

# SENATE BILL 538

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By: **Senator Zirkin**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate Brokers – Contracts – Real Estate Reform Act of 2012**

3 FOR the purpose of establishing that a presumed agency relationship between a real  
4 estate broker licensee and a buyer or lessee terminates if a certain period of  
5 time has passed since the licensee and the buyer or lessee entered into the  
6 relationship; establishing that the burden is on the licensee to establish that a  
7 presumed agency relationship has not terminated under certain provisions of  
8 law; requiring a brokerage agreement to contain a termination date occurring  
9 no later than a certain period of time after the date on which the agreement was  
10 entered into; establishing that a certain real estate broker is deemed to have  
11 earned the customary or agreed commission only if certain circumstances are  
12 met, including a requirement that the contract with the broker be performed  
13 subject to a certain exception; providing that the broker may still earn the  
14 commission if the contract is prevented, hindered, or delayed by any act of the  
15 employer; repealing a provision that allows a special agreement to alter the  
16 statutory conditions under which a real estate broker may earn a commission;  
17 authorizing a certain real estate contract to contain a provision for the payment  
18 of legal fees by the losing party in a certain legal action only if the provision is  
19 equally applicable to both parties to the contract; declaring the intent of the  
20 General Assembly; making stylistic changes; and generally relating to the  
21 presumed buyer's or lessee's real estate agency relationships, length of real  
22 estate contracts, and payment of commission and legal fees in real estate  
23 contracts.

24 BY repealing and reenacting, with amendments,  
25 Article – Business Occupations and Professions  
26 Section 17–533(b) and 17–534(a) and (b)  
27 Annotated Code of Maryland  
28 (2010 Replacement Volume and 2011 Supplement)

29 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Real Property  
2 Section 14–105  
3 Annotated Code of Maryland  
4 (2010 Replacement Volume and 2011 Supplement)

5 BY adding to  
6 Article – Real Property  
7 Section 14–105.1  
8 Annotated Code of Maryland  
9 (2010 Replacement Volume and 2011 Supplement)

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

12 **Article – Business Occupations and Professions**

13 17–533.

14 (b) **(1)** A presumed buyer’s or lessee’s agency relationship shall be  
15 terminated if:

16 **[(1)] (I)** either the buyer, lessee, or licensee expressly states a wish  
17 to terminate the presumed agency relationship; **[or]**

18 **[(2)] (II)** the licensee and either the buyer or the lessee enter into a  
19 brokerage agreement; **OR**

20 **(III) 3 MONTHS HAVE PASSED SINCE THE LICENSEE AND THE**  
21 **BUYER OR LESSEE ENTERED INTO THE PRESUMED AGENCY RELATIONSHIP.**

22 **(2) THE BURDEN IS ON THE LICENSEE TO ESTABLISH THAT A**  
23 **PRESUMED AGENCY RELATIONSHIP HAS NOT TERMINATED UNDER PARAGRAPH**  
24 **(1) OF THIS SUBSECTION.**

25 17–534.

26 (a) Except as provided in § 17–533 of this subtitle, a brokerage relationship  
27 commences at the time that a client enters into a brokerage agreement and shall  
28 continue until:

29 (1) the completion of performance in accordance with the brokerage  
30 agreement; or

31 (2) the earlier of:

1 (i) any date of expiration **OCCURRING NOT LATER THAN 90**  
2 **DAYS AFTER THE DATE ON WHICH THE AGREEMENT WAS ENTERED INTO**, as  
3 agreed on by the parties in the brokerage agreement or in any amendments to the  
4 brokerage agreement;

5 (ii) any mutually agreed on termination of the brokerage  
6 relationship;

7 (iii) a default by any party under the terms of the brokerage  
8 agreement; or

9 (iv) a termination under § 17-530 of this subtitle.

10 (b) The brokerage agreement shall:

11 (1) have a definite termination date **NO LATER THAN 90 DAYS AFTER**  
12 **THE DATE ON WHICH THE AGREEMENT WAS ENTERED INTO AND** that is effective  
13 automatically without notice from the client;

14 (2) state the amount of compensation to be paid to the broker and  
15 whether the broker is authorized to receive the compensation from a person other than  
16 the client;

17 (3) state whether the broker is authorized to cooperate with other  
18 brokers and share compensation with the other brokers and the amount of the  
19 compensation;

20 (4) explain the events or conditions that will entitle the broker to a  
21 commission or other compensation; and

22 (5) contain a provision for the cancellation of the brokerage  
23 relationship by either the client or the broker.

## 24 **Article – Real Property**

25 14-105.

26 (A) [In the absence of special agreement to the contrary, if a] **A** real estate  
27 broker employed to sell, buy, lease, or otherwise negotiate an estate, or a mortgage or  
28 loan secured by the property, **IS DEEMED TO HAVE EARNED THE CUSTOMARY OR**  
29 **AGREED COMMISSION ONLY IF:**

30 (1) **THE BROKER** procures in good faith a purchaser, vendor, lessor,  
31 lessee, mortgagor, mortgagee, borrower, or lender, as the case may be[, and the];

1           **(2)** THE person procured is accepted by the employer and enters into a  
2 valid, binding, and enforceable written contract, in terms acceptable to the employer,  
3 of a sale, purchase, lease, mortgage, loan, or other contract, as the case may be[, and  
4 the];

5           **(3)** THE contract is accepted **AND SIGNED** by the employer [and  
6 signed by him, the broker is deemed to have earned the customary or agreed  
7 commission. He has earned the commission regardless of whether or not the]; **AND**

8           **(4)** THE contract entered into is performed[, unless].

9           **(B) A REAL ESTATE BROKER MAY EARN THE COMMISSION UNDER**  
10 **SUBSECTION (A) OF THIS SECTION REGARDLESS OF WHETHER THE**  
11 **REQUIREMENT UNDER SUBSECTION (A)(4) OF THIS SECTION IS MET ONLY IF** the  
12 performance of the contract is prevented, hindered, or delayed by any act of the  
13 [broker] **EMPLOYER THAT CONSTITUTES A BREACH OF CONTRACT.**

14 **14-105.1.**

15           **A REAL ESTATE CONTRACT, INCLUDING A BROKERAGE AGREEMENT,**  
16 **SUBMITTED TO A PARTY BY A REAL ESTATE BROKER, AN ASSOCIATE REAL**  
17 **ESTATE BROKER, OR A REAL ESTATE SALESPERSON MAY CONTAIN A PROVISION**  
18 **FOR THE PAYMENT OF LEGAL FEES BY THE LOSING PARTY IN A LEGAL ACTION**  
19 **INVOLVING THE PARTIES TO THE CONTRACT ONLY IF THE PROVISION IS**  
20 **EQUALLY APPLICABLE TO BOTH PARTIES TO THE CONTRACT.**

21           SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
22 General Assembly that this Act shall overturn the Court of Special Appeals ruling in  
23 *Holzman v. Fiola Blum, Inc.*, 726 A.2d 818 (1999).

24           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2012.