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To: Honorable Chair and Members of the Judicial Proceedings Committee

From: MLTA Legislative Committee

Date: February 28, 2024 [Hearing date: February 29, 2024]

Subject: **SB 0481** – Renters' Rights and Stabilization Act of 2024

Position: **Favorable With Amendments**

The Maryland Land Title Association (MLTA) asks that you return a **favorable with amendments recommendation for Senate Bill 481** – Renters' Rights and Stabilization Act of 2024.

The MLTA, while acknowledging that the Bill has laudable objectives initially opposed the Bill, particularly the addition of Section 8-119 to the Real Property Code of Maryland. This section, referred to as the tenants right of first refusal, in its present form could adversely affect the title held by owners of real estate, cause delays in the settlement process and increase risks to title insurers, leading to increased premiums for title insurance.

The MLTA has met with the Governor's office and it is our understanding that the MLTA's concerns have been or are being addressed and that an amended version of the bill is forthcoming. These amendments would allow the MLTA to change its initial position on SB 481 from unfavorable to favorable with amendments. The proposed amendments that have been shared with the MLTA by the Governor's office are attached to this testimony as Exhibit 1. Below, however, are the MLTA's concerns with the legislation presently before you.

By way of background, interests in real property are conveyed by deeds that are recorded in Baltimore City and the County Land Records offices in which the real property is located. When real property is sold or transferred, the real estate industry is charged with the responsibility of reviewing the public records such as land records, tax records, and court records to determine that owners and lenders have marketable and insurable title.

The Bill as presently introduced creates a myriad of problems for the title industry as (i) most residential leases, being less than 7 years, are never recorded in the Land Records and (ii) it fails to establish a workable verification process through third-party validation and compliance. Rather, it requires that title insurers rely upon an affidavit from an interested party, namely the seller/landlord, to attest that the law has been complied with and that the tenants did not express an interest in exercising their right of first refusal. Failure to comply with the law may delay or prevent settlement altogether. A non-complying seller has a financial incentive to be less than forthcoming in their affidavit. Our industry would have no means with which to verify the veracity of the seller's/landlord's statement.

Non-compliance with the law could result in an aggrieved tenant being able to unwind a real estate transaction. This would obviously harm unknowing purchasers, but it also harms title insurers and lenders that have accepted liability and expended money through the closing process. Additionally, should a tenant challenge title because the landlord failed to comply with the law, the title insurer under its title insurance policy has a duty to defend the unknowing purchaser.

Because our industry is unable to independently verify compliance with the law and failure to comply with the law would be exorbitantly costly to our industry (having to pay for lawsuits and possible loss of title), our industry most likely would take exception to the law in its title policies. When a title policy has an exception that means that matter that is excepted to will not be covered by the title policy. This would result

in home purchasers having to come up with tens of thousands of dollars to defend the title to their homes. Further, the exception also would appear in the lender's title insurance policy and most lender's will not accept an exception in the policy that could up end their loan and will not loan money under those circumstances. Meaning that if the purchaser is financing their home purchase, they would not be able to obtain financing.

It is important to note that the District of Columbia, after implementing a far more rigorous program for over 30 years, chose to substantially amend its tenant opportunity laws with respect to single family dwellings and, in the process removed the ability to challenge title or the title professional involved in the transaction.

The Maryland Land Title Association is unable to support the bill in its present form, but has offered amendments that would allow tenants a right of first refusal while maintaining an avenue of recourse against a non-complying seller without affecting the orderly transfer of title.

The MLTA therefore anticipates changing its stance on SB 0481 and respectfully requests that you return a **favorable with amendments recommendation for Senate Bill 0481**.

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Exhibit 1

The Maryland Land Title Association's position on Senate Bill 0481 is Favorable with the following Amendments.

[Amendments included on the following pages.]

Article – Housing and Community Development

5–104.

