# MARYLAND RECORDATION AND TRANSFER TAX GUIDE

# 2026*

***EDITOR'S NOTE AND DISCLAIMER: This guide is a compilation of (a) the 2002 Recording Seminar by Assistant Attorney General Julia Freit Andrew and (b) the 2004 Land Records Seminar by Assistant Attorney General Bruce L. Benshoof (Recording Taxes section only) updated by changes in the law, various advice memos issued by the Attorney General's office and commentary by the editors. NO ONE IN THE ATTORNEY GENERAL'S OFFICE HAS PARTICIPATED IN THE PREPARATION OF THIS UPDATED GUIDE. IT IS OFFERED ONLY AS A CONVENIENCE AND SHOULD NOT BE CITED AS LEGAL AUTHORITY.***

PREFACE

Citations of authority in this Guide are of several kinds: (a) statutes in Annotated Code of Maryland, (b) state and federal case law, (c) published opinions of the Maryland Attorney General, and (d) letters of advice/memoranda by Assistant Attorneys General given from time to time to the court clerks.

The Maryland statutes and case law are readily available online through Westlaw or Lexis. The published AG Opinions are available through the Maryland Attorney General's website: https://oag.maryland.gov/resources-info/Pages/search-opinions.aspx. The AG advice letters and memoranda to the clerks may be harder to find. Many of these have been collected by practitioners and/or filed by the clerks in their back-offices for reference. You may send a request to the email address below, and the editor will endeavor to forward the requested document if it is available.

Suggestions and/or corrections are welcome. Please send an email to **info.mdrectaxguide@gmail.com**. However, specific questions regarding the calculation or applicability of recordation and transfer taxes will not be answered. Seek advice from a qualified professional, the local clerk, or county office of law.

## Table of Contents


***I. Recordation Tax..... 1***

**A. Imposition ..... 1**

**B. Rate ..... 2**

1. Generally..... 2
2. Special Recordation Tax Rates – ..... 2

**C. Calculation of Consideration Payable ..... 3**

1. Generally: For deeds and other instruments that transfer an interest in real property, recordation and transfer taxes are imposed on the consideration payable..... 3
2. Certain Corporate Transfers ..... 4
3. Zero and Hidden Consideration Issues ..... 4
4. IRC § 1031 like-kind exchanges..... 6
5. "Transfers" that aren't really transfers and are thus not subject to recording taxes:..... 7
6. Leases ..... 8
7. Transaction Including More Than Real Property ..... 10
8. Lot Finishing Fee ..... 10

**D. Calculation of Debt Incurred ..... 11**

1. General procedure for debt not yet "incurred" —TP § 12-105(f) ..... 11
2. Indemnity Mortgages and Indemnity Deeds of Trust- TP § 12-105(f)(7)..... 12


*Prepared and edited by John P. (Jack) Machen, Special Chief Solicitor of the Baltimore City Law Department with input and advice from Edward J. Levin of Gordon Feinblatt LLC.

3. Wraparound Mortgages ..... 14
**E. Foreclosure Deeds ..... 14**
**F. Assignments ..... 15**
**G. Easements ..... 15**
**H. Contracts of Sale ..... 15**
**I. Covenants Not to Convey or Encumber ..... 15**
**J. Transfer of Development Rights ..... 15**
**K. Allocation of Liability ..... 16**
**L. Exemptions Pursuant to TP § 12-108 – ..... 16**
1. Governmental – TP § 12-108(a) ..... 16
2. Lien on Vehicle or Vessel TP § 12-108(b) ..... 17
3. Between Relatives – TP § 12-108(c) ..... 17
4. Spouses and Domestic Partners – TP § 12-108(d) ..... 18
5. Supplemental and Confirmatory Deeds and Modifications– TP § 12-108(e). ..... 18
6. Re-recording – TP § 12-108(f) ..... 20
7. Refinance – TP § 12-108(g) ..... 20
8. Lien on Farm Products or Equipment TP § 12-108(h) ..... 22
9. Purchase Money Mortgage or Deed of Trust TP § 12-108(i) ..... 22
10. Mortgage Assignment--TP § 12-108(j) ..... 24
11. UCC – TP § 12-108(k) ..... 24
12. Judgment--TP § 12-108(l) ..... 24
13. Lien Release--TP § 12-108(m) ..... 24
14. Order of Satisfaction--TP § 12-108(n) ..... 24
15. Participation Agreement--TP § 12-108(o) ..... 24
16. Transfers Among Related Business Entities – TP § 12-108(p) ..... 24
17. Transfers on Dissolution, Liquidation, etc.--TP § 12-108(q) ..... 26
18. Land Installment Contract--TP § 12-108(r) ..... 26
19. Option Agreement--TP § 12-108(s) ..... 27
20. Deed Consummating Recorded Contract of Sale--TP § 12-108(t) ..... 27
21. Lease for 7 Years or Less--TP § 12-108(u) ..... 27
22. Articles of Merger--TP § 12-108(v) ..... 27
23. Articles of Consolidation--TP § 12-108(w) ..... 28
24. Termination of Cooperative Housing Corporation--TP § 12-108(x) ..... 28
25. Conversion to LLC—TP § 12-108(y) ..... 29
26. Maryland Stadium Authority Affiliates--TP § 12-108(aa) ..... 30
27. Conversion of Real Estate Enterprise to LLC--TP § 12-108(bb) ..... 30
28. Transfer to Conservation Land Trust--TP § 12-108(cc) ..... 31
29. Transfers of real property from an estate--TP § 12-108(dd) ..... 31
30. Transfers of real property to or from a trust to beneficiaries--TP § 12-108(ee) ..... 32
31. Residential real property from a CCDFI--TP § 12-108(ff) ..... 32
32. Specified transfers of residential real property--TP § 12-108(gg) ..... 33
33. Racing facility sites--TP § 12-108(hh) ..... 33

34. Transfer on Death Deed--TP § 12-108(ii) ..... 33

**M. Other Exemptions from Recordation Tax ..... 34**

1. Partial exemption--TP § 12-103(b)(2) ..... 34
2. Complete exemption--TP § 12-103(b)(3) ..... 34
3. Transfers from the federal government – ..... 35
4. Estate transfer--ET § 9-105(c) ..... 35
5. Electric cooperative—Corp. & Ass'ns § 5-649(c) ..... 35
6. Condominium documents--RP § 11-102(c) – ..... 35
7. Bankruptcy –11 U.S.C. 1146(c) ..... 35

**N. Transfers of Controlling Interests ..... 36**

**O. Apportionment of Consideration or Debt Among Different Jurisdictions ..... 36**

***II. State Transfer Tax ..... 38***

**A. Imposition ..... 38**

**B. Rate ..... 38**

1. Generally – TP § 13-203(a) ..... 38
2. First-Time Maryland Home Buyers – ..... 38
3. Transaction Including More Than Real Property ..... 40

**C. Calculation of Consideration Payable ..... 40**

**D. Allocation of Liability ..... 41**

**E. Exemptions ..... 42**

1. Imported from TP § 12-108 per TP § 13-207(a) ..... 42
2. Agricultural land -- TP § 13-207(b) ..... 43
3. From governmental entity-- TP § 13-207(c) ..... 43
4. Estate Transfer -- ET § 9-106(c) ..... 44
5. Electric cooperative -- CA § 5-649(c) ..... 44
6. Condominium documents-- RP § 11-102(c) ..... 44

***III. County Transfer Taxes ..... 45***

**A. Allocation of Liability for County Transfer Tax ..... 45**

**B. Transfers of Properties in More than One County ..... 45**

**C. Taxation of Conveyances on Dissolution ..... 45**

**D. Collection of County Transfer Taxes by SDAT ..... 45**

**E. Mandatory Exemptions for All County Transfer Taxes ..... 45**

1. Spouses and domestic partners-- TP § 13-403 ..... 45
2. Maryland Stadium Authority-- TP § 13-403.1 ..... 46
3. Certain Business Transactions Filed with County or SDAT-- TP § 13-404 ..... 46
4. Transfers to stockholders, partners and members- TP § 13-405 ..... 47
5. Apportionment TP §13-406. ..... 48
6. Conservation Easement--TP § 13-410 ..... 48

7. Transfers from the federal government – ..... 48
8. Estate Transfer--ET § 9-105(c)(2) ..... 48
9. Electric Cooperative--CA § 5-649(c) ..... 48
10. Condominiums--RP § 11-102(c) ..... 48

**F. Transaction Including More Than Real Property ..... 49**

**G. Prince George's County Transfer Tax ..... 49**

**H. Baltimore City Yield Tax ..... 49**

**I. Mandatory Exemptions for Home Rule Counties – ..... 49**

**J. Charter Counties ..... 50**

**K. Code Counties –..... 50**

***IV. APPENDIX Recordation and Transfer Tax Rates in Maryland ..... 51***

# I. Recordation Tax

## A. Imposition

The recordation tax is an excise tax imposed by the State for the privilege of recording an instrument in the Land Records or, in some cases, with SDAT. Although imposed by the State, the recordation tax, to the extent collected by each clerk or county fiscal office, goes to such county's treasury (except, if collected by the clerk, the clerk retains a percentage of such collection as set forth in CJP § 2-213). For purposes of the taxes discussed in this Guide, Baltimore City is regarded as a county of Maryland. Therefore, any references to counties includes Baltimore City.

