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To: Members of the Senate Judicial Proceedings Committee
From: MLTA Legislative Committee
Date: March 12, 2021
Subject: **HB 19** – Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money

Position: **Support**

The Maryland Land Title Association (MLTA) **supports House Bill 19 Real Property – Residential Real Estate Transactions – Escrow Agents and Trust Money**. The MLTA supports HB 19, a bill that would clarify when a written agreement signed by the buyer and seller in a residential real estate transaction concerning a money deposit is required. This bill simply clarifies what was intended when MD Code, Real Property Article §10-802 was enacted in 2019.

Traditionally, Maryland Real Estate Brokers have held earnest money deposits made by buyers in connection with the purchase and sale of residential property. In connection therewith, Brokers are governed by MD Code, Business Occupations and Professions Article §17-501 *et seq.* However, because of a growing trend among Brokers to decline to hold earnest money deposits on behalf of their agents or simply lack the ability to do so because they do not maintain active trust accounts, residential real estate settlement companies began to hold them as an accommodation. Real Estate Settlement Companies (aka Title Insurance Producers) are in turn governed by MD Code, Insurance Article §22-105 with respect to trust money.

However, disputes between the buyer and seller frequently arise over the issue of the earnest money deposit. Real Property Article §10-802 was enacted in an attempt to prevent these disputes from occurring and provide clear instructions to the settlement company (now acting as the escrow agent) when they do. When the settlement companies have tried to comply with the new law, they have been stymied in their efforts because the statute was drafted too broadly and captured sums that were deposited by buyers for which the seller had no claim if the transaction did not close (i.e. the “down payment”). Additionally, there is no need to say “additional deposit” because whether it is the “original” deposit or an “additional” deposit, it is all “deposit.” The word “deposit” is used because that is the word used in the Maryland REALTORS® and the Greater Capital Area Association of REALTORS® (GCAAR) use in their contract forms to describe the “earnest money deposit.” With the statute being too broad in this

area, settlement agents struggle to come up with a form that deals with down payments at the outset. If it is not dealt with at the outset, then the situation arises where the settlement agents need to have another agreement signed when the buyer deposits the down payment at the time of closing.

Likewise, the word “entrusted” has been replaced with “delivered.” Many times, buyers will simply wire funds or mail checks to settlement agents without advance warning or any indication as to purpose of the funds. Settlement agents may not even realize that funds have been “entrusted” to them. Delivery requires a knowing acceptance. Once the settlement agent understands the purpose of the funds and connects it to a particular transaction, it can then prepare the escrow agreement called for in the statute.

HB 19 will clarify the existing law and carry out the intended purpose for it when MD Code, Real Property Article §10-802 was enacted in 2019. For the reasons stated above, the Maryland Land Title Association **strongly supports HB 19 and urges a favorable committee report.**

Thank you.