Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 508 (Delegates Healey and Norman)
Environmental Matters Judicial Proceedings

Real Property - Foreclosure - Mortgage Foreclosure Property Values Protection Act of 2012

This bill requires that, within 60 days after the entry of the final and nonappealable order of ratification in a foreclosure sale, the purchaser at the foreclosure sale must close on the transaction and record a deed transferring title to the property to the purchaser. If the transaction has not closed, the bill requires the purchaser to record the final order of ratification along with the contact information for specified persons.

Fiscal Summary

State Effect: Special fund revenues increase beginning in FY 2013 for the Circuit Court Real Property Records Improvement Fund to the extent that the bill's requirement to record a final order of ratification results in a greater number of documents being recorded. General fund revenues also increase due to the bill's recordation requirement.

Local Effect: The bill's requirement to record a final order of ratification may have an operational impact on each circuit court's land records office. There is likely no material impact on revenues or expenditures, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Post-sale Procedures: Under the Maryland Rules, a person authorized to make a foreclosure sale must file with the court, within 30 days after the sale, a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report. In addition, the purchaser must file an affidavit setting forth whether the purchaser is acting as an agent and, if so, information regarding the principals and stating that the purchaser has not directly or indirectly discouraged anyone from bidding for the property. A party and a holder of a subordinate interest in the property subject to the lien in an action to foreclose a lien may file exceptions to the sale within 30 days after receiving notice.

The court must then ratify the sale if (1) the time for filing exceptions has expired and either no exceptions were filed or the exceptions were overruled; and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate. After the court has ratified the sale and the purchase money has been paid, the individual making the sale must convey the property to the purchaser or the purchaser's assignee.

Recordation of Deed: Generally no deed may pass or take effect unless it is executed and recorded. No deed, mortgage, or deed of trust may be recorded unless it meets the requirements specified by statute relating to form, necessary attached documents, and payment of taxes. Included in the necessary attached documents must be a copy of the deed for submission to the State Department of Assessments and Taxation (SDAT). The supervisor of assessments must transfer ownership of property in the assessment records upon receipt of this copy of the deed.

The proper jurisdiction for recording all deeds is the county in which the land is located. If the land is located in more than one county, the deed must be recorded in all such counties. After any document has been recorded in one county, a certified copy of the recorded document may be recorded in any other county.

Background:

Real-estate Owned (REO) Property: According to the Maryland Foreclosure Task Force, the period of time between a foreclosure sale and the recordation of a deed transferring title to the property is estimated to range from 9 to 18 months. During this "limbo period," it is difficult for local governments to know who to contact about issues that may arise with the property. This is of special concern when the property is vacant. In addition, SDAT reports that many foreclosed residential properties are improperly retaining tax credits previously granted to individual homeowners because of the lengthy delays in recording deeds transferring legal title to the properties.

Generally, the longest delays do not occur when an individual purchaser buys property at a foreclosure sale because the recordation of a deed settles any question as to who owns the property. Rather, the longest delays often occur when a financial institution retains a property as a result of an unsuccessful foreclosure sale on the property. This acquisition often occurs when the amount of the outstanding loan owed to the financial institution is greater than the value of the property. This type of property is referred to as REO property. In Maryland 10,607 properties were purchased by financial institutions after a foreclosure auction in 2010. Six jurisdictions (Prince George's, Baltimore, Montgomery, Anne Arundel, and Frederick counties and Baltimore City) represented approximately 77% of all lender purchases. **Exhibit 1** shows the number of REO purchases in each Maryland jurisdiction in 2010.

Exhibit 1
2010 REO Purchases in Maryland Jurisdictions by Quarter

Jurisdiction	Q1	Q2	Q3	Q4
Allegany	14	17	10	15
Anne Arundel	136	211	157	179
Baltimore	239	272	281	280
Baltimore City	582	285	390	454
Calvert	29	25	24	51
Caroline	13	16	10	17
Carroll	22	33	32	29
Cecil	31	13	25	24
Charles	66	96	79	96
Dorchester	20	18	21	17
Frederick	130	152	152	111
Garrett	7	10	5	7
Harford	46	77	105	48
Howard	47	54	44	30
Kent	11	6	8	6
Montgomery	356	594	312	243
Prince George's	588	596	783	776
Queen Anne's	23	31	11	33
St. Mary's	35	36	27	23
Somerset	10	18	12	17
Talbot	4	7	11	6
Washington	114	91	84	80
Wicomico	36	42	33	27
Worcester	33	40	52	38
Total	**2,592**	**2,740**	**2,668**	**2,607**

Source: Department of Housing and Community Development

Recordation and Transfer Taxes: Often when a financial institution has acquired the property after a foreclosure sale, it delays the recording of the deed until it sells the property to another party, thus avoiding the payment of any recordation tax or transfer tax until absolutely necessary. When it does sell the property, the financial institution will record the deed twice and pay the taxes twice: once for the transfer between the foreclosed-on property owner and the financial institution and again for the transfer between the financial institution and the new purchaser.

