



Real Property Section

To: Members of the Senate Judicial Proceedings Committee

From: William A. O'Connell, Chair, Legislative Committee, Real Property Section

Date: March 15, 2021

Subject: **HB 19** – Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money

Position: **Support**

The Maryland State Bar Association (MSBA) Real Property Section **supports House Bill 19 Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money**. HB 19 seeks to clarify when a written agreement signed by the buyer and seller in a residential real estate transaction concerning a money deposit is required. This bill simply seeks to carry out what was intended when MD Code, Real Property Article §10-802 was enacted in 2019.

Traditionally, Maryland Real Estate Brokers have held earnest money deposits made by buyers in connection with the purchase and sale of residential property. When holding such deposits, Brokers are governed by MD Code, Business Occupations and Professions Article §17-501 *et seq.* However, because of a growing trend among Brokers to refuse to hold earnest money deposits or simply the inability to do so because they do not maintain trust accounts, residential real estate settlement companies began to hold them as an accommodation. Real Estate Settlement Companies (aka Title Insurance Producers) are in turned governed by MD Code, Insurance Article §22-105 with respect to trust money.

However, disputes between the buyer and seller often arise over the earnest money deposit. Real Property Article §10-802 was enacted to deal with such disputes when they arise and give clear instructions to the settlement company (aka escrow agent) on how to proceed when they do. But when the settlement companies tried to comply with the new law they were stymied in their efforts because the statute was drafted too broadly and captured sums that were deposited by buyers for which the seller had no claim if the transaction did not close (i.e. the “down payment”). In addition, there is no need to say “additional deposit” because whether it is the “original” deposit or an “additional” deposit, it is all “deposit.” The word “deposit” is used because that is the word used by the Maryland Association of Realtors and the Greater Capital Area Association of Realtors in their forms to describe the “earnest money deposit.” Because the statute is too broad in this area, settlement agents struggle to come up with a form that deals with down payments at the outset or the situation where they need another agreement signed when the buyer deposits the down payment at the time of closing. Section 10-802 in essence, uses too many words to describe the one thing the statute was intended to capture.

Likewise, the word “entrusted” is too broad and has been replaced with “delivered.” Many times,

buyers will simply wire funds or mail checks to settlement agents without advance warning or any indication as to purpose of the funds. Settlement agents many not even realize that funds have been “entrusted” to them. Delivery requires a knowing acceptance. Once the settlement agent understands the purpose of the funds and connects it to a particular transaction, it can accept the funds and prepare the escrow agreement called for in the statute.

HB 19 will clarify existing law and carry out the intended purpose for it when MD Code, Real Property Article §10-802 was enacted in 2019. For the reasons stated above, the MSBA Real Property Section **supports HB 19 and urges a favorable committee report.** Thank you and please do not hesitate to contact me at (443) 741-4536 or waoconnell@firstam.com.