

# HOUSE BILL 1236

Q6

3lr2389  
CF SB 730

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By: ~~Delegates Hixson and A. Miller~~, A. Miller, and Rosenberg

Introduced and read first time: February 8, 2013

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Recordation and Transfer Taxes – Low Income Housing Projects –**  
3 **Controlling Interest**

4 FOR the purpose of establishing the consideration used to calculate the recordation  
5 and State and county transfer tax on certain transactions for which a  
6 controlling interest is conveyed; defining certain terms; making conforming and  
7 stylistic changes; providing for the application of this Act; and generally relating  
8 to the recordation of State and county transfer taxes.

9 BY repealing and reenacting, with amendments,  
10 Article – Tax – Property  
11 Section 12–101(g) through (l), 12–103(a), 13–101(g) and (h), 13–103(a),  
12 13–203(a), and 13–412  
13 Annotated Code of Maryland  
14 (2012 Replacement Volume)

15 BY adding to  
16 Article – Tax – Property  
17 Section 12–101(a–1) and (g), 12–103(a–1), 13–101(a–1) and (g), and  
18 13–203(a–1), and ~~13–412(e)~~  
19 Annotated Code of Maryland  
20 (2012 Replacement Volume)

21 BY repealing  
22 Article – Tax – Property

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 12-117(a)(6)  
2 Annotated Code of Maryland  
3 (2012 Replacement Volume)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Tax – Property**

7 12-101.

8 (A-1) “ACTUAL PAYMENT” MEANS THE AMOUNT OF MONETARY  
9 CONSIDERATION PAID FOR THE CONVEYANCE OF A CONTROLLING INTEREST IN  
10 A REAL PROPERTY ENTITY THAT OWNS PROPERTY DEVELOPED UNDER SECTION  
11 42 OF THE INTERNAL REVENUE CODE, THE LOW INCOME HOUSING TAX  
12 CREDIT PROGRAM.

13 (G) (1) “REAL PROPERTY ENTITY” MEANS A CORPORATION, A  
14 PARTNERSHIP, AN ASSOCIATION, A LIMITED LIABILITY COMPANY, A LIMITED  
15 LIABILITY PARTNERSHIP, ANY OTHER UNINCORPORATED FORM OF DOING  
16 BUSINESS, OR A TRUST THAT DIRECTLY OR BENEFICIALLY OWNS REAL  
17 PROPERTY THAT:

18 (I) CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS  
19 ASSETS; AND

20 (II) HAS AN AGGREGATE VALUE OF AT LEAST \$1,000,000  
21 THAT IS DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE, DEED OF  
22 TRUST, OR OTHER LIEN ON OR SECURITY INTEREST IN THE REAL PROPERTY.

23 (2) “REAL PROPERTY ENTITY” DOES NOT INCLUDE AN ENTITY  
24 WITH LAND HOLDINGS THAT, OTHER THAN HOMESITES OR AREAS OF  
25 COMMERCIAL ACTIVITY RELATED TO AGRICULTURAL PRODUCTION, ARE  
26 ENTIRELY SUBJECT TO AN AGRICULTURAL USE ASSESSMENT UNDER § 8-209 OF  
27 THIS ARTICLE.

28 [(g)] (H) “Recordation tax” means the tax imposed under this title.

29 [(h)] (I) (1) “Security agreement” means an agreement that creates or  
30 provides for a security interest.

31 (2) “Security agreement” includes a financing statement filed under  
32 the Maryland Uniform Commercial Code to perfect a security interest.

1           [(i)] (J) (1) “Security interest” means an interest in real property or  
2 personal property that secures payment or performance of an obligation.

3                   (2) “Security interest” includes a lien or encumbrance on real property  
4 or personal property.

5           [(j)] (K) “Subsidiary corporation” includes any corporation that is a  
6 subsidiary of either a parent corporation or any other subsidiary corporation of the  
7 parent corporation.