(A) THE OFFICE SHALL:

(1) DEVELOP RESOURCES TO AID TENANTS IN UNDERSTANDING AND EXERCISING THE LEGAL RIGHTS OF TENANTS, INCLUDING:

(I) A MARYLAND TENANTS’ BILL OF RIGHTS, SUMMARIZING THE EXISTING RIGHTS AND REMEDIES AVAILABLE TO RESIDENTIAL TENANTS UNDER STATE AND FEDERAL LAW; AND

(II) A PUBLICLY ACCESSIBLE WEBSITE TO PROVIDE ACCESS TO THE MARYLAND TENANTS’ BILL OF RIGHTS AND OTHER RELEVANT INFORMATIONAL RESOURCES;

(2) ESTABLISH POINTS OF CONTACT WITHIN THE OFFICE BY WHICH A TENANT MAY REPORT A VIOLATION BY A LANDLORD OR A PERSON ACTING ON BEHALF OF A LANDLORD FOR REFERRAL TO APPROPRIATE ENFORCEMENT AGENCIES; AND

(3) PROVIDE RESOURCES TO FACILITATE ACCESS BY TENANTS TO CREDIT COUNSELING.

(4) RECEIVE NOTICES AND OTHER DOCUMENTS RELATED TO A TENANT’S EXCLUSIVE NEGOTIATION PERIOD OR RIGHT OF FIRST REFUSAL PURSUANT TO § 8–119 OF THE REAL PROPERTY ARTICLE.

(5) PROMULGATE REGULATIONS RELATED TO THE REQUIREMENTS FOR CONTENT AND DELIVERY OF NOTICES RELATED TO A TENANT’S EXCLUSIVE NEGOTIATION PERIOD OR RIGHT OF FIRST REFUSAL PURSUANT TO § 8–119 OF THE REAL PROPERTY ARTICLE.

5–105.

(A) (1) IN THIS SECTION “PUBLICLY DISCLOSABLE DATA” MEANS DATA THAT IS NOT REQUIRED TO BE WITHHELD FROM DISCLOSURE UNDER THE PUBLIC INFORMATION ACT OR ANY OTHER LAW.

(B) THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT SHALL:

(1) PUBLISH THE PUBLICLY DISCLOSABLE DATA RECEIVED BY THE DEPARTMENT PURSUANT TO § 8–119 OF THE REAL PROPERTY ARTICLE IN A DATA DASHBOARD ON THE DEPARTMENT’S WEBSITE; AND

(2) MAKE THE PUBLICLY DISCLOSABLE DATA AVAILABLE FOR DOWNLOAD IN OPEN DATA SETS THAT ALLOW AUTOMATED SEARCHING, SPATIAL ANALYSIS, VISUALIZATION, AND PROCESSING, ON REQUEST BY:

(I) A STATE AGENCY;

- (II) AN AGENCY OF A COUNTY OR MUNICIPAL CORPORATION;
OR
(III) AN ACADEMIC INSTITUTION LOCATED IN THE STATE.

Article – Real Property

8–119.

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

(2) “FAMILY MEMBER” MEANS A SPOUSE, FORMER SPOUSE, DOMESTIC PARTNER, FORMER DOMESTIC PARTNER, SON, DAUGHTER, STEPSON, STEPDAUGHTER, PARENT, STEPPARENT, SIBLING, STEPSIBLING, SON-IN-LAW, DAUGHTER-IN-LAW, STEPSON-IN-LAW, STEPDAUGHTER-IN-LAW, PARENT-IN-LAW, STEPPARENT-IN LAW, GRANDPARENT, STEPGRANDPARENT, GRANDCHILD, OR STEPGRANDCHILD.

(3) “OFFER TO PURCHASE” MEANS A GOOD FAITH OFFER TO PURCHASE A RESIDENTIAL RENTAL PROPERTY FOR A PRICE AT WHICH A WILLING SELLER WOULD SELL AND A WILLING BUYER WOULD PURCHASE IN AN ARM’S LENGTH TRANSACTION.

