

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 508 (Delegate Lafferty)
Environment and Transportation

Residential Property - Foreclosure Sale - Recordation of Instrument of Writing

This bill requires a secured party to record the instrument of writing that transfers a residential property bought at a foreclosure sale in the land records of the county in which the property is located. The document must be recorded within the later of (1) 30 days after the entry of the court order ratifying the foreclosure sale or (2) if a motion to alter a judgment is made before expiration of the aforementioned 30 days, 30 days after the entry of a court order that resolves the motion without nullifying the ratification order.

The bill prohibits a transfer tax from being assessed against a secured party that records an instrument of writing within 20 days after the entry of the court order ratifying the foreclosure sale. The bill also requires a court to provide notice of failure to timely record the instrument of writing to specified individuals, and it authorizes those individuals to enforce the recordation requirement through specified means.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: State transfer tax revenues decrease, potentially significantly, beginning in FY 2017 to the extent transfer taxes are not assessed due to the early recordation exemption. General fund expenditures increase, potentially significantly, for the Judiciary (to send required notices and for system upgrades); the Department of Labor, Licensing, and Regulation (DLLR) (for enforcement); and the Department of Housing and Community Development (DHCD) (for penalties assessed against properties under its management).

Local Effect: Transfer tax revenues decrease beginning in FY 2017 to the extent transfer taxes are not assessed due to the early recordation exemption. Local expenditures may increase to the extent that county attorneys enforce recordation requirements, as authorized.

This bill imposes a mandate on a unit of local government.

Small Business Effect: Potential meaningful impact on small businesses that purchase foreclosed properties to improve and resell them, due to the bill's shortened recording period and the creation of a cause of action for failure to meet the bill's requirements.

Analysis

Bill Summary:

Notice of Failure to Record Instrument of Writing: If a secured party fails to timely record an instrument of writing, the court is required to send a notice to (1) the Commissioner of Financial Regulation; (2) the county attorney for the county in which the property is located; and (3) the last known address of the mortgagor or grantor of mortgage or deed of trust on the property. The notice must include the date of the final ratification of the foreclosure sale, and it must be sent to the mortgagor or grantor by certified mail, postage prepaid, return receipt requested.

After receiving notice of failure to timely record, the commissioner may enforce the recordation requirement by exercising the authority provided under the Financial Institutions Article. The county attorney may enforce the recordation requirement as authorized by law. In addition to any other action authorized by law, the mortgagor or grantor may bring an action for damages incurred as a result of any violation of the recordation requirement, including an award from the court for a penalty up to \$2,500 plus reasonable attorney's fees and costs.

The recordation and notice of failure to record provisions do not apply when the foreclosure sale was subject to (1) a pending appeal of the ratification order; (2) a bankruptcy stay; or (3) an unexpired right of redemption in favor of the United States or any agency or department of the United States.

Notice to the County Supervisor of Assessments: The bill also alters the requirement in existing law that a purchaser of residential property sold in an action to foreclose a mortgage or deed of trust on the property provide a copy of the court order ratifying the foreclosure sale to the supervisor of assessments for the county in which the residential property is located. The copy must be provided by the later of (1) 45 days, instead of 60 days, after the entry of the court order ratifying the foreclosure sale or (2) if a motion to alter a judgment is made before expiration of the aforementioned 45 days, 30 days after the entry of a court order that resolves the motion without nullifying the ratification order.

Current Law:

Post-sale Procedures: Under the Maryland Rules, within 30 days after a foreclosure sale of property, the person authorized to make the sale must file a complete report of the sale with the court. A party or the holder of a subordinate interest in the property may file exceptions to the sale. The court must ratify the sale if (1) the time for filing exceptions has expired and exceptions to the report either were not filed or were filed but overruled and (2) the court is satisfied that the sale was fairly and properly made. Upon ratification of the sale, the court may refer the matter to an auditor to state an account.

At any time after the sale and before final ratification of the auditor's report, any person claiming an interest in the property (or in the proceeds of the sale of the property) may file an application for the payment of that person's claim from the surplus proceeds of the sale. For owner-occupied residential property, a secured party, or any appropriate party in interest, may file a motion for a deficiency judgment within three years after the final ratification of the auditor's report, if the proceeds of the sale, after deducting all costs and expenses allowed by the court, are insufficient to satisfy the debt and accrued interest. The filing of this motion is the sole post-ratification remedy available to a secured party or a party in interest for breach of a covenant under a deed of trust, mortgage, or promissory note that is secured by owner-occupied residential property.

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.

