

HOUSE BILL 1109

N1

11r2218

By: **Delegate Vaughn**

Introduced and read first time: February 11, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Rescission of Sales Contracts – Return of Deposits**

3 FOR the purpose of requiring the return of a deposit held by a real estate broker to a
4 purchaser who rescinds a contract to purchase a residential dwelling, a
5 cooperative interest, a condominium unit, or a lot in a homeowners association
6 to comply with a certain law governing the maintenance and disposition of trust
7 money by a real estate broker under certain circumstances; making clarifying
8 changes; and generally relating to the return of a deposit on rescission of a real
9 property sales contract.

10 BY repealing and reenacting, without amendments,
11 Article – Business Occupations and Professions
12 Section 17–505
13 Annotated Code of Maryland
14 (2010 Replacement Volume)

15 BY repealing and reenacting, without amendments,
16 Article – Corporations and Associations
17 Section 5–6B–03(a), (b), and (c)
18 Annotated Code of Maryland
19 (2007 Replacement Volume and 2010 Supplement)

20 BY adding to
21 Article – Corporations and Associations
22 Section 5–6B–03(c–1)
23 Annotated Code of Maryland
24 (2007 Replacement Volume and 2010 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Real Property
27 Section 10–702(h), 11–126(e), and 11–135(f)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2010 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Real Property
5 Section 11B–108(a), (b), and (c)
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2010 Supplement)

8 BY adding to
9 Article – Real Property
10 Section 11B–108(c–1)
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2010 Supplement)

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

15 **Article – Business Occupations and Professions**

16 17–505.

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

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

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

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

26 (4) the owner or beneficial owner of the trust money fails to complete
27 the real estate transaction for which the trust money was entrusted and the real
28 estate broker, in the real estate broker’s sole discretion, decides to distribute the trust
29 money in accordance with subsection (b) of this section.

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

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

- 1 (i) be in writing;
- 2 (ii) state whether the trust money will be paid to the owner or
3 beneficial owner; and
- 4 (iii) disclose to the owner and the beneficial owner that:
- 5 1. either party may prevent distribution of the trust
6 money under subsection (a)(4) of this section by submitting a protest within 30 days
7 from the date the notice was delivered or mailed by the real estate broker; and
- 8 2. if neither party submits a protest within 30 days from
9 the date the notice was delivered or mailed by the real estate broker, the trust money
10 will be distributed in accordance with the real estate broker's notice.
- 11 (3) The notice required under this subsection shall be:
- 12 (i) hand delivered to both the owner and beneficial owner; or
- 13 (ii) sent by certified mail, return receipt requested, and regular
14 mail to both the owner and beneficial owner.
- 15 (4) (i) An owner or beneficial owner may protest the distribution of
16 the trust money.
- 17 (ii) An owner or beneficial owner shall submit the protest to the
18 real estate broker holding the trust money within 30 days from the date the notice
19 required in paragraph (1) of this subsection was delivered or mailed by the real estate
20 broker.
- 21 (iii) A protest shall be in writing and either:
- 22 1. hand delivered; or
- 23 2. sent by certified mail, return receipt requested, and
24 regular mail.
- 25 (5) (i) If a written protest is received by the real estate broker, the
26 real estate broker shall distribute the trust money in accordance with subsection
27 (a)(1), (2), or (3) of this section.
- 28 (ii) If no written protest is received by the real estate broker
29 holding the trust money, the real estate broker shall distribute the trust money in
30 accordance with the terms of the notice as required in this section.
- 31 (c) When the duty of the real estate broker to maintain trust money in an
32 account terminates, the real estate broker promptly shall account for all trust money.

1 (d) A real estate broker may invest trust money:

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

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

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

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

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

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

17 **Article – Corporations and Associations**

18 5–6B–03.

19 (a) Within 15 days after a contract is signed or a public offering statement is
20 received, whichever occurs later, the initial purchaser may rescind, in writing, the
21 contract without any liability on the initial purchaser's part, and shall thereupon be
22 entitled to the prompt return of the deposit made on account of the contract.