For purpose of the recordation tax, TP § 12-101(j) defines "**instrument of writing**" as:

> *"a written instrument that:*
>
> *(i) conveys title to or creates or gives notice of a security interest in real property; or*
>
> *(ii) creates or gives notice of a security interest in personal property"*
>
> NOTE: In part (j)(1)(i), "title" means equitable or legal title.

This section goes on to provide that "instrument of writing" includes any:

***(i)*** *a deed or contract*; [**NOTE**: Real Property §1- 101(c) defines "deed" for purposes of the Real Property Article to include "any deed, grant, mortgage, deed of trust, lease, assignment, and release, pertaining to land or property or any interest therein or appurtenant thereto, including an interest in rents and profits from rents."

***(ii)*** *a mortgage, deed of trust, or other contract that creates an encumbrance on real property;*

***(iii)*** *a lease of real property;*

***(iv)*** *an assignment of a lessee's interest in real property;*

***(v)*** *a security agreement;*

***(vi)*** *articles of merger or other document which evidences a merger of foreign corporations, foreign partnerships, foreign limited liability companies, or foreign limited partnerships; and*

***(vii)*** *articles of consolidation or other document which evidences a consolidation of foreign corporations.*

**B. Rate**

1. Generally

The recordation tax rate for each jurisdiction is set at a dollar amount per each $500 or fraction of $500 of (a) consideration payable or (b) the principal amount of the debt secured for an instrument of writing.

**NOTE:** "fraction of $500" means that if the consideration payable or debt secured is evenly divisible by $500, the recordation tax is assessed on that amount. If not, the consideration payable or debt secured is rounded up to the next closest $500, and the recordation tax is based on the rounded amount.

**NOTE:** except as discussed below, the recordation tax rate is set by the governing body of each county.

2. Special Recordation Tax Rates –

a) TP § 12-103(c) –

The recordation tax rate is 55 cents per each $500 or fraction of $500 for an instrument of writing for property that:

(1) is located in 2 or more counties; and

(2) is security for a corporate bond of a public service company as defined in Public Utilities Article § 1-101

b) TP § 12-103(d) –

For articles of merger, or articles of consolidation filed with SDAT under CA § 3-107, or other document filed with SDAT which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, the recordation tax rate is $1.65 per each $500 or fraction of $500.

SDAT collects the recordation tax when articles of merger, articles of consolidation, or other document which evidences a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships are filed, and such rate is applied to the assessed value at the date of finality immediately before the date of the merger or consolidation pursuant to TP § 12-105(g)(2).

## C. Calculation of Consideration Payable

1. Generally: For deeds and other instruments that transfer an interest in real property, recordation and transfer taxes are imposed on the consideration payable.

TP § 12-103(a) – the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. When a grantee takes title subject to an open mortgage or deed of trust, there is a presumption that the grantee is assuming responsibility to make future payments on the secured debt, even if the grantee does not expressly assume personal liability for the debt. 25 Op. Md. Att'y Gen. 589 (1940). There is assumed indebtedness when one co-tenant acquires the interest of another co-tenant subject to an open mortgage or deed of trust on which both co-tenants are jointly and severally liable.

This general rule does not apply to a mortgage or deed of trust taken subject to and assumed by certain specified relatives of the grantor as described in TP 12-108(c).

Consideration is not limited to cash but may include anything of economic value given to the grantor, such as other property (real or personal, tangible or intangible) or relief from responsibility for payment of a debt. The clerk may investigate any recitation of consideration in an instrument presented for recording. See 41 Op. Md. Att'y Gen. 395 (1955); 49 Op. Md. Att'y Gen. 479 (493-94 (1964), 62 Op. Md. Att'y Gen. 172 (1977).

Pursuant to TP 12-104(a), the consideration payable, including the amount of any mortgage or deed of trust assumed by the grantee, or the principal amount of the secured debt incurred, shall be described in: (1) the recitals or the acknowledgment of the instrument of writing; or (2) an affidavit under oath that accompanies the instrument of writing and that is signed by a party to the instrument of writing or by an agent of a party.

**NOTE:** The assumption of debt is viewed as among the debtors, not in relationship to debtors' liability to the creditor [*see Pritchett v. Kidwell*, 55 Md. App. 206 (1983); 25 Op. Md. Att'y Gen. 589 (1940); 22 Op. Md. Att'y Gen. 799 (1937)]. Thus a cotenant taking another cotenant's interest subject to an existing mortgage would count as "assuming" that other cotenant's percentage of mortgage liability because the purchasing cotenant is expressly or implicitly waiving the right to contribution from the selling cotenant and indemnifying the selling cotenant against the liability (but if viewed in relationship to the creditor [as the taxpayers argued in *Kidwell*], each cotenant is already 100% liable to the creditor, so there wouldn't be anything assumed).

**NOTE:** The decision in the *Kidwell* case subtly changed the standard from that stated in the 1937 Attorney General's Opinion. The 1937 Attorney General's Opinion stated that "the [recordation] tax is based on the 'consideration paid or to be paid,' and that [consists

of] the total amounts paid [or to be paid] to obtain an unencumbered title to the property." The *Kidwell* court found that it is an "economic fact" that a grantee would pay a debt secured by a lien on the property, even if the grantee did not expressly assume personal liability for such debt. However, such potential payment only counts as "consideration payable" to the extent such payment would relieve the grantor from liability to repay such indebtedness. Conversely, if the grantor is already relieved from liability to pay the debt (such as through a discharge in bankruptcy), payments by the grantee would not benefit the grantor and, thus, would not constitute "consideration payable." In other words, the *Kidwell* court held that a grantee taking subject to a mortgage for which the grantor was not personally liable should be viewed as analogous to taking subject to the obligation to pay taxes or rent when due, and recordation tax would therefore not be due on the outstanding amount of the mortgage.

2. Certain Corporate Transfers

   Under TP §§ 12-105(g)(1) & 12-106, unless exempt under TP § 12-108(p), (q), (v) or (w), the consideration payable for instruments "*that transfer the real property of a corporation to its stockholders, the real property of a limited liability company to its members, or the real property of a partnership to its partners*" is fixed at "*the value of the real property determined by [SDAT] at the date of finality immediately before the date of transfer.*"

3. Zero and Hidden Consideration Issues

   If the consideration payable for an instrument is truly zero, then the recordation tax is zero. See 63 Op. Md. Att'y Gen. 623 (1978); 49 Op. Md. Att'y Gen. 508 (1964). But there are times where there is hidden consideration and other times where a transferee is apparently assuming a mortgage or deed of trust, even though the deed is stated as a "zero consideration" transfer.

   The typical zero consideration deed is a deed gifting property from one natural person to another for no consideration (other than love and affection), free and clear of any liens.

   Another typical zero consideration transfer is a deed transferring property from any person (natural or entity) to a charity or other non-profit, such as a church, school or university, free and clear of any liens.

**NOTE:** Conveyances to churches, schools and charities <u>for consideration</u> are <u>not</u> exempt from recordation and state transfer tax. Also instruments given by a church or charity to secure a debt are taxable. <u>See</u> 43 Op. Md. Att'y Gen. 366 (1958), 49 Op. Md. Att'y Gen. 501 (1964); Letters of advice to Howard M. Smith dated April 22, 1971 and June 3, 1983. Local transfer taxes in some jurisdictions may exempt such transfers.

**NOTE**: When the parties are family members or the grantee is a charity, a true gift can be presumed. However, when the parties to the deed are unrelated, the presumption is different. Unrelated persons or business entities generally do not give property to one

another unless there is something else going on, such as the discharge of a pre-existing debt or a side contractual arrangement that may disguise compensation to the grantor or an affiliate of the grantor. In the case of a purported gift or no-consideration transfer between unrelated persons or entities, the recording clerks are entitled to ask for more than a self-serving gift affidavit to substantiate whether such a transaction between unrelated parties is indeed a gift.

