

# SENATE BILL 1056

N1, Q6

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By: **Senator Haines**

Introduced and read first time: March 1, 2010

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Indemnity Mortgage – Effect of Foreclosure on Payment of**  
3 **Recordation Tax**

4 FOR the purpose of establishing that the requirement for the payment of public taxes,  
5 assessments, and charges before property may be transferred on the assessment  
6 books or records does not apply to the payment of recordation taxes; clarifying  
7 that a purchaser of foreclosed residential property is not required to pay the  
8 recordation tax for a certain mortgage securing the foreclosed property except  
9 under certain circumstances; establishing that if the purchaser of the foreclosed  
10 property is the grantor of a certain mortgage, the purchaser is responsible to  
11 pay the recordation tax; defining a certain term; providing for the application of  
12 this Act; and generally relating to the effect of foreclosure on payment of the  
13 recordation tax on property secured by an indemnity mortgage.

14 BY repealing and reenacting, without amendments,  
15 Article – Real Property  
16 Section 3–104(b) and 7–102(a)  
17 Annotated Code of Maryland  
18 (2003 Replacement Volume and 2009 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Real Property  
21 Section 3–104(c) and 7–105  
22 Annotated Code of Maryland  
23 (2003 Replacement Volume and 2009 Supplement)

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

26 **Article – Real Property**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-104.

2 (b) (1) Except as provided in subsection (c) of this section, property may  
3 not be transferred on the assessment books or records until:

4 (i) All public taxes, assessments, and charges currently due and  
5 owed on the property have been paid to the treasurer, tax collector, or director of  
6 finance of the county in which the property is assessed; and

7 (ii) All taxes on personal property in the county due by the  
8 transferor have been paid when all land owned by him in the county is being  
9 transferred.

10 (2) The certificate of the collecting agent designated by law, showing  
11 that all taxes, assessments, and charges have been paid, shall be endorsed on the  
12 deed, and the endorsement shall be sufficient authority for transfer on the assessment  
13 books.

14 (3) Except as provided in subsection (c) of this section, in Cecil,  
15 Charles, Dorchester, Harford, Howard, Kent, Queen Anne's, Somerset, and St. Mary's  
16 counties no property may be transferred on the assessment books or records until (1)  
17 all public taxes, assessments, any charges due a municipal corporation, and charges  
18 due on the property have been paid as required by law, and (2) all taxes on personal  
19 property in the county due by the transferor have been paid when all land owned by  
20 him in the county and municipal corporation is being transferred. The certificate of the  
21 collecting agent and municipal corporation designated by law showing that all taxes,  
22 assessments, and charges have been paid, shall be endorsed on the deed and the  
23 endorsement shall be sufficient authority for transfer on the assessment books.

24 (c) (1) (i) The requirements for prepayment of personal property taxes  
25 in subsection (b) of this section do not apply to grants of land made:

26 1. By or on behalf of any mortgagee, lien creditor,  
27 trustee of a deed of trust, judgment creditor, trustee in bankruptcy or receiver, and  
28 any other court-appointed officer in an insolvency or liquidation proceeding; or

29 2. By a deed in lieu of foreclosure to any holder of a  
30 mortgage or deed of trust or to the holder's assignee or designee.

31 (ii) Notwithstanding any other provision of law, and except as  
32 provided in subparagraph (iii) of this paragraph, after the recordation of a deed or  
33 other instrument that effects a grant of land described in subparagraph (i) of this  
34 paragraph, the land shall be free and clear of, and unencumbered by, any lien or claim  
35 of lien for any unpaid taxes on personal property.

36 (iii) Subparagraph (ii) of this paragraph does not apply to:

1                   1.     Any lien for unpaid taxes on personal property that  
2 attached to the land by recording and indexing a notice as provided in § 14–804(b) of  
3 the Tax – Property Article prior to the recording of the mortgage, lien, deed of trust, or  
4 other encumbrance giving rise to the grant of land described in subparagraph (i) of  
5 this paragraph; or

6                   2.     Unpaid taxes on personal property owned by the  
7 transferee or subsequent owner of the land after a grant of land described in  
8 subparagraph (i) of this paragraph.

9                   (iv)    This paragraph does not affect the rights of the personal  
10 property tax lienholder to make a claim to any surplus proceeds from a judicial sale of  
11 land resulting in a grant of land described in subparagraph (i) of this paragraph.

12                  (2)     Subsection (b) of this section does not apply in Charles, St. Mary’s,  
13 Dorchester, Harford, Howard, Kent, Prince George’s, Worcester, Carroll, Montgomery,  
14 Frederick and Washington counties to any deed executed as a mere conduit or for  
15 convenience in holding and passing title, known popularly as a straw deed or, as  
16 provided in § 4–108, a deed making a direct grant in lieu of a straw deed, or to a deed  
17 which is a supplementary instrument merely confirming, correcting, or modifying a  
18 previously recorded deed, if there is no actual consideration paid or to be paid for the  
19 execution of the supplementary instrument.

