

# HOUSE BILL 1608

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By: **Delegates Morgan, Holmes, Clark, Frush, Rey, and Wilson**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Trust Money – Escrow Trust Accounts**

3 FOR the purpose of requiring an escrow agent to deposit trust money into an escrow trust  
4 account within a certain period of time; requiring that an escrow trust account be  
5 kept only for trust money and be kept separately from an escrow agent's other  
6 accounts; prohibiting an escrow agent from using trust money for any purpose other  
7 than that for which it is entrusted to the escrow agent; requiring that an escrow trust  
8 account be maintained at a financial institution insured by a certain entity; requiring  
9 that an escrow trust account be a certain type of financial account, subject to a  
10 certain exception; requiring an escrow agent to maintain a trust account until a  
11 certain occurrence; requiring an escrow agent to provide certain notice before  
12 distributing trust money under certain circumstances; authorizing an owner or a  
13 beneficial owner to protest a certain distribution in a certain manner; providing for  
14 the distribution of trust money under certain circumstances; requiring an escrow  
15 agent to provide a prompt accounting of all trust money when the duty of the escrow  
16 agent to maintain the trust money in an account terminates; authorizing an escrow  
17 agent to invest rather than deposit trust money under certain circumstances;  
18 providing that an escrow agent may not be held liable for certain decisions; requiring  
19 an agreement under which an escrow agent is entrusted with trust money to contain  
20 a certain statement; establishing certain record-keeping requirements for an escrow  
21 agent; requiring an escrow agent to provide certain information to the Attorney  
22 General on reasonable request and at the escrow agent's expense; establishing  
23 certain penalties for a violation of this Act; defining certain terms; providing for the  
24 application of this Act; and generally relating to requirements for escrow trust  
25 accounts and the treatment of trust money.

26 BY renumbering

27 Article – Real Property

28 Section 10–801 and the subtitle “Subtitle 8. Miscellaneous Provisions”

29 to be Section 10–901 and the subtitle “Subtitle 9. Miscellaneous Provisions”

30 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2015 Replacement Volume and 2017 Supplement)

BY adding to

Article – Real Property

Section 10–801 through 10–806 to be under the new subtitle “Subtitle 8. Escrow Trust Accounts”

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 10–801 and the subtitle “Subtitle 8. Miscellaneous Provisions”, respectively, of Article – Real Property of the Annotated Code of Maryland be renumbered to be Section(s) 10–901 and the subtitle “Subtitle 9. Miscellaneous Provisions”, respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

### Article – Real Property

#### SUBTITLE 8. ESCROW TRUST ACCOUNTS.

##### 10–801.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “BENEFICIAL OWNER” MEANS A PERSON OTHER THAN THE OWNER OF THE TRUST MONEY FOR WHOSE BENEFIT AN ESCROW AGENT IS ENTRUSTED TO HOLD TRUST MONEY.

(C) “ESCROW AGENT” MEANS A PERSON ENGAGED IN THE BUSINESS OF RECEIVING ESCROWS FOR DEPOSIT OR DELIVERY.

(D) “TRUST MONEY” MEANS A DEPOSIT, A PAYMENT, OR ANY OTHER MONEY THAT A PERSON ENTRUSTS TO AN ESCROW AGENT TO HOLD FOR:

(1) THE BENEFIT OF THE OWNER OR BENEFICIAL OWNER OF THE TRUST MONEY; AND

(2) A PURPOSE THAT RELATES TO A REAL ESTATE TRANSACTION INVOLVING REAL ESTATE IN THE STATE.

##### 10–802.

THIS SUBTITLE DOES NOT APPLY TO:

1           (1) A PERSON DOING BUSINESS UNDER A STATE OR FEDERAL LAW  
2 RELATING TO BANKS, TRUST COMPANIES, BUILDING AND LOAN ASSOCIATIONS, OR  
3 SAVINGS AND LOAN ASSOCIATIONS; OR

4           (2) A REAL ESTATE AGENT OR BROKER LICENSED UNDER TITLE 17 OF  
5 THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

6 **10-803.**

7           (A) EXCEPT AS OTHERWISE AUTHORIZED UNDER § 10-804 OF THIS  
8 SUBTITLE, AN ESCROW AGENT SHALL DEPOSIT TRUST MONEY INTO AN ESCROW  
9 TRUST ACCOUNT NO LATER THAN 7 BUSINESS DAYS AFTER RECEIVING THE MONEY.