Notice to County Supervisor of Assessments: A purchaser of a foreclosed property is required to provide a copy of the court order ratifying the foreclosure sale to the county supervisor of assessments within a specified number of days. This process alerts SDAT to the transfer of ownership before a deed is recorded, which enables SDAT to extinguish certain tax credits that are not otherwise available to secured party financial institutions who purchase foreclosed homes.

Commissioner of Financial Regulation: The Commissioner of Financial Regulation has the authority under the Financial Institutions Article to conduct investigations, issue subpoenas, issue orders to correct, convene hearings, and issue final cease and desist orders. The commissioner may also fine violators of applicable law up to \$1,000 for the first offense and up to \$5,000 for each subsequent offense. The commissioner's orders may be appealed to the circuit court.

Background: 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.

County governments collected \$350.7 million in local transfer taxes in fiscal 2014, and they are expected to collect \$377.8 million in fiscal 2015 and \$382.6 million in fiscal 2016. **Exhibit 1** shows estimated local transfer tax collections for fiscal 2014 through 2016.

State Fiscal Effect: State special fund revenues decrease, beginning in fiscal 2017, to the extent transfer taxes are not assessed due to the exemption for recordation within 20 days, as specified in the bill. The amount of the revenue decrease due to the exemption depends on the number of transfers that occur and the amount of consideration associated with each transfer. The number of affected transfers that may occur in any year is not known. As a point of reference, the State transfer tax on a transaction valued at \$250,000 is \$1,250.

Judiciary (Administrative Office of the Courts (AOC))

General fund expenditures increase for the circuit courts to monitor recording times and to prepare and mail notices. AOC estimates that the total impact of the bill's requirements adds an additional \$18.78 in costs to the court for *each* foreclosure transaction. This estimate includes \$5.15 per transaction for the time required to review and verify any violation of the 30-day recordation requirement, as well as \$9.73 in postage and supplies plus \$3.90 in clerk time for each batch of required notices. AOC advises that the total number of foreclosures in the State during 2015 is not ascertainable, but that Baltimore County has averaged 3,581 foreclosures per year which, *for illustrative purposes only*, could result in an additional \$67,251 in additional costs incurred in Baltimore County alone. The total number of transfers that will require monitoring and the distribution of notices is unknown.

AOC also advises that the Judicial Information System (JIS) needs to create an electronic "tickler" program for both the 20-day and 30-day time periods for foreclosure transactions

in its case management system, as well as in the e-Recording system in Baltimore County. JIS estimates that the required programing costs are \$30,600. This estimate does not include the case management systems in Montgomery and Prince George's counties. AOC also advises that the cause of action created under the bill for failure to timely file an instrument of writing may lead to an unknown number of additional cases, each of which would require considerable judicial resources to hear and resolve.

Department of Housing and Community Development

DHCD advises that delays in the recordation of DHCD-held properties may result in significant general fund expenditures for accumulated penalties, damages awards, court costs, and legal fees, totaling as much as \$300,000 annually. This estimate is based on the assumption that as many as 45% to 50% of foreclosure transactions are impacted by the bill's requirements. DHCD notes that several jurisdictions in the State take considerably longer than 30 days to record an instrument of writing after it is delivered, with some jurisdictions taking as long as six to nine months. DHCD advises that 65% of its total foreclosure activity occurs in these jurisdictions. DHCD advises that, if the 30-day time limit is applied based on the actual date of recordation, DHCD bears the burden of any penalties or judgements, plus potential damages, court costs, and attorney fees for each applicable transfer that is not timely recorded. DHCD advises that additional penalties may be incurred as a result of third-party purchasers being unable to secure financing within the 30-day window, delaying the recordation of instruments of writing. As the number of transfers that will occur is not known, general fund expenditures increase by a potentially significant amount.

Department of Labor, Licensing, and Regulation

DLLR advises that it requires four additional full-time staff to meet the bill's requirements related to the commissioner's enforcement authority, at a total cost of \$412,629 in fiscal 2017. Based on data from the DLLR Foreclosed Property Registry, approximately 54.6% of foreclosed properties will likely not have an instrument of writing properly recorded within 30 days. With enhanced education about the requirement, DLLR estimates that approximately 4,772 incidents each year could be subject to DLLR investigation and enforcement under the bill. However, the Department of Legislative Services advises that the bill authorizes, but does not require, the commissioner to enforce the recordation requirement by exercising the authority provided under the Financial Institutions Article. As a result, general fund expenditures increase, by a potentially significant amount, to the extent that DLLR undertakes the enforcement of penalty provisions. The receipt of notices from the circuit courts can likely be handled with existing resources.

