

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 222

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

Real Property - Residential Real Estate Transactions - Escrow Agents

This bill requires an escrow agent to enter into a written agreement with the purchaser and seller when the escrow agent agrees to hold trust money in escrow for a residential real estate transaction. The written agreement must contain (1) the amount of the trust money entrusted to the agent; (2) the date the trust money was entrusted to the agent; (3) the responsibility of the agent to notify the purchaser and seller of trust money returned due to dishonored funds; (4) the conditions under which the escrow agent may release the trust money; and (5) the process to address disputes over the release of the trust money. Nothing in the bill may be construed to prohibit an escrow agent from transferring trust money to another escrow agent, if the purchaser of the residential real estate for which the trust money is held chooses the escrow agent to whom the trust money is transferred.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations.

Local Effect: The bill is not anticipated to impact local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Beneficial owner” means a person other than the owner of the trust money for whose benefit an escrow agent holds trust money. “Escrow agent” means a person engaged in the business of receiving escrows for deposit or delivery. “Trust money” means a deposit, an additional deposit, or a down payment made by a purchaser that the purchaser 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 the purchase or sale of residential real estate in the State.

The bill applies only to (1) real property improved by four or fewer single-family dwellings that are intended for human habitation and (2) unimproved real property zoned for residential use by the local zoning authority of the county or municipality in which the real property is located. Additionally, the bill *does not* apply to (1) banks, trust companies, savings and loan associations, savings banks, or credit unions; (2) a home builder registered under specified provisions of the Business Regulation Article who is engaged in the initial sale of residential real estate; or (3) a real estate salesperson, associate real estate broker, or real estate broker licensed under specified provisions of the Business Occupations and Professions Article.

Current Law:

Home Builders

New home builders are required to register with the Home Builder and Home Builder Sales Representative Registration Unit within the Consumer Protection Division of the Office of the Attorney General. To register, a home builder must submit an application that must, among other things, include the account number and the name of the financial institution that holds the builder's escrow account, if the applicant elects to hold deposits in an escrow account.

A builder must also report the election made regarding deposit monies under § 10-301 of the Real Property Article. Section 10-301 generally pertains to escrow accounts, surety bonds, or irrevocable letters of credit maintained by a builder receiving a deposit in connection with the sale and purchase of a new single-family residential unit, the construction of which is not completed at the time of contracting the sale. A builder must hold the deposit in an escrow account segregated from all other funds to assure the return of the funds under specified circumstances. The builder must maintain the escrow account, surety bond, or irrevocable letter of credit until the earlier of (1) the granting of a deed to the property on which a completed residential unit is located to the purchaser; (2) the return of the money to the purchaser; or (3) the forfeiture of the money by the purchaser, under the terms of the sales contract. The builder may make withdrawals from an escrow account to finance the construction of a residential unit to pay documented claims for labor or material in accordance with a schedule agreed to by the purchaser in writing.

Real Estate Salespersons, Associate Real Estate Brokers, and Real Estate Brokers

Title 17, Subtitle 5 of the Business Occupations and Professions Article establishes various requirements for real estate salespersons, associate real estate brokers, and real estate

brokers related to trust money. An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services must promptly submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided services. Generally, a real estate broker must deposit trust money in an account that is maintained by the real estate broker within seven business days after the acceptance of a contract of sale by both parties, and the account must be separate from the real estate broker's own accounts and used solely for trust money. A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the broker.

A real estate broker must maintain a trust until:

- the real estate transaction for which the trust money was entrusted is consummated or terminated;
- the real estate broker receives written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money;
- on an interpleader filed by the real estate broker, a court orders a different disposition; or
- 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 specified procedures.

Other provisions similarly govern the distribution of funds when parties fail to complete a real estate transaction from which a trust is created, required notices, protests to distributions following failure to complete a real estate transaction, limitations on liability, and the required contents of any agreement related to the authority of a real estate broker to distribute funds.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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