



Real Property Section

To: Ways and Means Committee (House)

From: Legislative Committee of the Real Property Section Counsel

Date: February 10, 2023 [Hearing Date February 14, 2023]

Subject: **HB 457 – Recordation Tax - Purchase Money Mortgage or Purchase Money Deed of Trust - Extent of Exemption**

Position: **Support with Amendments**

The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **supports with amendments** House Bill 457 –Recordation Tax - Purchase Money Mortgage or Purchase Money Deed of Trust - Extent of Exemption.

We recognize that Maryland Code, Real Property Article, §12-108(i) on its face provides that a purchase money mortgage or deed of trust, that is a mortgage or deed of trust that secures in whole or in part the purchase money for the property secured by it, is totally exempt from recordation tax. We further recognize that the purpose of this exemption is to avoid double taxation on both a deed and mortgage or deed of trust given in the same transaction. Additionally, we recognize that there are opinions of the Attorney General that provide that a purchase money mortgage or deed of trust is not taxable to the extent that the amount secured is less than the purchase price of the property. Therefore, we do not object to passage of a bill that limits the exemption from recordation tax on a purchase money mortgage or deed of trust to the amount of the consideration recited in a deed given in the same transaction.

We do, however, object to the specific language of the bill, which, as now drafted provides as follows:

(3) A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax TO THE EXTENT THAT IT SECURES PURCHASE MONEY.

We believe that the bill should be amended to read as follows for the reasons set forth below:

(3) A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax EXCEPT TO THE EXTENT THAT IT SECURES PURCHASE MONEY THE AMOUNT SECURED EXCEEDS THE PURCHASE PRICE OF THE PROPERTY PURCHASED.

There are situations in which a lender funds both all or part of the acquisition price of a property and all or part of the cost of future improvements to that property. The amended language would make it clear that in this type of situation the full amount of the consideration on the deed, on which recordation tax is paid, would be the basis for the partial exemption from recordation tax on the purchase money mortgage or deed of trust.

Now, some of the clerks around the State (but certainly not all of them), examine acquisition/construction transactions to try to analyze how much of a recordation tax exemption should be afforded to a purchase money mortgage or deed of trust. In some of these cases, an exemption is granted to the full extent of the consideration for the deed; in other cases, a smaller tax exemption is granted. This is an inconsistency that prevents practitioners from knowing in many cases what the tax bill will be upon the recordation of documents, and it is inherently unfair because different people are not treated in the same way under the same type of transactions. Of importance, the amendment that we suggest avoids double taxation when there is a purchase money mortgage or deed of trust, while also providing for the imposition of recordation tax for the amount secured by the purchase money mortgage or deed of trust in excess of the consideration for the deed.

Thus, we support SB 47 with amendments. Thank you for your consideration.