Digital Payments & Good Funds
National Underwriting Guide

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Where are we seeing digital payments in the real estate industry?

- Mobile Earnest Money Deposits
- Digital Funds Transfers
- Digital Currencies

What are good funds?

- The use of various payment rails in real estate transactions is governed by specific state good funds laws.
- These laws set requirements for acceptable forms of closing funds.
- They help ensure final and disbursable funds are received prior to real estate transfers or closings.
- They are designed to protect consumers and ensure a real estate transaction can be completed.
- Good funds statutes act as a deterrent to fraud, provide certainty in real estate transactions for consumers and create stability in the economic marketplace.
- To be considered good funds, they must be both **IRREVOCABLE** and **IMMEDIATELY DISPERSIBLE ON RECEIPT.**
    - Examples include (some items may vary depending on state law):
        - Cashier's checks, certified checks, teller's checks or bank money orders issued by a federally insured financial institution
        - Wires
        - Real Time Payments
        - RTP is run by the Clearing House
        - Fed Now is run by the Federal Reserve
        - Other negotiable instruments which have been on deposit in an escrow account a certain number of days

What forms of payments do not qualify as good funds?

- Payment methods that are revocable or not immediately dispersible <u>are not</u> considered good funds.
- Examples include:
    - Checks
        - A check payment needs time to clear and is not immediate.
    - Automated Clearing House (ACH)
        - ACH is funded by way of batch processing (processed at certain times of the day/week). The payment is not immediate and can be "clawed back" (aka, reversed/revoked).

- Federal law gives the consumer up to 90 days to reverse funds.
- Credit card payments
  - Credit card payments can be disputed and revoked.
- App payments like PayPal, Venmo, Zelle, etc.
  - While these appear immediate, these types of payments are ACH based.

Why do we care about what digital payments qualify as Good Funds?
Purchasing real estate is different than almost any other transaction out there. Imagine if after purchasing a house, the buyer had 90 days to come back and revoke their transaction. The title industry needs those funds paid at the closing table to be final and irrevocable so that the funds can be used to pay off prior liens, pay other fees like realtor fees or appraisal costs and disburse proceeds to the seller. Oftentimes, we see closings set in succession. The final, irrevocable nature of the payment allows title agents to close deals back-to-back. Without this peace of mind, the seller would not be able to take those funds from closing to purchase their next house.

Reminders: As an agent, you should be following your state-specific statutes on good funds. If you have any questions as to what qualifies in your state, please reach out to your local underwriting counsel.