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By: **Delegates Kaiser, Goodwin, Gordon, and Ross**  
Introduced and read first time: March 1, 2004  
Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Recordation Tax - Indemnity Mortgages**

3 FOR the purpose of providing that, for purposes of the recordation tax, secured debt  
4 with respect to certain mortgages, deeds of trusts, and other security interests  
5 in real property securing a guarantee of repayment of a loan is deemed to be  
6 incurred as debt is incurred on the guaranteed loan and the recordation tax  
7 applies in a certain manner; and generally relating to the treatment of certain  
8 indemnity mortgages under the recordation tax.

9 BY repealing and reenacting, with amendments,  
10 Article - Tax - Property  
11 Section 12-105(f)  
12 Annotated Code of Maryland  
13 (2001 Replacement Volume and 2003 Supplement)

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

16 **Article - Tax - Property**

17 12-105.

18 (f) (1) Except as provided in paragraph (4) of this subsection, if the total  
19 amount of secured debt has not been incurred at the time of recording or filing the  
20 instrument of writing, the recordation tax applies only to the principal amount of the  
21 debt incurred at that time.

22 (2) Except as provided in paragraphs (3), (4), and (6) of this subsection,  
23 on or before 7 days after any additional debt is incurred after recording or filing an  
24 instrument of writing, a statement under oath of the amount of additional debt shall  
25 be filed with the clerk of the circuit court or with the Department, and the recordation  
26 tax shall be paid on the additional debt by the debtor.

1           (3)     If the additional debt under paragraph (2) of this subsection is  
2 applied to repayment of the debt previously incurred, the recordation tax does not  
3 apply to the additional debt.

4           (4)     The recordation tax may be computed and paid on the maximum  
5 outstanding principal sum, however expressed, that is stated to be secured by the  
6 instrument of writing, without regard to the amount of secured debt actually  
7 incurred, advanced, or readvanced.

8           (5)     When credit is originally extended under paragraph (1) of this  
9 subsection to a consumer borrower, as defined in § 12-901 of the Commercial Law  
10 Article, the lender shall inform the borrower that:

11                   (i)     the borrower may pay the recordation tax under paragraphs (1)  
12 and (2) or paragraph (4) of this subsection; and

13                   (ii)    if the borrower elects to pay the recordation tax as additional  
14 debt is incurred under paragraph (2) of this subsection, the consumer borrower is  
15 responsible for payment of the additional tax and any penalty provided by § 14-1012  
16 of this article.

17           (6)     (i)     This paragraph applies to construction loans for over \$100,000  
18 for which the total amount of secured debt has not been incurred at the time of  
19 recording or filing the instrument of writing.

20                   (ii)    At the time that additional debt is incurred, the lender shall  
21 issue a draft payable to the appropriate collector of the recordation tax in the amount  
22 of the recordation tax due under this subsection.

23                   (iii)   The funds for the draft may be proceeds from the additional  
24 debt that is incurred or from the borrower.

25                   (iv)    Until the recordation tax is paid as required under paragraph  
26 (2) of this subsection, the borrower shall remain liable for the recordation tax that is  
27 due on the additional debt.

28           (7)     (I)     IN THIS PARAGRAPH, "INDEMNITY MORTGAGE" INCLUDES ANY  
29 MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST IN REAL PROPERTY  
30 THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR WHICH THE  
31 GUARANTOR IS NOT PRIMARILY LIABLE.

32                   (II)    EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS  
33 PARAGRAPH:

34                           1.     SECURED DEBT WITH RESPECT TO AN INDEMNITY  
35 MORTGAGE IS DEEMED TO BE INCURRED FOR PURPOSES OF THIS SUBSECTION  
36 WHEN AND TO THE SAME EXTENT AS DEBT IS INCURRED ON THE GUARANTEED  
37 LOAN; AND

