; 3.3.1.4. Although the Nacha® Rules do not *require* a

receiving bank to honor a reversal request, the payor/originator has broad rights to dispute the basis of the refusal. Such a dispute could lead to arbitration and other resolution mechanisms resulting in significant delays in final payment, even if the originating payor's grounds for reversal are not justified on the merits.

The federal government is required to make most of its payments over the ACH network. See EFT Rule, 31 C.F.R. Part 208. This includes not only tax refunds but also any payments to vendors, such as a seller of real estate or a title or escrow company handling a real estate transaction. See GREEN BOOK: A GUIDE TO FEDERAL GOVERNMENT ACH PAYMENTS (Jan. 2021). Technically, the federal government's vendor payments are still subject to the Nacha® reversal rules, but its vendor and payments approval processes reduce this risk.

***Are ACH debit transfers “good funds” under the Model?***

No. ACH “debit” transfers are not considered “good funds” under this Model. A debit transfer is a “pull” payment where an escrow agent initiates a debit entry to “pull” funds from a customer's account. Because of the consumer protections applicable to ACH debit transfers and the greater and longer risks of reversal, this Model does not permit them to be used in real estate transactions. For example, under the ACH rules a consumer has a right to contest and reverse an allegedly unauthorized ACH debit transfer for 60 calendar days or longer. See, e.g., Nacha® Operating Rules §§ 3.11, 3.13.

***How does this Model handle checks deposited into escrow?***

Checks are a major difficulty in any model “good funds” legislation because they carry risks and uncertainties that are unique to the check collection system. Determining whether any check is *good enough* to constitute “good funds”—absent waiting a long period of time for any applicable limitation periods run—is in some measure a matter of prudence. Certain problems with checks can result in valid returns by the payor bank months or even years after final payment. Federal law provides additional and rather complicated rules for the check collection and payment process that supplement and sometimes supersede the UCC rules.

The list of check types included in this Model and the conditions on their acceptability as “good funds” reflect only one set of possible reasonable policy choices in response to these basic difficulties. The Model aims to be broadly protective of both consumers and escrow agents by providing relatively reasonable assurance that a deposited check will result in approximately “good funds.” However, many states have and likely will make different policy choices with respect to checks (or different types of checks and other drafts) than those reflected in this Model. Therefore, the use of bracketed text indicates that **the provisions of this Model governing checks are merely optional recommendations and may be replaced by any suitable alternative desired by a state.**

***Why is a record from a bank stating that funds are “finally settled” considered “good funds” under the Model?***

Section 2(f)(viii) extends the definition of “good funds” to “any other funds credited to the escrow account” provided the bank confirms in a record—whether in written or electronic form—that the funds are “finally settled.” A bank that makes a representation that funds are “finally settled” is expected to conduct any necessary inquiry about the funds collection process to make such a determination, since the bank may be liable for the accuracy of the representation to its customer.

***Do escrow agents have to accept “good funds” in all the forms included in the Model?***

No. Section 4 contains a rule of construction intended to avoid any misunderstanding about the nature and purpose of this Model. The rules in Section 3 only govern the minimum requirements for the receipt of funds into escrow making them eligible for disbursement. They do not preclude the escrow agent from adopting a higher or more restrictive standard or imposing additional requirements as a matter of sound business practices or agreement. Section 4 confirms this reading of the Model.

***What about other payment types being proposed or promoted as “good funds” that are not included in the Model?***

For any new or additional payment rail or system to be included in the definitions of “good funds” it would need to be properly regulated on the state and federal levels and provide irrevocable payments available for immediate withdrawal. For example, to be included in the definition of “good funds,” a payment system should be a financial market utility designated as systemically important by the Financial Stability Oversight Council under Title VIII of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010. Both the laws and the private system rules governing the payment rail should provide strong assurance of payment finality substantially similar to the payment rails designated as “good funds” under the Model.