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To: Members of the House Environment and Transportation Committee
From: MLTA Legislative Committee
Date: February 18, 2022
Subject: **HB 720** – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act)
Position: **Opposed unless amended**

The Maryland Land Title Association (MLTA) opposes unless amended House Bill 720 – Real Estate Brokerage Services and Termination of Residential Real Estate Contracts (The Anthony Moorman Act). The bill seeks to address a problem with a relatively small amount of residential real estate transactions in which a seller refuses to allow an earnest money deposit to be returned to the buyer when the buyer believe they have a right to terminate the contract.

The problem with statute as drafted is that when disputes arise, they are fact specific with each party believing their interpretation of the facts to be the correct interpretation. The escrow holder in turn is caught in the middle. Current law requires the escrow holder to have an agreement executed by the parties that tells the escrow holder what to do with the funds being held. The bill as drafted appears to allow the buyer to terminate the contract at will under the guise of “a contingency” that was not met. But just as often as a buyer seeking a release of the deposit, a seller seeks to terminate the contract for the buyer’s failure to perform. And just as often as the seller refuses to release the deposit to the seller, the buyer will refuse to execute a termination of the contract so the seller may move on and sell the property to another.

Thus, in order to even the playing field, and protect the escrow holder who is caught in the middle of the dispute, the MLTA proposes the attached amendments to the bill.

For these reasons, the MLTA **opposes HB 720 unless amended.**

HOUSE BILL 720

N1

2lr0931
CF SB 424

By: **Delegates C. Branch, T. Branch, Charles, Foley, Guyton, Harrison, Henson, Hill, Jackson, D. Jones, R. Jones, Patterson, Prettyman, Qi, Sample-Hughes, Smith, Valderrama, and Wells**

Introduced and read first time: February 3, 2022

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Real Estate – Real Estate Brokerage Services and Termination of Residential**
3 **Real Estate Contracts**
4 **(The Anthony Moorman Act)**

5 FOR the purpose of requiring a real estate broker or an escrow agent to distribute trust
6 money to a purchaser within a certain period of time if the purchaser terminates a
7 real estate transaction; requiring a holder of trust money who makes a certain
8 distribution to notify the seller and purchaser of the distribution within a certain
9 period of time; establishing that a holder of trust money may not be held liable for a
10 certain decision to distribute the trust money; authorizing a claimant aggrieved by
11 a certain distribution of trust money to file a claim in the District Court; and
12 generally relating to real estate brokerage services, escrow agents, and trust money.

13 BY repealing and reenacting, without amendments,
14 Article – Business Occupations and Professions
15 Section 17–101(a) and (l) and 17–501
16 Annotated Code of Maryland
17 (2018 Replacement Volume and 2021 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Business Occupations and Professions
20 Section 17–505
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2021 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Real Property
25 Section 10–802
26 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

hb0720

1 (2015 Replacement Volume and 2021 Supplement)

2 BY adding to
3 Article – Real Property
4 Section 10–803
5 Annotated Code of Maryland
6 (2015 Replacement Volume and 2021 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
8 That the Laws of Maryland read as follows:

9 **Article – Business Occupations and Professions**

10 17–101.

11 (a) In this title the following words have the meanings indicated.

12 (l) “Provide real estate brokerage services” means to engage in any of the
13 following activities:

14 (1) for consideration, providing any of the following services for another
15 person:

16 (i) selling, buying, exchanging, or leasing any real estate; or

17 (ii) collecting rent for the use of any real estate;

18 (2) for consideration, assisting another person to locate or obtain for
19 purchase or lease any residential real estate;

20 (3) engaging regularly in a business of dealing in real estate or leases or
21 options on real estate;

22 (4) engaging in a business the primary purpose of which is promoting the
23 sale of real estate through a listing in a publication issued primarily for the promotion of
24 real estate sales;

25 (5) engaging in a business that subdivides land that is located in any state
26 and sells the divided lots; or

27 (6) for consideration, serving as a consultant regarding any activity set
28 forth in items (1) through (5) of this subsection.

29 17–501.

30 (a) In this Part I of this subtitle the following words have the meanings indicated.

1 (b) "Beneficial owner" means a person, other than the owner of the trust money,
2 for whose benefit a real estate broker or, on behalf of a real estate broker, an associate real
3 estate broker or a real estate salesperson is entrusted to hold trust money.

