HB 595

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 595 (Delegate Niemann, *et al.*)

Environmental Matters Judicial Proceedings and Budget and Taxation

---

Real Property - Foreclosure of Residential Property - Certified Community Development Financial Institutions

---

This emergency bill prohibits a person from requiring, as a condition of a sale or transfer of owner-occupied residential property to a certified community development financial institution (CDFI), any affidavit, statement, agreement, or addendum that limits ownership or occupancy of the property by the immediately preceding mortgagor or grantor. Such an instrument may not serve as a basis to avoid a sale or transfer to a certified CDFI and is unenforceable against any person named in the affidavit, statement, agreement, or addendum.

The bill exempts a certified CDFI that purchases owner-occupied residential property under the circumstances specified above from the applicability of the Protecting Homeowners in Foreclosure Act (PHIFA). In addition, the bill provides exemptions to the recordation tax and State transfer tax for an instrument of writing relating to a transfer from a certified CDFI to the immediately preceding mortgagor or grantor of the property under the circumstances specified above.

Fiscal Summary

State Effect: State transfer tax revenues may decrease beginning in FY 2014 to the extent transfers pursuant to the bill occur. General fund revenues decrease as a result of commissions not being collected by the clerks of the circuit court. The bill's changes can be handled with existing budgeted resources of the Judiciary.

Local Effect: Local recordation and transfer tax revenues may decrease beginning in FY 2014 to the extent transfers pursuant to the bill occur. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill applies to those CDFIs that are certified by the Community Development Financial Institutions Fund in the U.S. Department of the Treasury under 12 U.S.C. Section 4701 *et seq*. The bill also applies to any company that controls, is controlled by, or is under common control with a certified CDFI.

Current Law:

Federal Community Development Financial Institutions Fund

The purpose of the Community Development Financial Institutions Fund is to promote economic revitalization and community development through investment assistance and assistance to CDFIs. 12 U.S.C. Section 4702 generally defines "community development financial institution" as an entity that (1) has a primary mission of promoting community development; (2) serves an investment area or targeted population; (3) provides both financial and educational services; (4) maintains accountability to residents of its investment area or targeted population; and (5) is a legal, nongovernmental entity at the time of application. The CDFI Fund accepts and evaluates applications by considering specified criteria in order to determine whether to certify CDFIs.

Maryland Protecting Homeowners in Foreclosure Act

PHIFA was enacted to address the growing problem of foreclosure "rescue" scams. It requires that "foreclosure consultants" enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period. PHIFA grants consumers a private right of action and the Attorney General and the commissioner enforcement authority.

Generally, PHIFA does not apply to (1) a Maryland attorney while performing an activity related to the attorney's regular practice of law in the State; (2) a person who holds or services a mortgage loan secured by a lien on a residence in foreclosure while providing services, collection, and loss mitigation activities in connection with the obligation or lien; (3) banks, trust companies, savings and loan associations, credit unions, or insurance companies; (4) a judgment creditor of a homeowner; (5) a title insurer; (6) a title insurance producer; (7) a licensed mortgage broker or mortgage lender acting under the license; (8) a licensed real estate broker, associate real estate broker, or real estate salesperson acting within the scope of the license; or (9) a nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or foreclosure purchasers.

Recordation and Transfer Tax Exemptions

Generally, an instrument of writing is not subject to recordation tax if the instrument of writing transfers title between related entities, such as parent corporations and subsidiaries, and the transfer is for no consideration; nominal consideration; or consideration that comprises only the issuance, cancellation, or surrender of stock of a subsidiary corporation. An instrument of writing is also exempt when it transfers a title under these circumstances and the parent corporation previously owned the real property, owns the stock of the subsidiary and has owned that stock for a period greater than 18 months, or acquires the stock of a subsidiary corporation which has been in existence and has owned the real property for a period of two years.

An instrument of writing is not subject to the State transfer tax to the same extent that it is not subject to recordation tax as discussed above.

In addition, exemptions to the local transfer tax in code home rule counties mirror the exemptions at the State level. Of the charter and commission counties that impose a transfer tax, several incorporate the State exemptions, while local exemptions in other counties are independently defined.

Background: According to the U.S. Treasury, a certified CDFI works in market niches that are underserved by traditional financial institutions and provide financial products and services in economically distressed target markets, such as mortgage financing for low-income and first-time homebuyers and not-for-profit developers; flexible underwriting and risk capital for needed community facilities; and technical assistance, commercial loans, and investments to small start-up or expanding businesses in low-income areas.

As of December 15, 2013, there are 808 certified CDFIs in the nation and 11 with headquarters in Maryland. In addition to CDFIs headquartered in Maryland, other CDFIs also operate in the State. Certified CDFIs include banks, credit unions, depository institution holding companies, loan funds, and venture capital funds. Nationwide, loan funds account for more than 60% of all CDFIs, while credit unions account for more than 20%.

Foreclosure Sale Timeline

A foreclosure sale of residential property that is not owner-occupied may not occur until at least 45 days after the borrower is properly served with a copy of the order to docket or complaint to foreclose. However, if the residential property is owner-occupied and foreclosure mediation is not held, the foreclosure sale may not occur until the later of (1) at least 45 days after service of process that includes a final loss mitigation affidavit or (2) at least 30 days after mailing of a final loss mitigation affidavit.

