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**To:** Members of the Senate Judicial Proceedings Committee

**From:** MLTA Legislative Committee

**Date:** February 21, 2022

**Subject:** **SB 424** – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act)

**Position:** **Opposed unless amended**

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**The Maryland Land Title Association (MLTA) opposes unless amended Senate Bill 424** – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act). The bill seeks to address a problem with a relatively small amount of residential real estate transactions in which a seller refuses to allow an earnest money deposit to be returned to the buyer when the buyer believes they have a right to terminate the contract.

The problem with statute as drafted is that when disputes arise, they are fact specific with each party believing their interpretation of the facts to be the correct interpretation. The escrow holder in turn is caught in the middle. Current law requires the escrow holder to have an agreement executed by the parties that tells the escrow holder what to do with the funds being held. The bill as drafted appears to allow the buyer to terminate the contract at will under the guise of “a contingency” that was not met. But just as often as a buyer seeking a release of the deposit, a seller seeks to terminate the contract for the buyer’s failure to perform. And just as often as the seller refuses to release the deposit to the seller, the buyer will refuse to execute a termination of the contract so the seller may move on and sell the property to another.

Thus, to even the playing field, and protect the escrow holder who is caught in the middle of the dispute, the MLTA proposes the attached amendments to the bill.

For these reasons, the MLTA **opposes SB 424 unless amended**.

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# SENATE BILL 424

N1

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CF 2lr0931

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By: **Senator Hayes**

Introduced and read first time: January 26, 2022

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate – Real Estate Brokerage Services and Termination of Residential**  
3 **Real Estate Contracts**  
4 **(The Anthony Moorman Act)**

5 FOR the purpose of requiring a real estate broker or an escrow agent to distribute trust  
6 money to a purchaser within a certain period of time if the purchaser terminates a  
7 real estate transaction; requiring a holder of trust money who makes a certain  
8 distribution to notify the seller and purchaser of the distribution within a certain  
9 period of time; establishing that a holder of trust money may not be held liable for a  
10 certain decision to distribute the trust money; authorizing a claimant aggrieved by  
11 a certain distribution of trust money to file a claim in the District Court; and  
12 generally relating to real estate brokerage services, escrow agents, and trust money.

13 BY repealing and reenacting, without amendments,  
14 Article – Business Occupations and Professions  
15 Section 17–101(a) and (l) and 17–501  
16 Annotated Code of Maryland  
17 (2018 Replacement Volume and 2021 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Business Occupations and Professions  
20 Section 17–505  
21 Annotated Code of Maryland  
22 (2018 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article – Real Property  
25 Section 10–802  
26 Annotated Code of Maryland  
27 (2015 Replacement Volume and 2021 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.

**\*sb0424\***

1 BY adding to  
2 Article – Real Property  
3 Section 10–803  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2021 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
7 That the Laws of Maryland read as follows:

8 **Article – Business Occupations and Professions**

9 17–101.

10 (a) In this title the following words have the meanings indicated.

11 (l) “Provide real estate brokerage services” means to engage in any of the  
12 following activities:

13 (1) for consideration, providing any of the following services for another  
14 person:

15 (i) selling, buying, exchanging, or leasing any real estate; or

16 (ii) collecting rent for the use of any real estate;

17 (2) for consideration, assisting another person to locate or obtain for  
18 purchase or lease any residential real estate;

19 (3) engaging regularly in a business of dealing in real estate or leases or  
20 options on real estate;

21 (4) engaging in a business the primary purpose of which is promoting the  
22 sale of real estate through a listing in a publication issued primarily for the promotion of  
23 real estate sales;

24 (5) engaging in a business that subdivides land that is located in any state  
25 and sells the divided lots; or

26 (6) for consideration, serving as a consultant regarding any activity set  
27 forth in items (1) through (5) of this subsection.

28 17–501.

29 (a) In this Part I of this subtitle the following words have the meanings indicated.

30 (b) “Beneficial owner” means a person, other than the owner of the trust money,  
31 for whose benefit a real estate broker or, on behalf of a real estate broker, an associate real

1 estate broker or a real estate salesperson is entrusted to hold trust money.

2 (c) "Trust money" means a deposit, payment, or other money that a person  
3 entrusts to a real estate broker or, on behalf of a real estate broker, to an associate real  
4 estate broker or a real estate salesperson to hold for:

5 (1) the benefit of the owner or beneficial owner of the trust money; and

6 (2) a purpose that relates to a real estate transaction involving real estate  
7 in the State.