4 (c) "Trust money" means a deposit, payment, or other money that a person
5 entrusts to a real estate broker or, on behalf of a real estate broker, to an associate real
6 estate broker or a real estate salesperson to hold for:

7 (1) the benefit of the owner or beneficial owner of the trust money; and

8 (2) a purpose that relates to a real estate transaction involving real estate
9 in the State.

10 17-505.

11 (a) A real estate broker shall maintain trust money in an account authorized
12 under this Part I of this subtitle until:

13 (1) the real estate transaction for which the trust money was entrusted is
14 consummated or terminated;

15 (2) the real estate broker receives proper written instructions from the
16 owner and beneficial owner directing withdrawal or other disposition of the trust money;

17 (3) on an interpleader filed by the real estate broker, a court orders a
18 different disposition; or

19 (4) the owner or beneficial owner of the trust money fails to complete the
20 real estate transaction for which the trust money was entrusted and the real estate broker,
21 in the real estate broker's sole discretion, decides to distribute the trust money in
22 accordance with subsection (b) of this section.

23 (b) (1) Prior to distributing the trust money under subsection (a)(4) of this
24 section, the real estate broker shall notify both the owner and the beneficial owner that the
25 real estate broker intends to distribute the trust money to the person who, in the good faith
26 opinion of the real estate broker, is entitled to receive the trust money in accordance with
27 the terms of the real estate contract which established the trust.

28 (2) The notice required under this subsection shall:

29 (i) be in writing;

30 (ii) state whether the trust money will be paid to the owner or
31 beneficial owner; and

32 (iii) disclose to the owner and the beneficial owner that:

1 1. either party may prevent distribution of the trust money
2 under subsection (a)(4) of this section by submitting a protest within 30 days from the date
3 the notice was delivered or mailed by the real estate broker; and

4 2. if neither party submits a protest within 30 days from the
5 date the notice was delivered or mailed by the real estate broker, the trust money will be
6 distributed in accordance with the real estate broker's notice.

7 (3) The notice required under this subsection shall be:

8 (i) hand delivered to both the owner and beneficial owner; or

9 (ii) sent by certified mail, return receipt requested, and regular mail
10 to both the owner and beneficial owner.

11 (4) (i) An owner or beneficial owner may protest the distribution of the
12 trust money.

13 (ii) An owner or beneficial owner shall submit the protest to the real
14 estate broker holding the trust money within 30 days from the date the notice required in
15 paragraph (1) of this subsection was delivered or mailed by the real estate broker.

16 (iii) A protest shall be in writing and either:

17 1. hand delivered; or

18 2. sent by certified mail, return receipt requested, and
19 regular mail.

20 (5) (i) If a written protest is received by the real estate broker, the real
21 estate broker shall distribute the trust money in accordance with subsection (a)(1), (2), or
22 (3) of this section.

23 (ii) If no written protest is received by the real estate broker holding
24 the trust money, the real estate broker shall distribute the trust money in accordance with
25 the terms of the notice as required in this section.

26 **(C) IF A SELLER OR PURCHASER OF RESIDENTIAL REAL ESTATE,
AS DEFINED IN §
27 10-802 OF THE REAL PROPERTY ARTICLE, TERMINATES A REAL ESTATE
28 TRANSACTION IN ACCORDANCE WITH § 10-803 OF THE REAL PROPERTY ARTICLE,
29 THE REAL ESTATE BROKER SHALL DISTRIBUTE THE TRUST MONEY IN
ACCORDANCE WITH § 10-802 UNLESS AGREED OTHERWISE BY THE PARTIES IN A
WRITTEN AGREEMENT.**

30 **[(c)] (D)** When the duty of the real estate broker to maintain trust money in an
31 account terminates, the real estate broker promptly shall account for all trust money.

2 (2) A homebuilder registered under Title 4.5 of the Business Regulation
3 Article who is engaged in the initial sale of residential real estate; or

4 (3) A real estate salesperson, associate real estate broker, or real estate
5 broker licensed under Title 17 of the Business Occupations and Professions Article.

6 (c) When an escrow agent agrees to hold trust money, the escrow agent shall
7 enter into a written agreement with the purchaser and seller of the residential real estate
8 that contains the following information:

9 (1) The amount of the trust money delivered to the escrow agent;

10 (2) The date the trust money was delivered to the escrow agent;

11 (3) The responsibility of the escrow agent to notify the purchaser and seller
12 of trust money returned due to dishonored funds;

13 (4) The conditions under which the escrow agent may release the trust
14 money; and

15 (5) The process to address disputes over the release of the trust money.