The range for recordation tax rates is $2.50 per $500 of transaction in Baltimore, Howard, and Prince George's counties to $6.00 per $500 of transaction in Frederick and Talbot counties. There is no State recordation tax. Local transfer tax rates range from 0.5% in six counties (Allegany, Caroline, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Seven counties (Calvert, Carroll, Cecil, Charles, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers. The State transfer tax is 0.5%. **Exhibit 2** shows both the recordation taxes and transfer taxes for each county.

Exhibit 2
County Recordation Taxes and Transfer Taxes

	Recordation per $500 of Transaction	**Transfer**
County	**FY 2012**	**FY 2012**
Allegany	$3.25	0.5%
Anne Arundel	3.50	1.0%
Baltimore City	5.00	1.5%
Baltimore	2.50	1.5%
Calvert	5.00	0.0%
Caroline	5.00	0.5%
Carroll	5.00	0.0%
Cecil	4.10	0.0%
Charles	5.00	0.0%
Dorchester	5.00	0.75%
Frederick	6.00	0.0%
Garrett	3.50	1.0%
Harford	3.30	1.0%
Howard	2.50	1.0%
Kent	3.30	0.5%
Montgomery	3.45	1.0%
Prince George's	2.50	1.4%
Queen Anne's	4.95	0.5%
St. Mary's	4.00	1.0%
Somerset	3.30	0.0%
Talbot	6.00	1.0%
Washington	3.80	0.5%
Wicomico	3.50	0.0%
Worcester	3.30	0.5%

Source: Department of Legislative Services

As shown in Exhibit 2, the recordation tax in Baltimore City is $5.00 for each $500 of transaction and transfer taxes are 1.5% for the city and 0.5% for the State. If a house sells in Baltimore City for $100,000, the recordation tax is $1,000 and the transfer taxes are $1,500 for the city and $500 for the State.

Homestead Property Tax Credit: As noted above, the current delay in recording the transfer of the deed causes many foreclosed residential properties to improperly retain homestead property tax credits because SDAT traditionally uses the recordation of a deed in the land records to determine whether to remove the tax credit. Property owned by a financial institution may not receive a tax credit because the property must be the owner's primary residence.

The Homestead Property Tax Credit Program provides tax credits against State, county, and municipal real property taxes for owner-occupied residential properties for the amount of real property taxes resulting from an annual assessment increase that exceeds a certain percentage or "cap" in any given year. The State requires the cap on assessment increases to be set at 10% for State property tax purposes; however, local governments have the authority to set their caps between 0% and 10%.

A majority of local subdivisions have assessment caps below 10%: 20 counties in fiscal 2011 and 2012, and 21 counties in fiscal 2013. **Exhibit 3** lists county assessment caps for 2013, the number of homestead accounts, and the average tax credit for a property. Two counties (Prince George's and Queen Anne's) raised the assessment cap for fiscal 2013, while one county (Wicomico) lowered the assessment cap.

The Homestead Property Tax Credit Program is administered as follows:

- Increases in property assessments are equally spread out over three years. For example, if a property's assessment increased by $120,000, from $300,000 to $420,000, the increase would be phased in through increments of $40,000 annually for the next three years.

- If the assessment cap were set at 10%, however, the amount of assessment subject to taxes would increase by only $30,000 in the first year, $33,000 in the following year, and $36,300 in the third year.

- Since the assessment cap was set lower than the actual market increase, the homeowner does not have to pay taxes on the property's full assessed value.

