



Real Property Section

To: Environment and Transportation Committee

From: Legislative Committee of the Real Property Section Counsel

Date: February 18, 2022 [Hearing Date February 22, 2022]

Subject: **HB 720** – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act)

Position: **Oppose**

The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes House Bill 720** – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act). The bill seeks to solve a relatively small problem with disputes over earnest money deposits in a residential real estate transaction with a solution that swallows purpose for the earnest money deposit in the first place. If the buyer can simply demand the deposit back because a “contingency” was not met, has the deposit been made at all?

When a dispute arises under the contract of sale of residential property, they are fact specific that cannot be handled by a statutory one size fits all statute. If the parties wish to allow the buyer to claw back the earnest money deposit on demand, they should put that in the escrow agreement that is required under current law.

When these fights do happen, it’s never a clear contingency “out;” one side always claims the other was somehow in default, either by failing to take some act to meet the contingency or otherwise intentionally preventing it to occur. The escrow agent will still end up being a finder of fact who is dragged into at least a consumer complaint process, if not more. The decision when people are fighting is never clear.

In addition, often buyers fail to timely complete the transaction, but refuse to terminate the contract so the seller can move on. This bill does nothing to address that issue.

And the definition of “contingency” should not list specific events; instead, it should match Black Law Dictionary’s definition: “An event that may or may not happen.” Many of the listed “contingencies” make no sense in the context of this bill (e.g., among others “back up contracts”, “sales of residential unimproved land”, “deeds and titles”, and “building permits, feasibility studies, or other contingencies related to condominium notice”.) And some are already required by law (e.g., among others, “homeowner’s association notices” and “property condition disclosures and disclaimer act notices”.)

If this is truly a problem, the better approach would be to provide mandatory statutory damages or attorney’s fees to the prevailing party in an action seeking the return of the deposit for bad actors who fail to execute releases when they should have done so. This would be a much more efficient

and fair method of addressing the problem and would invoke less conflicts of law and of existing professional duties.

For these reasons, the Real Property Section Counsel of the MSBA **opposes HB 720** and asks for an **unfavorable report**. Thank you for your consideration.

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