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BULLETIN No. 20-26

DATE: June 9, 2020

TO: All Settlement Service Providers

RE: Seller's closing assistance and required use of a specific title company

The Maryland Insurance Administration ("the Administration") has recently learned that some contracts for the sale of real property located in the State of Maryland contain language requiring that, in order for the buyer to receive seller closing cost assistance for the subject transaction, the buyer must purchase title insurance from a specific title company. The Administration is issuing this Bulletin to remind all persons involved in such real estate transactions that Maryland law expressly prohibits the use of these provisions.

Section 27-214 of the Maryland Insurance Article ("the Article") states:

(a) *In general.* – (1) A person may not require another person to buy insurance through a particular insurance producer or insurer as a condition, agreement, or understanding with respect to selling or providing a loan, credit, sale, goods, property, contract, lease, or service to the other person.

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(c) *Effect of Violation.* -- (1) Violation of this section does not invalidate any contract or transaction.

(2) Notwithstanding a combination contract, tying agreement, understanding, or condition to the contrary, the person required to buy or pay for insurance or to bid ex-insurance may substitute at any time other insurance from insurance producers or insurers chosen by the person, or may decline further insurance coverage if the insurance is other than to protect the interest of a lender, property owner, or other person.

Section 27-103 of the Article states:

(a) *In general.* – (1) If the Commissioner finds that a person in the State has engaged or is engaging in an act or practice that is defined in or prohibited under this title, the Commissioner shall order the person to cease and desist from the act or practice.

Section 1-101 of the Article states:

(dd) Person – “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity.

Pursuant to the foregoing, any contractual provision purporting to require that insurance be purchased from a particular title company as a precondition for obtaining closing cost assistance is statutorily prohibited.

The Insurance Administration encourages any persons involved in a real estate settlement in Maryland to notify the Administration if the contract of sale requires a buyer to use a particular title company as a precondition for receiving seller’s closing assistance.

Should you have any questions concerning this Bulletin, please contact Mr. David Zitterbart, Chief of Title Enforcement, by e-mail at david.zitterbart@maryland.gov or by telephone at (410) 468-2144.

KATHLEEN A. BIRRANE
Commissioner

Signature on original

By: _____
Erica J. Bailey,
Associate Commissioner
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