



House Bill 728 – Sales of Residential Real Property – Offers to Purchase and Transfer Tax Information

Maryland REALTORS® offers the following comments on HB 728.

It is our understanding that HB 728 is an attempt to address so-called “Homeowner Benefit Agreements” (HBAs), which have recently been offered in Maryland. These agreements provide an upfront payment to homeowners (typically \$500-\$2,000) in exchange for the exclusive right to list their properties for a term of anywhere from 25 to 40 years. These agreements are recorded in the land records of the property and involve a termination fee of 3% of the home value should the property owner choose to violate the terms of the agreement.

Several states have opened investigations into these agreements through their respective Attorneys General on the basis that these agreements have been predatory upon certain racial, ethnic, and socio-economic groups. The outcomes of those investigations are still pending.

However, as it pertains to HB 728, we believe it is necessary to share with the General Assembly that in those investigations, the companies offering HBAs have argued that these are not listing agreements. Rather, they have claimed that these are agreements to enter into a listing agreement at some point during the term of the contract. If this assertion holds, then the provisions of HB 728 would not apply to HBAs offered in Maryland.

As an alternative, we are including with our written testimony a copy of the American Land Title Association’s national model ordinance for these agreements. It is our understanding that this model language is being introduced in other states as a response to HBAs. If this approach is not favored by the General Assembly, then we would recommend that a separate definition for such agreements be outlined in the code so as not to interfere with the standard listing agreement for residential sales transactions. For instance, the General Assembly could define these as “Non-Title Recorded Agreements for Personal Services” (NTRAPS), as outlined by American Land Title, “brokerage services agreements” or another exclusive representation agreement that is separate and distinct from what the industry considers a standard “listing agreement.”

We thank you for your consideration of our comments as you review HB 728.

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