Exhibit 3
County Homestead Property Tax Credit Statistics

County	FY 2013 Assessment Cap	Homesteads	Average Credit*	County** Average Gain Per Credit Removed	State** Average Gain Per Credit Removed
Allegany	7%	3,632	$9,635	$95	$11
Anne Arundel	2%	114,129	108,567	988	122
Baltimore City	4%	92,149	46,929	1,064	53
Baltimore	4%	147,253	40,755	448	46
Calvert	10%	452	34,774	310	39
Caroline	5%	3,632	26,423	230	30
Carroll	5%	8,916	19,660	202	22
Cecil	8%	946	19,067	179	21
Charles	7%	2,362	20,404	218	23
Dorchester	5%	4,670	26,260	256	29
Frederick	5%	10,775	19,630	209	22
Garrett	5%	5,019	23,985	237	27
Harford	5%	3,088	14,328	149	16
Howard	5%	42,874	46,133	530	52
Kent	5%	3,401	58,616	599	66
Montgomery	10%	7,659	29,324	281	33
Prince George’s	4%	120,783	45,480	600	51
Queen Anne’s	5%	7,811	53,337	452	60
St. Mary’s	5%	16,371	44,610	382	50
Somerset	10%	457	20,948	185	23
Talbot	0%	9,411	222,961	999	250
Washington	5%	9,802	17,983	170	20
Wicomico	5%	873	14,441	111	16
Worcester	3%	10,622	50,552	354	57
	Total	**627,087**			

*Represents the difference between a house’s true assessed value and the value with an assessment cap.
**Represents the amount the county or State gains if a house with an average homestead property tax credit loses the credit.

Source: State Department of Assessments and Taxation, Department of Legislative Services

State Fiscal Effect: Special fund revenues increase for the Circuit Court Real Property Records Improvement Fund beginning in fiscal 2013 to the extent that the bill's requirement to record a final order of ratification (if the transaction has not closed) results in more documents recorded with each circuit court's land records office.

Created by Chapter 327 of 1991, the Circuit Court Real Property Records Improvement Fund consists of surcharges assessed on instruments recorded in the land records and the financing statement records, document copying revenues, and accumulated interest revenue. The nonlapsing fund supports all personnel and operating costs within the land records offices of the clerks of the circuit court. It further supports the maintenance costs of the Electronic Land Records Online Imagery System and its website for making images accessible to the public. The Budget Reconciliation and Financing Act of 2011 (Chapter 397) increased the surcharge on all recordable instruments that support the fund, from $20 to $40, for fiscal 2012 through 2015.

General fund revenues also increase beginning in fiscal 2013 to the extent the bill's requirement to record a final order of ratification (if the transaction has not closed) results in more documents recorded with each circuit court's land records office. Recording fees are generally based on the length of the instrument being recorded. The cost to record documents in land records is $20 if the document is fewer than nine pages and $75 if nine or more pages. According to the land records department at various circuit courts, most final orders of ratification are one to two pages. However, the bill's requirement that the final order of ratification include specified contact information may increase the length of the document to nine or more pages.

This estimate assumes that most financial institutions that acquire a property after a foreclosure sale will continue to delay the recordation of the deed until another purchaser is found. In these situations, the financial institution must record the final order of ratification within the bill's 60-day time limit and then record the deed twice when another purchaser is found. By continuing to delay the recordation of the deed, the financial institution avoids the removal of the homestead property tax credit and is able to delay the payment of any recordation tax and transfer tax owed until the recordation of the deed.

Baltimore City notes that it would monitor the recordation of a final order ratifying a sale in order to remove the homestead property tax credit. As noted above, property owned by a financial institution may not receive a homestead property tax credit. There is no current requirement to report the recordation of a final order ratifying a sale to the local supervisor of assessments; however, if the city does so, both local property tax revenues and State general fund revenues increase. The responsibility of monitoring the recordation of a final order ratifying a sale would be the responsibility of each jurisdiction.

Local Fiscal Effect: This estimate assumes that most financial institutions that acquire a property after a foreclosure sale will continue to delay the recordation of the deed until another purchaser is found. Therefore, there is likely no material fiscal impact on local revenue or expenditures from the receipt of recordation taxes and transfer taxes. However, the increased filings from the bill's requirement to record a final order of ratification (if the transaction has not closed) may have an operational impact on each circuit court's land records office. However, to the extent that more foreclosure purchasers record a *deed* within 60 days of a final and nonappealable order ratifying a sale, local revenues may increase due to the more efficient removal of the homestead property tax credit as well as the investment earnings from an earlier receipt of recordation taxes and transfer taxes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Baltimore City; State Department of Assessments and Taxation; Property Tax Assessment Appeals Board; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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