Typical hidden consideration issues:

(i) As discussed above, assumed debt is "consideration payable," which includes any debt secured by a lien subject to which the grantee is taking title to the property, even if the grantee is not formally assuming liability, if payment of such debt would relieve the grantor of an obligation to do so.

(ii) Payoff of existing debt is consideration. Because the grantee is paying off the debt on behalf of the grantor, it is viewed the same as if the grantee had paid that amount to the grantor in cash, and then the grantor has used the money to pay off the existing debt.

(iii) Ownership interests received or increase in value is taxable. If a partner in a partnership, member in a limited liability company, shareholder in a corporation or beneficiary in a statutory trust contributes property to the entity in return for an interest or increased interest in that entity, that transfer is taxable based on the value of the property conveyed, unless a specific exemption applies [*see Dean v. Pinder*, 312 Md. 154, 538 A.2d 1184 (1988)].

(iv) If performance (or a promise of performance) is given as consideration and the value of such performance (or promise of performance) is not readily ascertainable, one may presume that the amount of "consideration payable" is equal to the assessed value of the property [*see* 23 Op. Md. Att'y Gen. 624 (1938)].

(v) If property is given as consideration rather than, or in addition to, cash, the value of the property given must be included in the amount of the consideration.

(vi) If properties are being swapped, the consideration payable for the deed conveying one parcel is the value of the other parcel and vice versa. See 36 Op. Md. Att'y Gen. 259 (1951) and discussion below regarding like-kind exchanges.

(vii) **BUT** deed(s) between cotenants for a self-partition of a single property are not taxable [*see* 23 Op. Md. Att'y Gen. 629 (1938)]; however, deed(s) between cotenants for exchanging interests in multiple properties are taxable [*see* 23 Op. Md. Att'y Gen. 629; Letter of Advice to Frank W. Hales (Jan. 27, 1977)].

For example, if A and B own property as equal tenants-in common and decide to partition it without judicial partition, they may divide the property into lots Y and Z, and if A ends up with lot Y and B ends up with lot Z, they would not have to pay recordation or transfer taxes. However, if A and B own Property X and

Property Y as equal tenants-in-common as to both properties and decide to make Property X solely A's and Property Y solely B's, then the deed to A of B's half interest in Property X will be subject to recording taxes based on one-half of the value of Property Y – and the deed to B of A's half interest in Property Y will be subject to recording taxes based on one-half of the value of Property X.

The following instruments are viewed as zero consideration, even with debt being assumed, because they are transfers of bare legal title without change of the underlying beneficial ownership:

- Deed to trustee of an *inter vivos* trust
- Deed from trustee of an *inter vivos* trust back to original settlor of such trust
- Deed from trustee of an *inter vivos* trust out to the residuary beneficiaries upon the death of the settlor(s)
- Deed from agent, nominee or "straw man" to "real" beneficial owner of property [*see* 43 Op. Md. Att'y Gen. 116 (1958)]
- Deed from "real" beneficial owner of property to agent, nominee or "straw man"

4. IRC § 1031 like-kind exchanges

See Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 28, 2004); *cf.* 43 Op. Md. Att'y Gen. 116 (1958)]

(i) The basic exchange is a property swap subject to recording taxes as discussed above. Each deed is taxable based on the fair market value of the property conveyed. See 36 Op. Md. Att'y Gen. 259 (1951).

> Example 1: Abel transfers Whiteacre, valued at $60,000, to Baker, and Baker conveys Blackacre, also valued at $60,000 to Abel. Both deeds are subject to recording taxes on $60,000.
>
> Example 2: Abel owns Whiteacre, which is worth $100,000. Baker owns Blackacre, which is worth $125,000. Abel transfers Whiteacre to Baker together with a cash payment of $25,000. In exchange, Baker transfers Blackacre valued at $125,000 to Abel. The deed to Whiteacre is taxable on $100,000 because Abel is receiving net $100,000 as consideration: that is, real property (Blackacre) worth $125,000 minus a $25,000 cash payment Abel must give Baker. The deed to Blackacre is taxable on $125,000 because Baker is receiving as consideration for the conveyance a piece of real property (Whiteacre) worth $100,000 plus a $25,000 cash payment.

(ii) The tricky part is that some steps in more complicated exchanges involve the use of the modern equivalent to a straw man: a "qualified intermediary" or "accommodation party" to allow for a deferred exchange where the conveyance of the exchanged properties can take place at different times.

(iii) When the relinquished property is transferred to the qualified intermediary from the exchangor, the qualified intermediary is acting as the nominee for the exchangor, and it is a zero consideration transfer.

(iv) When the relinquished property is transferred from the qualified intermediary to its purchaser, the deed is taxable on the consideration paid.

(v) When the replacement property is transferred to the qualified intermediary, the qualified intermediary is acting as the nominee for the exchangor in purchasing the property, and the deed is taxable on the consideration paid.

(vi) When the replacement property is transferred from the qualified intermediary to the exchangor, the deed is merely transferring legal title from the nominee to the true purchaser, and it is a zero consideration transfer.

5. "Transfers" that aren't really transfers and are thus not subject to recording taxes:

(i) Deed confirming conversion of a partnership into a Maryland limited liability company pursuant to CA § 4A-211 is not a transfer (as stated in CA § 4A-213(a): "*A general or limited partnership that has been converted to a limited liability company pursuant to [CA] § 4A-211 shall be deemed for all purposes the same entity that existed before the conversion.")* – **BUT** if the property was not titled in the name of the partnership prior to such conversion, recording taxes would be due for the implicit transfer into the partnership prior to the conversion [*see* Memorandum from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Dec. 4, 1997)].

(ii) Deed confirming registration of a general partnership as a limited liability partnership (pursuant to CA § 9A-1001) or of a limited partnership as a limited liability limited partnership (pursuant to CA § 10-805) – **BUT** if the property was not titled in the name of the partnership prior to such registration, recording taxes would be due for the implicit transfer into the partnership prior to the conversion [*see* Memorandum from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Dec. 4, 1997)].

**NOTE**: Transfers from a corporation to its stockholders, a partnership to its partners, or a limited liability company to its members not fitting within the exemptions described in TP §12-108 are subject to recordation and transfer taxes. TP 1§2-106. The taxes are computed on the full value of the property as determined by the SDAT as of the date of finality immediately before the date of transfer. TP §§12-105(g) and 13-205(d).

6. Leases

(1) Leases for a term of 7 years or less are exempt from recordation tax pursuant to TP § 12-105(d) & TP § 12-108(u).

**NOTE**: RP § 3-101(a) requires the recording of a lease if the initial term exceeds 7 years. However, RP § 3-101(c) provides that the recording requirement does not apply if the initial is less than 7 years and if each renewal term under the lease (i) is for 7 years or less, and (ii) by the provisions of the lease, may be effected or prevented by a party to the lease or a party's assigns. Note further that under RP § 3-101(d), any lease required to be recorded but is not recorded is nonetheless valid between the parties and any third party if the tenant is in such actual occupancy as to give reasonable notice of the lease. In practice therefore, few people ever need to record a lease unless there is leasehold financing, which of course requires the mortgage, and therefore the lease, to be recorded.

**NOTE**: In order to avoid the recordation tax, parties sometimes structure what is meant to be a long-term lease as a lease with an original term of 7 years or less and with multiple renewal terms which are exercised immediately after the initial lease is recorded. If indeed the tenant is under no obligation to renew the lease beyond 7 years, then the recording tax exemption will apply. But if the facts suggest otherwise, such as a contemporaneously filed leasehold mortgage securing a loan term in excess of 7 years, it will be presumed that the tenant has renewed the to at least the term of the loan. Under RP §3-101, before recording a short-form memorandum of lease, the parties are required to submit to the recording office a copy of the underlying lease for examination as to whether any taxes are due.

(ii) Ground leases – TP § 12-105(c)

If a lease of real property creating a perpetually renewable ground rent is recorded without a transfer of the reversionary estate for full consideration other than the ground rent being recorded at the same time, the recordation tax applies to the redemption sum as determined under RP § 8-110, plus any additional consideration payable.

