NAIOP
MARYLAND CHAPTERS
THE ASSOCIATION FOR COMMERCIAL REAL ESTATE

February 21, 2023

The Honorable, Guy Guzzone, Chair
Senate Budget and Taxation Committee
Miller Senate Office Building, 3 West
Annapolis, Maryland 21401

Favorable: SB 476 – Recordation Tax - Indemnity Mortgage Exemption – Threshold Amount

Dear Chair, Guzzone and Committee Members:

The NAIOP Maryland Chapters representing 700 companies involved in all aspects of commercial, industrial and mixed-use real estate recommends your favorable report on Senate Bill 476 which increases the amount of an Indemnity Mortgage that is exempt from the recordation tax.

What is an Indemnity Mortgage?

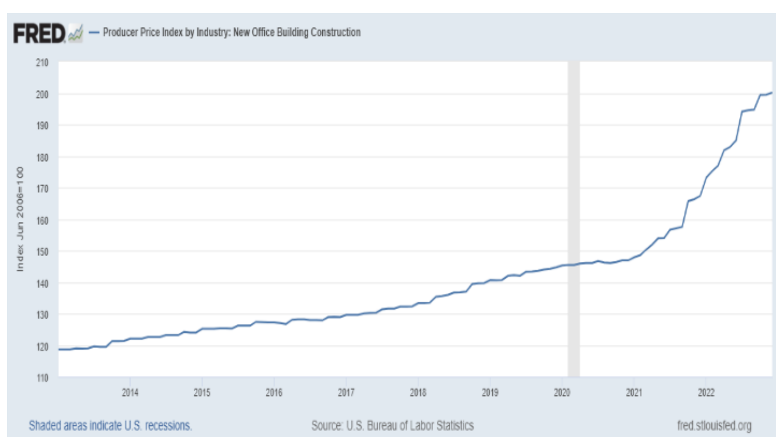
An Indemnity Mortgage, sometimes called a *"Guaranty"* Deed of Trust, is a method of collateralizing a loan where a third party accepts a future, contingent liability on a piece of real property in order to guarantee a primary loan taken out by another person or entity. The Indemnity Mortgage is different than a conventional mortgage because no debt is incurred when an Indemnity Mortgage is recorded. Commercial construction is often guaranteed through an Indemnity Mortgage.

Increasing the Exemption Threshold

The legal principal behind the recordation tax exemption for Indemnity Mortgages has been that someone who guarantees a loan should not be taxed in the same way as a primary borrower. In 2013 the General Assembly exempted Indemnity Mortgages of up to $3 million from the recordation tax. HB 371 would increase the threshold to Indemnity Mortgages valued at up to $15 million.

Rationale and Policy Considerations

Commercial real estate generates more net tax revenues to local government than any other property type. Revenues to local government from commercial real estate have increased substantially since the current threshold was established. When the current $3 million threshold was established in 2013, recordation tax revenues were $282 million. In FY2023 recordation tax revenues had risen to $609 million.



Over that same time period the assessable base of commercial real property increased from $145.3 billion to $203 billion resulting in considerably higher revenues from commercial real estate taxes.

At the same time, the rising cost of construction means the exemption has become less meaningful. Between January of 2013 and December of 2022, the St. Louis Federal Reserve Bank's index of New Office Building Construction costs (graph above) increased 69% while the amount of exemption was unchanged.

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Applying the recordation tax to debt is a first cost that creates a barrier to investment capital and complicates project economics. These considerations weigh on development decisions in an uncertain market where the slow return to office and the shift to remote work are already delaying or scaling back construction projects.

Increasing the threshold will incentivize capital investments that increase the assessments of commercial buildings and in turn raise recurring annual real estate taxes.

Because the exemption is used in land development and construction it reduces the repetitive application of recordation tax during the land development and construction process.

For these reasons NAIOP respectfully requests your favorable report on Senate Bill 476.

Sincerely,

T.M. Ballentine

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Budget and Taxation Committee Members
Nick Manis – Manis, Canning Assoc.