



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

January 19th, 2023

Senate Budget & Taxation Committee

The Honorable Guy Guzzone

3 West Miller Senate Building

Annapolis, Maryland 21401

Re: Senate Bill – 65 - Recordation Tax – Purchase Money Mortgage or Purchase Money Deed of Trust – Extent of Exemption

Dear Chairman Guzzone and Members of the Committee,

It is a great pleasure to appear before the Senate Budget and Tax Committee this afternoon in order to present Senate Bill 65.

As I am sure the members of this Committee are aware, Maryland imposes a recordation tax at the time that deeds, mortgages and deeds of trust are recorded in the county or city land records offices. The tax revenues accrue to the local jurisdiction and in fact are an important source of income to the jurisdiction. The tax is based upon the sale price of land being transferred in the case of deeds or upon the amount of the loan in the case of mortgages and deeds of trust.

Tax Property Article Section 12-108 grants several exemptions from the recordation tax. One of the most important exemptions is for what are known as “purchase money mortgages” and “purchase money deeds of trust”. These instruments secure loans made to finance the purchase price of real property and are recorded at the same time as the deed transferring the property to its new owner. The exemption thus avoids the double payment of tax at the time that property changes hands, one tax on the amount of the purchase price, paid upon the recordation of the deed, and a second tax on the amount of the loan that enables the buyer to pay for the property, paid upon the recordation of the mortgage or deed of trust.

Up until recently, all Maryland real property attorneys understood that in the unusual case that the amount of the loan exceeded the purchase price of the piece of real estate, the mortgage or deed of trust was only a “purchase money mortgage” or “purchase money deed of trust” to the extent of the purchase price and that any additional loan amount would not be considered a “purchase price mortgage” or “purchase price deed of trust” and therefore would be subject to recordation tax.

So what is this bill all about? Let me illustrate it with this example.

Baltimore City has a huge inventory of abandoned homes. It sells one to a developer for \$5,000. The developer takes out a loan for \$150,000 to fix up the home. When the deed is

recorded in the land records, a recordation tax is due on the \$5,000 purchase price. When the deed of trust to secure the \$150,000 loan is recorded, one would expect that \$5,000 would be exempt from recordation tax and that the remaining \$145,000 would be taxable.

Recently, however, a resourceful Chicago lawyer carefully read the actual language of the current statute. It provides that a purchase money mortgage or deed of trust secures the purchase price “in whole or in part”. Exploiting an arguable ambiguity, the Chicago lawyer has argued that because, in my example, the deed of trust secures “in part” the \$5,000 purchase price, there is no recordation tax due at all upon the recordation of the entire \$150,000 deed of trust.

Senate Bill 65 simply clarifies the language of the recordation tax statute so that the arguable ambiguity is eliminated. It adds eight words to the statute, stating that a purchase money mortgage or purchase money deed of trust is not subject to recordation tax **to the extent that it secures purchase money**. This will clarify that in my example, \$5,000 of the deed of trust qualifies as a purchase money deed of trust and will not be taxed, but the remaining \$145,000 of the deed of trust will not qualify as a purchase money deed of trust and will be taxed.

I appreciate the Committee’s consideration of Senate Bill 65.