

HB 19.pdf

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Position: FAV



House Bill 19 – Residential Real Estate Transactions – Escrow Agents and Trust Money

Position: Support

Maryland REALTORS® supports HB 19 which seeks to clarify the law passed two years ago regarding the holding of escrow money in residential real estate transactions.

In 2019, the Legislature passed legislation, HB 222, to require a consumer notice when a title company or attorney holds escrow money for a residential real estate transaction. Real Estate Brokers, who also hold escrow money, had already been subject to a very detailed regulatory process and oversight over their handling of escrow money. While HB 222 did not provide as detailed a process for non-licensees (real estate), it at least established a disclosure so that consumers would understand how their escrow money would be handled – particularly in cases when a dispute arose.

HB 19 doesn't change the intent of the original law but seeks to clarify that the bill applies only to escrow money held for deposit on a home purchase. At times, escrow agents may hold other deposits (like money to fix the furnace) and those other escrows not involving deposits shouldn't be subject to the notice law.

The Maryland REALTORS® believes HB 19 provides important clarity and recommends a favorable report.

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MLTA HB19 written testimony for JPR.pdf

Uploaded by: Jones, Lisa

Position: FAV



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To: Members of the Senate Judicial Proceedings Committee
From: MLTA Legislative Committee
Date: March 12, 2021
Subject: **HB 19** – Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money

Position: **Support**

The Maryland Land Title Association (MLTA) **supports House Bill 19 Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money**. The MLTA supports HB 19, a bill that would 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 clarifies 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. In connection therewith, Brokers are governed by MD Code, Business Occupations and Professions Article §17-501 *et seq.* However, because of a growing trend among Brokers to decline to hold earnest money deposits on behalf of their agents or simply lack the ability to do so because they do not maintain active trust accounts, residential real estate settlement companies began to hold them as an accommodation. Real Estate Settlement Companies (aka Title Insurance Producers) are in turn governed by MD Code, Insurance Article §22-105 with respect to trust money.

However, disputes between the buyer and seller frequently arise over the issue of the earnest money deposit. Real Property Article §10-802 was enacted in an attempt to prevent these disputes from occurring and provide clear instructions to the settlement company (now acting as the escrow agent) when they do. When the settlement companies have tried to comply with the new law, they have been 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”). Additionally, 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 in the Maryland REALTORS® and the Greater Capital Area Association of REALTORS® (GCAAR) use in their contract forms to describe the “earnest money deposit.” With the statute being too broad in this

area, settlement agents struggle to come up with a form that deals with down payments at the outset. If it is not dealt with at the outset, then the situation arises where the settlement agents need to have another agreement signed when the buyer deposits the down payment at the time of closing.

Likewise, the word “entrusted” 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 may 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 then prepare the escrow agreement called for in the statute.

HB 19 will clarify the 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 Maryland Land Title Association **strongly supports HB 19 and urges a favorable committee report.**

Thank you.

HB 19 Testimony Support JPR [3.15.21].pdf

Uploaded by: O'Connell, William

Position: FAV



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.