

**Department of Legislative Services**  
Maryland General Assembly  
2001 Session

**FISCAL NOTE**  
**Revised**

Senate Bill 18 (Senator Haines)

Budget and Taxation

Ways and Means

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**Recordation and Transfer Tax - Transfer from Real Estate Enterprise to  
Limited Liability Company**

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This bill provides that an instrument of writing that transfers title to real property from a “real estate enterprise” to a limited liability company (LLC) is exempt from recordation and transfer taxes under specified circumstances. An individual’s other business interests unaffected by the transfer may not affect the individual’s ability to claim the exemption.

The bill is effective July 1, 2001.

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**Fiscal Summary**

**State Effect:** Potential decrease in transfer tax revenues beginning in FY 2002.

**Local Effect:** Potential decrease in recordation and transfer tax revenues.

**Small Business Effect:** Potential minimal.

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**Analysis**

**Bill Summary:** Real estate enterprise is defined as a business conducted by one or more individuals who own real property, including a sole proprietorship or a tenancy by the entirety, and are involved principally in buying, selling, leasing, or managing real property.

A transfer to an LLC is exempt from recordation and transfer tax if: (1) the transfer is for no consideration other than the issuance of membership interests in the LLC; (2) the members of the LLC are identical to the partners of the conveying real estate enterprise;

(3) each member's allocation of the profits and losses of the LLC is identical to that member's allocation of the conveying real estate enterprise; (4) the transfer is part of a discontinuation of the real property enterprise; and (5) all real property owned by the individuals and used in the conduct of business is being converted to a single LLC.

**Current Law:** Chapter 630 of 1996 provided an exemption from recordation and transfer taxes for transfers of real property from a predecessor entity (not including a tenancy by the entirety) to an LLC if: (1) the members of the LLC are identical to the partners of the converting entity; (2) each member's allocation of the profits and losses of the LLC are identical to that member's allocation of the converting entity; and (3) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to an LLC. Predecessor entity includes a proprietorship, comprised of one or more individuals, which is involved principally in buying, selling, leasing, or managing real property.

Any property owned by any person or group of persons can be converted to an LLC, although the conversion of a tenancy by the entirety to an LLC is currently subject to recordation and transfer taxes.

**Background:** Tenancy by the entirety is joint ownership of title by husband and wife, in which both have the right to the entire property, and upon death of one, the other has full title to the property (right of survivorship).

### *State Transfer Tax*

The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland home buyers). The tax is collected by the clerks of the circuit court and transferred to the Comptroller of the Treasury.

State transfer tax revenues are special fund revenues dedicated for specific programs and are distributed as follows: 3% of total revenue is earmarked to defray administrative costs, and \$1 million to cover debt service expenses. The remaining revenues are approximately dedicated to the following: Program Open Space (76%), Agricultural Land Preservation Fund (17%), Heritage Conservation Fund (2%), and Rural Legacy Program (5%). Approximately 50% of Program Open Space revenues are distributed to local Program Open Space programs. Any decrease in transfer tax revenues would result in a funding decrease for these programs. The property transfer tax allocation to these programs for fiscal 2002 totals \$109,761,300.

### *Local Transfer Tax*

A local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage. Except in Prince George's County, mortgages are not subject to the tax.

### *Recordation Tax*

The counties and Baltimore City are authorized by law to impose locally established recordation tax rates on any business or person: (1) conveying title to real property; or (2) creating or giving notice of a security interest (i.e., a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The clerks of the circuit court collect the county recordation taxes in all counties except Prince George's, where the County Director of Finance collects the taxes. Fees ranging from 3% to 5% of the tax collected are retained by the clerks, which are credited to the State general fund. The remainder of the tax is remitted to the respective counties. Total recordation taxes collected during fiscal 2000, the latest year for which information is available, totaled \$198,303,150, while fees retained by the clerks totaled \$6,982,069.

**Exhibit 1** provides a schedule of local recordation and transfer tax rates for fiscal 2000. **Exhibit 2** provides a schedule of the recordation taxes collected in each county for fiscal 2000.