If the residential property is owner-occupied and the homeowner requests post-file foreclosure mediation, the foreclosure sale may not occur until at least 15 days after the foreclosure mediation is held. In the event a foreclosure mediation is not held, the foreclosure sale may not take place until at least 15 days after the date the Office of Administrative Hearings files its report with the court.

The borrower of a mortgage or deed of trust on residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the borrower or the individual's attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

Local Recordation and Transfer Taxes

The counties and Baltimore City are authorized to impose locally established recordation tax rates on any business or person (1) conveying title to real property or (2) creating or giving notice of a security interest (*i.e.*, a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The State and most counties impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

For purposes of local recordation taxes, which are applied to each $500 or fraction of $500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

County governments collected $553.0 million in local recordation and transfer taxes in fiscal 2012, and they are expected to collect $671.3 million in fiscal 2013 and $656.8 million in fiscal 2014. These amounts are significantly lower than the amounts collected in fiscal 2006 when the soaring real estate market yielded recordation and transfer taxes totaling $1.2 billion. **Exhibits 1** and **2** show current recordation and transfer tax rates and estimated local recordation and transfer tax collections for fiscal 2013 and 2014.

Exhibit 1
County Recordation Tax Collections
Fiscal 2013 and 2014

County	Tax Rate	FY 2013	FY 2014
Allegany	$3.50	$1,692,145	$1,050,000
Anne Arundel	3.50	39,000,000	36,500,000
Baltimore City	5.00	28,645,000	23,367,000
Baltimore	2.50	30,000,000	25,500,000
Calvert	5.00	5,909,376	6,000,000
Caroline	5.00	1,301,909	1,100,000
Carroll	5.00	10,021,395	9,750,000
Cecil	4.10	5,535,807	4,800,000
Charles	5.00	11,104,089	10,500,000
Dorchester	5.00	1,434,291	1,534,386
Frederick	6.00	24,339,679	22,453,062
Garrett	3.50	2,300,000	2,000,000
Harford	3.30	10,699,395	10,200,510
Howard	2.50	21,837,593	20,098,864
Kent	3.30	962,237	1,010,000
Montgomery	3.45	103,878,439	103,658,874
Prince George’s	2.75	27,563,300	28,391,400
Queen Anne’s	4.95	4,614,108	3,820,000
St. Mary’s	4.00	5,688,996	5,100,000
Somerset	3.30	437,714	350,000
Talbot	6.00	4,900,000	5,050,000
Washington	3.80	5,213,999	5,000,000
Wicomico	3.50	2,249,756	2,516,123
Worcester	3.30	6,648,659	6,000,000
Total		**$355,977,887**	**$335,750,219**

Source: Department of Legislative Services

Exhibit 2
County Transfer Tax Collections
Fiscal 2013 and 2014

County	Tax Rate	FY 2013	FY 2014
Allegany	0.50%	$300,696	$350,000
Anne Arundel	1.00%	38,000,000	36,500,000
Baltimore City	1.50%	23,371,000	24,948,000
Baltimore	1.50%	50,000,000	52,000,000
Calvert	0.00%	0	0
Caroline	0.50%	377,400	210,842
Carroll	0.00%	0	0
Cecil	$10/deed	23,946	20,000
Charles	0.00%	0	0
Dorchester	0.75%	619,002	650,000
Frederick	0.00%	0	0
Garrett	1.00%	1,375,000	1,150,000
Harford	1.00%	10,854,826	9,600,000
Howard	1.00%	25,253,440	27,000,000
Kent	0.50%	451,355	580,000
Montgomery	1.00%	85,409,701	86,684,000
Prince George’s	1.40%	66,661,700	68,664,800
Queen Anne’s	0.50%	1,351,064	1,650,000
St. Mary’s	1.00%	4,268,826	4,350,000
Somerset	0.00%	0	0
Talbot	1.00%	2,600,000	2,500,000
Washington	0.50%	1,484,247	1,400,000
Wicomico	0.00%	0	0
Worcester	0.50%	2,912,622	2,750,000
Total		**$315,314,825**	**$321,007,642**

Source: Department of Legislative Services

State Fiscal Effect: State special fund revenues may decrease beginning in fiscal 2014 to the extent that properties are transferred pursuant to the bill. However, the amount of any decrease depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer.

As a point of reference, the State transfer tax on a transaction valued at $250,000 is $1,250. An exemption pursuant to the bill would result in a special fund revenue decrease of $1,250 for each property transfer affected.

Local Fiscal Effect: Local recordation and transfer tax revenues may decrease beginning in fiscal 2014 to the extent that properties are transferred pursuant to the bill. However, the amount of any decrease depends on the number of transfers that occur pursuant to the bill and the amount of consideration associated with each transfer. As noted, due to the expected small number of this type of transfer each year, the overall effect on local recordation and transfer tax revenues is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; U.S. Treasury; U.S. Code; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2014
ncs/kdm Revised - House Third Reader - March 17, 2014

Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510