Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 123 (Chair, Judicial Proceedings Committee)(By Request - Departmental - Assessments and Taxation)

Judicial Proceedings Environmental Matters

Real Property - Foreclosure Sale of Residential Property - Notice to Local Supervisor of Assessments

This departmental bill requires a purchaser of residential property sold in an action to foreclose a mortgage or deed of trust on the property to provide a copy of the court order ratifying the foreclosure sale to the supervisor of assessments for the county in which the residential property is located. The copy must be provided by the later of (1) 60 days after the entry of the court order ratifying the foreclosure sale; or (2) if a motion to alter a judgment is made before expiration of the aforementioned 60 days, 30 days after the entry of a court order that resolves the motion without nullifying the ratification order. The bill requires the supervisor of assessments to provide a receipt to the person providing a copy of the ratification order. If a copy of the ratification order is not provided to the supervisor of assessments, any reduction in property tax received by the residential property because of its status as an owner-occupied principal residence (from the date of the entry of the ratification order until the earlier of either the receipt of this order by the supervisor or the recordation of the deed transferring the property to a third party) remains due and collectable as a property tax.

The bill takes effect June 1, 2012, and applies to all taxable years beginning after June 30, 2012.

Fiscal Summary

State Effect: Potentially significant special fund revenue increase in FY 2013 and subsequent years due to the more efficient removal of the Homestead Tax Credit (tax credit) on foreclosed residential properties. No impact on expenditures.

Local Effect: Potentially significant increase in local property tax revenues in FY 2013 and subsequent years due to the more efficient removal of the tax credit on foreclosed residential properties. No impact on expenditures.

Small Business Effect: The State Department of Assessments and Taxation (SDAT) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with the assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill does not apply if an instrument of writing transferring the residential property has been recorded in the appropriate county land record office before the expiration of the aforementioned time periods. Additionally, the bill does not apply if the foreclosure sale is subject to a pending appeal of the ratification order, a bankruptcy stay, or an unexpired right of redemption in favor of the United States or any agency or department of the United States.

Current Law: No title to property acquired at a foreclosure sale is invalid because the property was purchased by the secured party, his or her assignee, or representative, or for his or her account.

Post-sale Procedures: Under the Maryland Rules, a person authorized to make a foreclosure sale must file with the court, within 30 days after the sale, a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report. In addition, the purchaser must file an affidavit setting forth whether the purchaser is acting as an agent and, if so, information regarding the principals and stating that the purchaser has not directly or indirectly discouraged anyone from bidding for the property. A party and a holder of a subordinate interest in the property subject to the lien in an action to foreclose a lien may file exceptions to the sale within 30 days after receiving notice.

The court must then ratify the sale if (1) the time for filing exceptions has expired and either no exceptions were filed or exceptions were filed but overruled; and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate. After the court has ratified the sale and the purchase money has been paid, the individual making the sale must convey the property to the purchaser or the purchaser’s assignee.

Recordation of Deed: Generally no deed may pass or take effect unless it is executed and recorded. No deed, mortgage, or deed of trust may be recorded unless it meets the requirements specified by statute relating to form, necessary attached documents, and payment of taxes. Included in the necessary attached documents must be a copy of the deed for the submission to SDAT. The supervisor of assessments must transfer ownership of property in the assessment records upon receipt of this copy of the deed.

The proper jurisdiction for recording all deeds is the county in which the land is located. If the land is located in more than one county, the deed must be recorded in all such counties. After any document has been recorded in one county, a certified copy of the recorded document may be recorded in any other county.

Background: The Homestead Tax Credit Program provides tax credits against State, county, and municipal real property taxes for owner-occupied residential properties for the amount of real property taxes resulting from an annual assessment increase that exceeds a certain percentage or "cap" in any given year. The State requires the cap on assessment increases to be set at 10% for State property tax purposes; however, local governments have the authority to set their caps between 0% and 10%.

A majority of local subdivisions have assessment caps below 10%: 20 counties in fiscal 2011 and 2012, and 21 counties in fiscal 2013. **Exhibit 1** lists county assessment caps for 2013, the number of homestead accounts, and the average tax credit for a property. Two counties (Prince George's and Queen Anne's) raised the assessment cap for fiscal 2013, while one county (Wicomico) lowered the assessment cap.

The Homestead Tax Credit Program is administered as follows:

- Increases in property assessments are equally spread out over three years. For example, if a property's assessment increased by $120,000, from $300,000 to $420,000, the increase would be phased in through increments of $40,000 annually for the next three years.

- If the assessment cap were set at 10%, however, the amount of assessment subject to taxes would increase by only $30,000 in the first year, $33,000 in the following year, and $36,300 in the third year.

- Since the assessment cap was set lower than the actual market increase, the homeowner does not have to pay taxes on the property's full assessed value.