**State Revenues:** An increase in the number of conversions as a result of this bill would decrease State transfer tax revenues. Information is not available to the Department of Legislative Services on the number of real estate enterprises in Maryland that would meet the qualifications of this bill to be exempt from the transfer tax. Accordingly, the number of real estate enterprises that would convert to LLCs cannot be reasonably estimated and the resulting decrease in State transfer taxes paid cannot be reliably estimated. Any decrease in transfer tax revenues would result in a funding decrease for the programs referenced above (e.g., Program Open Space).

**Local Revenues:** This bill could result in a decrease in recordation and transfer tax revenues for local governments. Information is not available to the Department of Legislative Services on the number of real estate enterprises in Maryland that would meet the qualifications of this bill to be exempt from the transfer tax. Accordingly, the number of real estate enterprises that would convert to LLCs cannot be reasonably estimated. Therefore, the resulting decrease in local recordation and transfer tax cannot be reliably estimated.

## **Additional Information**

**Prior Introductions:** Similar legislation was introduced during the 2000 session as HB 1187 and SB 360. HB 1187 passed the House with amendments but did not receive a report from the Senate Budget and Taxation Committee. SB 360 received an unfavorable report from the Senate Budget and Taxation Committee.

**Cross File:** None.

**Information Source(s):** Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader – January 12, 2001  
ef/jr Revised – Senate Third Reader – March 22, 2001

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**Exhibit 1**  
**Local Recordation and Transfer Tax Rates**  
**FY 2001**

<u>County</u>	<u>Recordation Tax Rate per \$500 of Consideration</u>	<u>Transfer Tax Rate (Percent of Transaction Value)</u>
Allegany	\$2.20	0.2%
Anne Arundel	3.50	1.0%
Baltimore City	2.75	1.5%
Baltimore	2.50	1.5%
Calvert	5.00	0.0%
Caroline	3.30	0.5%
Carroll	3.50	0.0%
Cecil	3.30	0.5%
Charles	5.00	0.0%
Dorchester	3.30	1.0%
Frederick	5.00	0.0%
Garrett	3.50	1.0%
Harford	3.30	1.0%
Howard	2.50	1.0%
Kent	3.30	0.5%
Montgomery	2.20	1.0%
Prince George's	2.20	1.4%
Queen Anne's	3.30	0.5%
St. Mary's	3.30	1.0%
Somerset	1.65	0.0%
Talbot	3.30	1.0%
Washington	3.80	0.0%
Wicomico	2.30	0.0%*
Worcester	3.30	0.5%

\* - effective December 9, 2000.

Source: Department of Legislative Services

**Exhibit 2**

**Distribution of Recordation Tax  
FY 2000**

<u>County</u>	<u>Total Tax Collected</u>	<u>Percent Retained by Clerk of the Court</u>	<u>Fees Retained by Clerk of the Court*</u>
Allegany	\$667,689	5.0%	\$33,384
Anne Arundel	25,361,708	3.0%	760,852
Baltimore City	9,946,539	3.0%	248,701
Baltimore County	34,021,813	3.0%	1,149,844
Calvert	4,654,121	5.0%	232,709
Caroline	806,851	5.0%	40,345
Carroll	6,503,791	5.0%	325,203
Cecil	3,032,355	5.0%	139,833
Charles	8,009,080	5.0%	400,454
Dorchester	1,785,614	5.0%	89,283
Frederick	10,530,772	5.0%	526,561
Garrett	1,450,844	5.0%	72,546
Harford	8,516,895	3.0%	255,509
Howard	11,476,121	5.0%	573,829
Kent	739,156	5.0%	36,960
Montgomery	35,309,163	3.0%	1,059,277
Prince George's**	14,642,234	N/A	N/A
Queen Anne's	2,679,422	5.0%	128,463
St. Mary's	3,088,949	5.0%	154,454
Somerset	244,188	5.0%	12,209
Talbot	3,037,272	5.0%	151,708
Washington	4,900,688	5.0%	245,034
Wicomico	1,804,727	5.0%	90,244
Worcester	5,093,161	5.0%	254,667
<b>TOTAL</b>	<b>\$198,303,150</b>		<b>\$6,982,069</b>

\*\*The Finance Director currently collects the tax in Prince George's County and no fees are remitted to the State.

Source: Administrative Office of the Courts