(4) “TENANT” MEANS A LESSEE OF A RESIDENTIAL RENTAL PROPERTY WHO HAS RESIDED AT THE RESIDENTIAL RENTAL PROPERTY FOR NOT LESS THAN 6 MONTHS WHO:

(I) IS A NAMED LESSEE IN THE WRITTEN LEASE; OR

(II) HAS PAID TO THE LESSOR RENTAL PAYMENTS THAT THE LESSOR HAS ACCEPTED UNDER AN UNWRITTEN LEASE AGREEMENT.

(5) “MATERIAL TERMS”:

(I) INCLUDES THE SALES PRICE, SETTLEMENT DATE, AND OTHER CONTINGENCIES;

(II) SHALL NOT INCLUDE THE METHOD OF FINANCING OR WAIVING OF A HOME INSPECTION; AND

(III) SHALL BE COMMERCIALY REASONABLE, FAIR, DONE IN GOOD FAITH, AND ADHERE TO GENERALLY ACCEPTED RESIDENTIAL REAL ESTATE PRACTICES.

(6) “RESIDENTIAL RENTAL PROPERTY” MEANS A TENANT-OCCUPIED RESIDENTIAL RENTAL PROPERTY IMPROVED BY THREE OR FEWER INDIVIDUAL DWELLING UNITS.

(7) “TENANT’S EXCLUSIVE NEGOTIATION PERIOD” MEANS A PERIOD OF TIME IN WHICH A TENANT IS NOTIFIED ABOUT THE TENANT’S RIGHT

TO PURCHASE THE PROPERTY AND NEGOTIATE EXCLUSIVELY WITH THE OWNER OF THE RESIDENTIAL RENTAL PROPERTY TO ENTER INTO A CONTRACT OF SALE.

(8) "THIRD PARTY" MEANS A PARTY WHO IS NOT LISTED UNDER SUBSECTION (B) AND IS NOT THE TENANT OF THE RESIDENTIAL RENTAL PROPERTY.

(B) THIS SECTION DOES NOT APPLY TO:

(1) A TRANSFER OF TITLE TO A FAMILY MEMBER OF THE OWNER;

(2) A TRANSFER OF TITLE TO A BUSINESS ENTITY OWNED IN WHOLE BY THE OWNER;

(3) A TRANSFER OF TITLE THROUGH A SHERIFF'S SALE, TAX SALE, ORDER FORECLOSING RIGHT OF REDEMPTION, OR SALE BY FORECLOSURE, PARTITION, OR BY COURT APPOINTED TRUSTEE;

(4) A TRANSFER BY A FIDUCIARY IN THE COURSE OF THE ADMINISTRATION OF DECEDENT'S ESTATE, GUARDIANSHIP, CONSERVATORSHIP, OR TRUST;

(5) A TRANSFER OF TITLE PURSUANT TO A TESTAMENTARY DOCUMENT, A TRUST INSTRUMENT OR THROUGH INHERITANCE;

(6) A TRANSFER OF BARE LEGAL TITLE INTO A REVOCABLE TRUST, WITHOUT ACTUAL CONSIDERATION FOR THE TRANSFER, WHERE THE TRANSFEROR IS THE CURRENT BENEFICIARY OF THE TRUST;

(7) A TRANSFER OF TITLE TO A GOVERNMENT AGENCY;

(8) A TRANSFER OF TITLE IN LIEU OF FORECLOSURE OF A MORTGAGE OR DEED OF TRUST;

(9) A TRANSFER OF TITLE PURSUANT TO A COURT ORDER, RECEIVERSHIP OR COURT-APPROVED SETTLEMENT;

(10) A TRANSFER OF TITLE PURSUANT TO THE ORDER OF A BANKRUPTCY COURT OR SALE BY A BANKRUPTCY TRUSTEE OR DEBTOR IN POSSESSION;

(11) A GIFT TRANSFER OF TITLE TO ANY NONPROFIT ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE INTERNAL REVENUE CODE;

(12) A TRANSFER OF TITLE BY A PUBLIC HOUSING AUTHORITY; OR

(13) RESIDENTIAL RENTAL PROPERTY WITH FOUR OR MORE INDIVIDUAL DWELLING UNITS.