Exhibit 1
County Homestead Tax Credit Statistics

County	FY 2013 Assessment Cap	Homesteads	Average Credit*	County** Average Gain Per Credit Removed	State** Average Gain Per Credit Removed
Allegany	7%	3,632	$9,635	$95	$11
Anne Arundel	2%	114,129	108,567	988	122
Baltimore City	4%	92,149	46,929	1,064	53
Baltimore	4%	147,253	40,755	448	46
Calvert	10%	452	34,774	310	39
Caroline	5%	3,632	26,423	230	30
Carroll	5%	8,916	19,660	202	22
Cecil	8%	946	19,067	179	21
Charles	7%	2,362	20,404	218	23
Dorchester	5%	4,670	26,260	256	29
Frederick	5%	10,775	19,630	209	22
Garrett	5%	5,019	23,985	237	27
Harford	5%	3,088	14,328	149	16
Howard	5%	42,874	46,133	530	52
Kent	5%	3,401	58,616	599	66
Montgomery	10%	7,659	29,324	281	33
Prince George's	4%	120,783	45,480	600	51
Queen Anne's	5%	7,811	53,337	452	60
St. Mary's	5%	16,371	44,610	382	50
Somerset	10%	457	20,948	185	23
Talbot	0%	9,411	222,961	999	250
Washington	5%	9,802	17,983	170	20
Wicomico	5%	873	14,441	111	16
Worcester	3%	10,622	50,552	354	57
	Total	**627,087**			

*Represents the difference between a house's true assessed value and the value with an assessment cap.
**Represents the amount the county or State gains if a house with an average homestead credit loses the credit.

Source: State Department of Assessments and Taxation, Department of Legislative Services

Real estate-owned (REO) property is property acquired by a secured party as a result of an unsuccessful foreclosure sale on the property. This acquisition occurs when the amount of the outstanding loan owed to the secured party is greater than the value of the property. In Maryland, 10,607 properties were bought by a secured party after a foreclosure auction in 2010. Six jurisdictions (Prince George's, Baltimore, Montgomery, Anne Arundel, and Frederick counties and Baltimore City) represented approximately

77% of all lender purchases. **Exhibit 2** shows the number of REO purchases in each Maryland jurisdiction in 2010. Often when a secured party has acquired the property after a foreclosure sale, it delays the recording of the deed until it sells the property to another party, thus avoiding the payment of any recordation fee or transfer tax until absolutely necessary. When it does sell the property, the financial institution will record the deed twice and pay the transfer taxes twice: once for the transfer between the foreclosed-on property owner and the financial institution and again for the transfer between the financial institution and the new purchaser.

Exhibit 2
2010 REO Purchases in Maryland Jurisdictions by Quarter

Jurisdiction	Q1	Q2	Q3	Q4
Allegany	14	17	10	15
Anne Arundel	136	211	157	179
Baltimore	239	272	281	280
Baltimore City	582	285	390	454
Calvert	29	25	24	51
Caroline	13	16	10	17
Carroll	22	33	32	29
Cecil	31	13	25	24
Charles	66	96	79	96
Dorchester	20	18	21	17
Frederick	130	152	152	111
Garrett	7	10	5	7
Harford	46	77	105	48
Howard	47	54	44	30
Kent	11	6	8	6
Montgomery	356	594	312	243
Prince George’s	588	596	783	776
Queen Anne’s	23	31	11	33
St. Mary’s	35	36	27	23
Somerset	10	18	12	17
Talbot	4	7	11	6
Washington	114	91	84	80
Wicomico	36	42	33	27
Worcester	33	40	52	38
Total	**2,592**	**2,740**	**2,668**	**2,607**

Source: Department of Housing and Community Development

According to SDAT, this delay in recording the transfer of the deed causes many foreclosed residential properties to improperly retain tax credits because SDAT traditionally uses the recordation of a deed in the land records to determine whether to remove the tax credit. Property owned by a financial institution does not qualify for the tax credit because the property must be the owner's primary residence.

State Fiscal Effect: By requiring the secured party to provide the court order ratifying the sale directly to the supervisor of assessments within the specified time periods, SDAT will remove the tax credit regardless of whether the secured party records the deed. When the tax credit is removed, the property is taxed on its full value and not at the value capped by the credit. A more efficient removal of the tax credit will increase property tax special fund revenues. However, the amount of increase in property tax revenues is not quantifiable at this time because the property value for each house with an improper tax credit is unknown. Exhibit 1 shows the amount that the State gains if a house with an average tax credit loses the credit. However, this cannot be used to calculate the increase in property taxes because it includes all houses in the county and not solely REO properties.

Local Fiscal Effect: A more efficient removal of the tax credit will increase property tax revenue for local jurisdictions. The amount of increase in property tax revenues is not quantifiable at this time because the property value for each house with an improper tax credit is unknown. Carroll County notes that the potential increase is likely minimal because the average amount of the tax credit has dropped significantly in recent years due to stagnant property values. Cecil County also estimates a minimal increase in the tax revenues because the county already tracks foreclosures closely in order to remove the tax credit. Each of these jurisdictions has a small number of REO properties. For a jurisdiction such as Baltimore City or Prince George's County, the increase in revenue may be significant given the exceptionally high number of REO properties. Exhibit 1 shows the amount that the local government gains if a house with an average tax credit loses the credit. However, this cannot be used to calculate the increase in property taxes because it includes all houses in the county and not solely REO properties.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; State Department of Assessments and Taxation; Maryland

Foreclosure Task Force; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2012
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Real Property – Purchase of Residential Property by Secured Party – Notice to Local Supervisor of Assessments

BILL NUMBER: SB 123

PREPARED BY: Department of Assessments and Taxation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

_ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS