

Maryland Protects Against New Home Purchase Deposit Forfeitures

Legislation recently enacted in the State of Maryland provides potential purchasers of newly constructed homes with increased protections from earnest money deposit forfeitures in transactions that are contingent upon obtaining a lender's commitment to fund a mortgage loan.

Under existing provisions of the state's real property laws, a contract for the initial sale of a new home must be contingent on the purchaser obtaining a written commitment for a loan secured by the property, unless the contract expressly states otherwise. If the contract contains a loan commitment contingency, it must state the maximum loan interest rate that the purchaser is obligated to accept.

Legislative records analyzing [Maryland House Bill 1183](#) and its background recite news reports indicating that a large nationwide home builder operating in about 20 states "regularly collected forfeited deposits from prospective home buyers who were unable to obtain financing for their new home after signing a contract with the builder." In a related putative class action lawsuit brought in a federal district court, the plaintiffs alleged that the builder and/or its subsidiaries "...routinely enter into new home sale agreements with prospective buyers and fail to return their deposits when these buyers are unable to obtain a

mortgage approval." The plaintiffs also alleged that between 2006 and 2009 the builder "retained \$106.2 million in customer deposits where sales agreements never reached closing", and that 3,030 prospective buyers were affected by such practices [the case advanced to a federal appellate court regarding the enforceability of an arbitration clause in the purchase contracts, but was eventually settled. Thus,



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the plaintiffs' allegations in the case were not adjudicated or proven]. Legislative records indicate that, "Over several years prior to that lawsuit, according to its reports to the U.S. Securities and Exchange Commission, the company retained approximately \$125 million in forfeited deposits from 3,300 prospective home buyers."

To address such situations, House Bill 1183 provides that contracts for the sale of newly constructed homes (as defined by the Maryland Home Builder Registration Act) must not only state the maximum interest rate that the buyer is obligated to accept, but also must state

the time period within which the purchaser must obtain a written loan commitment. The new statutes also provide that, if a purchaser does not obtain a written commitment for a loan in accordance with the terms of the contract and within the required time period, either the seller or the purchaser may provide a written notice declaring the contract to be null and void. If the purchaser so elects, the written notice to the seller must be accompanied by documentation from a lender evidencing the purchaser's inability to obtain a loan in accordance with the contract terms. If either the seller or purchaser so elect, the seller will be required to return any deposit paid by the purchaser if the purchaser has complied with his/her contractual obligations.

During the course of the legislation, the Maryland Association of REALTORS® successfully advanced an amendment to the bill clarifying that, if a deposit is held by a licensed real estate broker in a new home sale transaction that is subject to HB 1183, the broker must distribute the deposit in accordance with existing provisions of the state's real estate licensing laws governing the handling, distribution and accounting for trust moneys [Maryland Business and Occupations Code, section 17-505]. House Bill 1183 will take effect on October 1, 2015.