8 17-505.

9 (a) A real estate broker shall maintain trust money in an account authorized  
10 under this Part I of this subtitle until:

11 (1) the real estate transaction for which the trust money was entrusted is  
12 consummated or terminated;

13 (2) the real estate broker receives proper written instructions from the  
14 owner and beneficial owner directing withdrawal or other disposition of the trust money;

15 (3) on an interpleader filed by the real estate broker, a court orders a  
16 different disposition; or

17 (4) the owner or beneficial owner of the trust money fails to complete the  
18 real estate transaction for which the trust money was entrusted and the real estate broker,  
19 in the real estate broker's sole discretion, decides to distribute the trust money in  
20 accordance with subsection (b) of this section.

21 (b) (1) Prior to distributing the trust money under subsection (a)(4) of this  
22 section, the real estate broker shall notify both the owner and the beneficial owner that the  
23 real estate broker intends to distribute the trust money to the person who, in the good faith  
24 opinion of the real estate broker, is entitled to receive the trust money in accordance with  
25 the terms of the real estate contract which established the trust.

26 (2) The notice required under this subsection shall:

27 (i) be in writing;

28 (ii) state whether the trust money will be paid to the owner or  
29 beneficial owner; and

30 (iii) disclose to the owner and the beneficial owner that:

31 1. either party may prevent distribution of the trust money  
32 under subsection (a)(4) of this section by submitting a protest within 30 days from the date

1 the notice was delivered or mailed by the real estate broker; and

2 2. if neither party submits a protest within 30 days from the  
3 date the notice was delivered or mailed by the real estate broker, the trust money will be  
4 distributed in accordance with the real estate broker's notice.

5 (3) The notice required under this subsection shall be:

6 (i) hand delivered to both the owner and beneficial owner; or

7 (ii) sent by certified mail, return receipt requested, and regular mail  
8 to both the owner and beneficial owner.

9 (4) (i) An owner or beneficial owner may protest the distribution of the  
10 trust money.

11 (ii) An owner or beneficial owner shall submit the protest to the real  
12 estate broker holding the trust money within 30 days from the date the notice required in  
13 paragraph (1) of this subsection was delivered or mailed by the real estate broker.

14 (iii) A protest shall be in writing and either:

15 1. hand delivered; or

16 2. sent by certified mail, return receipt requested, and  
17 regular mail.

18 (5) (i) If a written protest is received by the real estate broker, the real  
19 estate broker shall distribute the trust money in accordance with subsection (a)(1), (2), or  
20 (3) of this section.

21 (ii) If no written protest is received by the real estate broker holding  
22 the trust money, the real estate broker shall distribute the trust money in accordance with  
23 the terms of the notice as required in this section.

24 (C) IF A ~~SELLER OR~~ PURCHASER OF RESIDENTIAL REAL ESTATE,  
AS DEFINED IN §  
25 10-802 OF THE REAL PROPERTY ARTICLE, TERMINATES A REAL ESTATE  
26 TRANSACTION IN ACCORDANCE WITH § 10-803 OF THE REAL PROPERTY ARTICLE,  
~~27 THE REAL ESTATE BROKER SHALL DISTRIBUTE THE TRUST MONEY TO THE~~  
~~28 PURCHASER IN ACCORDANCE WITH THIS SECTION AND ANY WRITTEN AGREEMENT~~  
~~OR IN ACCORDANCE WITH § 10-803.~~

~~29~~ [c] (D) When the duty of the real estate broker to maintain trust money in an  
~~30~~ account terminates, the real estate broker promptly shall account for all trust money.

~~31~~ [d] (E) A real estate broker may invest trust money:

1 (1) as the owner and beneficial owner of the trust money instruct in  
2 writing; or

3 (2) as the real estate broker, owner, and beneficial owner of the trust  
4 money agree in writing.

5 [(e)] (F) A real estate broker may not be liable to an owner or beneficial owner  
6 of the trust money for:

7 (1) a good faith decision to distribute the trust money under subsection  
8 (a)(4) of this section; or

9 (2) a decision not to distribute the trust money under subsection (a)(4) of  
10 this section.

11 [(f)] (G) An agreement under which a real estate broker is entrusted with the  
12 trust money shall contain a statement that the real estate broker may distribute the trust  
13 money in accordance with subsection (b) of this section if the owner or beneficial owner of  
14 the trust money fails to complete the real estate transaction for which the trust money was  
15 entrusted.