10          (B) AN ESCROW AGENT SHALL MAINTAIN AN ESCROW TRUST ACCOUNT:

11           (1) SEPARATELY FROM THE ESCROW AGENT'S OWN ACCOUNTS; AND

12           (2) SOLELY FOR TRUST MONEY.

13          (C) AN ESCROW AGENT MAY NOT USE TRUST MONEY FOR ANY PURPOSE  
14 OTHER THAN THAT FOR WHICH IT IS ENTRUSTED TO THE ESCROW AGENT.

15          (D) AN ESCROW TRUST ACCOUNT SHALL BE MAINTAINED AT A FINANCIAL  
16 INSTITUTION LOCATED IN THE STATE WHOSE DEPOSITS ARE INSURED BY:

17           (1) THE FEDERAL DEPOSIT INSURANCE CORPORATION;

18           (2) THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION;

19           (3) THE NATIONAL CREDIT UNION ADMINISTRATION;

20           (4) THE STATE OF MARYLAND DEPOSIT INSURANCE FUND  
21 CORPORATION; OR

22           (5) THE CREDIT UNION INSURANCE CORPORATION.

23          (E) UNLESS THE OWNER AND BENEFICIAL OWNER GIVE WRITTEN  
24 INSTRUCTIONS TO THE CONTRARY, AN ESCROW TRUST ACCOUNT SHALL BE:

25           (1) A NONINTEREST-BEARING CHECKING ACCOUNT;

26           (2) A NONINTEREST-BEARING SAVINGS ACCOUNT; OR

1           **(3) ANY COMBINATION OF THESE ACCOUNTS.**

2   **10-804.**

3           **(A) AN ESCROW AGENT SHALL MAINTAIN TRUST MONEY IN AN ACCOUNT**  
4 **AUTHORIZED UNDER THIS SUBTITLE UNTIL:**

5                   **(1) THE REAL ESTATE TRANSACTION FOR WHICH THE TRUST MONEY**  
6 **WAS ENTRUSTED IS CONSUMMATED OR TERMINATED;**

7                   **(2) THE ESCROW AGENT RECEIVES PROPER WRITTEN INSTRUCTIONS**  
8 **FROM THE OWNER AND BENEFICIAL OWNER DIRECTING WITHDRAWAL OR OTHER**  
9 **DISPOSITION OF THE TRUST MONEY;**

10                   **(3) ON AN INTERPLEADER FILED BY THE ESCROW AGENT, A COURT**  
11 **ORDERS A DIFFERENT DISPOSITION; OR**

12                   **(4) THE OWNER OR THE BENEFICIAL OWNER OF THE TRUST MONEY**  
13 **FAILS TO COMPLETE THE REAL ESTATE TRANSACTION FOR WHICH THE TRUST**  
14 **MONEY WAS ENTRUSTED AND THE ESCROW AGENT, IN THE ESCROW AGENT'S SOLE**  
15 **DISCRETION, DECIDES TO DISTRIBUTE THE TRUST MONEY IN ACCORDANCE WITH**  
16 **SUBSECTION (B) OF THIS SECTION.**

17           **(B) (1) BEFORE DISTRIBUTING THE TRUST MONEY UNDER SUBSECTION**  
18 **(A)(4) OF THIS SECTION, THE ESCROW AGENT SHALL NOTIFY BOTH THE OWNER AND**  
19 **THE BENEFICIAL OWNER THAT THE ESCROW AGENT INTENDS TO DISTRIBUTE THE**  
20 **TRUST MONEY TO THE PERSON WHO, IN THE GOOD-FAITH OPINION OF THE ESCROW**  
21 **AGENT, IS ENTITLED TO RECEIVE THE TRUST MONEY IN ACCORDANCE WITH THE**  
22 **TERMS OF THE REAL ESTATE CONTRACT THAT ESTABLISHED THE TRUST.**

23                   **(2) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL:**

24                           **(i) BE IN WRITING;**

25                           **(ii) STATE WHETHER THE TRUST MONEY WILL BE PAID TO THE**  
26 **OWNER OR BENEFICIAL OWNER; AND**

