

## **URGENT: IMMEDIATE ATTENTION REQUIRED**

A message from Alvin C. Monshower, Jr., SMAR Legal Counsel

RE: House Bill 1109 – Return of Earnest Money Deposit

In September, 2010, Mr. Monshower advised that the Maryland Real Estate Commission had announced a new advisory regarding the return of earnest money deposits by real estate brokers in residential real estate transactions where the property is located in a Homeowners Association or is a condominium.

Specifically, the Commission advised that a real estate broker may return the earnest money deposit to the buyer without a written release of deposit agreement signed by the seller and the buyer in those instances where a buyer timely rescinds the Contract of Sale, in writing, based upon the receipt of the required disclosures from the seller and/or the condominium or Homeowners Association (“HOA”).

The advisory by the Maryland Real Estate Commission, at the time, was appropriate, given the fact that current Maryland law clearly provides that a buyer who timely rescinds a contract of sale based upon their receipt of the required HOA and/or condominium disclosure documents, is entitled, for no stated reason, to rescind the Contract of Sale, provided such rescission is in writing, and to the return of any earnest money deposits made by the buyer with respect to the contract of sale - subject to the right of the seller to retain from any such deposit the cost of reproducing the HOA documents or the amount of \$100, whichever is less, as stated above.

**However, with the enactment of House Bill 1109 during the 2011 Session of the Maryland Legislature, this will now change effective October 1, 2011.**

Pursuant to House Bill 1109, the Maryland Legislature amended the Condominium Act with respect to the initial and resale of condominium units as well as the Disclosure/Disclaimer Act and the Maryland Homeowners Association Act to provide that any earnest money deposits held by a licensed real estate broker shall comply with the requirements of Section 17-505 of the Maryland Real Estate Brokers Act. In other words, in a residential transaction where the property being conveyed is located within a condominium, or within a homeowners association, or is subject to the Maryland Residential Property Disclosure/Disclaimer Act, a broker **may not distribute the earnest money deposit in the absence of proper written instructions from the seller and the buyer directing the disposition of the deposit monies or the broker, in the broker’s good faith, intends to disburse the deposit monies to the seller or the buyer, by written notice to both parties, pursuant to the requirements of Section 17-505(b)(1) of the Maryland Real Estate Brokers Act.**