
By: **Delegates Kaiser, Barkley, Gordon, King, Madaleno, and Weir**
Introduced and read first time: February 7, 2005
Assigned to: Ways and Means

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 trust, and other security interests in
5 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 2004 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

1 2. THE RECORDATION TAX APPLIES UNDER THIS
2 SUBSECTION IN THE SAME MANNER AS IF THE GUARANTOR WERE PRIMARILY
3 LIABLE FOR THE GUARANTEED LOAN.

4 (III) THIS PARAGRAPH DOES NOT APPLY TO THE EXTENT THAT
5 RECORDATION TAX IS PAID ON ANOTHER INSTRUMENT OF WRITING THAT SECURES
6 PAYMENT OF THE GUARANTEED LOAN.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
8 effect July 1, 2005.