The redemption sum under RP § 8-110(b)(2)(i) is equal to "a sum equal to the annual rent reserved multiplied by:

1. 25 (which is capitalization at 4%), if the lease was executed from April 8, 1884 to April 5, 1888, both inclusive;

2. 8.33 (which is capitalization at 12%), if the lease was or is created after July 1, 1982; or

3. 16.66 (which is capitalization at 6%), if the lease was created at any other time (*i.e.,* on or before April 7, 1884; or from April 6, 1888 to June 30, 1982, inclusive)

If the lease is recorded at the same time with the transfer of the reversionary estate created for full consideration, the lease is not subject to recordation tax.

(iii) All other leases – TP § 12-105(d) –

For a lease of real property for a term of more than 7 years not perpetually renewable, the recordation tax applies to:

A. the average annual rent over the term of the lease, including renewals, capitalized at 10% (that is, multiplied by 10) plus any additional consideration payable other than rent; or

B. if the average annual rent cannot be determined, the greater of:

(i) 105% of the minimum average annual rent as determined by the lease, capitalized at 10% plus any additional consideration payable, other than rent; **or**

(ii) 60% of the assessment of the real property subject to lease.

Example One: Lease for 8 years and an annual rent of $2,400 per year. The recordation tax is based on $24,000 (10 times the annual rent) plus any other consideration.

Example Two: Lease for 12 years where the annual rent starts at $3,000 and increases by $1,000 each year up to $14,000 in year 12. The total rent over the term of the lease is $102,000. The average annual rent is $8,500. The recordation tax is based on $85,000 (10 times the average annual rent) plus any other consideration.

Example Three: Same as Example Two, except that the lease also provides for percentage rent based on the tenant's gross sales. That amount cannot be determined. The minimum average annual rent is $8,500. 105% of the minimum average annual rent is $8,925. The recordation tax is based on the greater of (a) $89,250 (10 times 105% of the minimum average annual rent) plus any other consideration or (b) 60% of the assessed value of the real property subject to the lease.

(iv) Documents that give constructive notice of an unrecorded lease – TP § 12-105(e)

*(1) In this subsection, "document":*
*(i) means any document that publicizes or gives constructive notice of an unrecorded lease; and*
*(ii) includes:*

*1. an attornment agreement;*
*2. a memorandum of a lease; and*
*3. an assignment of a lease.*

*(2) A document may be recorded only if the original lease is submitted and recordation tax on the document and the original lease is paid.* [*See also* RP § 3-101(e) (must submit a copy of lease when recording memorandum of lease).]

*(3) Subject to TP § 12-111* [recordation tax may be allocated by agreement], *the lessee is chargeable with recordation tax on the original lease. If a lessee fails or refuses to pay recordation tax after a demand is made, the party offering for recordation the original lease may:*

*(i) pay recordation tax; and*

*(ii) sue the lessee to recover the amount of recordation tax paid, with interest from the date of payment of recordation tax.*

*(iv) Recordation tax has to be paid on the original lease only if the original lease was required to be recorded under RP § 3-101.*

**NOTE**: Recordation and transfer taxes may be triggered if an instrument, such as a deed of trust or an assignment of leases given to a lender as security for a commercial mortgage loan, makes reference to the specific leases that are subject to the deed of trust or assignment. Such reference may cause the deed of trust or assignment of leases to constitute a "document that publicizes or gives constructive notice of an unrecorded lease." For this reason, careful practitioners will avoid making specific reference to leases in such documents.

7. Transaction Including More Than Real Property

In a sale of business assets that includes both real property and other types of property, the state recordation and transfer taxes, and the county transfer taxes of apply only to the value of the real property. The consideration paid for the other types of property are not subject to these taxes. Shelter Senior Living IV, LLC v. Baltimore County, Maryland, et al., 251 Md. App.129 (2021).

8. Lot Finishing Fee

For some time, land developers and home builders would structure the sale of unimproved residential lots in two parts: sale of the land and a separate arrangement under which the home builder would compensate the developer for "finishing" the lot; i.e., grading and installing roads, curb, gutter and utilities. At closing, the deed consideration would reflect only the price paid for the land while the settlement sheet would reflect an additional payment to the developer characterized as a lot finishing fee. In 1995, the Attorney General's office learned of this practice and determined that it constituted an understatement of consideration and thus an underpayment of recordation and transfer taxes. The

AG's office issued a memorandum to all the clerks of the circuit courts urging them to implement a policy of requiring the settlement sheet to be submitted in all transactions involving the sale of unimproved lots from developers. See Memorandum dated December 5, 1995 to All Clerks of the Circuit Courts from Julia M. Freit, Asst. Attorney General.

## D. Calculation of Debt Incurred

1. General procedure for debt not yet "incurred" —TP § 12-105(f)

> *(1)….[I]f the total amount of secured debt has not been incurred at the time of recording or filing the instrument of writing, the recordation tax applies only to the principal amount of the debt incurred at that time.*
>
> *(2) [O]n or before 7 days after any additional debt is incurred after recording or filing an instrument of writing, a statement under oath of the amount of additional debt shall be filed with the clerk of the circuit court or with [SDAT], and the recordation tax shall be paid on the additional debt by the debtor.*

**NOTE**: The typical situation for a partially incurred debt is a construction loan when advances are disbursed over time as the construction proceeds. This is addressed in TP § 12-105(f)(6). Recording clerks may request an affidavit signed by the borrower and the lender confirming the amount advanced (and thus incurred) at the time of recordation and their acknowledgment of the requirements of TP § 12-105(f) that recordation taxes are to be paid in the future as advances are made. The debtor thereafter must file a statement under oath every time an additional debt is incurred and pay the recordation tax thereon within seven days after the disbursement is made. Failure to do so may subject the debtor to criminal penalties. A new disbursement will not be subject to tax if used to repay a previous disbursement from the same account. TP § 12-105(f)(3).

Another example of a debt not yet incurred is where the mortgage or deed of trust secures a seller's agreement to refund a deposit in connection with a purchase and sale of property, which obligation would never arise unless the sale of the property fails to proceed and the seller defaults on its refund obligation. Since the refund obligation has not been incurred at the time of recordation, no tax is due.

TP § 12-105(f)(4) — Option to pay recordation tax on maximum amount secured. Even though the entire amount of the loan has not been advanced at the time of recordation, the parties may pay recordation taxes on the maximum amount of the loan. Thereafter, no further recordation taxes will be due, irrespective of future advances, repayments and subsequent re-advances (e.g., with a line of credit or home equity loan). If the debtor elects to prepay the recordation tax on the maximum face amount stated in the instrument, the debtor is not entitled to a refund if the full amount of the debt is never incurred. 82 Op. Md. Att'y Gen. 171 (1997).

2. Indemnity Mortgages and Indemnity Deeds of Trust- TP § 12-105(f)(7)

a) Indemnity Mortgage or Indemnity Deed of Trust (either of which is call an "IDOT") – the mortgage or deed of trust secures a guaranty of the obligations of another person and under which the guarantor/grantor/mortgagor is not primarily liable. Because the IDOT secures a contingent obligation (the guaranty), it can be considered a debt not yet incurred and therefore not subject to recordation tax. TP § 12-105(f)(1).

b) Typically the maker of the promissory note is a single member limited liability company whose sole member is the owner of the property, which in turn guarantees the debt and grants the IDOT. These are often used in commercial loans where knowledgeable counsel is familiar with the somewhat more complicated structure. IDOTs are almost never seen in residential loans.

c) True Indemnity Mortgage – the mortgage or deed of trust secures direct obligations of the grantor which are in an unknown amount and/or may or may not become due or the grantor and borrower are not directly affiliated entities. Examples of a typical true indemnity mortgage are where the IDOT secures a payment and performance bond or a hedge agreement in connection with an interest rate swap where the repayment obligation may never arise and in any event cannot be determined at the time of recordation.

d) Under TP § 12-105(f)(7), for any IDOT entered into after July 1, 2012 securing a guaranty "of a loan (or series of loans that are part of the same transaction)" in excess of $12.5 million, it is presumed that the guarantor has incurred a debt, and therefore the full recordation tax is due. Accordingly, the IDOT exemption applies only when the loan is for less than $12.5 million.

