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BULLETIN NO. 18-04

DATE: February 12, 2018
TO: All Maryland-licensed title insurance producers
RE: Trust Funds – Earnest Money Deposits

The Maryland Insurance Administration (“Administration”) has noted a trend in Maryland real estate transactions wherein a title insurance producer will, at the request of a realtor, hold an earnest money deposit (“EMD”) in connection with a residential real estate transaction. The purpose of this Bulletin is to inform Maryland-licensed title insurance producers that they are not required to accept and hold an EMD, but if they do agree to accept and hold an EMD, the EMD is considered “trust money” under the Insurance Article, Annotated Code of Maryland.¹ Further, although any agreement between the parties to the real estate transaction pertaining to the deposit and release of the EMD is not regulated under the Insurance Article, a title insurance producer who misappropriates, converts, unlawfully withholds, fails or refuses to pay over on demand money belonging to an insurer, insurance producer, or other person entitled to the “trust money,” will be subject to the appropriate administrative action in accordance with § 10-126.

I. Trust Money Defined

Section 22-105(a)(3) defines trust money as a deposit, payment, or other money that a person entrusts to a title insurer or its agent to hold for the benefit of a buyer in a real estate transaction or for a beneficial owner, in connection with an escrow, settlement, closing, or title indemnification. See also § 10-121 and Code of Maryland Regulations (COMAR) 31.16.03.02B(13).

II. Trust Money Deposits

Section 22-105(b) requires a title insurer or producer to “pool and commingle trust money received from clients or beneficial owners in connection with escrows, settlements, closings or title indemnifications” if the title insurer or producer determines that the trust money, if placed in a separate deposit, would generate interest in an amount not greater than \$50 or the cost of administering the separate account. Section 22-105(d) provides that trust money is required to be deposited and

¹ Unless otherwise noted, all statutory references are to the Insurance Article, Annotated Code of Maryland.

maintained until disbursed in accordance with the real estate transaction in a financial institution located in the State, or, subject to the approval of the Commissioner of Financial Regulation, in a financial institution outside of the State that otherwise complies with Maryland escrow requirements. See COMAR 31.16.03.03B

Pursuant to § 22-105(f), trust money which is not required to be deposited into a Maryland Affordable Housing Trust (“MAHT”) account may be deposited into any other deposit or investment vehicle as specified by the buyer or beneficial owner or agreed upon by the buyer or beneficial owner and the title insurer or title insurance agent.² Additionally, any agreement between a buyer or beneficial owner and a title insurer or title insurance agent must be in writing and either be in a separate agreement or part of another agreement between the parties, in conspicuous type and initialed by the buyer or beneficial owner. See COMAR 31.16.03.05.

III. Earnest Money Deposit

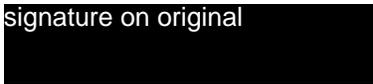
Under the Insurance Article, a title insurance producer is not required to accept and hold an EMD in connection with a Maryland real estate transaction, but if a producer does agree to do so, the EMD shall be treated as “trust money” and deposited according to the requirements set forth in the Insurance Article. See § 22-105(d).

Further, the Insurance Article does not regulate the terms and conditions of an agreement wherein the parties to the real estate transaction provide a written agreement or an addendum to the ratified contract pertaining to the deposit and release of the EMD. This means that the Administration is not authorized under the current law to require the title producer to prepare any particular agreements pertaining specifically to the deposit and release of the EMD.

Note, however, that if a title insurance producer misappropriates, converts, unlawfully withholds, fails or refuses to pay over on demand money belonging to an insurer, insurance producer, or other person entitled to the “trust money,” which includes an EMD, the Administration may investigate and initiate appropriate administrative action in accordance with § 10-126.

Please direct any questions concerning this Bulletin to Darlene A. Arnold, Director of Enforcement, at 410-468-2354 or darlene.arnold@maryland.gov or to Erica J. Bailey, Associate Commissioner, Compliance and Enforcement at 410-468-2113 or erica.bailey@maryland.gov.

ALFRED W. REDMER, JR.
Insurance Commissioner

signature on original


By:
Erica J. Bailey
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² If trust money is not expected to generate interest in excess of \$50, COMAR 31.16.03.05, provides that such trust money may be deposited in a non-MAHT account.