(C) (1) AS PROVIDED IN THIS SUBSECTION, BEFORE A RESIDENTIAL RENTAL PROPERTY MAY BE OFFERED FOR SALE TO THE PUBLIC OR ANY THIRD PARTY, THE OWNER AND TENANT SHALL ENTER INTO A TENANT'S EXCLUSIVE NEGOTIATION PERIOD FOR THE PURCHASE OF THE PROPERTY.

(2) (I) AT LEAST 60 DAYS, BUT NO MORE THAN 120 DAYS BEFORE A RESIDENTIAL RENTAL PROPERTY MAY BE LISTED FOR SALE WITH A REAL ESTATE BROKER OR OTHERWISE OFFERED FOR SALE TO THE PUBLIC OR ANY THIRD PARTY, THE OWNER OF THE PROPERTY SHALL CAUSE TO BE SENT TO EACH TENANT OF THE PROPERTY, A WRITTEN NOTICE OF THE TENANT'S RIGHT TO DELIVER AN OFFER TO PURCHASE THE PROPERTY.

(II) THE NOTICE SHALL:

1. BE IN THE FORM THAT THE SECRETARY OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PRESCRIBES BY REGULATION;

2. BE DELIVERED BY:

A. UNITED STATES POSTAL SERVICE CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

B. DELIVERY SERVICE PROVIDING DELIVERY TRACKING AND CONFIRMATION;

3. CONTAIN MATERIAL TERMS THAT THE OWNER WOULD AGREE TO INCORPORATE IN A RESULTING CONTRACT OF SALE WITH THE TENANT;

4. STATE, IN A CONSPICUOUS MANNER, THAT THE NOTICE IS A SOLICITATION OF AN OFFER TO PURCHASE AND IS NOT INTENDED, AND MAY NOT BE CONSTRUED TO RESULT IN A BINDING CONTRACT OF SALE; AND

5. STATE ANY INFORMATION REGARDING DEADLINES FOR THE TENANT TO SUBMIT AN OFFER TO PURCHASE.

(III) THE OWNER SHALL SEND A COPY OF THE NOTICE TO THE OFFICE OF TENANTS' RIGHTS BY A METHOD THAT THE SECRETARY OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PRESCRIBES BY REGULATION.

(3) (I) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE TENANT MAY DELIVER TO THE OWNER A WRITTEN OFFER TO PURCHASE THE PROPERTY.

(II) IF MULTIPLE TENANTS DELIVER OFFERS TO PURCHASE THE PROPERTY, THE OWNER MAY SELECT THE MORE FAVORABLE OFFER WITHOUT LIABILITY TO ANY OTHER TENANT.

(III) WITHIN 5 DAYS AFTER RECEIPT OF THE OFFER TO PURCHASE, THE OWNER SHALL:

1. ACCEPT THE OFFER IF THE OFFER CONTAINS THE SAME OR MORE FAVORABLE MATERIAL TERMS AS CONTAINED IN THE NOTICE, AND NOTIFY THE OFFICE OF TENANTS' RIGHTS; OR

2. DELIVER A COUNTEROFFER TO THE TENANT, WITH AN EXPLANATION OF HOW THE OFFER DEVIATES FROM THE NOTICE, IF THE OFFER CONTAINS MATERIAL TERMS THAT DEVIATE FROM THE TERMS OF THE NOTICE.

(4) (I) WITHIN 5 DAYS AFTER RECEIPT OF THE COUNTEROFFER, THE TENANT MAY:

1. ACCEPT THE COUNTEROFFER; OR
2. REJECT THE COUNTEROFFER.

(II) IF THE TENANT FAILS TO RESPOND TO THE COUNTEROFFER WITHIN 5 DAYS AFTER RECEIPT OF THE COUNTEROFFER, THE COUNTEROFFER IS DEEMED TO BE REJECTED AND THE OWNER SHALL NOTIFY THE OFFICE OF TENANTS' RIGHTS.