e) The parties may not record serial IDOTs, each for less than $12.5 million, in an effort to extend the exemption beyond $12.5 million. The language in TP § 12-105(f)(7)(iii)(2) "*or series of loans that are part of the same transaction*" is intended to prevent this. What constitutes the "same transaction" is a question of common sense and fact. Where there are the same or related borrowers, same lender, same property purchased under one purchase contract, and/or same construction project, whether it is the same transaction is generally obvious. Different interest rates, a time separation between recording such related IDOTs, or a statement of different loan purposes would require further inquiry to determine if there is a legitimate business reason for the difference or whether it is merely an artifice whose primary purpose is to avoid the recordation tax by extending the IDOT exemption above $12.5 million. See Memorandum from Stuart Cordish, Courts Unit, Office of the Attorney General to All Clerks of Circuit Court and All Land Records Departments dated June 19, 2013 (**Note**: at the time that memo was issued, the exemption threshold for IDOTs was $3 million. It was later raised to $12.5 million).

f) An IDOT that involves a loan or series of loans in excess of $12.5 million is taxable, even if the parties limit the amount secured to an amount less than $12.5 million or if there is a purchase money exemption, refinance exemption or allocation between

jurisdictions that reduces the taxable base. In all such cases, the recordation tax will be calculated based on the lesser amount secured or the amount not subject to any exemption, but in any event the amount of the loan, not the taxable base, determines the eligibility for the exemption. Thus even though the tax may be calculated on an amount less than $12.5 million, if the loan or series of loans is greater than $12.5 million, then the recordation tax applies.

g) Parties may sometimes attempt to record a purported "Purchase Money IDOT." This may arise when a purchase is combined with a construction loan, and the borrower wishes to have the benefit of both an exemption for the purchase money mortgage and an exemption for a construction loan IDOT that is under $12.5 million. There are several problems with such an arrangement.

First of all, there can be no such thing as a "Purchase Money IDOT." The basis of the IDOT exemption is that the grantor (owner of the property) is not primarily liable on the underlying debt. It is nonsensical for the purchaser of the property to claim that it is not primarily liable for the purchase obligation.

The only way to have an IDOT and a purchase money mortgage in the same transaction is to make them entirely separate loans: that is, a purchase money mortgage to cover the purchase price and a separate IDOT under which the property owner is a contingent guarantor of the construction loan made to a related entity. However, the IDOT exemption will be lost if the total of both loans exceeds $12.5 million because they are in a "series of loans that are part of the same transaction" and will be aggregated to determine taxability as provided under TP § 12-105(f)(7)(iii)(2).

If the entire amount of the borrowed money is under the $12.5 million IDOT exemption threshold, the parties would be better off just to structure the loan as an IDOT and forget about the purchase money exemption. If the entire loan is over $12.5 million, the best they can do is call it a "Partial Purchase Money Deed of Trust" and get the exemption only for the purchase money portion.

h) The basis of the IDOT exemption (though technically it is a tax deferral not a tax exemption) is that the debt secured has not been incurred at the time of recordation, as the guaranty is generally considered a contingent debt. That said, many guaranties and the IDOTs they secure are drafted with casual disregard of this important point. If the guaranty states on its face that the liability of the guarantor is "primary, absolute and unconditional," as many do, that undermines the concept that the guaranty is a contingent debt not yet incurred. Furthermore, if the IDOT states on its face that it secures the note or contains a covenant to pay the indebtedness under the note, then the IDOT grantor becomes directly liable for the primary debt. Careful drafters must make clear in the IDOT and the guaranty that, notwithstanding any language in the guaranty or the IDOT to the contrary, the guarantor is not primarily liable for the borrower's debt under the note and the guarantor will incur no payment obligation unless and until there is a default under the note. The clerk can determine this by an examination of the note or other instrument evidencing the underlying obligation as well as the mortgage and the guaranty. See 49

Op. Md. Att'y Gen. 503 (1964); 58 Op. Md. Att'y Gen. 792 (1973), and 30 Op. Md. Att'y Gen. 722 (1975).

i) As mentioned above, IDOTs are almost exclusively used in commercial loans where knowledgeable lawyers are familiar with the structure. IDOTs have been heavily criticized by many county attorneys as being a manipulative contrivance when the nominal borrower (maker of the note) and the guarantor (grantor under the IDOT) are under the same ownership, and the only reason for the entity split is to avoid the recordation tax. The Maryland legislature appears to be cognizant of this reality and has nonetheless sanctioned IDOTs, effectively making their use a targeted tax break for commercial transactions under $12.5 million.

j) For any IDOT that is not taxable on recordation, the recordation tax is not due until the guarantor/grantor becomes primarily liable; i.e., the debt is incurred, and, if and when the debt is incurred, recordation tax is due and payable pursuant to TP § 12-105(f)(2). See 74 Op. Md. Att'y Gen. 281 (1989); 60 Op. Md. Att'y Gen. 722 (1975); 58 Op. Md. Att'y Gen. 792 (1973); 49 Op. Md. Att'y Gen. 503 (1964); 29 Op. Md. Att'y Gen. 201 (1944). Typically the guaranteed debt is incurred when the borrower defaults on the underlying promissory note.

3. Wraparound Mortgages

A wraparound mortgage is subject to tax on money borrowed to pay off an old debt (unless the refinancing exemption applies) and on any new money borrowed. However, a wraparound mortgage is not taxable on an old debt that it refers to that is not being paid off. *See Prince George's County v. Mahon*, 59 Md. App. 682 (1984).

**E. Foreclosure Deeds**

Deeds-in-lieu-of-foreclosure and deeds transferring property to the buyer at a foreclosure sale, even if the buyer is the mortgagee, are subject to the tax. *See* 24 Op. Md. Att'y Gen 974 (1939); letter of advice to W. Garrett Larrimore dated November 3, 1976.

Tax on a deed-in-lieu-of-foreclosure is calculated on the outstanding principal balance due on the mortgage. If the lender proves to the clerk's satisfaction that: (1) the fair market value is less than the outstanding principal balance; and (2) the debtor is insolvent or the debt is non-recourse, tax may be based on the fair market value of the property. *See* 24 Op. Md. Att'y Gen. 974 (1939); letter of advice to Elmer H. Kahline, Jr. dated December 9, 1981; letter of advice to Judson Wood dated September 17, 1993.

Tax on a deed-in-lieu-of-foreclosure or a trustee's deed resulting from a ratified foreclosure sale is based not only on the debt satisfied by the deed in lieu of foreclosure or the bid price payable for the trustee's deed, but also on any debt assumed by the grantee. For example, if the foreclosure is of a second mortgage on the property and the purchaser is taking the property subject to a first mortgage, the consideration payable is the bid price plus the principal balance due on the first mortgage. *See* Letter of advice to E. Aubrey Collison dated August 3, 1984; letter of advice to Lynne G. Howell dated August 17, 1990.

Deeds to substitute purchasers of property sold at a foreclosure sale should comply with Maryland Rule 14-215(c)(3) with a court order approving the substitution of purchaser. The trustee conducting the sale has no authority to deed the property to anyone other than the foreclosure sale purchaser. Therefore, a deed conveying property from the trustee to the substitute purchaser, even with the consent of the original purchaser, constitutes two conveyances in a single instrument (that is, from the trustee to the original purchaser and from the original purchaser to the substitute purchaser) (unless there is a court order, as described below). Such a deed should be taxed on the bid payable by the original purchaser to the trustee and the full purchase price payable by the substitute purchaser to the original purchaser. *See* Letter of advice to Susan Braniecki dated October 1, 1992. However, if there is a court order under Rule 14-215(c)(3) approving the substitution of purchaser, then only the conveyance to the substitute purchaser is taxed.

**F. Assignments**

Whether assignments are subject to tax depends on the nature of what is being assigned. Assignments of leases by lessees are taxable. *See* 43 Op. Md. Att'y Gen. 120 (1958). Assignments of contracts of sale are taxable. *See* letter of advice to C. Merritt Pumphrey dated April 6 1983. The following assignments are not taxable: (a) of mortgages and deeds of trust, (b) of security agreements and (c) of rents, unless the assignment gives constructive notice of an unrecorded lease as discussed at Section I.C.6(4) above.

**G. Easements**

Recordation and transfer taxes are imposed upon the recording of easements calculated on the consideration paid. *See* 22 Op. Md. Att'y Gen. 736 (1937). *See also* the definition of "real property" in TP 1-101 (gg).

**H. Contracts of Sale**

Recordation and transfer taxes are imposed on the recording of contracts of sale. *See* 49 Op. Md. Att'y Gen. 467 (1964). However when the deed is subsequently recorded, no taxes are due so long as the same parties are involved. TP §§12-108(t) and 13 207(a)(13). *See* Op. Md. Att'y Gen. 768 (1937); Letter of advice to C. Merritt Pumphrey dated April 6, 1983.