27                           **(iii) DISCLOSE TO THE OWNER AND THE BENEFICIAL OWNER**  
28 **THAT:**

29                                   **1. EITHER PARTY MAY PREVENT DISTRIBUTION OF THE**  
30 **TRUST MONEY UNDER SUBSECTION (A)(4) OF THIS SECTION BY SUBMITTING A**

1 PROTEST WITHIN 30 DAYS AFTER THE DATE THE NOTICE WAS DELIVERED OR  
2 MAILED BY THE ESCROW AGENT; AND

3                   2. IF NEITHER PARTY SUBMITS A PROTEST WITHIN 30  
4 DAYS AFTER THE DATE THE NOTICE WAS DELIVERED OR MAILED BY THE ESCROW  
5 AGENT, THE TRUST MONEY WILL BE DISTRIBUTED IN ACCORDANCE WITH THE  
6 ESCROW AGENT'S NOTICE.

7                   (3) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL BE:

8                   (I) HAND DELIVERED TO BOTH THE OWNER AND THE  
9 BENEFICIAL OWNER; OR

10                   (II) SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED,  
11 AND REGULAR MAIL TO BOTH THE OWNER AND THE BENEFICIAL OWNER.

12                   (4) (I) AN OWNER OR A BENEFICIAL OWNER MAY PROTEST THE  
13 DISTRIBUTION OF THE TRUST MONEY.

14                   (II) AN OWNER OR A BENEFICIAL OWNER SHALL SUBMIT A  
15 PROTEST TO THE ESCROW AGENT HOLDING THE TRUST MONEY WITHIN 30 DAYS  
16 AFTER THE DATE THE NOTICE REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION  
17 WAS DELIVERED OR MAILED BY THE ESCROW AGENT.

18                   (III) A PROTEST SHALL BE IN WRITING AND:

19                   1. HAND DELIVERED; OR

20                   2. SENT BY CERTIFIED MAIL, RETURN RECEIPT  
21 REQUESTED, AND BY REGULAR MAIL.

22                   (5) (I) IF A WRITTEN PROTEST IS RECEIVED BY THE ESCROW  
23 AGENT, THE ESCROW AGENT SHALL DISTRIBUTE THE TRUST MONEY IN  
24 ACCORDANCE WITH SUBSECTION (A)(1), (2), OR (3) OF THIS SECTION.

25                   (II) IF NO WRITTEN PROTEST IS RECEIVED BY THE ESCROW  
26 AGENT HOLDING THE TRUST MONEY, THE ESCROW AGENT SHALL DISTRIBUTE THE  
27 TRUST MONEY IN ACCORDANCE WITH THE TERMS OF THE NOTICE AS REQUIRED IN  
28 THIS SECTION.

29                   (C) WHEN THE DUTY OF THE ESCROW AGENT TO MAINTAIN TRUST MONEY  
30 IN AN ACCOUNT TERMINATES, THE ESCROW AGENT PROMPTLY SHALL ACCOUNT FOR  
31 ALL TRUST MONEY.

1           **(D) AN ESCROW AGENT MAY INVEST TRUST MONEY:**

2                   **(1) AS THE OWNER AND THE BENEFICIAL OWNER OF THE TRUST**  
3 **MONEY INSTRUCT IN WRITING; OR**

4                   **(2) AS THE ESCROW AGENT, OWNER, AND BENEFICIAL OWNER OF THE**  
5 **TRUST MONEY AGREE IN WRITING.**

6           **(E) AN ESCROW AGENT IS NOT LIABLE TO AN OWNER OR A BENEFICIAL**  
7 **OWNER OF THE TRUST MONEY FOR:**

8                   **(1) A GOOD-FAITH DECISION TO DISTRIBUTE THE TRUST MONEY**  
9 **UNDER SUBSECTION (A)(4) OF THIS SECTION; OR**

10                   **(2) A DECISION NOT TO DISTRIBUTE THE TRUST MONEY UNDER**  
11 **SUBSECTION (A)(4) OF THIS SECTION.**

