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USE OF DRAFTS IN ESCROW TRANSACTIONS

A question has arisen as to the appropriateness of executing escrow instructions where the instrument transferring funds in the escrow transaction is a "draft." Since a draft is a conditional promise to pay, it is not appropriate for an escrow officer or title agent handling an escrow to immediately execute the escrow instructions upon receipt of the draft.

A draft, before it becomes the functional equivalent of cash, must be presented to the bank or financial institution where the account upon which the draft is drawn resides. The financial institution will then verify with the person upon whose account the draft is drawn that it is appropriate that disbursement of funds occur. It is this conditional aspect of the draft which makes it inappropriate for the escrow to be effectuated immediately upon receipt of the draft rather than when the draft has been honored.

The division hereby advises all licensees engaged in escrow transactions that it will consider the immediate execution of escrow instructions upon receipt of a draft as a diversion of fiduciary funds as defined in NRS 683A.400. Appropriate disciplinary measures will be taken in these instances.

Pursuant to NRS 679B.140 and NRS 679B.150, this standard is hereby made an order of the Commissioner and will be effective upon September 15, 1986.



DAVID A. GATES
Commissioner of Insurance

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