

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1608 (Delegate Morgan, *et al.*)
Environment and Transportation

Real Property - Trust Money - Escrow Trust Accounts

This bill establishes numerous duties and requirements related to the activities of escrow agents responsible for trusts established for the purpose of conducting a real estate transaction.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations.

Local Effect: The bill is not anticipated to impact local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill does not apply to (1) a person doing business under a State or federal law relating to banks, trust companies, building and loan associations, or savings and loan associations or (2) a real estate agent or broker licensed under specified provisions of the Business Occupations and Professions Article.

Defined Terms

“Beneficial owner” means a person other than the owner of the trust money for whose benefit an escrow agent is entrusted to hold trust money. “Escrow agent” means a person engaged in the business of receiving escrows for deposit or delivery. “Trust money” means a deposit, payment, or any other money that a person entrusts to an escrow agent to hold

for (1) the benefit of the owner or beneficial owner of the trust money and (2) a purpose that relates to a real estate transaction involving real estate in the State.

Escrow Trust Accounts

Generally, an escrow agent must deposit trust money into an escrow trust account within seven business days after receiving the money. An escrow trust account must be maintained separately from the escrow agent's own accounts and solely for trust money. Money in the account may not be used for any purpose other than that for which it is entrusted to the escrow agent.

An escrow trust account must be maintained at a financial institution located in the State whose deposits are insured by (1) the Federal Deposit Insurance Corporation; (2) the Federal Savings and Loan Insurance Corporation; (3) the National Credit Union Administration; (4) the State of Maryland Deposit Insurance Fund Corporation; or (5) the Credit Union Insurance Corporation. Unless specified consent is provided, an escrow trust account must be a noninterest-bearing checking account, a noninterest-bearing savings account, or a combination of these accounts.

Distributions

An escrow agent must maintain trust money in an account authorized under the bill until:

- the real estate transaction for which the trust money was entrusted is consummated or terminated;
- the escrow agent receives specified written instructions from the owner and beneficial owner directing the disposition of the trust money;
- a court orders a different disposition; or
- the owner or the beneficial owner fails to complete the real estate transaction and the escrow agent decides to distribute the trust money in accordance with procedures established under the bill.

When the duty of the escrow agent to maintain trust money in an account terminates, the escrow agent must promptly account for all trust money.

Distribution of Funds Following a Failure to Complete a Transaction

Before distributing the trust money following a failure to complete a transaction as authorized under the bill, the escrow agent must send specified notice to both the owner and the beneficial owner that the agent intends to distribute the trust money in accordance with the terms of the real estate contract that established the trust. Among other things, the

notice must disclose that either party may prevent distribution of the trust money by submitting a specified protest within 30 days, and that if neither party submits a protest, the trust money will be distributed in accordance with the notice.

Any protest must be submitted in writing and hand delivered or sent by certified mail, return receipt requested, and by regular mail. If a written protest is received by the escrow agent, the agent must distribute the trust money in accordance with (1) procedures due to the consummation or termination of the real estate transaction for which the trust money was entrusted; (2) receipt of specified written instructions from the owner and beneficial owner directing the disposition of the trust money; or (3) a court order of a different disposition.

An agreement under which an escrow agent is entrusted with the trust money *must* contain a statement that the escrow agent may distribute the trust money in accordance with the bill's provisions if the owner or the beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted. Following a failure of the owner or the beneficial owner to complete a transaction, an agent is not liable for a (1) good-faith decision to distribute the trust money or (2) decision not to distribute the trust money.

Investment of Trust Money

An escrow agent may invest trust money as the owner and the beneficial owner of the trust money instruct in writing, or as the escrow agent, owner, and beneficial owner agree in writing.

Recordkeeping Requirements

An escrow agent must maintain all records of trust money in a secured area. Records must be maintained for at least five years after the closing of a real estate transaction, or if a transaction is not closed, for at least five years after the date on which the trust money was delivered to the agent. An agent may keep and store an electronic record under the bill if specified document management conditions are met.

Required Access

An escrow agent must allow a representative of the Attorney General to inspect records after receiving reasonable notice. An agent must provide a paper copy of any document or record requested at the expense of the escrow agent, and an escrow agent must also *display* to the Attorney General all records, books, and accounts of any money held in trust.

Penalties

An escrow agent who violates the bill's provisions is guilty of a misdemeanor and on conviction for a first violation, is subject to a fine of up to \$5,000 and/or imprisonment for up to one year. For a second or subsequent violation, a violator is subject to a fine of up to \$10,000 and/or imprisonment for up to one year.

Current Law: Title 17, Subtitle 5 of the Business Occupations and Professions Article includes provisions similar to the bill related to the activities of a real estate broker. An associate real estate broker or a real estate salesperson who obtains trust money while providing real estate brokerage services must promptly submit the trust money to the real estate broker on whose behalf the associate real estate broker or the real estate salesperson provided services. Generally, a real estate broker must deposit trust money in an account that is maintained by the real estate broker within seven business days after the acceptance of a contract of sale by both parties, and the account must be separate from the real estate broker's own accounts and used solely for trust money. A real estate broker may not use trust money for any purpose other than that for which it is entrusted to the broker.

A real estate broker must maintain a trust until:

- the real estate transaction for which the trust money was entrusted is consummated or terminated;
- the real estate broker receives written instructions from the owner and beneficial owner directing withdrawal or other disposition of the trust money;
- on an interpleader filed by the real estate broker, a court orders a different disposition; or
- the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted and the real estate broker, in the real estate broker's sole discretion, decides to distribute the trust money in accordance with specified procedures.

Other provisions similarly govern the distribution of funds when parties fail to complete a real estate transaction from which a trust is created, required notices, protests to distributions following failure to complete a real estate transaction, limitations on liability, and the required contents of any agreement related to the authority of a real estate broker to distribute funds.

Small Business Effect: Small business escrow agents who do not qualify as real estate brokers may be subject to additional regulation under the bill.

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; Department of Legislative Services

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