

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 256

(Senator Garagiola)

Education, Health, and Environmental Affairs

Economic Matters

Real Estate Brokers - Limited Liability Companies - Payment of Commission

This bill authorizes one or more licensed real estate salespersons and licensed associate real estate brokers who are affiliated with the licensed broker to form a limited liability company (LLC), with the consent of the licensed real estate broker. All members of the LLC must be licensed real estate salespersons or licensed associate real estate brokers. The bill authorizes licensed real estate salespersons and licensed associate real estate brokers who are members of the LLC to direct commissions to the LLC.

Fiscal Summary

State Effect: None. The bill would not directly affect State operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Except under specified circumstances, a real estate broker, an associate real estate broker, or a real estate sales person is prohibited from paying compensation, in any form, for the provision of real estate brokerage services to any person who is not a licensed real estate broker.

The prohibition does not apply to: (1) an individual who is licensed in another state and who is able to divide fees with a licensed broker in Maryland; or (2) a professional service corporation formed by salespersons and associate brokers.

Background: Generally, a domestic LLC may be organized and conduct business in any state for any lawful purpose, except the business of insurance. An LLC has a separate existence and offers its members the protection from liability similar to a corporation while providing the pass-through taxation of a partnership. Unlike a corporation, an LLC does not issue stock shares. Instead, members make capital contributions and receive a share of distributions and profits. Unless otherwise provided in the operating agreement, its profits and losses are allocated among its members in proportion to their respective capital interests, and distributions are made in proportion to the share of profits. Capital contributions may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or perform services.

Statutes regarding the payment of commission to licensed real estate brokers, salespersons, etc. was written prior to the common use of LLCs as business entities. Various statutes have had to be amended in recent years to accommodate the existence of LLCs, which are a relatively new form of business organization.

Small Business Effect: Licensed real estate brokers, salespersons, etc., who form LLCs would be eligible to receive commissions under the bill.

According to the 1997 Economic Census, there were 3,956 firms involved in real estate, rental, and leasing. These firms had approximately 17,100 employees and an annual payroll of approximately \$561.9 million.

Additional Information

Prior Introductions: None.

Cross File: HB 464 (Delegate Fulton) is listed as a crossfile; however, the bills are not identical.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Association of Realtors; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2005
ncs/ljm Revised - Senate Third Reader - March 17, 2005

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