

HOUSE BILL 420

Q6
HB 260/08 – W&M

1lr1373

By: **Delegates Kaiser, Barkley, Cane, Carr, Gutierrez, Hucker, Luedtke, Pendergrass, Reznik, Stocksdale, F. Turner, and Zucker**
Introduced and read first time: February 4, 2011
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 for a certain amount
6 is deemed to be incurred as debt is incurred on the guaranteed loan and, with
7 respect to those mortgages, deeds of trust, and other security interests, the
8 recordation tax applies in a certain manner; and generally relating to the
9 treatment of certain indemnity mortgages under the recordation tax.

10 BY repealing and reenacting, with amendments,
11 Article – Tax – Property
12 Section 12–105(f)
13 Annotated Code of Maryland
14 (2007 Replacement Volume and 2010 Supplement)

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

17 **Article – Tax – Property**

18 12–105.

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

23 (2) Except as provided in paragraphs (3), (4), and (6) of this
24 subsection, on or before 7 days after any additional debt is incurred after recording or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 filing an instrument of writing, a statement under oath of the amount of additional
2 debt shall be filed with the clerk of the circuit court or with the Department, and the
3 recordation tax shall be paid on the additional debt by the debtor.

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

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

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

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

16 (ii) if the borrower elects to pay the recordation tax as
17 additional debt is incurred under paragraph (2) of this subsection, the consumer
18 borrower is responsible for payment of the additional tax and any penalty provided by
19 § 14-1012 of this article.

20 (6) (i) This paragraph applies to construction loans for over
21 \$100,000 for which the total amount of secured debt has not been incurred at the time
22 of recording or filing the instrument of writing.

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

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

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

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

35 **(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS**
36 **PARAGRAPH:**

1 **1. SECURED DEBT WITH RESPECT TO AN INDEMNITY**
2 **MORTGAGE IS DEEMED TO BE INCURRED FOR PURPOSES OF THIS SUBSECTION**
3 **WHEN AND TO THE SAME EXTENT AS DEBT IS INCURRED ON THE GUARANTEED**
4 **LOAN; AND**

5 **2. THE RECORDATION TAX APPLIES UNDER THIS**
6 **SUBSECTION IN THE SAME MANNER AS IF THE GUARANTOR WERE PRIMARILY**
7 **LIABLE FOR THE GUARANTEED LOAN.**

8 **(III) THIS PARAGRAPH DOES NOT APPLY:**

9 **1. TO THE EXTENT THAT RECORDATION TAX IS PAID**
10 **ON ANOTHER INSTRUMENT OF WRITING THAT SECURES PAYMENT OF THE**
11 **GUARANTEED LOAN; OR**

12 **2. TO AN INDEMNITY MORTGAGE THAT SECURES A**
13 **GUARANTEE OF REPAYMENT OF A LOAN FOR LESS THAN \$5,000,000.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2011.