8           [(k)] (L) “Successor” has the meaning stated in § 1–101(y) of the  
9 Corporations and Associations Article.

10           [(l)] (M) (1) “Supplemental instrument of writing” means an instrument  
11 of writing that confirms, corrects, modifies, or supplements a previously recorded  
12 instrument of writing.

13                   (2) “Supplemental instrument of writing” includes an instrument of  
14 writing that secures a debt and grants a security interest in property in addition to or  
15 in substitution for property described in the previously recorded instrument of writing.

16 12–103.

17           (a) (1) **[The] EXCEPT AS PROVIDED IN SUBSECTION (A–1) OF THIS**  
18 **SECTION, THE** recordation tax rates under this section are applied to each \$500 or  
19 fraction of \$500 of consideration payable or of the principal amount of the debt secured  
20 for an instrument of writing.

21                   (2) The consideration:

22                           (i) includes the amount of any mortgage or deed of trust  
23 assumed by the grantee; and

24                           (ii) subject to item (i) of this paragraph, includes only the  
25 amount paid or delivered in return for the sale of the property and does not include  
26 the amount of any debt forgiven or no longer secured by a mortgage or deed of trust on  
27 the property.

28           **(A–1) (1) THE RECORDATION TAX RATES UNDER THIS SECTION ARE**  
29 **APPLIED TO EACH \$500 OR FRACTION OF \$500 OF CONSIDERATION PAID FOR**  
30 **THE CONVEYANCE OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY**  
31 **THAT HAS DEVELOPED REAL PROPERTY UNDER SECTION 42 OF THE INTERNAL**  
32 **REVENUE CODE, THE LOW INCOME HOUSING TAX CREDIT PROGRAM.**

1           **(2) THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE**  
2 **THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE**  
3 **PURCHASE OF THE INTEREST.**

4 12-117.

5           **(a) [(6) (i) “Real property entity” means a corporation, partnership,**  
6 **association, limited liability company, limited liability partnership, other**  
7 **unincorporated form of doing business, or trust that directly or beneficially owns real**  
8 **property that:**

9                           **1. constitutes at least 80% of the value of its assets; and**

10                           **2. has an aggregate value of at least \$1,000,000.**

11                           **(ii) For the purposes of this paragraph, the value of real**  
12 **property shall be determined without reduction for any mortgage, deed of trust, or**  
13 **other lien on or security interest in the real property.**

14                           **(iii) “Real property entity” does not include an entity with land**  
15 **holdings that, other than homesites or areas of commercial activity related to**  
16 **agricultural production, are entirely subject to an agricultural use assessment under §**  
17 **8-209 of this article.]**

18 13-101.

19           **(A-1) “ACTUAL PAYMENT” HAS THE MEANING STATED IN § 12-101 OF**  
20 **THIS ARTICLE.**

21           **(G) (1) “REAL PROPERTY ENTITY” MEANS A CORPORATION, A**  
22 **PARTNERSHIP, AN ASSOCIATION, A LIMITED LIABILITY COMPANY, A LIMITED**  
23 **LIABILITY PARTNERSHIP, ANY OTHER UNINCORPORATED FORM OF DOING**  
24 **BUSINESS, OR A TRUST THAT DIRECTLY OR BENEFICIALLY OWNS REAL**  
25 **PROPERTY THAT:**

26                           **(I) CONSTITUTES AT LEAST 80% OF THE VALUE OF ITS**  
27 **ASSETS; AND**

28                           **(II) HAS AN AGGREGATE VALUE OF AT LEAST \$1,000,000**  
29 **THAT IS DETERMINED WITHOUT REDUCTION FOR ANY MORTGAGE, DEED OF**  
30 **TRUST, OR OTHER LIEN ON OR SECURITY INTEREST IN THE REAL PROPERTY.**

