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SENATE BILL NO. 533

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 54.1-2108.2 of the Code of Virginia, relating to the Department of Professional and Occupational Regulation; real estate brokers; protection of real estate escrow funds.

Patron—Lewis

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2108.2 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2108.2. Protection of escrow funds, etc., held by a real estate broker in the event of termination of a real estate purchase contract.

Notwithstanding any other provision of law, for purchase transactions:

1. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker, or an agent of such principal broker or supervising broker, *that is to be held in the firm's escrow account* shall be placed in ~~an~~ such escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated.

2. *If a principal broker or supervising broker, or an agent of such principal broker or supervising broker, receives an earnest money deposit that will not be held in the firm's escrow account, the principal broker or supervising broker shall ensure that the earnest money deposit is delivered to the escrow agent named in the contract by the end of the fifth business banking day following receipt of the deposit, unless otherwise agreed to in writing by the principals to the transaction.*

3. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed-upon principal as provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section; or (iv) the broker releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the earnest money deposit.

At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (a) hand delivery; (b) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (c) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (d) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies with this section shall be immune from liability to any of the parties to the contract.

3- 4. A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77.

4- 5. If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 and otherwise comply with the provisions of § 54.1-2108.1.

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