

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1019

(Senator Kelley)

Finance

Environmental Matters

Residential Real Property - Real Estate Settlements - Disclosures

This bill establishes that a person who participates in an “affiliated business arrangement” as defined under the federal Real Estate Settlement Procedures Act (RESPA) is not in violation of a State law that otherwise prohibits affiliates from participating in a real estate settlement (1) solely because that person participates in an affiliated business arrangement; and (2) as long as that person complies with existing RESPA disclosure requirements. A person who does not comply is guilty, under existing penalty provisions, of a misdemeanor and subject to maximum penalties of six months imprisonment and/or a fine of \$1,000.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

Local Effect: Potential minimal increase in expenditures due to the bill’s incarceration provision.

Small Business Effect: Potential minimal.

Analysis

Current Law: A person involved with the settlement of real estate transactions involving land in the State may not pay to, or receive from, another any consideration to solicit, obtain, retain, or arrange real estate settlement business. However, a person is not prohibited from:

- paying a commission to an agent who holds a certificate of qualification; or
- referring a real estate settlement business or entering into a professional fee arrangement between attorneys, if the referral or professional fee arrangement does not violate provisions of the Business Occupations Article.

For purposes of the federal RESPA law, an “affiliated business arrangement” is defined as an arrangement in which:

- a person who is in a position to refer business, incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1% in a settlement service provider; and
- either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

An affiliated business arrangement does not violate RESPA if the person making each referral provides the other party with a specified written affiliated business arrangement disclosure statement. The disclosure must state that the referring party has a business relationship with the settlement service provider and that the referring party may receive a financial or other benefit as the result of the referral. The affiliated business arrangement disclosure statement must set forth the estimated charge or range of charges for the settlement services and state that the borrower, purchaser, or seller is not required to use the listed provider as a condition of settling a mortgage loan or purchasing, selling, or refinancing the subject property.

A person who violates these federal disclosure provisions is subject to maximum penalties of one year imprisonment and/or a \$10,000 fine. The person may also be subject to civil liability. However, a person may avoid being guilty of violating federal disclosure provisions by proving, by a preponderance of the evidence, that failure to comply was due to a mistake.

Background: Chapters 356 and 357 of 2008 created the Commission to Study the Title Insurance Industry in Maryland. The commission was required to:

- review State laws relating to the title insurance industry;
- review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
- identify title insurance issues that affect State consumers;
- examine the rate-setting factors for title insurance premiums;
- examine how rates and services in other specified states compare to those in Maryland;

- identify ways to improve consumer education about the title insurance industry;
- study whether mechanics' liens on properties scheduled for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
- review the time limits, subsequent to closing, for the issuance of title insurance policies;
- study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of those arrangements on title insurance rates;
- and study any other issue with significant impact on the title insurance industry.

In addition, Chapter 361 of 2009 required the commission to examine the adequacy of the blanket surety bond or letter of credit required under the Insurance Article and the impact of raising the bonding requirements on title insurance producers. The commission held eight meetings, including two public hearings, and solicited testimony and presentations to fully study each of its charges.

The bill codifies one of the commission's recommendations with respect to affiliated business arrangements.

State Revenues: General fund revenues potentially increase minimally as a result of the bill's monetary penalty provision to the extent that additional cases are heard in the District Court as a result of this new offense.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty to the extent that more people are committed to Division of Corrections facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures potentially increase as a result of the bill's incarceration penalty to the extent that people are convicted of this new offense and sentenced to imprisonment. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: HB 1471 (Delegate Rudolph, *et al.*) - Environmental Matters.

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

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