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**To:** Judicial Proceedings Committee (Senate)

**From:** Legislative Committee of the Real Property Section

**Date:** March 6, 2024 [Hearing Date March 7, 2024]

**Subject:** **SB 962 – Real Property - Contracts of Sale - Title Report Requirement**

**Position:** **Unfavorable unless Amended**

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The Real Property Section of the Maryland State Bar Association (MSBA) **opposes SB 962 – Real Property - Contracts of Sale - Title Report Requirement** in its present form.

We understand that there may be an effort to turn this bill into a fraud prevention task force. We support such an endeavor but would like to add a member of the Real Property Section of the MSBA as a member of Task Force to Study Property Fraud Prevention.

In its present form, this bill, if enacted, would require the seller of any real property in the state to provide the buyer with a “title report” prior to closing “that is supported by an affidavit by the person making the title search stating that a complete search of the public records covering a period of not less than 60 years has been performed in accordance with generally accepted standards of title examination.” And it would allow a buyer to rescind the contract *up to five days after the closing* if the title report discloses certain matters.

The proponents of the bill are apparently trying to prevent land fraud transactions where an imposter represents that they are the owner of the property who then sells it to an unsuspecting buyer who finds out after closing that the true owner knew nothing of the transaction and never agreed to sell.

Seller impersonation is an ever-growing problem but requiring the “seller” to produce a “title report” will not solve the problem. If the “seller” is willing to submit fake IDs and go through all the trouble of perpetrating the fraud, adding a fake title report or even a correct title report will simply confirm the “seller’s” identity and may even allow the bad actor to bolster their “*bona fides*”.

All contracts give the buyer the opportunity to obtain a title search and decline to pursue the purchase in the event the seller cannot cure a title defect timely. And in connection with residential transactions, last year’s Anthony Moorman bill (i.e., RP § 10-803) already includes “Deeds and titles” which would allow the buyer to terminate the contract prior to closing and

receive their deposit back. The problem the bill seeks to solve is why all buyers have the option to purchase title insurance.

Buyers who want protection from seller impersonation or other unauthorized sale of real property, should be encouraged to purchase title insurance. The Standard Owner's policy that all title insurers issue states:

#### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, [Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 *includes, but is not limited to*, insurance against loss from:
  - a. a defect in the Title caused by:
    - i. *forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
    - ii. *the failure of a person or Entity to have authorized a transfer or conveyance; . . . .*

In addition to not solving the problem, there are many problems with this bill. First, the phrase "public records" is not defined. Second, while the buyer would have the "title report" *prior* to closing, it would allow the buyer to rescind the contract *after* the buyer decided to complete the transaction with full knowledge of the contents of the "title report."

Third, where would a seller obtain a "title report" and affidavit? Will the seller be able to find a title searcher who is willing to provide a "title report" to a seller knowing that it will be sent to an unlimited amount of people and relied on by the eventual buyer? Are abstractors willing to accept such a liability and become *de facto* title insurers?

Fourth, in a residential transaction, it is the buyer who selects the title company who in turn orders a title search on behalf of the title insurance underwriter who will make an offer to insure based on the results of the search of the records designed to impart constructive notice as well as other matters. In a commercial transaction, typically the buyer is given time to conduct its own research on the property which includes a determination as to whether the title is marketable.

Fourth, what is the purpose of providing the buyer with a "title report"? What if the "title report" has a mistake in it? The records related to real property are complicated. That is why prudent buyers purchase title insurance.

For these reasons, the Real Property Section Counsel of the MSBA **opposes Senate Bill 962 unless amended**. Thank you for your consideration.