(5) IF THE TENANT DOES NOT DELIVER AN OFFER TO PURCHASE AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION OR IF THE PARTIES DO NOT ENTER INTO A CONTRACT OF SALE AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE TENANT'S RIGHT OF FIRST REFUSAL IS TERMINATED AND THE OWNER SHALL NOTIFY THE OFFICE OF TENANT'S RIGHTS.

(D) (1) A TENANT HAS A RIGHT OF FIRST REFUSAL TO PURCHASE RESIDENTIAL RENTAL PROPERTY AS PROVIDED IN THIS SUBSECTION.

(2) A TENANT HAS A RIGHT OF FIRST REFUSAL TO PURCHASE RESIDENTIAL RENTAL PROPERTY IF:

(I) THE OWNER INTENDS TO ACCEPT AN OFFER FROM A THIRD PARTY TO PURCHASE THE PROPERTY THAT IS AT LEAST 10 PERCENT LESS THAN THE LOWEST PRICE OFFERED TO THE TENANT IN ANY PREVIOUS NOTICE, OFFER OR COUNTEROFFER PURSUANT TO SUBSECTION (C) OF THIS SECTION; OR

(II) THE OWNER, WITHOUT HAVING LISTED THE PROPERTY FOR SALE WITH A REAL ESTATE BROKER OR OTHERWISE OFFERED THE PROPERTY FOR SALE TO THE PUBLIC OR ANY THIRD PARTY, RECEIVES FROM A THIRD PARTY AN OFFER TO PURCHASE THE PROPERTY.

(3) (I) IF THE OWNER RECEIVES AN OFFER TO PURCHASE THE PROPERTY FROM A THIRD PARTY AS SPECIFIED IN SUBSECTION (D)(2) OF THIS SECTION, THE OWNER MAY NOT ACCEPT THE OFFER UNTIL:

1. THE OWNER PROVIDES WRITTEN NOTICE TO THE TENANT OF THE TENANT'S RIGHT OF FIRST REFUSAL; AND
2. THE TENANT HAS AN OPPORTUNITY TO EXERCISE THE RIGHT OF FIRST REFUSAL.

(II) THE WRITTEN NOTICE TO THE TENANT OF THE TENANT'S RIGHT OF FIRST REFUSAL SHALL:

1. BE IN THE FORM THAT THE SECRETARY OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PRESCRIBES BY REGULATION;

2. BE DELIVERED BY:

A. UNITED STATES POSTAL SERVICE CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR

B. DELIVERY SERVICE PROVIDING DELIVERY TRACKING AND CONFIRMATION;

3. CONTAIN THE SAME SALES PRICE AS THE THIRD-PARTY OFFER TO PURCHASE.

4. STATE, IN A CONSPICUOUS MANNER, THAT THE NOTICE IS A SOLICITATION OF AN OFFER TO PURCHASE AND IS NOT INTENDED, AND MAY NOT BE CONSTRUED TO RESULT IN A BINDING CONTRACT OF SALE;

5. STATE ANY INFORMATION REGARDING DEADLINES FOR THE TENANT TO SUBMIT AN OFFER TO PURCHASE;

(III) THE OWNER SHALL SEND A COPY OF THE NOTICE TO THE OFFICE OF TENANTS' RIGHTS BY A METHOD THAT THE SECRETARY OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PRESCRIBES BY REGULATION.

(4) (I) THE TENANT MAY, WITHIN 30 DAYS OF RECEIPT OF THE NOTICE UNDER PARAGRAPH (D)(3) OF THIS SUBSECTION, DELIVER AN OFFER TO PURCHASE THE PROPERTY TO THE OWNER.

(II) IF A TENANT DELIVERS AN OFFER TO PURCHASE AT THE SAME SALES PRICE AS THE THIRD-PARTY PURCHASER'S OFFER AS PROVIDED IN THIS PARAGRAPH, THE OWNER SHALL ACCEPT THE OFFER AND NOTIFY THE OFFICE OF TENANTS' RIGHTS.