Local Fiscal Effect: Local transfer tax revenues decrease, beginning in fiscal 2017, due to the bill's prohibition on transfer tax assessments on secured parties in jurisdictions that

collect local transfer tax (Baltimore City, as well as Allegany, Anne Arundel, Baltimore City, Caroline, Cecil, Dorchester, Garrett, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Talbot, Washington, and Worcester counties). The amount of the revenue decrease due to the exemption depends on the number of transfers that occur pursuant to the bill, the amount of consideration associated with each transfer, and the tax rate in each jurisdiction. The number of affected transfers that may occur is not known. Additionally, AOC also estimates that Montgomery and Prince George's counties, which do not use the statewide tracking system, will be required to update their own case management systems, at a cost of approximately \$5,760 per system. Finally, as the bill authorizes, but does not require, the county attorney to enforce the recordation requirement, the impact of enforcement on county finances is expected to be minimal.

Additional Comments: DLLR advises that it is unclear whether the authority specified under the Financial Institutions Article provides the commissioner jurisdiction over certain entities that may operate as a secured party who is required to timely file an instrument of writing under the bill. For purposes of this analysis, it is assumed that such authority exists.

AOC advises that, under existing law, an instrument of writing cannot be recorded until tax on the transfer has been paid. AOC advises that one clerk of the court interprets § 13-202 of the Tax-Property Article as *requiring* the collection of a transfer tax before the instrument of writing can be recorded. In transactions addressed by the bill, a secured party may operate on both sides, as both the seller and the purchaser. If a secured party is both the seller and the purchaser of the property, it is not clear how the cause of action attaches when a mortgagor or grantor is authorized to bring an action for damages since it is *the secured party* who must record the instrument of writing.

Additional Information

Prior Introductions: None.

Cross File: SB 330 (Senator Conway) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Department of Legislative Services

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min/kdm

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Exhibit 1
Transfer Tax Revenue Trend for Fiscal 2014-2016

County	FY 2014	FY 2015	FY 2016	FY 2014-2015		FY 2015-2016		Average Annual Difference
				\$ Difference	% Difference	\$ Difference	% Difference	
Allegany	\$478,515	\$387,898	\$425,000	-\$90,617	-18.9%	\$37,102	9.6%	-5.8%
Anne Arundel	38,982,623	43,000,000	40,000,000	4,017,377	10.3%	-3,000,000	-7.0%	1.3%
Baltimore City	36,767,342	36,801,230	28,499,000	33,888	0.1%	-8,302,230	-22.6%	-12.0%
Baltimore	53,627,948	65,000,000	67,000,000	11,372,052	21.2%	2,000,000	3.1%	11.8%
Calvert	0	0	0	0	N/A	0	N/A	N/A
Caroline	344,652	534,257	250,000	189,605	55.0%	-284,257	-53.2%	-14.8%
Carroll	0	0	0	0	N/A	0	N/A	N/A
Cecil	25,009	27,836	1,254,878	2,827	11.3%	1,227,042	4408.1%	608.4%
Charles	0	0	4,683,200	0	N/A	4,683,200	N/A	N/A
Dorchester	634,992	703,685	826,614	68,693	10.8%	122,929	17.5%	14.1%
Frederick	0	0	0	0	N/A	0	N/A	N/A
Garrett	1,492,070	1,307,500	1,403,500	-184,570	-12.4%	96,000	7.3%	-3.0%
Harford	11,646,255	11,200,000	12,800,000	-446,255	-3.8%	1,600,000	14.3%	4.8%
Howard	26,907,783	30,252,673	28,000,000	3,344,890	12.4%	-2,252,673	-7.4%	2.0%
Kent	559,650	674,613	708,343	114,963	20.5%	33,730	5.0%	12.5%
Montgomery	91,220,828	89,510,000	97,040,000	-1,710,828	-1.9%	7,530,000	8.4%	3.1%
Prince George's	73,462,773	81,988,000	86,087,400	8,525,227	11.6%	4,099,400	5.0%	8.3%
Queen Anne's	1,461,174	1,679,000	1,729,370	217,826	14.9%	50,370	3.0%	8.8%
St. Mary's	5,016,977	5,573,007	4,250,000	556,030	11.1%	-1,323,007	-23.7%	-8.0%
Somerset	0	0	0	0	N/A	0	N/A	N/A
Talbot	3,341,976	3,505,646	3,200,000	163,670	4.9%	-305,646	-8.7%	-2.1%
Washington	1,593,811	2,399,022	1,500,000	805,211	50.5%	-899,022	-37.5%	-3.0%
Wicomico	0	0	0	0	N/A	0	N/A	N/A
Worcester	3,165,273	3,278,524	3,000,000	113,251	3.6%	-278,524	-8.5%	-2.6%
Total	\$350,729,651	\$377,822,891	\$382,657,305	\$27,093,240	7.7%	\$4,834,414	1.3%	4.5%

Source: Department of Legislative Services, County Budget