

# **Maryland Affordable Housing Trust (MAHT)**

## **Applicable Law and Regulations**

**The law and regulations governing MAHT are found in:**

- Housing and Community Development Article, Sections 10-101 - 10-301 of the Annotated Code of Maryland;
- Insurance Article Section 22-103 of the Annotated Code of Maryland; and
- Code of Maryland Regulations ("COMAR") 31.16.03.01-.08.

## **Housing and Community Development**

### **Title 10.**

#### **Maryland Affordable Housing Trust**

##### **§10–101.**

- (a) In this title the following words have the meanings indicated.
- (b) “Award” means a grant, loan, deferred payment loan, loan guarantee, or other financial assistance.
- (c) “Board” means the Board of Trustees of the Trust.
- (d) “Fund” means the Maryland Affordable Housing Trust Fund.
- (e) “Trust” means the Maryland Affordable Housing Trust.
- (f) “Trustee” means a member of the Board.

##### **§10–102.**

- (a) There is a Maryland Affordable Housing Trust.
- (b) (1) The Trust is an instrumentality of the State and is a body corporate and politic.
  - (2) The exercise by the Trust of its powers under this title is an essential public function.
- (c) The purpose of the Trust is to make affordable housing more available throughout the State.
- (d) The Department shall provide staff for the Trust.

##### **§10–103.**

- (a) There is a Board of Trustees of the Trust.
- (b) The Board shall control the Trust and exercise all of the corporate powers of the Trust.

##### **§10–104.**

- (a) (1) The Board consists of 14 trustees.
  - (2) The nonvoting trustees are:
    - (i) the Secretary;
    - (ii) a member of the House of Delegates, appointed by the Speaker of the House; and
    - (iii) a member of the Senate, appointed by the President of the Senate.
  - (3) With the advice and consent of the Senate, the Governor shall appoint 11 voting trustees, consisting of:

- (i) four representatives of the public; and
- (ii) one representative of each of the following:
  - 1. title companies doing business in the State;
  - 2. financial institutions doing business in the State
  - 3. political subdivisions;
  - 4. nonprofit housing developers;
  - 5. for profit housing developers;
  - 6. public housing authorities; and
  - 7. social services providers.

(b) In appointing trustees, the Governor shall consider geographic representation.

(c) Service as a trustee is not a State office or State employment for purposes of any prohibition against holding two public positions.

(d) (1) The term of a voting trustee is 4 years.

(2) The terms of voting trustees are staggered as required by the terms provided for voting trustees on October 1, 2005.

(3) At the end of a term, a voting trustee continues to serve until a successor is appointed and qualifies.

(4) A voting trustee who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

**§10–105.**

The Governor shall appoint one of the trustees to serve as chair of the Board.

**§10–106.**

(a) A quorum is a majority of the voting trustees then serving on the Board.

(b) The Board may act with a majority vote of a quorum of the Board.

**§10–107.**

(a) The debts, obligations, and liabilities of the Trust are those of the Trust only and are not:

(1) a pledge of the State's credit; or

(2) those of the State or its officers, employees, or governmental units.

(b) (1) The net earnings of the Trust may not inure to the benefit of a trustee, officer, or private person.

- (2) A trustee, officer, or private person is not entitled to share in the distribution of the corporate assets of the Trust.
- (3) If the Trust is dissolved or abolished, by act of the General Assembly or otherwise, its assets shall be distributed to the State or a governmental unit of the State.

**§10–108.**

The Board shall:

- (1) receive applications for awards from the Trust;
- (2) make the final decisions about awards; and
- (3) develop a process for making awards that encourages a broad geographic distribution of money.

**§10–109.**

- (a) The Board shall comply with the Maryland Public Ethics Law.
- (b) The Board is exempt from:
  - (1) taxation by the State or its political subdivisions;
  - (2) the General Procurement Law provisions of Division II of the State Finance and Procurement Article; and
  - (3) the Administrative Procedure Act, Title 10, Subtitles 1 through 4, of the State Government Article.

**§10–110.**

- (a) The books and records of the Trust are subject to audit:
  - (1) by the State, at the State's discretion; and
  - (2) annually by an independent auditor approved and paid by the Trust.
- (b)
  - (1) Within the first 90 days of each fiscal year, the Board shall report to the Governor and, subject to § 21246 of the State Government Article, to the General Assembly.
  - (2) The report shall include a complete operating and financial statement of the operations of the Trust and a summary of the activities of the Trust during the preceding fiscal year.