#### 16 Article – Real Property

17 10–802.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) “Escrow agent” means a person engaged in the business of residential  
20 real estate settlements who receives trust money.

21 (3) “Residential real estate” means:

22 (i) Real property improved by four or fewer single-family dwelling  
23 units that are designed principally and are intended for human habitation; and

24 (ii) Unimproved real property zoned for residential use by the local  
25 zoning authority of the county or municipality in which the real property is located.

26 (4) “Trust money” means a deposit made by a purchaser in connection with  
27 a residential real estate sales transaction that the purchaser delivers to an escrow agent to  
28 hold for the benefit of the purchaser and the seller.

29 (b) This section does not apply to:

30 (1) Banks, trust companies, savings and loan associations, savings banks,  
31 or credit unions;

(2) A homebuilder registered under Title 4.5 of the Business Regulation Article who is engaged in the initial sale of residential real estate; or

(3) A real estate salesperson, associate real estate broker, or real estate broker licensed under Title 17 of the Business Occupations and Professions Article.

(c) When an escrow agent agrees to hold trust money, the escrow agent shall enter into a written agreement with the purchaser and seller of the residential real estate that contains the following information:

(1) The amount of the trust money delivered to the escrow agent;

(2) The date the trust money was delivered to the escrow agent;

(3) The responsibility of the escrow agent to notify the purchaser and seller of trust money returned due to dishonored funds;

(4) The conditions under which the escrow agent may release the trust money; and

(5) The process to address disputes over the release of the trust money.

(D) IF A SELLER OR PURCHASER TERMINATES A REAL ESTATE TRANSACTION IN ACCORDANCE WITH § 10-803 OF THIS SUBTITLE, THE ESCROW AGENT SHALL DISTRIBUTE THE TRUST MONEY TO THE PURCHASER IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION AND ANY WRITTEN AGREEMENT OF THE PARTIES OR IN ACCORDANCE WITH § 10-803.

[(d)] (E) Nothing in this section may be construed to prohibit an escrow agent from transferring trust money to another escrow agent if the purchaser of the residential real estate for which the trust money is held chooses the escrow agent to whom the trust money is transferred.

10-803.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "CONTINGENCY" MEANS AN EVENT THAT MAY NOT HAPPEN. CLAUSE INCLUDED IN A

CONTRACT OF SALE FOR RESIDENTIAL REAL ESTATE THAT:

1. REQUIRES A SPECIFIC EVENT OR ACTION TO OCCUR FOR THE CONTRACT TO BE ENFORCEABLE; AND

2. ENTITLES A PARTY EXERCISING THE CONTINGENCY

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~~31—TO TERMINATE THE CONTRACT AND RECEIVE DISTRIBUTION OF THE TRUST MONEY.~~ |

~~1 (II) "CONTINGENCY" INCLUDES A CLAUSE RELATING TO:~~

~~2 1. APPRAISALS;~~

~~3 2. BACK-UP CONTRACTS;~~

~~4 3. BUILDING PERMITS, FEASIBILITY STUDIES, OR~~  
~~5 OTHER CONTINGENCIES RELATED TO CONDOMINIUM NOTICE;~~

~~6 4. CONSERVATION EASEMENTS;~~

~~7 5. COOPERATIVE HOUSING NOTICES;~~

~~8 6. DEEDS AND TITLES;~~

~~9 7. HOME OR ENVIRONMENTAL INSPECTIONS;~~

~~10 8. HOMEOWNERS ASSOCIATION NOTICES;~~

~~11 9. ON-SITE SEWAGE DISPOSAL SYSTEM INSPECTIONS;~~

~~12 10. PROPERTY CONDITION DISCLOSURES AND~~  
~~13 DISCLAIMER ACT NOTICES;~~

~~14 11. SHORT SALES;~~

~~15 12. SALES OF RESIDENTIAL UNIMPROVED LAND;~~

~~16 13. TERMITE INSPECTIONS;~~

~~17 14. THIRD-PARTY APPROVAL NOT RELATED TO~~  
~~18 FINANCING; OR~~

~~19 15. WATER AND SEWER ASSESSMENTS NOTICES.~~

~~2018~~ (3) "HOLDER OF TRUST MONEY" MEANS:

21 (I) AN ESCROW AGENT AS DEFINED IN § 10-802 OF THIS  
 22 SUBTITLE; OR

23 (II) A LICENSED REAL ESTATE BROKER AS DEFINED IN § 17-101  
 24 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

1 (4) "RESIDENTIAL REAL ESTATE" HAS THE MEANING STATED IN §  
2 10-802 OF THIS SUBTITLE.