23 (b) (1) After a contract is signed and before the issuance of a membership
24 certificate, the developer must deliver to the initial purchaser a copy of any
25 amendments, supplements, or modifications to the public offering statement.

26 (2) The initial purchaser may rescind, in writing, the contract within 5
27 days after receiving any of the aforesaid items which are material in nature, without
28 any liability on the initial purchaser's part, and shall be entitled to the return of any
29 deposit made on account of the contract.

30 (c) If the developer fails to comply with the requirements of this section, the
31 initial purchaser before the issuance of a membership certificate may rescind, in
32 writing, the contract, without liability on the initial purchaser's part and shall
33 thereupon be entitled to the prompt return of any deposits made on account of the
34 contract.

1 **[(1)] (I)** [within] **WITHIN** 15 days following receipt of all of the
2 information required under subsection (b) of this section or the signing of the contract,
3 whichever is later; and

4 **[(2)] (II)** [within] **WITHIN** 5 days following receipt of the information
5 required under subsection (d) of this section[, rescind in writing the contract of sale
6 without stating any reason and without any liability on his part, and he shall be
7 entitled to the return of any deposits made on account of the contract].

8 **(2) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A**
9 **LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER THIS SUBSECTION**
10 **SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE**
11 **BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.**

12 11-135.

13 **(f) (1)** Any purchaser may at any time within 7 days following receipt of
14 all of the information required under subsection (a) or (b) of this section, whichever is
15 applicable, rescind in writing the contract of sale without stating any reason and
16 without any liability on his part.

17 **(2)** The purchaser, upon rescission, is entitled to the return of any
18 deposits made on account of the contract.

19 **(3) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL**
20 **ESTATE BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER THIS**
21 **SUBSECTION SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505**
22 **OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.**

23 11B-108.

24 **(a)** A person who enters into a contract as a purchaser but who has not
25 received all of the disclosures required by § 11B-105, § 11B-106, or § 11B-107 of this
26 title, as applicable, shall, prior to settlement, be entitled to cancel the contract and to
27 the immediate return of deposits made on account of the contract.

28 **(b) (1)** Any purchaser who has not received all of the disclosures required
29 under § 11B-105 or § 11B-106 of this title, as applicable, 5 calendar days or more
30 before the contract was entered into, within 5 calendar days following receipt by the
31 purchaser of the disclosures required by § 11B-105(a) and (b) or § 11B-106(a) and (b)
32 of this title, as applicable, may cancel in writing the contract without stating a reason
33 and without liability on the part of the purchaser.

34 **(2)** The purchaser shall be entitled to the return of any deposits made
35 on account of the contract, except that the vendor shall be entitled to retain the cost of
36 reproducing the information specified in § 11B-105(b), § 11B-106(b), or § 11B-107(b)

1 of this title, as applicable, or \$100, whichever amount is less, if the disclosures are not
2 returned to the vendor at the time the contract is cancelled.

3 (c) Any purchaser may within 3 calendar days following receipt by the
4 purchaser of a change in mandatory fees and payments exceeding 10 percent of the
5 amount previously stated to exist or any other substantial and material amendment to
6 the disclosures required by § 11B-105 or § 11B-106 of this title, as applicable, which
7 adversely affects the purchaser, cancel in writing the contract without stating a reason
8 and without liability on the part of the purchaser, and the purchaser shall be entitled
9 to the return of deposits made on account of the contract.

10 **(C-1) IF ANY DEPOSITS ARE HELD IN TRUST BY A LICENSED REAL**
11 **ESTATE BROKER, THE RETURN OF THE DEPOSITS TO A PURCHASER UNDER**
12 **SUBSECTION (A), (B), OR (C) OF THIS SECTION SHALL COMPLY WITH THE**
13 **PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND**
14 **PROFESSIONS ARTICLE.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2011.