

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 83 (Senator Zirkin)
Education, Health, and Environmental Affairs

Real Estate Brokers - Contract Provisions - Payment of Legal Fees

This bill allows a real estate contract submitted to a party by a real estate broker, an associate real estate broker, or a real estate salesperson to contain a provision for the payment of legal fees by the losing party in a legal action involving the parties only if the provision is equally applicable to both parties to the contract.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Generally, Maryland follows the rule that each party in a legal action must pay his or her litigation expenses regardless of the verdict in the case. This rule, commonly known as the “American Rule,” is in contrast to the “English Rule” which gives the prevailing party a right to recover legal fees from the losing party. However, there are numerous exceptions to this general rule in Maryland statute and Maryland rules which require one party to pay another party’s “reasonable attorney’s fees.”

There is no requirement in Maryland that real estate contracts, which provide for the reimbursement of legal fees in a legal action, to enforce the contract be reciprocal for

both parties. As a result, one party can stipulate that the other party may not receive reasonable attorney's fees and costs even if the other party prevails in litigation. Statutes exist in other states that make, by operation of law, such a one-sided fee-shifting provision in a contract reciprocal. For instance, Oregon requires that, in legal actions based on a contract that specifically provides for the reimbursement of attorney's fees and costs incurred to enforce the contract, the prevailing party is reimbursed, regardless of whether the prevailing party was the party specified in the contract.

The Maryland Association of Realtors' *default* real estate contract for residential properties contains a provision for the payment of legal fees by the losing party in a legal action that applies to both parties to the contract. However, the Department of Legislative Services advises that contract provisions, including the provision pertaining to legal fees, are generally negotiated for each sale; there is no mandated *standard* residential real estate contract in the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Association of Realtors; Oregon State Legislature; *LegalEase* Newsletter; Maryland Legal Ethics – Legal Information Institute; Department of Legislative Services

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