

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 538

(Senator Zirkin)

Judicial Proceedings

Real Estate Brokers - Contracts - Real Estate Reform Act of 2012

This bill establishes a three-month time limit on a presumed agency relationship between a prospective buyer or lessee and a licensed real estate broker, a licensed associate real estate broker, or a licensed real estate salesperson. The burden of proof to establish that a presumed agency relationship has not terminated falls on the licensee. The bill also establishes a 90-day time limit on the maximum length of any brokerage agreement between a client and a licensee. The bill alters the circumstances in which a real estate broker may collect a commission, including repealing provisions that allow the parties to enter into a special agreement that varies from the default statutory rules and allow a broker to earn a commission regardless of whether a contract entered into by the broker's employer and a purchaser is performed. The bill requires that an attorney's fee-shifting provision in a real estate contract equally apply to both contracting parties.

Fiscal Summary

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

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The State Real Estate Commission issues licenses to qualified real estate brokers, associate brokers, and salespersons (collectively known as licensees). A presumed agency relationship is established when a licensee assists a prospective buyer or lessee in locating residential real estate for purchase or lease, and the licensee is not a

seller's agent, unless the licensee, buyer, or seller expressly declines the presumed agency relationship. The presumed agency relationship terminates under two conditions: (1) either the buyer, lessee, or licensee expressly states a wish to terminate the presumed agency relationship; or (2) the licensee and either the buyer or the lessee enter into a brokerage agreement.

Before the licensee may present an offer to purchase or lease, or negotiate a purchase or lease of, real estate, the presumed buyer's or lessee's agency must be terminated and the parties must enter into a brokerage agreement. A brokerage relationship commences at the time a client enters into a brokerage agreement and continues until the completion of performance in accordance with the brokerage agreement or the earliest of (1) any date of expiration, as agreed on by the parties in the brokerage agreement or in any amendments to the agreement; (2) any mutually agreed on termination of the brokerage relationship; (3) a default by any party under the agreement's terms; or (4) a termination related to a client refusing to consent to a licensee's dual agency.

The brokerage agreement must have a definite termination date that is automatically effective without notice to the client and contain a provision for the cancellation of the relationship by either party. The brokerage agreement must also provide specified information regarding the broker's compensation.

Unless otherwise agreed to, a real estate broker employed to engage in a real estate transaction is deemed to have earned the customary or agreed commission if the broker procures, in good faith, a purchaser, vendor, or other party who is accepted by the employer and enters into a valid written contract accepted by the employer. The broker earns the commission regardless of whether the contract is performed, unless the broker prevents, hinders, or delays the performance of the contract.

Background: The bill is in response to *Holzman v. Fiola Blum, Inc.* 125 Md. App. 602, 726 A.2d 818 (1999). In *Holzman*, the court interpreted the commission clause of an exclusive listing agreement to determine that the broker earned a commission after the sellers cancelled a first contract under which the broker would receive the entire commission and entered into a second contract.

Small Business Impact: The bill may have a meaningful impact on real estate brokers, some of which are small businesses. Currently, absent an agreement to the contrary, a broker may earn a commission regardless of whether a contract entered into is performed. Under the bill, unless the employer breaches the contract, the contract entered into must be performed in order for the broker to earn the commission. Therefore, it may be more difficult for a real estate broker to earn the commission.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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ncs/kdm

Analysis by: Michael F. Bender

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