

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1109

(Delegate Vaughn)

Environmental Matters

Judicial Proceedings

Real Property - Rescission of Sales Contracts - Return of Deposits

This bill specifies that the standards for the maintenance and disposition of a trust account by a licensed real estate broker apply to deposits held by a licensed real estate broker on behalf of the purchaser of a residential dwelling, a cooperative interest, a condominium unit, or a lot in a homeowners association.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Real Estate Broker Trust Accounts

If a real estate broker receives trust money, the broker must deposit the trust money into a trust account within seven days of the acceptance of a contract of sale by both parties. The broker must maintain the trust money in an authorized account until (1) the real estate transaction for which the trust money was entrusted is consummated or terminated; (2) the broker receives proper written instructions from the owner and beneficial owner directing disposition of the money; (3) on an interpleader filed by the broker, a court

orders a different disposition; or (4) the owner or beneficial owner of the trust fails to complete the real estate transaction and the broker distributes the trust money in accordance with the terms of the real estate contract which established the trust.

If the broker must distribute the funds because of a failure by the owner or beneficial owner to complete the real estate transaction, the broker must distribute the funds to the person who, in the good faith opinion of the real estate broker, is entitled to receive the trust money in accordance with the terms of the real estate contract. The broker must provide specified written notice to each party detailing whether the trust money will be paid to the owner or beneficial owner and both parties' rights to protest the decision.

An owner or beneficial owner may protest the distribution of the trust money by submitting the protest within 30 days from the date the notice was delivered or mailed by the broker. If a written protest is received by the broker, the broker must distribute the funds in another lawful manner.

Common Ownership Communities (COC) and Single-family Residential Properties

For a vendor to enforce a contract for the sale of residential real property, the vendor must provide the purchaser with a public offering statement or other specified disclosures, on or before the time a contract is executed. The time period allowed for rescinding a contract depends on the type of residential real property and whether these documents were provided.

Condominiums: If an initial contract of sale of a condominium unit has not been amended, the purchaser may rescind in writing the contract of sale within 15 days following the receipt of a public offering statement or the signing of the contract, whichever is later. If there has been an amendment, the purchaser may rescind the contract in writing within five days following receipt of the copy of any amendments. Regardless of whether the vendor amends the contract of sale, the purchaser may rescind without stating any reason and is entitled to the return of any deposits made on account of the contract. For a resale of a condominium unit, any purchaser may rescind in writing, within seven days following receipt of specified disclosures, the contract of sale without stating any reason and without any liability on the purchaser's part.

Homeowners' Associations (HOAs): A person who has entered into a contract to purchase a lot in an HOA but who has not received all of the specified disclosures is entitled to cancel the contract prior to settlement and receive an immediate return of deposits made on account of the contract. If a purchaser has not received all of the required specified disclosures within five calendar days or more before entering into the contract, the purchaser may cancel, within five calendar days following the eventual receipt of the required specified disclosures, the contract without stating a reason and

without liability on the part of the purchaser. In this scenario, the vendor is entitled to retain the cost of reproducing the information or \$100, whichever is less.

Cooperative Housing Corporations: If a developer fails to provide the specified documents, an initial purchaser may rescind, in writing, the contract before the issuance of a membership certificate without liability on the purchaser's part and is entitled to a prompt return of any deposits made on account of the contract. Within 15 days after a contract is signed or a public offering statement is received, whichever is later, the initial purchaser may rescind, in writing, the contract without any liability on the purchaser's part and is entitled to prompt return of any deposit.

After a contract is signed but before the issuance of a membership certificate, the developer must deliver to the purchaser a copy of any changes to the public offering statement. If the purchaser rescinds in writing the contract within five days of receipt of a copy to any material change to the public offering statement, the purchaser is entitled to a return of any deposit made on account of the contract.

Single-family Residential Real Property: A purchaser who does not receive the disclosure or disclaimer statement on or before entering into the contract of sale has the unconditional right, upon written notice to the vendor or vendor's agent (1) to rescind the contract of sale at any time before the receipt of the disclosure or disclaimer statement or within five days following receipt of the disclosure or disclaimer statement; and (2) to the immediate return of any deposits made on account of the contract.

In the event a purchaser does not receive the disclosure or disclaimer statement on or before entering into the contract of sale, the purchaser's right to rescind the contract of sale is terminated if not exercised (1) before making a written application to a lender for a mortgage loan, if the lender discloses in writing at or before the time the application is made that the right to rescind terminates on submission of the application; or (2) within five days following receipt of a written disclosure from a lender who has received the purchaser's application for a mortgage loan, if the lender's disclosure states that the purchaser's right to rescind terminates at the end of that five-day period.

Small Business Effect: A small business vendor of a single-family residential real property or residential real property in a COC may more frequently receive distribution of a deposit when a real estate broker is used under the bill. Currently, the purchaser is entitled to the return of any deposits made on account of the contract if a timely rescission is made.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 10, 2011
mm/kdm Revised - House Third Reader - March 28, 2011

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510