

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 98

(Senators Kelley and Colburn)

Judicial Proceedings

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Real Property - Recordation - Foreclosure Sales

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This bill requires a secured party that purchases property subject to a mortgage or deed of trust at a foreclosure sale to pay all required recordation or transfer taxes at the time of recording a deed transferring title to the secured party. The bill also requires that, within 60 days after the entry of the final order of ratification in a foreclosure sale, the person authorized to make the sale must record the deed transferring title to the purchaser. If the title has not been transferred, the final order of ratification must be recorded. A person violating the provisions of the bill is guilty of a misdemeanor and subject to a fine of up to \$5,000.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenue due to the potential for additional investment income as a result of the receipt of transfer taxes within 60 days of a final order ratifying a sale in an action to foreclose a mortgage or deed of trust and due to fines assessed in cases heard in the District Court. No impact on expenditures.

**Local Effect:** Increase in local revenues due to the potential for additional investment income as a result of the receipt of transfer taxes and recordation fees within 60 days of a final order of ratifying a sale in an action to foreclose a mortgage or deed of trust. Baltimore City anticipates an increase of \$27,500 in FY 2013 and \$200,000 in subsequent years. Potential minimal increase in revenues due to the bill's penalty provision for those cases heard in the circuit courts. No impact on expenditures.

**Small Business Effect:** None.

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## 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 the 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:** 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 homestead property tax credits previously granted to individual homeowners because of the lengthy delays in recording deeds transferring legal title to the properties.

Often, the longest delays 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 called real estate owned (REO) property. In Maryland 10,607 properties were bought 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.

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**Exhibit 1**  
**2010 REO Purchases in Maryland Jurisdictions by Quarter**

<b><u>Jurisdiction</u></b>	<b><u>Q1</u></b>	<b><u>Q2</u></b>	<b><u>Q3</u></b>	<b><u>Q4</u></b>
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
<b>Total</b>	<b>2,592</b>	<b>2,740</b>	<b>2,668</b>	<b>2,607</b>

Source: Department of Housing and Community Development

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Often when a secured party 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 fee or transfer tax until absolutely necessary. When it does sell the property, the financial institution will record the deed twice and pay the transfer 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 fee. 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 fees and transfer taxes for each county.

**State Fiscal Effect:** If more financial institutions record a deed within 60 days of the entry of a final order ratifying a foreclosure sale, general fund revenue may potentially increase. Under current law, a financial institution typically waits to pay the transfer tax until the property is sold to another party. The early receipt of the transfer tax may increase investment income.

However, the bill authorizes a financial institution to simply record the final order of ratification if the title has not been transferred. If a title has been transferred, the financial institution is required to record the deed and, therefore, pay the transfer tax and recordation fees. Because the bill authorizes the recording of a deed or entry of a final order ratifying a sale within 60 days, financial institutions may still not record the deed, opting instead to record the final order of ratification, and the State may not receive the transfer taxes any earlier than the current practice.

However, while it appears that the financial institution has the option of recording the deed when it sells the property to a purchaser, it is likely advantageous for the financial institution to record the deed within the 60-day time limit. This is because, by opting to record the final order of ratification, the financial institution will eventually have to pay a recordation fee three times: once for the final order of ratification and then twice for the deed when it sells the property to a purchaser.

**Exhibit 2**  
**County Recordation Fees and Transfer Taxes**

<b>County</b>	<b>Recordation per \$500 of Transaction</b>	<b>Transfer</b>
	<b>FY 2012</b>	<b>FY 2012</b>
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 fee 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 fee is \$1,000 and the transfer taxes are \$1,500 for the city and \$500 for the State. *By way of illustration*, if the financial institution records three times in addition to paying the transfer taxes twice when the property is sold, the financial institution pays a total of \$7,000. However, if the financial institution records the deed within the 60-day limit, it pays the recordation fee only twice, as well as the transfer fee twice, for a total of \$6,000. It is unlikely that by waiting to

record the deed and pay the transfer tax, the financial institution will be able to gain enough investment income to recoup the cost of recording an instrument a third time.

**Local Fiscal Effect:** Kent, Montgomery, Washington, and Worcester county note that the bill has minimal or no impact on county operations or finances. However, Baltimore City estimates that investment revenue may increase by \$27,500 in fiscal 2013 and approximately \$200,000 in each subsequent fiscal year.

Baltimore City states that, between January 1, 2005, and December 31, 2011, there were 6,482 REO properties in the city; 1,192 of these properties have no deed recorded. If a financial institution records the deed for each property within 60 days of the final order ratifying a foreclosure sale, the city advises it would receive \$2.5 million in transfer taxes and recordation fees sooner than under the current practice. The early receipt of this amount could increase investment income by approximately \$27,500 in fiscal 2013 and approximately \$200,000 in subsequent years. If, as noted above, financial institutions are incentivized to record a deed within the 60-day time limit, this estimate appears reasonable.

Baltimore City also notes that it would monitor the recordation of a final order ratifying a sale in order to remove the Homestead Tax Credit. The Homestead Tax Credit 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. Property owned by a financial institution may not receive a Homestead 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Kent, Montgomery, Washington, and Worcester counties; Baltimore City; State Department of Assessments and Taxation; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Legislative Services

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