

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1235

(Delegate Wells)

Environment and Transportation

Judicial Proceedings

**Real Estate - Real Estate Brokerage Services and Termination of Residential
Real Estate Contracts (The Anthony Moorman Act)**

This bill requires a real estate broker or an escrow agent to distribute “trust money” to a purchaser – if the purchaser terminates a residential real estate contract under the terms of a contingency clause – after written notice of a request to return the money is provided to the holder of the trust money and the seller and specified procedures are satisfied. Within 10 days of receiving this notice, the seller must provide the holder of the trust money with a copy of a complaint filed in the District Court or a notarized, written request for mediation relating to the distribution of the trust money. On receipt of a complaint/request for mediation, the holder of trust money must hold the trust money until a court order or mediation agreement authorizes the distribution or the holder files an interpleader action in the District Court. Conversely, if the holder of the trust money does not receive a copy of a complaint or a request for mediation within 30 days, the holder must distribute the trust money to the purchaser and notify the purchaser and seller of the distribution. A holder of trust money may not be held liable for a decision to distribute the trust money in accordance with the bill’s provisions. A claimant aggrieved by a distribution of trust money under the bill’s provisions may file an action in the District Court, as specified.

Fiscal Summary

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

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: A “contingency” means a 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 to terminate the contract and receive distribution of the trust money. The bill specifies numerous examples of contingencies, including clauses relating to appraisals; conservation easements; home or environmental inspections; property condition disclosures and disclaimer act notices; short sales; and water and sewer assessments notices.

Current Law: Under § 10-802 of the Real Property Article, “trust money” means a deposit made by a purchaser in connection with a residential real estate sales transaction that the purchaser delivers to an escrow agent to hold for the benefit of the purchaser and the seller.

Distribution of Trust Money

A real estate broker must maintain trust money in an authorized account until:

- the real estate transaction for which the trust money was entrusted is consummated or terminated;
- the real estate broker receives proper 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, subject to notification requirements.

Prior to distributing the trust money under the latter conditions, the broker must notify both the owner and the beneficial owner that the broker intends to distribute the money to the person who, in the good faith opinion of the broker, is entitled to receive the money in accordance with the terms of the real estate contract that established the trust. The notice in the event of a failed transaction must be in writing and include (1) a statement of whether the trust money will be paid to the owner or the beneficial owner and (2) disclosure to the owner and the beneficial owner that either party may prevent distribution of the funds by submitting a written protest within 30 days, as specified. If a written protest is received, then funds must be distributed in accordance with one of the other three processes described above. If no written protest is received, then the funds must be disbursed in accordance with the terms of the notice. A real estate broker may not be liable to an owner

or beneficial owner of the trust money for a good faith decision to distribute the trust money or a decision not to distribute the trust money under these circumstances.

An agreement under which a real estate broker is entrusted with the trust money must contain a statement that the real estate broker may distribute the trust money as described above if the owner or beneficial owner of the trust money fails to complete the real estate transaction for which the trust money was entrusted.

Trust Money Agreements

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

- the amount of the trust money delivered to the escrow agent;
- the date the trust money was delivered to the escrow agent;
- the responsibility of the escrow agent to notify the purchaser and seller of trust money returned due to dishonored funds;
- the conditions under which the escrow agent may release the trust money; and
- the process to address disputes over the release of the trust money.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 424 and HB 720 of 2022.

Designated Cross File: SB 651 (Senator Carter) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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