20                  (3)     Subsection (b) of this section does not apply in Baltimore City and  
21 Anne Arundel, Baltimore, Carroll, Frederick, or Washington counties to any deed  
22 transferring property to the county when the controller or treasurer of the county has  
23 certified that the conveyance does not impair the security for any public taxes,  
24 assessments, and charges due on the remaining property of the grantor.

25                  (4)     (i)     Property may be transferred on the assessment books or  
26 records in July, August, or September if instead of paying the taxes required under  
27 subsection (b)(1) of this section on a property transfer by assumption, a lender or the  
28 attorney handling the transfer of title files with the county treasurer, tax collector, or  
29 director of finance of the county in which the property is assessed a statement that  
30 certifies that the lender maintains a real estate tax escrow account.

31                  (ii)    Upon receipt of the statement required in subparagraph (i)  
32 of this paragraph, the county treasurer, tax collector, or director of finance shall  
33 endorse on the deed an appropriate certification and the endorsement shall be  
34 sufficient authority for transfer on the assessment books.

35                  (5)     At the time of transfer of real property subject to a semiannual  
36 payment schedule for the payment of property taxes, only those semiannual payments  
37 that are due for the current taxable year under § 10–204.3 of the Tax – Property  
38 Article must be paid prior to the transfer of the property.

1           **(6) THE PUBLIC TAXES, ASSESSMENTS, AND CHARGES TO BE**  
2 **COLLECTED UNDER SUBSECTION (B)(1) OF THIS SECTION DO NOT INCLUDE ANY**  
3 **RECORDATION TAXES IMPOSED UNDER TITLE 12 OF THE TAX – PROPERTY**  
4 **ARTICLE.**

5 7–102.

6           (a) (1) No mortgage or deed of trust may be a lien or charge on any  
7 property for any principal sum of money in excess of the aggregate principal sum  
8 appearing on the face of the mortgage or deed of trust and expressed to be secured by  
9 it, without regard to whether or when advanced or readvanced.

10           (2) Paragraph (1) of this subsection does not apply to a mortgage or  
11 deed of trust to:

12                   (i) Guarantee the party secured against loss from being an  
13 obligee of a third party;

14                   (ii) Indemnify the party secured against loss from being an  
15 endorser, guarantor, or surety; or

16                   (iii) Secure a guarantee or indemnity agreement.

17 7–105.

18           (a) A provision may be inserted in a mortgage or deed of trust authorizing  
19 any natural person named in the instrument, including the secured party, to sell the  
20 property or declaring the borrower's assent to the passing of a decree for the sale of the  
21 property, on default in a condition on which the mortgage or deed of trust provides  
22 that a sale may be made.

23           (b) A sale made pursuant to this section, §§ 7–105.1 through 7–105.8 of this  
24 subtitle, or the Maryland Rules, after final ratification by the court and grant of the  
25 property to the purchaser on payment of the purchase money, has the same effect as if  
26 the sale and grant were made under decree between the proper parties in relation to  
27 the mortgage or deed of trust and in the usual course of the court, and operates to pass  
28 all the title which the borrower had in the property at the time of the recording of the  
29 mortgage or deed of trust.

30           **(C) (1) IN THIS SUBSECTION, “INDEMNITY MORTGAGE” MEANS A**  
31 **MORTGAGE OR DEED OF TRUST DESCRIBED IN § 7–102(A)(2) OF THIS SUBTITLE.**

32           **(2) THIS SUBSECTION APPLIES TO AN INDEMNITY MORTGAGE ON**  
33 **WHICH THE RECORDATION TAX IMPOSED UNDER TITLE 12 OF THE TAX –**  
34 **PROPERTY ARTICLE WAS NOT PAID AT THE TIME OF RECORDING BECAUSE THE**  
35 **GRANTOR’S OBLIGATION AS GUARANTOR OR INDEMNITOR TO PAY THE DEBT**  
36 **SECURED HAD NOT BEEN INCURRED AT THE TIME OF RECORDING.**

1           **(3) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**  
2 **SUBSECTION, A PURCHASER OF PROPERTY SECURED BY AN INDEMNITY**  
3 **MORTGAGE AT A SALE MADE UNDER THIS SECTION, §§ 7-105.1 THROUGH**  
4 **7-105.8 OF THIS SUBTITLE, OR THE MARYLAND RULES MAY NOT BE REQUIRED**  
5 **TO PAY THE RECORDATION TAX ON THE INDEMNITY MORTGAGE.**

6           **(4) IF THE PURCHASER OF THE PROPERTY UNDER A SALE**  
7 **DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION IS THE GRANTOR OF THE**  
8 **INDEMNITY MORTGAGE, THE PURCHASER SHALL REMAIN LIABLE FOR THE**  
9 **RECORDATION TAX.**

10           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
11 construed to apply only prospectively and may not be applied or interpreted to have  
12 any effect on or application to any indemnity mortgage recorded before the effective  
13 date of this Act.

14           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 June 1, 2010.