**I. Covenants Not to Convey or Encumber**

Covenants not to convey or encumber are not recordable. *See* 73 Op. Md. Att'y Gen. 345 (1988). See Equitable Trust Company v. Imb*esi*, 287 Md. 249 (1980)

**J. Transfer of Development Rights**

Instruments transferring development rights are not subject to recordation taxes. *See* Letter of advice to Jeffrey Bridner dated August 20, 1996; Memorandum to clerks stated October 8, 1996.

## K. Allocation of Liability

Generally the liability for payment of the recordation tax is shared equally among the parties, but (1) in the absence of agreement to the contrary, seller pays all of the recordation tax if transferring to a first-time Maryland home buyer, (2) in the absence of agreement to the contrary, the mortgagor/grantor pays all of the recordation tax due on a mortgage or deed of trust, and (3) liability for recordation tax may always be otherwise allocated by agreement.

RP § 14-104 –

*(b) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.*

*(c) (1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.*

*(3) This subsection does not apply to tax sales of property under Title 14, Subtitle 8 of the Tax - Property Article.*

TP § 12-111 –

*By agreement, recordation tax may be paid by any person.*

## L. Exemptions Pursuant to TP § 12-108 –

1. Governmental – TP § 12-108(a)

An instrument of writing is not subject to recordation tax if the instrument of writing transfers property to, or grants a security interest to:

(i) the United States [including, generally, all agencies and instrumentalities thereof];

(ii) the State [of Maryland];

(iii) an agency of the State [of Maryland]; or

(iv) a political subdivision in the [State of Maryland, which includes counties, cities and other municipalities, and agencies and instrumentalities thereof – such as boards of education, etc.]

Instruments given to a governmental entity to secure repayment of a debt are exempt, provided however each county may decide whether or not to tax instruments that secure repayment of debt created by the sale of Industrial Revenue Authority Bonds.

**NOTE**: There are some government loan programs, such as VA loans, under which the loan is made by a private lender and guaranteed in whole or in part by a governmental agency. Because such a mortgage or deed of trust is not granted to a governmental agency, it is not exempt from recordation taxes.

2. Lien on Vehicle or Vessel TP § 12-108(b)

A security agreement is not subject to recordation tax if the security agreement is: (1) on a vehicle and is perfected by filing with the Motor Vehicle Administration; or (2) on a vessel and is perfected by filing with the Department of Natural Resources.

3. Between Relatives – TP § 12-108(c)

*(1) When property is transferred subject to a mortgage or deed of trust, the recordation tax does not apply to the principal amount of debt assumed by the transferee, if the instrument of writing transfers the property from the transferor to a:*

*(i) spouse or former spouse* [Note: this is unnecessary now that TP § 12-108(d) is a complete exemption for all transfers between spouses]*;*

*(ii) son, daughter, stepson, or stepdaughter;*

*(iii) parent or stepparent;*

*(iv) son-in-law, daughter-in-law, stepson-in-law, or stepdaughter-in-law;*

*(v) parent-in-law or stepparent-in-law;*

*(vi) brother, sister, stepbrother, or stepsister*

*(vii) grandchild or stepgrandchild*

*(viii) grandparent or stepgrandparent, or*

*(ix) domestic partner or former domestic partner.*

*(2)(i) To qualify as a domestic partner under this subsection, an individual shall submit evidence of a domestic partnership.*

*(ii) To qualify as a former domestic partner under this subsection, an individual shall submit evidence of dissolution of a domestic partnership.*

*(3) The exemption under paragraph (1) of this subsection for transfers to a domestic partner or former domestic partner of the transferor applies only to an instrument of writing for residential property.*

**NOTE:** This only exempts consideration that consists of "assumed debt" – it is not a complete exemption like TP § 12-108(d) – other "consideration payable" results in tax.

**NOTE:** This exemption does not exempt "purchase money" – if an existing debt is being paid off as part of the same transaction in which the property is being transferred (other than as provided in TP § 12-108(d)), the debt is not being "assumed" (thus there is "consideration payable" in the amount paid off) [*see* Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (July 12, 2002)].

4. Spouses and Domestic Partners – TP § 12-108(d)

*(1) An instrument of writing that transfers property between the following individuals is not subject to recordation tax:*

*(i) spouses or former spouses; or*

*(ii) domestic partners or former domestic partners.*

*(2)(i) To qualify as a domestic partner under this subsection, an individual shall submit evidence of a domestic partnership.*

*(ii) To qualify as a former domestic partner under this subsection, an individual shall submit evidence of dissolution of a domestic partnership.*

*(3) The exemption under paragraph (1) of this subsection for transfers between domestic partners or former domestic partners applies only to an instrument of writing for residential property.*

**NOTE:** This exemption was previously limited to transfers "in accordance with a property settlement or divorce decree." This limitation was removed from TP § 12-108(d) but remains in TP § 13-403 with respect to any county transfer tax.

**NOTE:** This exemption only applies to instruments that transfer property (such as deeds and leases). It does not apply to instruments that grant a security interest from one spouse to another (such as a mortgage or deed of trust). Also, this exemption only applies to residential property.

5. Supplemental and Confirmatory Deeds and Modifications– TP § 12-108(e).

A supplemental instrument of writing is defined in TP 12-101(p) as one that:

*"confirms, corrects, modifies, supplements, or amends and restates a previously recorded instrument of writing, regardless of whether recordation tax was paid on such instrument of writing… [and includes] an instrument of writing that secures a debt and*

*grants a security interest in property in addition to or in substitution for property described in the previously recorded instrument of writing."*

TP § 12-108(e) provides:

*A supplemental instrument of writing is not subject to recordation tax except to the extent that: (1) actual consideration is payable on the supplemental instrument of writing; or (2) the amount of unpaid outstanding principal debt is increased by the supplemental instrument of writing.*

**NOTE**: A deed of trust or mortgage modification that merely adds or substitutes collateral, changes the interest rate or maturity date, or makes other changes that do not affect the amount secured would not incur the recordation tax. However, the tax would be triggered if the unpaid principal is increased. For example, a deed of trust for $100,000 is recorded and recordation taxes paid on the full amount. The loan is paid down to $50,000, and the supplement reflects the new debt secured in the face amount of $125,000. Taxes are due on the increase of $75,000. In 1990 and 2005, there were conflicting advice memos from the Attorney General's office on whether the tax applies to the increase in the face amount secured or the increase over the outstanding principal balance. That uncertainty was resolved with a change in the law in 2013 (Ch. 268; HB 1209) which made clear that the tax applies when there is an increase in the "unpaid outstanding principal" debt.

The language "*regardless of whether recordation tax was paid on such instrument of writing"* was added to TP 12-101(p) in 2013 to make clear that pre-existing IDOTs could be modified without triggering the recordation tax, so long as the debt is not increased above the $12.5 million IDOT exemption threshold. This provision also applies to modifications of purchase money mortgages or purchase money deeds of trust.

The supplemental instrument cannot be executed as part of the same transaction in which the original mortgage (the one to which the offered instrument is allegedly supplemental) was executed. **Note**. In a single transaction with a loan secured by multiple properties (real, personal or mixed), no instrument covering the transaction is deemed "supplemental" even if the properties are variously classified as principal collateral and additional collateral. See 50 Op. Md. Att'y Gen. 445 (1965).

The original instrument must continue in existence and not be released of record. The supplemental instrument must not extinguish the old debt. See 61 Op. Md. Att'y Gen. 817 (1976). The secured creditor on the supplemental instrument must be the same as on the original instrument or an assignee. The debtor on the original and supplemental instruments must be the same. Substitution of a new debtor constitutes a new transaction, and the exemption does not apply. *See* 49 Op. Md. Att'y Gen. 461 (1964), 53 Op. Md. Att'y Gen. 77 (1968), 60 Op. Md. Att'y Gen. 724, 729 (1975).

*See Hammond v. Philadelphia Electric Power Co.*, 192 Md. 179 (1949); *Hampton Plaza Joint Venture, Inc. v. Clerk*, 55 Md. App. 50 (1983); 24 Op. Md. Att'y Gen. 966 (1939); 43 Op. Md. Att'y Gen. 116 (1958); 44 Op. Md. Att'y Gen. 373 (1959).

6. Re-recording – TP § 12-108(f)

Any instrument of writing previously recorded in the land records of the same county or another Maryland county.

