

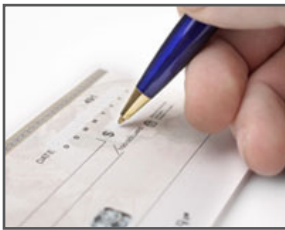


Bounced Checks Lead to HomeBanc Mortgage’s Bankruptcy

By Robin Salisian

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When HomeBanc Mortgage Corp. issued more than \$20 million in bounced checks to real estate closing attorneys, the company filed for Chapter 11 and left dozens of closing attorneys scrambling for money.



So what happened?

After HomeBanc’s financial backer, JPMorgan Chase, stopped providing funds, HomeBanc could no longer “provide funds on the mortgages it had sold,” says an article on www.law.com. Except they had already “issued checks to...lawyers,

who then disbursed the money to sellers, real estate agents, surveyors, and others.”

Ultimately, “these lawyers are really scrambling right now,” said C. Scott Logan, president of the Georgia Real Estate Closing Attorneys Association.

According to the article, “while the state’s ‘good funds’ law requires lawyers to wait until checks have cleared the bank before closing a mortgage, in practice, most real estate closing attorneys close mortgages when they have the check in hand, without waiting for the money to clear,” Logan said.

But lawyers’ concerns do not end with bounced checks. There is a possibility of having violated State Bar of Georgia rules.

The article continues to say that when lawyers distribute money from escrow accounts before the money is actually there, negative balances are created. And according to the Bar rules, it is illegal “for a lawyer to have a negative balance in an escrow account.”

State Bar General Counsel, William P. Smith III, however, gives lawyers some hope. “As long as the lawyers took steps to ensure the money disbursed to home sellers was covered, they aren’t in violation.” Also, the article says, “the lawyer hasn’t violated the bar’s ethical rules if the lawyer was unaware the funds were insufficient.”

But while lawyers may be saved from acting illegally, their personal pockets are suffering. Many have had to dip into their own funds to scrounge up the money by taking out home equity loans on their own homes or maxing out their credit cards. Somehow, somehow, the money must be collected.

“Most real estate closing lawyers probably never dreamed they would be in a position of having to front their own money for someone else’s mortgage,” said Logan. “None of us had ever really contemplated that scenario.”

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