31           **(2) “REAL PROPERTY ENTITY” DOES NOT INCLUDE AN ENTITY**  
32 **WITH LAND HOLDINGS THAT, OTHER THAN HOMESITES OR AREAS OF**  
33 **COMMERCIAL ACTIVITY RELATED TO AGRICULTURAL PRODUCTION, ARE**

1 ENTIRELY SUBJECT TO AN AGRICULTURAL USE ASSESSMENT UNDER § 8-209 OF  
 2 THIS ARTICLE.

3 [(g)] (H) “Subsidiary corporation” includes any corporation that is a  
 4 subsidiary of either a parent corporation or any other subsidiary corporation of the  
 5 parent corporation.

6 [(h)] (I) “Successor” has the meaning stated in § 1-101(y) of the  
 7 Corporations and Associations Article.

8 13-103.

9 (a) In this section, “controlling interest”[, AND “real property”[, and “real  
 10 property entity”] have the meanings stated in § 12-117 of this article.

11 13-203.

12 (a) (1) Except AS PROVIDED IN SUBSECTION ~~(A-1)~~ SUBSECTIONS  
 13 ~~(A-1) AND (B) OF THIS SECTION, AND EXCEPT as provided in subsection (b) of this~~  
 14 ~~section,~~ the rate of the transfer tax is 0.5% of the consideration payable for the  
 15 instrument of writing.

16 (2) The consideration:

17 (i) includes the amount of any mortgage or deed of trust  
 18 assumed by the grantee; and

19 (ii) subject to item (i) of this paragraph, includes only the  
 20 amount paid or delivered in return for the sale of the property and does not include  
 21 the amount of any debt forgiven or no longer secured by a mortgage or deed of trust on  
 22 the property.

23 **(A-1) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,**  
 24 **THE RATE OF THE TRANSFER TAX IS 0.5% OF THE CONSIDERATION PAID FOR**  
 25 **THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY ENTITY**  
 26 **THAT HAS DEVELOPED REAL PROPERTY UNDER SECTION 42 OF THE INTERNAL**  
 27 **REVENUE CODE, THE LOW INCOME HOUSING TAX CREDIT PROGRAM.**

28 **(2) THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE**  
 29 **THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE**  
 30 **PURCHASE OF THE INTEREST.**

31 13-412.

1 (a) (1) Except **AS PROVIDED IN SUBSECTION (C) OF THIS SECTION**  
 2 **AND ~~EXCEPT as provided in~~** paragraph (2) of this subsection, a county transfer tax  
 3 shall apply to the consideration payable for an instrument of writing.

4 (2) If a county transfer tax applies to mortgages or deeds of trust, the  
 5 county transfer tax shall apply to the consideration payable or the principal amount of  
 6 the debt secured for an instrument of writing.

7 (b) **[The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**  
 8 **THE** consideration:

9 (1) includes the amount of any mortgage or deed of trust assumed by  
 10 the grantee; and

11 (2) subject to item (1) of this subsection, includes only the amount paid  
 12 or delivered in return for the sale of the property and does not include the amount of  
 13 any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

14 (c) (1) **A COUNTY TRANSFER TAX APPLIES TO THE CONSIDERATION**  
 15 **PAID FOR THE TRANSFER OF A CONTROLLING INTEREST IN A REAL PROPERTY**  
 16 **ENTITY THAT HAS DEVELOPED REAL PROPERTY UNDER SECTION 42 OF THE**  
 17 **INTERNAL REVENUE CODE, THE LOW INCOME HOUSING TAX CREDIT**  
 18 **PROGRAM.**

19 (2) **THE CONSIDERATION UNDER THIS SUBSECTION SHALL BE**  
 20 **THE ACTUAL PAYMENT MADE BY THE PURCHASER TO THE SELLER FOR THE**  
 21 **PURCHASE OF THE INTEREST.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 23 July 1, 2013, and shall be applicable to all instruments of writing recorded or filed on  
 24 or after July 1, 2013.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.