**§10–201.**

There is a Maryland Affordable Housing Trust Fund

**§10–202.**

- (a) The Board shall use the Fund to make awards to:

- (1) help acquire, build, rehabilitate, or preserve affordable housing;
- (2) help nonprofit organizations develop affordable housing; and
- (3) help promote affordable housing by contributing to pay the operating expenses of housing developments.

(b) In any fiscal year, the Board may use up to 5% of the Fund to pay actual operating and staffing expenses directly related to the activities of the Trust.

**§10–203.**

The State Treasurer shall hold and the Comptroller shall account for the Fund.

**§10–204.**

The Fund consists of:

- (1) money that the Board receives from any public or private source, including a gift, grant, or legacy;
- (2) interest earned on Trust accounts held by title insurers and their agents under §22–105 of the Insurance Article;
- (3) investment earnings of the Fund; and
- (4) repayments of principal or payments of interest on loans from the Fund.

**§10–205.**

The Board may solicit money for the Fund from any source.

**§10–206.**

Money in the Fund shall be invested in the same way as other State money.

**§10–301.**

This title shall be liberally construed to accomplish its purposes.

# Maryland Insurance Section 22-105

## Article - Insurance

### § 22-105.

- (a)
  - (1) In this section the following words have the meanings indicated.
  - (2) "Beneficial owner" means a person, other than the buyer in a real estate transaction, for whose benefit a title insurer or its agent is entrusted to hold trust money.
  - (3) "Trust money" means a deposit, payment, or other money that a person entrusts to a title insurer or its agent to hold for the benefit of a buyer in a real estate transaction or for a beneficial owner, in connection with an escrow, settlement, closing, or title indemnification.
- (b) A title insurer or its agent shall pool and commingle trust money received from clients or beneficial owners in connection with escrows, settlements, closings, or title indemnifications if, in the judgment of the title insurer or its agent, a separate deposit of the trust money would generate interest in an amount not greater than \$50 or the cost of administering a separate account.
- (c) At least quarterly, the financial institution in which a commingled account is maintained under this section shall pay the interest earned on the account, less any service charges of the financial institution, to the Maryland Affordable Housing Trust to enhance the availability of affordable housing throughout the State as provided in § 10-102 of the Housing and Community Development Article.
- (d) Trust money required to be commingled under subsection (b) of this section in connection with a real estate transaction shall be deposited and maintained until disbursed in accordance with the transaction:
  - (1) in a financial institution located in the State; or
  - (2) subject to approval of the Banking Board in the Department of Labor, Licensing, and Regulation, in a financial institution outside the State that complies with the requirements of this subtitle.
- (e) A title insurer or its agent does not violate, and may not be charged by the Commissioner with a violation of, any ethical or legal duties by placing trust money in an account under subsection (b) of this section with the interest paid to the Maryland Affordable Housing Trust under subsection (c) of this section.
- (f) Except for trust money that a title insurer or its agent places in a commingled account under subsections (b) and (c) of this section, and subject to regulations of the Commissioner, trust money in the possession of the title insurer or its agent may be deposited in any other deposit or investment vehicle:
  - (1) specified by the client or beneficial owner; or
  - (2) as agreed on by the client or beneficial owner and the title insurer or its agent.

# **Title 31 MARYLAND INSURANCE ADMINISTRATION**

## **Subtitle 16 MISCELLANEOUS**

### **Chapter 03 Title Insurance Companies — MAHT Account**

**Authority: Insurance Article, §2-109 and 22-103\*, Annotated Code of Maryland**

#### **.01 General.**

The purpose of this chapter is to provide for the implementation and monitoring of accounts to be maintained by title insurers or title insurance producers for the benefit of the Maryland Affordable Housing Trust.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Act" means Insurance Article, §22-103\*, Annotated Code of Maryland.
- (2) "Beneficial owner" means a person, other than the buyer in a real estate transaction, for whose benefit a title insurer or title insurance producer is entrusted to hold trust money.
- (3) "Buyer" means a buyer in a real estate transaction.
- (4) "Commissioner" means the Maryland State Insurance Commissioner.
- (5) "Financial institution" means:
  - (a) A financial institution located in the State; or
  - (b) Subject to approval of the Banking Board in the Department of Labor, Licensing, and Regulation, a financial institution outside the State that complies with the requirements of Insurance Article, Title 22, Subtitle 1, Annotated Code of Maryland.
- (6) Law Firm.
  - (a) "Law firm" means an association of attorneys who are admitted to practice before the Court of Appeals of the State, and who:
    - (i) Are primarily engaged in the practice of law; and
    - (ii) Solicit, procure, or negotiate title insurance contracts only as an incident of the practice of law.
  - (b) "Law firm" includes a sole practitioner.

- (c) "Law firm" does not include:<sup>1</sup>
  - (i) An attorney or an association of attorneys who own, operate, or share an interest in a title agency; or
  - (ii) An attorney who is employed by a title agency as a title insurance producer or title insurance broker.
- (7) "MAHT account" means an account established with a financial institution for the benefit of the Maryland Affordable Housing Trust.
- (8) "Maryland Affordable Housing Trust (MAHT)" means the fund created under Housing and Community Development Article, Annotated Code of Maryland.
- (9) "Mortgage" includes a deed of trust.
- (10) "Person" means an individual, joint venture, partnership, corporation, trust, foundation, association, limited liability company, or any other legal entity.
- (11) Title Agency.
  - (a) "Title agency" means a business formed for the primary purpose of acting as a title insurance producer.
  - (b) "Title agency" includes a sole proprietor, partnership, corporation, or limited liability company.
- (12) Title Insurance Producer.
  - (a) "Title insurance producer" means a person who, for compensation, in any manner solicits, procures, or negotiates title insurance contracts.
  - (b) "Title insurance producer" includes a person who provides escrow, closing, or settlement services which may result in the issuance of a title insurance contract.
  - (c) "Title insurance producer" does not include individuals employed and used by title insurance producers for the performance of clerical, stenographic, and similar office duties.
- (13) "Trust money" means a deposit, payment, or other money that a person entrusts to a title insurer or a title insurance producer to hold for a buyer or beneficial owner in connection with a real estate escrow, settlement, closing, or title indemnification.

### **.03 Establishment of MAHT Accounts.**

#### **A. Establishment.**

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<sup>1</sup> \* Renumbered as §22-105



- (1) Each title insurer or title insurance producer expecting to make trust money deposits, as set forth in §B of this regulation, shall establish one or more MAHT accounts with a financial institution.
- (2) The MAHT account:
  - (a) May provide all of the financial services which may be required by a title insurer or a title insurance producer;
  - (b) Shall be an interest-bearing account; and.
  - (c) Shall be an account which:
    - (i) Is permitted to be held by a title insurer or title insurance producer under federal or State law; and
    - (ii) Charges reasonable and customary service charges for commercial accounts.

**B. Trust Money Deposits.**

- (1) Except as provided in §B(3) of this regulation, a title insurer or title insurance producer shall deposit all trust monies, as defined in Regulation .02B of this chapter, into a MAHT account as provided in §B(2) of this regulation.
- (2) Trust money from a particular transaction shall be deposited into a MAHT account only if, in the reasonable judgment of the title insurer or the title insurance producer, the money (if deposited into a separate MAHT interest bearing account) would earn:
  - (a) \$50 or less in interest; or
  - (b) More than \$50 in interest, if the reasonable and customary charges of the financial institution are anticipated to be more than the interest which would be earned on the trust money if separately deposited into a MAHT interest bearing account.
- (3) A law firm is not required to deposit trust monies into a MAHT account, but shall deposit those monies as may be required by any other applicable law, including the attorney trust accounts provisions of Business Occupations and Professions Article, Annotated Code of Maryland.

**.04 Operation of MAHT Accounts.**

**A. Account Terms.** The terms of a MAHT account require that:

- (1) The financial institution in which the MAHT account is maintained pays the interest earned on the MAHT account, less the reasonable and customary service charges of the financial institution, at least quarterly, to MAHT;
- (2) At the time of payment of interest earned to MAHT, the financial institution provides an itemized statement for each MAHT account maintained in that financial institution, which statement shall set forth:

- (a) The interest earned on each MAHT account, and
- (b) If requested by MAHT, an itemized statement of each service charge assessed against the MAHT account.

**B. Service Charges.**

- (1) Reasonable and customary charges for commercial accounts may be deducted from interest on the MAHT account, except charges for:
  - (a) Deposits of dishonored items;
  - (b) Presentations against insufficient funds;
  - (c) Overdrafts;
  - (d) Certified checks;
  - (e) Account reconciliations; and
  - (f) Wire transfers.
- (2) If the aggregate service charges assessed against a title insurer or title insurance producer on all of its MAHT accounts held in a single financial institution exceed the aggregate interest earned on those MAHT accounts, the title insurer or title insurance producer is liable for payment of those service charges to the extent they exceed the earned interest.
- (3) The Commissioner or MAHT may authorize a title insurer or title insurance producer to close all of its MAHT accounts or not open a MAHT account or accounts if the title insurer or title insurance producer:
  - (a) Demonstrates that it will cost or has cost more in reasonable and customary service charges for commercial accounts to maintain a MAHT account than will be or has been generated in interest by the MAHT account; and
  - (b) Agrees to open a MAHT account or accounts if the condition described in §B(3)(a) of this regulation is no longer applicable.
- (4) These regulations do not preclude a financial institution from electing to waive service charges on a MAHT account.