16 **(D) IF A S E L L E R O R PURCHASER TERMINATES A REAL**
17 **ESTATE TRANSACTION IN**
18 **ACCORDANCE WITH § 10-803 OF THIS SUBTITLE, THE ESCROW AGENT SHALL**
19 **DISTRIBUTE THE TRUST MONEY IN ACCORDANCE WITH THE**
20 **REQUIREMENTS OF THIS SECTION AND THE WRITTEN AGREEMENT OF THE PARTIES.**

21 **[(d)] (E)** Nothing in this section may be construed to prohibit an escrow agent
22 from transferring trust money to another escrow agent if the purchaser of the residential
23 real estate for which the trust money is held chooses the escrow agent to whom the trust
24 money is transferred.

24 **10-803.**

25 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
26 **INDICATED.**

27 **(2) (I) “CONTINGENCY” MEANS AN EVENT THAT MAY NOT HAPPEN.**

19 **(3) “HOLDER OF TRUST MONEY” MEANS:**

22 **(I) AN ESCROW AGENT AS DEFINED IN § 10-802 OF THIS**
23 **SUBTITLE; OR**

24 **(II) A LICENSED REAL ESTATE BROKER AS DEFINED IN § 17-101**

1 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

2 (4) "RESIDENTIAL REAL ESTATE" HAS THE MEANING STATED IN §
3 10-802 OF THIS SUBTITLE.

4 (5) "TRUST MONEY" HAS THE MEANING STATED IN § 10-802 OF THIS
5 SUBTITLE.

6 (B) (1) IF A SELLER OR PURCHASER TERMINATES A
RESIDENTIAL REAL ESTATE
7 CONTRACT FOR FAILURE OF A CONTINGENCY TO OCCUR, SUCH PARTY SHALL NOTIFY
THE HOLDER OF TRUST MONEY AND THE OTHER PARTY BY DELIVERING AN
ACKNOWLEDGED WRITING SETTING FORTH THE CONTINGENCY THAT DID NOT
OCCUR AND DEMANDING THAT TRUST MONEY BE DISTRIBUTED
8 THE PURCHASER AND THE CONTRACT TERMINATED.

8 (2) IF A SELLER OR PURCHASER OBJECTS TO THE
DISTRIBUTION OF TRUST MONEY AS DEMANDED AND
TERMINATION OF THE CONTRACT, SUCH PARTY SHALL
NOTIFY THE OTHER PARTY AND THE HOLDER OF TRUST
MONEY BY DELIVERING AN ACKNOWLEDGED
WRITING SETTING FORTH THE BASIS FOR THE
OBJECTION WITHIN 10 DAYS OF RECEIPT OF
THE DEMAND AND FILE AN ACTION IN A COURT
OF COMPETENT JURISDICTION WITHIN 30 DAYS
THEREOF.

9 (3) IF NO SUCH OBJECTION IS TIMELY MADE OR NO ACTION IS
TIMELY FILED, THE HOLDER OF THE TRUST MONEY SHALL DELIVER
THE TRUST MONEY TO THE PURCHASER AND THE RESIDENTIAL
REAL ESTATE MAY BE MARKETED AND SOLD BY THE SELLER
WITHOUT THE CONSENT OF THE PURCHASER AND SUBSEQUENT
PURCHASERS SHALL BE PROTECTED AGAINST ANY CLAIM MADE
AGAINST THE SELLER BY THE PURCHASER.

10 (4) NO ACTION, CLAIM OR PROCEEDING MAY BE MADE
AGAINST A HOLDER OF TRUST MONEY FOR DISTRIBUTING TRUST
MONEY UNDER THIS SUBSECTION AND A HOLDER OF TRUST MONEY SHALL
11 NOT BE LIABLE FOR A DECISION
TO DISTRIBUTE OR NOT TO DISTRIBUTE THE TRUST MONEY UNDER THIS
SUBSECTION.

(C) A SELLER OR PURCHASER MAY FILE AN ACTION FOR DAMAGES IN A COURT
OF COMPETENT JURISDICTION AGAINST THE OTHER FOLLOWING THE TIME LIMITS
PRESCRIBED IN THIS SECTION, BUT NO SUCH ACTION SHALL AFFECT TITLE TO THE
RESIDENTIAL REAL ESTATE.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2022.