> **NOTE:** This exemption does not apply to instruments previously recorded outside of Maryland.
>
> **NOTE:** The instrument that is re-recorded must be the original, an identical counterpart, or a certified copy pursuant to RP § 3-104(e)(1)(last sentence) without any substantive amendment, addition or other change [but a cover page or last page may be added to meet the requirements of RP § 3-501(b) for recording in Montgomery County, or other non-substantive recording requirements such as the election district of the property and the like].

7. Refinance – TP § 12-108(g)

> *(1) In this subsection, "original mortgagor" includes:*
>
> *(i) a person who assumed a debt secured by real property that the person purchased and who paid the recordation tax on the consideration paid for the property;*
>
> *(ii) a person that received the property from the original mortgagor under a deed that was exempt from recordation tax under subsection (p) (transfer between related business entities) or (y) (transfer from certain entities to limited liability company) of TP 12-108; and*
>
> *(iii) the trustee of an inter vivos trust if the trustee or the settlor of the trust originally assumed or incurred the debt secured by the mortgage or deed of trust.*
>
> *(2) A mortgage or deed of trust is not subject to recordation tax to the extent that it secures the refinancing of an amount not greater than the unpaid principal amount secured by an existing mortgage, IDOT or deed of trust at the time of refinancing if the mortgage or deed of trust secures the refinancing of real property that is:*
>
> *(i) being refinanced by the original mortgagor or by the original mortgagor and, if applicable, the spouse of the original mortgagor; or*
>
> *(ii) being refinanced by the settlor of an inter vivos trust if the mortgage or deed of trust is given by a trustee of the trust.*
>
> *(3) To qualify for a refinance exemption an original mortgagor or agent of the original mortgagor shall include a statement in the recitals or in the acknowledgment of the mortgage or deed of trust, or submit with the mortgage or*

*deed of trust, an affidavit under oath, signed by the original mortgagor or agent of the original mortgagor, stating:*

*(i) that the individual is the original mortgagor or agent of the original mortgagor; and*

*(ii) the amount of unpaid principal of the original mortgage, IDOT or deed of trust that is being refinanced.*

*(4) A statement under paragraph (3) of this subsection by an agent of the original mortgagor shall state that the statement:*

*(i) is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and*

*(ii) is true to the best of the knowledge, information, and belief of the agent.*

**NOTE:** In summary, on a qualifying refinance only the "new" money is taxed: that is, the difference between the face amount of the refinancing instrument and the outstanding principal balance of the loan being refinanced.

**NOTE:** Prior to 2013, the refinance exemption applied only to mortgages encumbering a "principal residence." That year the statute was amended to remove that limitation at the same time changes were made in the taxation of IDOTs.

**NOTE:** There is no requirement that recordation taxes have been paid on the original mortgage or deed of trust for the refinance exemption to apply. For example, the refinance exemption may apply if the original security instrument was an IDOT. See Memorandum from Stuart Cordish, Courts Unit, Office of the Attorney General to All Clerks of Circuit Court and All Land Records Departments dated June 19, 2013.

**NOTE:** To be an "original mortgagor" by assumption under TP § 12-108(g)(1)(i), the mortgagor must pay the recordation tax on the assumption of the debt (*i.e.*, the mortgagor cannot have used TP § 12-108(c) to exclude the assumed debt from "consideration payable" for purposes of calculating the recordation tax on the deed). For example, if father conveys property to son subject to an existing mortgage, and son claims the exemption under TP § 12-108(c) to exclude the assumed debt from the "consideration payable," then son cannot claim to be an "original mortgagor" with respect to the existing debt.

Questions may arise on whether party refinancing is the original mortgagor when there has been a change in corporate form, such as partnership converting to an LLC or when two entities merge. In such cases the successor entity should be treated as the original mortgagor. Other instances may not be so clear, such as one-tenant-in-common buying out another or when there is one refinance involving multiple properties and multiple borrowers. County attorneys advising recording clerks have not always responded with

the same answers to all these questions. Based on a strict reading, the word "the" preceding "original mortgagor," suggests that there needs to be complete identity between the mortgagor on the original debt and the mortgagor on the refinancing, except where the statute expressly provides otherwise. Until the legislature or the courts provide more definitive guidance, county attorneys will be guided by common sense and their best judgment.

**NOTE:** The word "**refinance**" was defined in Springhill Lake Investors Limited Partnership v. Prince George's County, 114 Md. App. 420, 431- 33, 690 A.2d 535, 540-41 (1997), as including "when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer," **or** an "increasing or altering" of one existing loan to pay off another. Thus, the refinancing exemption can be used with respect to a modification of one existing mortgage loan that increases the debt under that existing mortgage loan in order to pay off another existing mortgage loan.

8. Lien on Farm Products or Equipment TP § 12-108(h)

An instrument of writing of a mechanic's lien or crop lien that relates to farm products or equipment used in farming operations is not subject to recordation tax.

9. Purchase Money Mortgage or Deed of Trust TP § 12-108(i)

*(1) In this subsection, "purchase money mortgage" or "purchase money deed of trust" means a mortgage or deed of trust that:*

*(i) is given by the transferee of real property with respect to the property purchased;*

*(ii) is delivered as part of the same transaction as the instrument of writing that transfers the property purchased and that is subject to the recordation tax;*

*(iii) recites on its face that it secures, in whole or in part, the purchase money for the property or otherwise recites on its face that it is a purchase money mortgage or purchase money deed of trust;*

*(iv) is fully executed within 30 days of the date that the instrument of writing transferring the property is fully executed; and*

*(v) is recorded no later than 30 days after the date that the instrument of writing transferring the property is duly recorded.*

*(2) For the purpose of this subsection, the date that an instrument is fully executed is the later of:*

*(i) the date of the last acknowledgment; or*

*(ii) the date on the instrument of writing.*

*(3) A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax.*

**NOTE**: A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax to the extent of the amount of "consideration payable" on which recordation tax was paid on the purchase deed. *See* 50 Op. Md. Att'y Gen 428 (1965). Generally, one may only use the amount of purchase money on which recordation tax was paid on the deed toward purchase money mortgage exemption (*i.e.*, the purpose of purchase money mortgage exemption is to avoid taxing the same dollars twice, but it is not to avoid taxing such dollars once). 47 Op. Md. Att'y Gen. 196, 199 (1962); *see also* 50 Op. Md. Att'y Gen. 428, 429 (1965); 31 Op. Md. Att'y Gen. 239, 241 (1946). Thus, for instance, a deed conveying title pursuant to a confirmed plan in bankruptcy is exempt from recordation and transfer taxes under 11 U.S.C. §1146(a). However, because no recordation tax is paid on the deed, the purchase money exemption will not apply. *Case of Eastmet Corp.*, 907 F.2d 1487 (4th Cir. 1990).

**NOTE**: When property is transferred indirectly pursuant to a transfer of the controlling interest in a real property entity pursuant to TP §12-117 and recordation taxes are paid pursuant to TP §12-117, a mortgage or deed of trust on the underlying properties may be considered purchase money if all other conditions under TP §12-108(i) are satisfied.

**NOTE**: An otherwise qualifying purchase money mortgage does not become disqualified simply because it encumbers property in addition to the property purchased. See letter of advice to A. James Smith dated March 27, 1981.

**NOTE**: It is a common misunderstanding that paying recordation and transfer taxes on a deed automatically provides a credit against the taxable base on an accompanying mortgage for the full amount of the deed consideration. But that is not always the case. The purchase money exemption under Tax Property Article 12-108(i) applies only to the amount of secured debt that is purchase money. A few examples illustrate this.

1. A $100,000 deed accompanied by an $80,000 purchase money mortgage. The mortgage is fully exempt.

2. A $100,000 deed accompanied by a $120,000 mortgage. Without any further information, the purchase money exemption is presumed to apply to $100,000 of the mortgage. The excess $20,000 is taxed.

3. A $100,000 deed accompanied by a $120,000 mortgage where it is clear from the settlement sheet or accompanying loan documents that $30,000 of loan proceeds are withheld for later disbursement to cover rehabilitation expenses. In that case, the purchase money exemption applies only to $90,000 of the mortgage. Since the $30,000 is explicitly earmarked for construction costs rather than purchase money, it is not eligible for the purchase money exemption.

*See* 50 Op. Md. Att'y Gen 428 (1965). "Since this particular exemption is limited to the amount of the purchase money consideration, any future advance under the deed of trust is 'additional debt' … which requires that recordation tax on the amount of such additional debt be paid by the debtor before it is incurred."

10. Mortgage Assignment--TP § 12-108(j)

An assignment of a mortgage or deed of trust is not subject to recordation tax.

