

HOUSE BILL 68

C2, I3, N1

8lr0962

(PRE-FILED)

By: **Delegates McConkey and Love**

Requested: October 25, 2007

Introduced and read first time: January 9, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Guaranty Fund – Fund Balance and Maximum Recovery**

3 FOR the purpose of increasing the minimum level at which the State Real Estate
4 Commission must maintain the Real Estate Guaranty Fund; increasing the
5 maximum amount a person may recover for a claim brought against the Fund;
6 altering a certain notice that a real estate broker must include in a sales
7 contract; increasing the maximum amount for which the Commission may order
8 a payment by the Fund; providing for the application of this Act; and generally
9 relating to the Real Estate Guaranty Fund.

10 BY repealing and reenacting, with amendments,
11 Article – Business Occupations and Professions
12 Section 17–402(a), 17–403, 17–404, 17–405, and 17–410(b)
13 Annotated Code of Maryland
14 (2004 Replacement Volume and 2007 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Business Occupations and Professions**

18 17–402.

19 (a) The Commission shall:

20 (1) establish a Real Estate Guaranty Fund; and

21 (2) maintain the Guaranty Fund at a level of at least:

22 (I) **\$250,000 FOR THE CALENDAR YEAR 2008;**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (II) **\$300,000 FOR THE CALENDAR YEAR 2009;**
2 (III) **\$350,000 FOR THE CALENDAR YEAR 2010;**
3 (IV) **\$400,000 FOR THE CALENDAR YEAR 2011; AND**
4 (V) **\$500,000 FOR THE CALENDAR YEAR 2012 AND FOR**
5 **EACH SUBSEQUENT CALENDAR YEAR.**

6 17-403.

7 (a) (1) Subject to paragraph (2) of this subsection, before the Commission
8 issues a real estate broker license, an associate real estate broker license, or a real
9 estate salesperson license to any individual, the individual shall pay a fee of \$20 to be
10 credited to the Guaranty Fund.

11 (2) Regardless of how many times an individual applies to the
12 Commission for a license under this title, the Commission only may charge the
13 individual once for the fee required under this subsection.

14 (b) If the amount in the Guaranty Fund falls below [\$250,000] **THE**
15 **MINIMUM LEVEL SPECIFIED IN § 17-402(A) OF THIS SUBTITLE**, the Commission
16 shall assess each real estate broker, each associate real estate broker, and each real
17 estate salesperson a fee in an amount that will return the Guaranty Fund to [a level
18 of] at least [\$250,000] **THAT MINIMUM LEVEL.**

19 17-404.

20 (a) (1) Subject to the provisions of this subtitle, a person may recover
21 compensation from the Guaranty Fund for an actual loss.

22 (2) A claim shall:

23 (i) be based on an act or omission that occurs in the provision of
24 real estate brokerage services by:

- 25 1. a licensed real estate broker;
26 2. a licensed associate real estate broker;
27 3. a licensed real estate salesperson; or
28 4. an unlicensed employee of a licensed real estate
29 broker;

1 (ii) involve a transaction that relates to real estate that is
2 located in the State; and

3 (iii) be based on an act or omission:

4 1. in which money or property is obtained from a person
5 by theft, embezzlement, false pretenses, or forgery; or

6 2. that constitutes fraud or misrepresentation.

7 (b) The amount recovered for any claim against the Guaranty Fund may not
8 exceed [\$25,000] **\$100,000** for each claim.

9 (c) (1) A person may not recover from the Guaranty Fund for any loss
10 that relates to:

11 (i) the purchase of any interest in a limited partnership that is
12 formed for the purpose of investment in real estate;

13 (ii) a joint venture that is promoted by a licensed real estate
14 broker, a licensed associate real estate broker, or licensed real estate salesperson for
15 the purpose of investment in real estate by 2 or more individuals; or

16 (iii) the purchase of commercial paper that is secured by real
17 estate.

18 (2) A claim under the Guaranty Fund may not be made by:

19 (i) the spouse of the licensee or the unlicensed employee alleged
20 to be responsible for the act or omission giving rise to the claim; or

21 (ii) the personal representative of the spouse of the licensee or
22 the unlicensed employee alleged to be responsible for the act or omission giving rise to
23 the claim.

24 (d) A claim under this subtitle shall be submitted to the Commission within
25 3 years after the claimant discovers or, by the exercise of ordinary diligence, should
26 have discovered the loss or damage.

27 17-405.

28 A real estate broker shall include in each sales contract that is provided by the
29 real estate broker a written notice to the buyer that the buyer is protected by the
30 Guaranty Fund in an amount not exceeding [\$25,000] **\$100,000**.

31 17-410.

1 (b) (1) The Commission may order payment by the Guaranty Fund only
2 for the actual monetary loss suffered by the claimant as a result of the claim proven by
3 the claimant.

4 (2) For any claim, the Commission may not order a payment by the
5 Guaranty Fund of more than [~~\$25,000~~] **\$100,000**.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
7 construed to apply only prospectively and may not be applied or interpreted to have
8 any effect on or application to any claim against the Real Estate Guaranty Fund that
9 is based on an act or omission that occurred before the effective date of this Act.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2008.