

SENATE BILL 436

Q6

3lr1602
CF 3lr2975

By: **Senators Peters, DeGrange, Brinkley, Colburn, Currie, Edwards, and Robey**

Introduced and read first time: January 30, 2013

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation Taxes – Exemptions**

3 FOR the purpose of exempting certain indemnity mortgage transactions from the
4 recordation tax; altering the transaction amount that is subject to the
5 recordation tax for supplemental instruments of writing; making certain
6 refinancing instruments exempt from the recordation tax; altering a certain
7 definition; and generally relating to exemptions from the recordation tax.

8 BY repealing and reenacting, with amendments,
9 Article – Tax – Property
10 Section 12–101(l), 12–105(f)(7), and 12–108(e) and (g)
11 Annotated Code of Maryland
12 (2012 Replacement Volume)

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

15 **Article – Tax – Property**

16 12–101.

17 (l) (1) “Supplemental instrument of writing” means an instrument of
18 writing that confirms, corrects, modifies, [or] supplements, **OR AMENDS AND**
19 **RESTATES** a previously recorded instrument of writing, **REGARDLESS OF WHETHER**
20 **RECORDATION TAX WAS PAID ON SUCH INSTRUMENT OF WRITING.**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 12-105.

2 (f) (7) (i) In this paragraph, “indemnity mortgage” includes any
3 mortgage, deed of trust, or other security interest in real property that secures a
4 guarantee of repayment of a loan for which the guarantor is not primarily liable.

5 (ii) Except as provided in subparagraph (iii) of this paragraph:

6 1. secured debt with respect to an indemnity mortgage is
7 deemed to be incurred for purposes of this subsection when and to the same extent as
8 debt is incurred on the guaranteed loan; and

9 2. the recordation tax applies under this subsection in
10 the same manner as if the guarantor were primarily liable for the guaranteed loan.

11 (iii) This paragraph does not apply:

12 1. to the extent that recordation tax is paid on another
13 instrument of writing that secures payment of the guaranteed loan; [or]

14 2. to an indemnity mortgage [that secures a guarantee
15 of repayment of a loan for] **EVIDENCING A LIEN OF less than [\$1,000,000]**
16 **\$5,000,000; OR**

17 **3. TO A SUPPLEMENTAL INSTRUMENT OF WRITING**
18 **AS DEFINED IN § 12-101(L) OF THIS SUBTITLE THAT CONFIRMS, CORRECTS,**
19 **MODIFIES, SUPPLEMENTS, OR AMENDS AND RESTATES A PREVIOUSLY**
20 **RECORDED INSTRUMENT OF WRITING REGARDLESS OF WHETHER**
21 **RECORDATION TAX WAS PAID ON THE INSTRUMENT OF WRITING.**

22 12-108.

23 (e) A supplemental instrument of writing is not subject to recordation tax
24 except to the extent that:

25 (1) actual consideration is payable on the supplemental instrument of
26 writing; or

27 (2) the amount of debt **SECURED** is increased by the supplemental
28 instrument of writing.

29 (g) (1) In this subsection, “original mortgagor” includes:

30 (i) [an individual who] **A PERSON THAT** assumed a debt
31 secured by real property that the [individual] **PERSON** purchased [as a principal

1 residence] and [who] paid the recordation tax on the consideration paid for the
2 property; and

3 (ii) the trustee of an inter vivos trust if[:

4 1. the mortgaged property is used as a principal
5 residence of the settlor of the trust; and

6 2.] the trustee or the settlor of the trust originally
7 assumed or incurred the debt secured by the mortgage or deed of trust.

8 (2) A mortgage or deed of trust is not subject to recordation tax to the
9 extent that it secures the refinancing of an amount not greater than the [unpaid
10 principal amount] **DEBT** secured by an existing mortgage or deed of trust at the time
11 of refinancing if the mortgage or deed of trust secures the refinancing of real property
12 that is:

13 (i) [1. used as a principal residence by the original
14 mortgagor; and

15 2.] being refinanced by the original mortgagor or by the
16 original mortgagor and, **IF APPLICABLE**, the spouse of the original mortgagor; or

17 (ii) [used as a principal residence] **BEING REFINANCED** by the
18 settlor of an inter vivos trust if the mortgage or deed of trust is given by a trustee of
19 the trust.

20 (3) To qualify for an exemption under paragraph (2) of this subsection
21 an original mortgagor or agent of the original mortgagor shall include a statement in
22 the recitals or in the acknowledgment of the mortgage or deed of trust, or submit with
23 the mortgage or deed of trust, an affidavit under oath, signed by the original
24 mortgagor or agent of the original mortgagor, stating:

25 (i) that the [individual] **PERSON** is the original mortgagor or
26 agent of the original mortgagor; **AND**

27 (ii) [that the mortgaged property is the principal residence of
28 the original mortgagor or of the settlor of an inter vivos trust if the mortgage or deed
29 of trust is given by a trustee of the trust; and

30 (iii)] the amount of [unpaid principal of] the original mortgage or
31 deed of trust that is being refinanced.

32 (4) A statement under paragraph (3) of this subsection by an agent of
33 the original mortgagor shall state that the statement:

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1 (i) is based on a diligent inquiry made by the agent with
2 respect to the facts set forth in the statement; and

3 (ii) is true to the best of the knowledge, information, and belief
4 of the agent.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2013.