

Chapter 156

(House Bill 1109)

AN ACT concerning

Real Property – Rescission of Sales Contracts – Return of Deposits

FOR the purpose of requiring the return of a deposit held by a real estate broker to a purchaser who rescinds a contract to purchase a residential dwelling, a cooperative interest, a condominium unit, or a lot in a homeowners association to comply with a certain law governing the maintenance and disposition of trust money by a real estate broker under certain circumstances; making ~~clarifying~~ conforming changes; and generally relating to the return of a deposit on rescission of a real property sales contract.

BY repealing and reenacting, without amendments,
Article – Business Occupations and Professions
Section 17–505
Annotated Code of Maryland
(2010 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Corporations and Associations
Section 5–6B–03(a), (b), and (c)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY adding to
Article – Corporations and Associations
Section 5–6B–03(c–1)
Annotated Code of Maryland
(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Real Property
Section 10–702(h), 11–126(e), and 11–135(f)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Article – Real Property
Section 11B–108(a), (b), and (c)
Annotated Code of Maryland
(2010 Replacement Volume and 2010 Supplement)

BY adding to

Article – Real Property

Section 11B–108(c–1)

Annotated Code of Maryland

(2010 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Business Occupations and Professions

17–505.

(a) A real estate broker shall maintain trust money in an account authorized under this Part I of this subtitle until:

(1) the real estate transaction for which the trust money was entrusted is consummated or terminated;

(2) the real estate broker receives proper written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money;

(3) on an interpleader filed by the real estate broker, a court orders a different disposition; or

(4) the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted and the real estate broker, in the real estate broker's sole discretion, decides to distribute the trust money in accordance with subsection (b) of this section.

(b) (1) Prior to distributing the trust money under subsection (a)(4) of this section, the real estate broker shall notify both the owner and the beneficial owner that the real estate broker intends to distribute the trust money to the person who, in the good faith opinion of the real estate broker, is entitled to receive the trust money in accordance with the terms of the real estate contract which established the trust.

(2) The notice required under this subsection shall:

(i) be in writing;

(ii) state whether the trust money will be paid to the owner or beneficial owner; and

(iii) disclose to the owner and the beneficial owner that:

1. either party may prevent distribution of the trust money under subsection (a)(4) of this section by submitting a protest within 30 days from the date the notice was delivered or mailed by the real estate broker; and

2. if neither party submits a protest within 30 days from the date the notice was delivered or mailed by the real estate broker, the trust money will be distributed in accordance with the real estate broker's notice.

(3) The notice required under this subsection shall be:

(i) hand delivered to both the owner and beneficial owner; or

(ii) sent by certified mail, return receipt requested, and regular mail to both the owner and beneficial owner.

(4) (i) An owner or beneficial owner may protest the distribution of the trust money.

(ii) An owner or beneficial owner shall submit the protest to the real estate broker holding the trust money within 30 days from the date the notice required in paragraph (1) of this subsection was delivered or mailed by the real estate broker.

(iii) A protest shall be in writing and either:

1. hand delivered; or

2. sent by certified mail, return receipt requested, and regular mail.

(5) (i) If a written protest is received by the real estate broker, the real estate broker shall distribute the trust money in accordance with subsection (a)(1), (2), or (3) of this section.

(ii) If no written protest is received by the real estate broker holding the trust money, the real estate broker shall distribute the trust money in accordance with the terms of the notice as required in this section.

(c) When the duty of the real estate broker to maintain trust money in an account terminates, the real estate broker promptly shall account for all trust money.

(d) A real estate broker may invest trust money:

(1) as the owner and beneficial owner of the trust money instruct in writing; or

(2) as the real estate broker, owner, and beneficial owner of the trust money agree in writing.

(e) A real estate broker may not be liable to an owner or beneficial owner of the trust money for:

(1) a good faith decision to distribute the trust money under subsection (a)(4) of this section; or

(2) a decision not to distribute the trust money under subsection (a)(4) of this section.

(f) An agreement under which a real estate broker is entrusted with the trust money shall contain a statement that the real estate broker may distribute the trust money in accordance with subsection (b) of this section if the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted.

Article – Corporations and Associations

5-6B-03.

(a) Within 15 days after a contract is signed or a public offering statement is received, whichever occurs later, the initial purchaser may rescind, in writing, the contract without any liability on the initial purchaser's part, and shall thereupon be entitled to the prompt return of the deposit made on account of the contract.

(b) (1) After a contract is signed and before the issuance of a membership certificate, the developer must deliver to the initial purchaser a copy of any amendments, supplements, or modifications to the public offering statement.

