

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 476

(Senators Zucker and Guzzone)

Budget and Taxation

Ways and Means

Recordation Tax - Indemnity Mortgage Exemption - Threshold Amount

This bill increases the exemption threshold for certain indemnity mortgage transactions from \$3.0 million to \$12.5 million. **The bill takes effect July 1, 2024, and applies to all instruments of writing recorded on or after July 1, 2024.**

Fiscal Summary

State Effect: General fund revenues decrease as a result of commissions not being collected by the clerks of the circuit court. Expenditures are not affected.

Local Effect: Potential significant reduction in local recordation tax revenues beginning in FY 2025. Local expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapters 267 and 268 of 2013 (1) increased the value of an indemnity mortgage that is exempt from recordation tax to \$3.0 million; (2) required that a series of indemnity mortgages that are part of the same transaction must be considered as one for purposes of the recordation tax; (3) allowed indemnity mortgages recorded before July 1, 2012, to be amended without incurring the recordation tax on the original loan amount; (4) altered the definition of supplemental instrument of writing to include an instrument of writing that amends and restates a previously recorded instrument of writing regardless of whether the recordation tax was paid on such an instrument of writing; (5) specified that an indemnity mortgage that is recorded in multiple counties is not subject to the recordation tax on the full value of the mortgage in each county; (6) required that

recording tax be paid on the difference between the unpaid principal balance of the original loan and the amount of any new loan; and (7) allowed commercial mortgages, including indemnity mortgages, to be refinanced without incurring recording tax in the same manner as residential mortgages.

An indemnity mortgage works as follows. A lender agrees to loan money to a borrower on two conditions: (1) that a third party guarantees repayment of the loan; and (2) that the guarantor executes a mortgage on real property to secure the guarantee. An indemnity mortgage is the instrument that manifests the pledge of the property. An indemnity mortgage is recorded so as to establish a lien on the property.

State Fiscal Effect: As of July 1, 2019, the clerks of the circuit court collect local recording taxes in 10 counties – Allegany, Calvert, Dorchester, Garrett, Kent, Queen Anne’s, Somerset, St. Mary’s, Washington, and Worcester. In the other 14 jurisdictions, local finance offices are responsible for the collection of recording taxes.

The clerks of the court who collect the tax are entitled to a commission of between 3% and 5% of all public monies collected, which, unless otherwise specified, are remitted to the State general fund. As a result, any decrease in local recording tax revenue will also decrease the amount of the commissions collected by the clerks and remitted to the general fund.

Local Fiscal Effect: The bill increases the minimum amount an indemnity mortgage has to secure before being taxable from \$3.0 million to \$12.5 million, thereby subjecting fewer indemnity deeds of trust to recording taxes than under current law. As a result, it is estimated that local recording tax revenues will decrease by a potentially significant amount beginning in fiscal 2025. However, the exact amount of the revenue decrease cannot be reliably estimated and depends on the number of these transactions that occur each year and the value of the consideration of these transactions, neither of which can be reliably estimated due to data limitations. As a point of reference, Frederick County estimates that increasing the exemption threshold will reduce the county’s recording tax revenues by \$1.0 million to \$3.0 million annually.

Local recording tax revenues are projected to total \$609.0 million in fiscal 2023. Recording tax rates range from \$2.50 per \$500 of transaction in Baltimore and Howard counties to \$7.00 per \$500 of transaction in Frederick County. A majority of counties have tax rates set between \$3.00 and \$5.00.

Additional information on local recording tax rates and revenues can be found in the [County Revenue Outlook report](#). A copy of the report is available on the Department of Legislative Services website.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 371 (Delegate Attar) - Ways and Means.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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