3 (5) "TRUST MONEY" HAS THE MEANING STATED IN § 10-802 OF THIS  
4 SUBTITLE.

5 (B) (1) IF A SELLER OR PURCHASER TERMINATES A  
RESIDENTIAL REAL ESTATE  
6 ~~CONTRACT FOR FAILURE OF A CONTINGENCY TO OCCUR, SUCH PARTY SHALL NOTIFY~~  
~~UNDER THE TERMS OF A CONTINGENCY CLAUSE OF A CONTRACT OF SALE~~  
7 ~~FOR RESIDENTIAL REAL ESTATE, THE HOLDER OF TRUST MONEY AND THE OTHER~~  
~~PARTY BY DELIVERING AN ACKNOWLEDGED WRITING SETTING FORTH THE CONTINGENCY~~  
~~THAT DID NOT OCCUR AND DEMANDING THE TRUST MONEY BE DISTRIBUTED TO THE~~  
~~PURCHASER AND THE CONTRACT TERMINATED. SHALL DISTRIBUTE~~  
8 ~~THE TRUST MONEY TO THE PURCHASER WITHIN 30 DAYS AFTER WRITTEN NOTICE~~  
9 ~~OF THE TERMINATION IS SENT TO THE HOLDER OF TRUST MONEY.~~

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7 (2) IF A SELLER OR PURCHASER OBJECTS TO THE  
DISTRIBUTION OF TRUST MONEY AS DEMANDED AND  
TERMINATION OF THE CONTRACT, SUCH PARTY SHALL  
NOTIFY THE OTHER PARTY AND AT THE HOLDER OF TRUST  
MONEY BY DELIVERING AN ACKNOWLEDGED  
WRITING SETTING FORTH THE BASIS FOR THE  
OBJECTION WITHIN 10 DAYS OF RECEIPT OF  
THE DEMAND AND FILE AN ACTION IN A COURT  
OF COMPETENT JURISDICTION WITHIN 30 DAYS  
THEREOF. WHO RECEIVES NOTICE UNDER

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108 (3) IF NO SUCH OBJECTION IS TIMELY MADE OR NO ACTION IS TIMELY  
FILED, THE HOLDER OF THE TRUST MONEY SHALL DELIVER THE TRUST  
MONEY TO THE PURCHASER AND THE RESIDENTIAL REAL ESTATE MAY  
BE MARKETED AND SOLD BY THE SELLER WITHOUT THE CONSENT OF  
THE PURCHASER AND ANY SUBSEQUENT PURCHASER SHALL BE  
PROTECTED AGAINST ANY CLAIM MADE AGAINST THE SELLER BY THE  
PURCHASER.

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11 PARAGRAPH (1) OF THIS SUBSECTION SHALL NOTIFY THE PURCHASER AND SELLER  
12 OF THE DISTRIBUTION OF THE TRUST MONEY WITHIN 30 DAYS AFTER THE DELIVERY  
13 OF THE TERMINATION NOTICE.

149 (3) NO ACTION, CLAIM OR PROCEEDING MAY BE MADE  
AGAINST A HOLDER OF TRUST MONEY FOR DISTRIBUTING TRUST  
MONEY UNDER THIS SUBSECTION SECTION AND A HOLDER OF TRUST  
MONEY SHALL MAY NOT BE LIABLE FOR A DECISION  
1510 TO DISTRIBUTE OR NOT DISTRIBUTE THE TRUST MONEY UNDER THIS SUBSECTION.

1611 (C) A SELLER OR PURCHASER CLAIMANT MAY FILE AN ACTION FOR  
DAMAGES IN A COURT OF COMPETENT JURISDICTION AGAINST THE OTHER

FOLLOWING THE TIME LIMITS PRESCRIBED IN THIS SECTION, BUT NO SUCH  
ACTION SHALL AFFECT TITLE TO THE RESIDENTIAL REAL ESTATE, WHO IS  
AGGRIEVED BY A DISTRIBUTION OF TRUST MONEY

~~17 — UNDER THIS SECTION MAY FILE AN ACTION IN THE DISTRICT COURT SITTING IN THE  
18 — DISTRICT IN WHICH THE RESIDENTIAL REAL ESTATE IS LOCATED.~~

1912 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2022.