(2) The initial purchaser may rescind, in writing, the contract within 5 days after receiving any of the aforesaid items which are material in nature, without any liability on the initial purchaser's part, and shall be entitled to the return of any deposit made on account of the contract.

(c) If the developer fails to comply with the requirements of this section, the initial purchaser before the issuance of a membership certificate may rescind, in writing, the contract, without liability on the initial purchaser's part and shall thereupon be entitled to the prompt return of any deposits made on account of the contract.

(C-1) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL ESTATE BROKER, THE RETURN OF THE DEPOSITS TO AN INITIAL PURCHASER UNDER SUBSECTION (A), (B), OR (C) OF THIS SECTION SHALL COMPLY WITH THE

PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

Article – Real Property

10-702.

(h) (1) A purchaser who does not receive the disclosure or disclaimer statement on or before entering into the contract of sale has the unconditional right, upon written notice to the vendor or vendor’s agent:

(i) To rescind the contract of sale at any time before the receipt of the disclosure or disclaimer statement or within 5 days following receipt of the disclosure or disclaimer statement; and

(ii) To the immediate return of any deposits made on account of the contract.

(2) A purchaser’s right to rescind the contract of sale under this subsection terminates if not exercised:

(i) Before making a written application to a lender for a mortgage loan, if the lender discloses in writing at or before the time application is made that the right to rescind terminates on submission of the application; or

(ii) Within 5 days following receipt of a written disclosure from a lender who has received the purchaser’s application for a mortgage loan, if the lender’s disclosure states that the purchaser’s right to rescind terminates at the end of that 5-day period.

(3) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER THIS SUBSECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

11-126.

~~(e) (1) Any purchaser may RESCIND IN WRITING THE CONTRACT OF SALE WITHOUT STATING ANY REASON AND WITHOUT ANY LIABILITY ON THE PURCHASER’S PART AND SHALL BE ENTITLED TO THE RETURN OF ANY DEPOSITS MADE ON ACCOUNT OF THE CONTRACT at any time;~~

~~[(1)] (1) [within] WITHIN 15 days following receipt of all of the information required under subsection (b) of this section or the signing of the contract, whichever is later; and~~

~~[(2)] (II) [within] WITHIN 5 days following receipt of the information required under subsection (d) of this section[, rescind in writing the contract of sale without stating any reason and without any liability on his part, and he shall be entitled to the return of any deposits made on account of the contract].~~

(e) (1) Any purchaser may at any time [(1)](I) within 15 days following receipt of all of the information required under subsection (b) of this section or the signing of the contract, whichever is later; and [(2)](II) within 5 days following receipt of the information required under subsection (d) of this section, rescind in writing the contract of sale without stating any reason and without any liability on his part, and he shall be entitled to the return of any deposits made on account of the contract.

(2) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER THIS SUBSECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

11-135.

(f) (1) Any purchaser may at any time within 7 days following receipt of all of the information required under subsection (a) or (b) of this section, whichever is applicable, rescind in writing the contract of sale without stating any reason and without any liability on his part.

(2) The purchaser, upon rescission, is entitled to the return of any deposits made on account of the contract.

(3) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL ESTATE BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER THIS SUBSECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

11B-108.

(a) A person who enters into a contract as a purchaser but who has not received all of the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this title, as applicable, shall, prior to settlement, be entitled to cancel the contract and to the immediate return of deposits made on account of the contract.

(b) (1) Any purchaser who has not received all of the disclosures required under § 11B-105 or § 11B-106 of this title, as applicable, 5 calendar days or more before the contract was entered into, within 5 calendar days following receipt by the purchaser of the disclosures required by § 11B-105(a) and (b) or § 11B-106(a) and (b) of this title, as applicable, may cancel in writing the contract without stating a reason and without liability on the part of the purchaser.

(2) The purchaser shall be entitled to the return of any deposits made on account of the contract, except that the vendor shall be entitled to retain the cost of reproducing the information specified in § 11B-105(b), § 11B-106(b), or § 11B-107(b) of this title, as applicable, or \$100, whichever amount is less, if the disclosures are not returned to the vendor at the time the contract is cancelled.

(c) Any purchaser may within 3 calendar days following receipt by the purchaser of a change in mandatory fees and payments exceeding 10 percent of the amount previously stated to exist or any other substantial and material amendment to the disclosures required by § 11B-105 or § 11B-106 of this title, as applicable, which adversely affects the purchaser, cancel in writing the contract without stating a reason and without liability on the part of the purchaser, and the purchaser shall be entitled to the return of deposits made on account of the contract.

(C-1) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL ESTATE BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER SUBSECTION (A), (B), OR (C) OF THIS SECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, April 12, 2011.