
To: Judicial Proceedings Committee

From: Legislative Committee of the Real Property Section Counsel

Date: February 27, 2023 [Hearing Date February 28, 2023]

Subject: **SB 651** – 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 Senate Bill 651** – 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 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

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 651** and asks for an **unfavorable report**. If the committee believes this bill is something Maryland needs, we offer the attached amendments that would at least level the playing field for the seller, purchaser, subsequent purchasers, and the escrow holder. Thank you for your consideration.

By: **Senator Carter**

Introduced and read first time: February 6, 2023

Assigned to: Education, Energy, and the Environment

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, subject to a certain exception; establishing that a holder of trust
 10 money may not be held liable for a certain decision to distribute the trust money;
 11 authorizing a claimant aggrieved by a certain distribution of trust money to file a
 12 claim in the District Court; and generally relating to real estate brokerage services,
 13 escrow agents, and trust money.

14 BY repealing and reenacting, without amendments,
 15 Article – Business Occupations and Professions
 16 Section 17–101(a) and (l) and 17–501
 17 Annotated Code of Maryland
 18 (2018 Replacement Volume and 2022 Supplement)

19 BY repealing and reenacting, with amendments,
 20 Article – Business Occupations and Professions
 21 Section 17–505
 22 Annotated Code of Maryland
 23 (2018 Replacement Volume and 2022 Supplement)

24 BY repealing and reenacting, with amendments,
 25 Article – Real Property
 26 Section 10–802
 27 Annotated Code of Maryland
 28 (2015 Replacement Volume and 2022 Supplement)

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

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1 BY adding to
2 Article – Real Property
3 Section 10–803
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2022 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 (1) “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,

1 for whose benefit a real estate broker or, on behalf of a real estate broker, an associate real
2 estate broker or a real estate salesperson is entrusted to hold trust money.

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

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

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

9 17-505.

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

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

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

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

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

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

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

28 (i) be in writing;

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

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

32 1. either party may prevent distribution of the trust money

1 under subsection (a)(4) of this section by submitting a protest within 30 days from the date
2 the notice was delivered or mailed by the real estate broker; and

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

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

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

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

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

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

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

16 1. hand delivered; or

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

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

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

25 **(C) IF A PURCHASER OF RESIDENTIAL REAL ESTATE, AS DEFINED IN §**
26 **10-802 OF THE REAL PROPERTY ARTICLE, TERMINATES A REAL ESTATE**
27 **TRANSACTION IN ACCORDANCE WITH § 10-803 OF THE REAL PROPERTY ARTICLE,**
28 **THE REAL ESTATE BROKER SHALL DISTRIBUTE THE TRUST MONEY TO THE**
29 **PURCHASER IN ACCORDANCE WITH THIS SECTION.**

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

32 **[(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;

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

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

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

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

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

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

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

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

15 **(D) IF A SELLER OR PURCHASER TERMINATES A REAL ESTATE**
16 **TRANSACTION IN**
17 **ACCORDANCE WITH § 10-803 OF THIS SUBTITLE, THE ESCROW AGENT SHALL**
18 **DISTRIBUTE THE TRUST MONEY IN ACCORDANCE WITH THE**
19 **REQUIREMENTS OF § 10-803 NOTWITHSTANDING ANY WRITTEN AGREEMENT TO THE**
20 **CONTRARY.**

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

25 **10-803.**

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

28 **(2) (I) "CONTINGENCY" MEANS A REQUIREMENT**
29 **INCLUDED IN** A
30 **CONTRACT OF SALE FOR RESIDENTIAL REAL ESTATE OR IMPOSED BY LAW THAT**
31 **ALLOWS A SELLER OR PURCHASER TO TERMINATE THE CONTRACT ON THE FAILURE**
32 **OF SUCH REQUIREMENT TO BE COMPLETED:**

19 **(3) “HOLDER OF TRUST MONEY” MEANS:**

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

24 **(II) A LICENSED REAL ESTATE BROKER AS DEFINED IN § 17-101**

1 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

2 (4) "RESIDENTIAL REAL ESTATE" HAS THE MEANING STATED IN §
3 10-802 OF THIS SUBTITLE.

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

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(B) (1) IF A SELLER OR PURCHASER TERMINATES A RESIDENTIAL REAL ESTATE CONTRACT FOR FAILURE OF A CONTINGENCY TO BE COMPLETED, SUCH PARTY SHALL NOTIFY 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.

(2) IF A SELLER OR PURCHASER OBJECTS TO THE DEISTRIBUTION OF TRUST MONEY AS DEMANDED, SUCH PARTY SHALL NOTIFY THE OTHER PARTY AND 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 OR DEMAND MEDIATION WITHIN 30 DAYS THEREAFTER.

(3) IF NO SUCH OBJECTION IS TIMELY MADE, NO ACTION IS TIMELY FILED, OR NO DEMAND FOR MEDIATION IS TIMELY MADE, THE HOLDER OF THE TRUST MONEY SHALL DELIVER THE TRUST MONEY AS DEMANDED AND THE RESIDENTIAL REAL PROPERTY MAY BE MARKETED AND SOLD WITHOUT THE CONSENT OF THE PURCHASER AND SUBSEQUENT PURCHASERS SHALL BE PROTECTED AGAINST ANY CLAIM MADE AGAINST THE SELLER BY THE PURCHASER.

(4) IF THE SELLER OR PURCHASER FILES AN ACTION OR DEMANDS MEDIATION, THE HOLDER OF THE TRUST MONEY MAY CONTINUE TO HOLD THE TRUST MONEY UNTIL RECEIPT OF A COURT ORDER DIRECTING THE DISTRIBUTION OF THE TRUST MONEY, OR UNTIL RECEIPT OF WRITTEN MUTUAL INSTRUCTIONS FROM SELLER AND PURCHASER OR FILE AN ACTION FOR INTERPLEADER IN A COURT OF COMPETENT JURISDICTION AND DEDUCT UP TO \$1,000 FOR THE ACTUAL COSTS AND ATTORNEY'S FEES INCURRED IN DOING SO.

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

(C) A SELLER OR PURCHASER 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 PROPERTY.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2023.