

Department of Legislative Services  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 755

(Senator Peters)

Finance

Economic Matters

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**Credit Regulation - Escrow Accounts - Water and Sewer Facilities Assessments**

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This bill authorizes, on request of a borrower, a lending institution that makes a loan secured by a first mortgage or first deed of trust on the borrower's residential real property to create an escrow account in connection with that loan solely for the payment of "water and sewer facilities assessments." A servicer must make timely payment of the water and sewer facilities assessment due if (1) the mortgagor has paid an amount sufficient to pay the assessment due and (2) the servicer is in possession of the assessment bill. Failure to make the required timely payment is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

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**Fiscal Summary**

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

**Local Effect:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The bill defines "water and sewer facilities assessment" as a fee or charge assessed on an owner of specified residential real property, including a front foot benefit

fee or charge. The fee or charge must be paid to the lienholder of the lien recorded on the residential real property for public water and wastewater facilities.

Except in certain circumstances (*e.g.*, foreclosure, release, excessive balance), funds in an escrow account for paying water and sewer facilities assessments may not be used to reduce the principal or pay interest or other loan charges.

### **Current Law:**

#### *Escrow Accounts*

If a specified lending institution creates, or is the assignee of, an escrow account in connection with a loan secured by a first mortgage or first deed of trust on any interest in residential real property, the lending institution must pay interest to the borrower on the funds in the escrow account at an annual interest rate not less than the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year as published by the Federal Reserve in “Selected Interest Rates (Daily) – H.15,” as of the first business day of the calendar year. The lending institution must provide the borrower with an escrow account statement each year and pay annual interest, computed on the account’s average monthly balance, by crediting the escrow account with the amount due.

Maryland’s requirements to pay a specified amount of interest and provide a statement for an escrow account created for a loan secured by a first mortgage or first deed of trust on any interest in residential real property do not apply if the loan is purchased by an out-of-state lender through the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation and the out-of-state lender, as a condition of purchase, elects to service the loan. However, they do apply if the out-of-state lender sells the loan to a Maryland lender or places the loan with a Maryland lender for servicing.

If the purpose of the escrow account is to pay taxes, insurance premiums, and ground rents, the account funds may not be used to reduce principal or pay interest or other loan charges, except in a foreclosure, release, or situation in which the escrow account balance exceeds the amount specified in the note, loan agreement, or security instrument.

If the balance does periodically exceed the amount provided for in the note, loan agreement, or security instrument, the lending institution must give the borrower the option of (1) receiving a refund of the excess amount; (2) applying the excess amount to the payment of principal and interest; or (3) leaving the excess amount in the escrow account. Any refund of an excess amount must be made within 60 days after the receipt by the lender of the borrower’s request for a refund. However, if the borrower has not yet notified the

lender of the option chosen, the lender must refund any excess amount within 60 days after the date the lender mailed notice of the excess amount to the borrower.

### *Maryland Consumer Protection Act*

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**Background:** Water and sewer facilities assessments are also known as front foot benefit fees and are different from the quarterly water charges assessed to Maryland homeowners. When county governments used to install water and sewer lines in subdivisions, they would recoup the cost of that construction through a front foot benefit charge, in addition to the property tax bill. Most counties no longer install water and sewer facilities in subdivisions. Instead, the developer of the subdivision is tasked with this responsibility. The developer then ensures that the cost of construction is recouped from homeowners over a period of years, similar to the previous county systems. The quarterly water bill pays for water and sewer *usage* but, unless a special assessment indicates otherwise, it does not cover the cost for construction of water treatment and sewer facilities.

Maryland has almost 100 water and sewer providers, including 89 water and sewer systems owned by small towns, the Washington Suburban Sanitary Commission, and county water and sewer systems. Water and sewer systems are funded using “enterprise funds,” which means that revenues are derived primarily from ratepayers.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Chesapeake Capital Partners, LLC; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2018  
mag/kdm Third Reader - March 26, 2018  
Revised - Amendment(s) - March 26, 2018

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