Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 209 (Senator Kelley)
Finance Economic Matters

Real Estate Settlements - Paying or Receiving Consideration - Penalties

This bill subjects licensees under Title 16 or Title 17 of the Business Occupations and Professions Article, Title 11 of the Financial Institutions Article, or Title 10 of the Insurance Article to disciplinary action from the appropriate licensing authority for violations involving the payment or receipt of consideration in connection with a real estate settlement.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues to the extent that existing civil and administrative penalties are imposed by licensing authorities under the bill. Enforcement can be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: For the purposes of the federal Real Estate Settlement Procedures Act (RESPA), a "residential real estate transaction" is a transaction involving a federally related mortgage loan. An "affiliated business transaction" is an arrangement in which:

- a person who is in a position to refer business, incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1% in a settlement service provider; and

- either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

A person involved with the settlement of real estate transactions involving land in the State may not pay to, or receive from, another person any consideration to solicit, obtain, retain, or arrange real estate settlement business. However, a person may participate in and receive compensation from an affiliated business arrangement, as defined by RESPA, if the person complies with specified RESPA requirements.

Additionally, a person who offers settlement services in connection with a residential real estate transaction involving State land must comply with RESPA requirements regarding disclosures of affiliated business arrangements.

Under RESPA, affiliated business arrangements are not prohibited if specified disclosures are made, the use of any particular provider of settlement services is not required, and the only thing of value that is received from the arrangement, other than permitted payments, is a return on the ownership interest or franchise relationship. The specified disclosures must state that the referring party has a business relationship with the settlement service provider and that the referring party may receive a financial or other benefit as the result of the referral. The affiliated business arrangement disclosure statement must set forth the estimated charge or range of charges for the settlement services and state that the borrower, purchaser, or seller is not required to use the listed provider as a condition of settling a mortgage loan or purchasing, selling, or refinancing the subject property.

A person who violates these federal disclosure provisions is subject to maximum penalties of one year imprisonment and/or a $10,000 fine. The person may also be subject to civil liability. However, a person may avoid being guilty of violating these provisions by proving, by a preponderance of the evidence, that failure to comply was due to a mistake.

A person who violates the State provisions is guilty of a misdemeanor and on conviction is subject to maximum penalties of six months imprisonment and/or a fine of $1,000. Each offense is a separate violation.

Background: Title 16 of the Business Occupations and Professions Article relates to real estate appraisers and home inspectors licensed by the State Commission of Real Estate Appraisers and Home Inspectors. Title 17 of the same Article relates to real estate brokers licensed by the State Real Estate Commission. Both commissions are within the Department of Labor, Licensing, and Regulation (DLLR). Title 11 of the Financial Institutions Article concerns various commercial lenders licensed by the Commissioner of Financial Regulation within DLLR. Finally, Title 10 of the Insurance Article relates to insurers and insurance producers licensed by the Maryland Insurance Administration. Each licensing authority has the ability to reprimand, suspend, or impose civil or administrative financial penalties for violations of the respective title or, in some cases, for a felony or misdemeanor conviction.

Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland. The commission was required to:

- review State laws relating to the title insurance industry;
- review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
- identify title insurance issues that affect State consumers;
- examine the rate-setting factors for title insurance premiums;
- examine how rates and services in other specified states compare to those in Maryland;
- identify ways to improve consumer education about the title insurance industry;
- study whether mechanics' liens on properties scheduled for settlement have an impact on timeliness of settlements or on title insurance premium rates;
- review the time limits, subsequent to closing, for the issuance of title insurance policies;
- study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other business involved with the settlement of real estate transactions to determine the impact of those arrangements on title insurance rates; and
- study any other issue with significant impact on the title insurance industry.

Chapters 373 and 374 of 2010 codified one of the commission's recommendations with respect to affiliated business arrangements.

Additional Information

Prior Introductions: SB 210 of 2011, as amended, passed the Senate but received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 3, 2012
ncs/kdm

Analysis by: Michael F. Bender

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