

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 649

(Senators Muse and Ramirez)

Judicial Proceedings

Environment and Transportation

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Real Property - Contract for Sale of New Home

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This bill requires a contract for the initial sale of a new home, which is contingent on the purchaser obtaining a written commitment for a loan secured by the property, to include a provision specifying the time period for obtaining such a commitment. If a purchaser does not obtain a written commitment for a loan in accordance with the terms of the contract, including terms relating to the time period for obtaining the written commitment, then upon written notice, the seller may elect to declare the contract void. Likewise, upon written notice, the purchaser may declare the contract void if specified obligations are met. The seller must then return any deposit paid under the contract to the purchaser. If the deposit is held by a licensed real estate broker, the deposit must be distributed in accordance with existing State law.

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Fiscal Summary

**State Effect:** The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful impact on builders of new homes who must return deposits to prospective purchasers and otherwise alter contractual terms for new home sales to comply with the bill.

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## Analysis

### Current Law:

#### *Contract for Sale of New Home*

A contract for the initial sale of a new home must be contingent on the purchaser obtaining a written commitment for a loan secured by the property, unless the contract contains a provision expressly stating that it is not contingent. A new home is defined under the Maryland Home Builder Registration Act as a newly constructed residential dwelling and the fixtures that are part of the dwelling. If the contract is contingent on the purchaser obtaining a written commitment for a loan secured by the property, the contract must state the maximum loan interest rate the purchaser is obligated to accept.

#### *Distribution of Money by Licensed Real Estate Broker*

A licensed real estate broker may hold money in trust for parties who are engaged in a real estate transaction in the State. Prior to distributing the trust money, the real estate broker must send specified written notices to both parties. After a specified period of time, the real estate broker must distribute the trust money in accordance with the terms of the notice, with specified exceptions. An agreement entrusting a real estate broker with trust money must contain a statement authorizing the real estate broker to distribute the trust money if either party fails to complete the real estate transaction for which the trust money was entrusted.

**Background:** According to news reports, Toll Brothers, Inc., a luxury home builder currently operating in 19 states, regularly collected forfeited deposits from prospective home buyers who were unable to obtain financing for their new home after signing a contract with the builder. A class action lawsuit filed in Maryland, *Noohi v. Toll Bros., Inc.*, (affirming District Court judgment) 708 F.3d (2013), alleged that forfeited deposits were the builder's largest source of profit during the contraction of the housing market. Over several years prior to that lawsuit, according to its reports to the U.S. Securities and Exchange Commission, Toll Brothers retained approximately \$125 million in forfeited deposits from 3,300 prospective home buyers. According to plaintiffs, the development company unlawfully refused to return deposits when the prospective buyers could not obtain mortgage financing.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1183 (Delegate Knotts) - Environment and Transportation.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division),  
*NBC News 4*, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2015  
md/kdm Revised - Senate Third Reader - April 7, 2015  
Revised - Enrolled Bill - May 13, 2015

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