



DIGITAL FUNDS TRANSFER

BEST PRACTICES FOR AGENTS



Background

Many new digital solutions for funds transfer have emerged that expand the available options beyond traditional payment options of wires, checks, credit cards, debit cards and automated clearing house (ACH) transactions. Payment services such as Venmo, Zelle and PayPal are new alternatives. Today, real estate transactions in the United States are paid for in US dollars, but cybercurrencies are moving closer to mainstream. For example, Chase and Facebook both have announced their own forms of cybercurrencies, similar to Bitcoin.

The title industry has developed the following best practices for title agents and settlement providers that engage in the escrow of funds for real estate transactions.

Best Practices

The following best practices should be considered when accepting funds from consumers into escrow in a digital form:

- ▶ **Security – The application or process used to transfer funds from the consumer to the escrow account should:**
 - » Provide for end-to-end encryption for all facets of the process.
 - » Not require the consumer to enter or store their online banking credentials.
 - » Be supported by technology vendors:
 - With a current SAE 16 Type 2 certification on all aspects of their technology solution.
 - Vetted by title agents and settlement providers to ensure adequate levels of E&O and cyber insurance.

- ▶ **Transfer – The transfer of funds should:**
 - » Meet state Good Funds requirements which under most state laws are irrevocable and immediately disbursable on receipt.
 - » Take into account the acceptance capabilities of all parties to the transaction.
 - » Be considered a bank-to-bank transfer or deposit of funds and not treated as a consumer payment that includes protections allowing for recalls or is governed by the federal Electronic Funds Transfer Act and its implementing regulations. Transfers should not be considered as a consumer to business payment for goods or services (eg. ACH or credit card). Under federal law, consumers cannot waive their right to reverse a transaction, even for a real estate purchase.
 - » Be transferred from a consumer's account at a depository institution directly into the settlement service provider's escrow account. Funds shouldn't move through other bank accounts or be transferred to cryptocurrency payment ledgers before deposit in an escrow account.
 - » Be final. All funds transfer methods must be final with no ability to claw back or reverse the transaction.

- ▶ **Source – The source of funds should be:**
 - » Directly linked to and transferred from the consumer's demand deposit account. Funds may not be sourced from a consumer's credit card, cryptocurrency, or any other non-depository source.
 - » Backed by the U.S. Dollar (USD). Funds should be transferred in USD or converted to USD prior to transfer.