



To: Maryland Agents of WFG National Title Insurance Company  
Date: February 16, 2018  
From: Underwriting Department  
Bulletin No. MD 2018-02  
Subject: MIA Bulletin - Earnest Money Deposits

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Maryland title insurance agents are being asked by real estate professionals, on an ever-increasing basis, to hold earnest money deposits ("EMDs") on purchases/sales of real property.

The Maryland Insurance Administration ("MIA") has issued Bulletin No. 18-04 as guidance to Maryland title producers on this topic. Please click [HERE](#) for a copy of the Bulletin.

The Bulletin makes it clear that earnest money funds are considered "trust money" under Maryland law. As such, EMDs are subject to the same rules as other trust funds, including the likely need to deposit such funds into a Maryland Affordable Housing Trust ("MAHT") account due to their relatively small dollar amount.\*\*

Further, the MIA does not regulate the terms of any written agreement or addendum to the purchase contract relating to the deposit and release of EMDs. If your agency chooses to hold EMDs, you are advised to hire local counsel to prepare a written escrow agreement which details your rights and obligations under these circumstances.

Holding EMDs isn't without risk. In the worst case, legal action may be taken against your agency if one of the parties to the real estate contact feels aggrieved about your decision to hold onto, or distribute, EMD funds. You may also incur legal expenses associated with depositing these funds with a court of competent jurisdiction (i.e., an action for "interpleader"), in order to resolve an EMD dispute between the buyer and the seller.

**\*\*A MAHT account is required for Maryland trust monies held in connection with real estate settlements that would earn \$50 or less in interest.**

*Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.*