12           **(F) AN AGREEMENT UNDER WHICH AN ESCROW AGENT IS ENTRUSTED WITH**  
13 **THE TRUST MONEY SHALL CONTAIN A STATEMENT THAT THE ESCROW AGENT MAY**  
14 **DISTRIBUTE THE TRUST MONEY IN ACCORDANCE WITH SUBSECTION (B) OF THIS**  
15 **SECTION IF THE OWNER OR THE BENEFICIAL OWNER OF THE TRUST MONEY FAILS**  
16 **TO COMPLETE THE REAL ESTATE TRANSACTION FOR WHICH THE TRUST MONEY WAS**  
17 **ENTRUSTED.**

18 **10-805.**

19           **(A) AN ESCROW AGENT SHALL MAINTAIN ALL RECORDS OF TRUST MONEY IN**  
20 **A SECURED AREA IN THE OFFICE OF THE ESCROW AGENT.**

21           **(B) RECORDS OF TRUST MONEY SHALL BE MAINTAINED:**

22                   **(1) FOR AT LEAST 5 YEARS AFTER THE DATE OF THE CLOSING OF A**  
23 **REAL ESTATE TRANSACTION; OR**

24                   **(2) IF A REAL ESTATE TRANSACTION IS NOT CLOSED, FOR AT LEAST 5**  
25 **YEARS AFTER THE DATE ON WHICH THE TRUST MONEY WAS DELIVERED TO THE**  
26 **ESCROW AGENT.**

27           **(C) AN ESCROW AGENT MAY KEEP AND STORE AN ELECTRONIC RECORD**  
28 **UNDER THIS SECTION IF:**

29                   **(1) THE ELECTRONIC RECORD CANNOT BE ERASED OR EDITED;**

1           **(2) THE ELECTRONIC RECORD WAS MADE OR PRESERVED BY THE**  
2 **ESCROW AGENT OR AN EMPLOYEE OF THE ESCROW AGENT AS PART OF THE REGULAR**  
3 **COURSE OF BUSINESS;**

4           **(3) THE ORIGINAL RECORD FROM WHICH THE ELECTRONIC RECORD**  
5 **WAS COPIED WAS MADE OR PREPARED BY THE ESCROW AGENT OR THE ESCROW**  
6 **AGENT'S EMPLOYEE AT OR NEAR THE TIME OF THE ACTIVITY DESCRIBED IN THE**  
7 **ELECTRONIC RECORD;**

8           **(4) A CUSTODIAN OF THE ELECTRONIC RECORD IS ABLE TO IDENTIFY**  
9 **THE STORED RECORD, ITS MODE OF PREPARATION, AND ITS MODE OF STORAGE; AND**

10           **(5) THE ELECTRONIC STORAGE SYSTEM IN WHICH THE ELECTRONIC**  
11 **RECORD IS SAVED CONTAINS A RELIABLE INDEXING SYSTEM THAT PROVIDES:**

12                   **(I) CONVENIENT ACCESS TO THE ELECTRONIC RECORD;**

13                   **(II) APPROPRIATE QUALITY CONTROL OF THE STORAGE**  
14 **PROCESS; AND**

15                   **(III) CHRONOLOGICAL ARRANGEMENTS OF STORED**  
16 **ELECTRONIC RECORDS.**

17           **(D) (1) ON REASONABLE NOTICE FROM THE ATTORNEY GENERAL, AN**  
18 **ESCROW AGENT SHALL ALLOW A REPRESENTATIVE OF THE ATTORNEY GENERAL TO**  
19 **ENTER THE ESCROW AGENT'S PLACE OF BUSINESS DURING BUSINESS HOURS TO**  
20 **INSPECT RECORDS KEPT IN ACCORDANCE WITH THIS SECTION.**

21           **(2) AN ESCROW AGENT SHALL PROVIDE A PAPER COPY OF ANY**  
22 **DOCUMENT OR RECORD REQUESTED BY THE ATTORNEY GENERAL AT THE EXPENSE**  
23 **OF THE ESCROW AGENT.**

24           **(3) ON DEMAND, AN ESCROW AGENT SHALL DISPLAY TO THE**  
25 **ATTORNEY GENERAL ALL RECORDS, BOOKS, AND ACCOUNTS OF ANY MONEY HELD**  
26 **IN TRUST.**

27 **10-806.**

28           **AN ESCROW AGENT WHO VIOLATES A PROVISION OF THIS SUBTITLE IS GUILTY**  
29 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:**

30           **(1) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000 OR**

1 IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; AND

2                   (2) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE NOT  
3 EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

4                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2018.