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To: Members of the Senate Education, Health and Environmental Affairs Committee

From: MLTA Legislative Committee

Date: February 15, 2022

Subject: **SB 425 – Real Estate Associate Brokers and Salespersons - Compensation - Payment From Title Insurance Producer**

Position: **Opposed**

The Maryland Land Title Association (MLTA) opposes Senate Bill 425 – Real Estate Associate Brokers and Salespersons – Compensation – Payment from Title Insurance Producers.

The bill seeks to permit Brokers to instruct the Title Insurance Producer to distribute its commissions to other Real Estate Salespersons, Associate Brokers or other Business Entities. This bill (1) invites anti-competitive behavior in the referral of buyers to title service providers; (2) creates uncertainty in the administrative responsibilities of the disbursing Title Insurance Producers; and (3) is unnecessary in light of the widespread use of instantaneous wire disbursements.

As memorialized in the Real Estate Settlement Procedures Act (RESPA), the consumer is harmed when professionals in the real estate industry act in non-competitive manner. This bill invites anti-competitive behavior by Brokerages due to the fact that a Brokerage can limit its authorization to disburse to only its preferred Title Agents. Many Brokerages have business relationships with particular Title Companies, including joint venture agreements, shared marketing agreements or a common ownership interest. By authorizing only those preferred partner Title Agents to directly disburse commissions, it is creating a significant financial incentive for its salespeople to steer all of his or her deals to the partner Title Agent. The consumer will be unaware that their guided choice in Title Agent was for the benefit of the Broker and Salesperson, not for their own benefit.

Prior to the prohibition of these types of disbursements by the Maryland Real Estate Commission, there was significant confusion and uncertainty among Title Agents relating to their responsibilities in disbursing these funds. Is the Title Agent now responsible for issuing 1099s to the Real Estate Salespeople? Do they have a responsibility to verify the appropriateness of the distributions if they suspect inappropriate kick-back payments? Is acting as a payroll processor for the Brokerages an act of giving something of value in exchange for a referral, triggering a possible RESPA violation? The statutory authorization does not resolve these remaining issues.

And finally, the recent exponential growth in the use of wires to disburse commissions has eliminated the practical need for such distributions because Brokerages have good funds in their account the day of closing. There is no longer a need to wait for the receipt of the check from the Salesperson, wait for the clearance of the check and then disburse all commissions owed. With cleared funds in their account on the same day as closing, a Brokerage can disburse commissions as quickly as their internal administrative process allows.

Technical Note

The term “compensation” in 17-322 appears to be an undefined term and has raised concerns among our membership about what items on the settlement sheet will fall into this category.