**.05 Separate Accounts.**

- A. Trust money which is not required to be deposited into a MAHT account may be deposited into any other deposit or investment vehicle:
  - (1) Specified by the buyer or beneficial owner; or.
  - (2) Agreed upon by the buyer or beneficial owner and the title insurer or title insurance producer.

- B. An agreement referred to in §A of this regulation between a buyer or beneficial owner and a title insurer or title insurance producer shall be in writing and either be:
  - (1) In a separate agreement; or
  - (2) If part of another agreement between the parties, in conspicuous type and initialed by the buyer or beneficial owner.

**.06 Annual Reports.**

- A. Filing. Each title insurer or title insurance producer who maintains a separate MAHT account shall file an annual report with the Commissioner and MAHT
- B. Forms. The annual report shall be prepared on a form approved by the Commissioner and shall include the following information:
  - (1) A list of all MAHT accounts and other bank accounts maintained by the title insurer or title insurance producer in which trust money was deposited at any time during the year, which list shall include:
    - (a) Name of the account holder;
    - (b) Names of all persons who have access to the account;
    - (c) Financial institution in which the account is maintained;
    - (d) Account number; and
    - (e) Purpose of the account;
  - (2) Gross and net interest earned on each account;
  - (3) A list of the types and amounts charged for services provided to each account, together with the total amount charged for services for each account; and
  - (4) Any other information the Commissioner considers necessary.
- C. Date of Filing. A title insurer or title insurance producer shall file the annual report with the Commissioner and MAHT on or before March 31 for the immediately preceding year ending December 31.

**.07 Review and Audit.**

- A. Review. The Commissioner and MAHT shall review the annual reports submitted by a title insurer or title insurance producer that maintains a separate MAHT account.
- B. Audit.
  - (1) The Commissioner may audit a title insurer or title insurance producer for compliance with this chapter.
  - (2) The Commissioner may examine, and a title insurer or title insurance producer shall produce for examination, any record or document of a title insurer or title insurance producer, including:

- (a) Books;
- (b) Records;
- (c) Financial statements;
- (d) Banking statements; or
- (e) Documents related to a real estate escrow, settlement, closing, or title indemnification.

(3) Each title insurer or title insurance producer shall permit the Commissioner to investigate, review, and copy records or documents of a financial institution pertaining to an account of a title insurer or title insurance producer.

C. Delegation.

- (1) The Commissioner may delegate the authority to audit a title insurer or title insurance producer to MAHT for compliance with this chapter.
- (2) If the Commissioner delegates its audit authority to MAHT, MAHT may audit the transactional files and related financial records of a title insurer or title insurance producer in connection with the sale or financing of real estate.
- (3) If the Commissioner delegates its audit authority to MAHT, MAHT shall conduct the audit and report its findings to the Commissioner.
- (4) The Commissioner may take appropriate action based upon the findings reported in the audit.

D. Cost. The expense incurred in connection with an audit performed under this chapter shall be paid by MAHT.

**.08 Enforcement.**

- A. The Commissioner may impose on a title insurer or title insurance producer any penalty, sanction, or other form of legal enforcement which the Commissioner has the authority to impose for failure to comply with the provisions of this chapter.
- B. The Commissioner may not charge a title insurer or a title insurer's producer with a violation of ethical or legal responsibilities when placing trust funds in accounts where the interest earned is paid to the Maryland Affordable Housing Trust in accordance with this chapter.'

**Administrative History**

Effective date: March 11, 1996 (23:5 Md. R. 379).

Regulation .02B amended effective May 19, 1997 (24:10 Md. R. 709).

Regulation .04B amended effective May 19, 1997 (24:10 Md. R. 709).

Regulation .06B amended effective May 19, 1997 (24:10 Md. R. 709).

Regulation .07C, D amended effective May 19, 1997 (24:10: Md. R. 709)  
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Chapter recodified from COMAR 09.31.06 to COMAR 31.16.03, July 1998  
Regulation .01 amended effective December 14, 2009 (36:25 Md. R. 1957)  
Regulation .02B amended effective December 14, 2009 (36:25 Md. R. 1957)  
Regulation .03 amended effective December 14, 2009 (36:25 Md. R. 1957)  
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