(III) IF MULTIPLE TENANTS DELIVER OFFERS TO PURCHASE THE PROPERTY, THE OWNER MAY SELECT THE MORE FAVORABLE OFFER WITHOUT LIABILITY TO ANY OTHER TENANT.

(5) IF THE TENANT DOES NOT DELIVER AN OFFER TO PURCHASE THE PROPERTY AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE OWNER MAY ACCEPT THE THIRD-PARTY PURCHASER'S OFFER OF SALE AND THE TENANT'S RIGHT OF FIRST REFUSAL IS WAIVED AND THE OWNER SHALL NOTIFY THE OFFICE OF TENANTS' RIGHTS.

(6) IF THE TENANT AND THE OWNER HAVE ENTERED INTO A CONTRACT OF SALE UNDER PARAGRAPH (4) OF THIS SUBSECTION, BUT THE CONTRACT IS TERMINATED BEFORE SETTLEMENT, THE TENANT'S RIGHT OF FIRST REFUSAL IS WAIVED AND THE OWNER SHALL NOTIFY THE OFFICE OF TENANT'S RIGHTS.

(7) IF A THIRD PARTY DELIVERS AN OFFER TO PURCHASE, THE OWNER SHALL PROVIDE NOTICE TO THE THIRD PARTY ABOUT THE TENANT'S RIGHT OF FIRST REFUSAL UNDER THIS SUBSECTION.

(E) THIS SECTION SHALL NOT BE CONSTRUED AS PROHIBITING AN INDIVIDUAL FROM SUBMITTING AN OFFER TO PURCHASE A PROPERTY LEASED BY THE INDIVIDUAL THAT IS LISTED FOR SALE WITH A LICENSED REAL ESTATE BROKER.

(F) THIS SECTION SHALL NOT BE CONSTRUED AS PROHIBITING MULTIPLE TENANTS FROM JOINTLY DELIVERING AN OFFER TO PURCHASE, OR FROM JOINTLY CONTRACTING TO PURCHASE, RESIDENTIAL RENTAL PROPERTY.

(G) THIS SECTION PREEMPTS ANY LOCAL LAW OR ORDINANCE GOVERNING THE RIGHT OF FIRST REFUSAL OF A JURISDICTION OR TENANT FOR THE PURCHASE OF A RESIDENTIAL RENTAL PROPERTY.

(H) THE RIGHTS OF A TENANT UNDER THIS SECTION MAY NOT BE WAIVED OR ASSIGNED AND ANY ATTEMPTED WAIVER OR ASSIGNMENT IS VOID.

(I) AN OWNER OF RESIDENTIAL REAL PROPERTY WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 PER VIOLATION.

(J) A TENANT MAY SEEK RELIEF FROM A COURT OF COMPETENT JURISDICTION TO RESTRAIN OR ENJOIN ANY VIOLATION OF THIS SECTION PRIOR TO THE CLOSING OF A CONTRACT OF SALE BETWEEN THE OWNER AND TENANT.

(K) (1) FOLLOWING CLOSING ON A CONTRACT OF SALE BETWEEN OWNER AND TENANT, LIABILITY FOR FAILURE TO COMPLY WITH THIS SUBSECTION SHALL LIE SOLELY WITH THE OWNER AND SHALL NOT ATTACH TO THE PROPERTY THAT IS THE SUBJECT OF THE REQUIRED NOTICE OR AFFECT THE RIGHTS OF THE PURCHASER.

(2) A TENANT WHO BRINGS AN ACTION AFTER CLOSING ON A CONTRACT OF SALE BETWEEN OWNER AND TENANT IN ANY COURT OF LAW AGAINST AN OWNER FOR FAILING TO PROVIDE THE NOTICE REQUIRED BY THIS SECTION MAY NOT FILE A NOTICE OF LIS PENDENS PURSUANT TO MARYLAND RULE 12-102; UPON MOTION OF A PARTY IN INTEREST THE COURT SHALL STRIKE A WRONGFULLY FILED NOTICE OF LIS PENDENS WITHOUT NEED FOR A HEARING.