



# Real Property Section

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**To:** Judicial Proceedings Committee

**From:** Legislative Committee of the Real Property Section Counsel

**Date:** February 21, 2022 [Hearing Date February 22, 2022]

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

**Position:** **Oppose**

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The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes Senate Bill 424** – 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 and cannot be handled by a statutory one size fits all solution. 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 occur, it is 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 from occurring. The escrow agent will still end up being a fact finder who is dragged into at least a consumer complaint process, if not more. The decision as to what to do with the deposit when people are fighting is never clear.

In addition, often buyers fail to timely complete the transaction or otherwise perform 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’s 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”.)

Furthermore, the various statutes involved in the bill are not harmonized. For example, Business Occupations and Professions Article §17-501 identifies an “owner” and “beneficial owner”, but the new subsection section (5)(c) seeks to apply to a “purchaser” as defined in Real Property Article §10-

802 for which there is no such definition. And in the proposed new subsection (d) to §10-802, it is unclear how one could comply with §10-802, the written agreement required thereby, and the new §10-803. If the written agreement allows the buyer to receive the deposit back on demand, then why would we need the proposed §10-803? But if the agreement does not allow the buyer to receive the deposit back on demand, then how could the escrow holder comply with both the agreement and the new statute?

If “deposit fights” are 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 or termination of the contract 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 SB 424** and asks for an **unfavorable report**. Thank you for your consideration.