11. UCC – TP § 12-108(k)

*A security agreement filed or recorded under the Maryland Uniform Commercial Code is not subject to recordation tax . . . (1) if it is filed or recorded: (i) to perfect a security interest in inventory; (ii) to perfect a security interest in contract rights, general intangibles, or accounts; (iii) to perfect a security interest in farm products or in equipment used in farming operations; (iv) to perfect a security interest taken or retained by a seller of collateral to secure all or part of its price; or (v) to publicize a lease of goods or fixtures, provided that the security agreement states on its face that it does not create a security interest; or (2) filed or recorded with the SDAT under CL § 9-501(a)(2).*

12. Judgment--TP § 12-108(l)

A judgment of a court is not subject to recordation tax.

13. Lien Release--TP § 12-108(m)

A release [of a mortgage, deed of trust, or other lien] is not subject to recordation tax. This exemption refers to releases of mortgages and deeds of trust. It does not apply to an instrument entitled "release" that is actually a reconveyance of a leasehold or contract interest. *See* Letter of advice to Dorsey Hile dated September 27, 1991.

14. Order of Satisfaction--TP § 12-108(n)

An order of satisfaction is not subject to recordation tax.

15. Participation Agreement--TP § 12-108(o)

A participation agreement . . . is not subject to recordation tax.

> **NOTE:** "Participation Agreement" is defined as an "agreement that shows an interest of a person in a note, mortgage, or deed of trust that is based on a previously recorded loan to the mortgagor or grantor under a deed of trust."

16. Transfers Among Related Business Entities – TP § 12-108(p)

*(1) In this subsection the following words have the meanings indicated.*

> *(i) "Business entity" means a limited liability company, corporation, limited partnership, or statutory trust.*

*(ii) "Owner" means a member, stockholder, limited partner, or beneficial owner of a business entity.*

*(iii) "Ownership interest" means a membership interest, stock, limited partnership interest, or beneficial interest.*

*(2) An instrument of writing is not subject to recordation tax if the instrument of writing is:*

*(i) a transfer of title to real property between a parent business entity and its wholly owned subsidiary business entity or between 2 or more subsidiary business entities wholly owned by the same parent business entity, if the parent business entity is an original owner of the subsidiary business entity, or became an owner through gift or bequest from an original owner of the subsidiary business entity, for:*

*1. no consideration;*

*2. nominal consideration; or*

*3. consideration that comprises only the issuance, cancellation, or surrender of the ownership interests of a subsidiary business entity;*

*(ii) an instrument of writing made pursuant to the reorganization of a business entity as described in § 368(a) of the Internal Revenue Code; or*

*(iii) a transfer of title to real property from a subsidiary business entity to its parent business entity for no consideration, nominal consideration or consideration that comprises only the issuance, cancellation, or surrender of a subsidiary's ownership interest, where the parent business entity:*

*1. previously owned the real property;*

*2. currently owns the ownership interest of the subsidiary and has owned that ownership interest for a period greater than 18 months; or*

*3. acquires the ownership interest of a subsidiary business entity which has been in existence and has owned the real property for a period of 2 years.*

**NOTE:** Until the early 1980's, corporations could avoid recordation and transfer taxes with the following steps: 1. Corporation A would deed property to its wholly-owned subsidiary (exempt). 2. Corporation A would sell its stock in the subsidiary to Corporation B (exempt). 3. The subsidiary would deed the property to its new parent, Corporation B (exempt). The statute was amended to include the provisions of TP §12-108(p)(2)(iii) which impose the 18 month and 2 year temporal conditions which effectively put an end to that practice.

**NOTE:** Pursuant to TP § 1-101(f), "**corporation**," when used in the Tax- Property Article includes more than just chartered corporations, but also includes associations, clubs, joint

stock companies, common-law business trusts, real estate investment trusts, "Massachusetts" trusts, and registered business trusts (now called statutory trusts). [*See* Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Aug. 5, 2004); Memorandum of Advice from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (June 11, 1998).]

**NOTE**: A question is sometimes raised as to whether this exemption would apply to a transfer between two limited liability companies that are wholly owned by the same individual. That would seem logical, but the wording of the statute limits this exemption to transfers between two or more subsidiary business entities wholly owned by the *"**same parent business entity**..."* An individual is not a business entity.

17. Transfers on Dissolution, Liquidation, etc.--TP § 12-108(q)

*An instrument of writing that transfers real property from a corporation, limited liability company, or partnership on its liquidation, dissolution, or termination is not subject to recordation tax, if the transferee is:*

> *(1) an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership;*
>
> *(2) a direct descendant or relative within 2 degrees of an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership counting by the civil law method; or*
>
> *(3) a stockholder, member, or partner who became a stockholder, member, or partner through gift or bequest from an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership.*

**NOTE:** The exemption applies even if the shareholders, partners or members assume an outstanding mortgage of the dissolved entity.

**NOTE:** The recording clerk may require proof that appropriate articles of dissolution or termination have been filed at the SDAT before accepting that a deed in dissolution may be recorded without payment of recording taxes.

18. Land Installment Contract--TP § 12-108(r)

A land installment contract for the sale of residential property to a natural person (as described in RP § 10-101(b)) is not subject to recordation tax.

**NOTE:** Recording taxes are due on the deed given when the final installment is paid. Recording taxes may also be due if the buyer reconveys the property back to the seller (whether such instrument of reconveyance is called a "quitclaim," "release," or other title). [*See*

Memorandum of Advice from Julia M. Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Sept. 27,1991).]

19. Option Agreement--TP § 12-108(s)

An option agreement for the purchase of real property is not subject to recordation tax. Though not expressly set forth in the code, it is reasonable to extend that exemption to an option to lease, inasmuch as a leasehold is a lesser interest real property than fee simple.

**NOTE:** Whether an instrument of writing constitutes a true option, as opposed to a contract, is a question of fact that can only be determined by examining the instrument itself and the surrounding circumstances, including whether the option has been exercised. An option that has been exercised is no longer an option, but a contract of sale, which is taxable. Where there is uncertainty, the clerk may require the parties to submit a sworn affidavit confirming that an option presented for recording has not been exercised and that the holder of the option is under no contractual obligation to purchase.

20. Deed Consummating Recorded Contract of Sale--TP § 12-108(t)

A deed conveying title to real property is not subject to recordation tax if recordation tax was paid on a prior contract of sale between the same parties for the real property [which was recorded, to the extent of the "consideration payable" on which recordation tax was paid on the contract of sale].

21. Lease for 7 Years or Less--TP § 12-108(u)

A lease of 7 years or less (which is not required to be recorded under RP § 3-101), is not subject to recordation tax. *See* discussion in Section I.C.6 above on taxation of leases.

22. Articles of Merger--TP § 12-108(v)

*Articles of merger or other document which evidences a merger of foreign corporations are not subject to recordation tax if there is a transfer of real property:*

> *(1) from a parent corporation to its subsidiary corporation;*
>
> *(2) from a subsidiary corporation to its parent corporation where the parent corporation;*
>
> > *(i) previously owned the real property;*
> >
> > *(ii) owns the stock of the subsidiary and has owned that stock for a period greater than 18 months; or*
> >
> > *(iii) acquires the stock of a subsidiary corporation which has been in existence and has owned the real property for a period of 2 years; or*

*(3) from a corporation merging out of existence to its successor corporation where recordation tax and, if then required to have been paid, transfer tax were paid when the corporation merging out of existence acquired title to the real property.*

**NOTE:** "Articles of merger" and "documents which evidence the merger or consolidation of foreign corporations" are defined in TP § 12-101(c) and (d), respectively.

23. Articles of Consolidation--TP § 12-108(w)

Articles of consolidation or other documents that evidence a consolidation of foreign corporations are not subject to recordation tax if recordation tax and, if then required to have been paid, transfer tax were paid when the corporation consolidating to form a new corporation acquired title to the real property.

**NOTE:** "Articles of consolidation" and "documents which evidence the merger or consolidation of foreign corporations" are defined in TP § 12-101(b) and (d), respectively.

24. Termination of Cooperative Housing Corporation--TP § 12-108(x)

*(1) Except as provided in this subsection, an instrument of writing that transfers real property from a cooperative housing corporation on its termination to an owner of a cooperative interest in the cooperative housing corporation is not subject to recordation tax if the cooperative housing corporation consists of single residential units and was established on or before January 1, 1970.*

*(2) The exemption under paragraph (1) of this subsection does not apply to:*

*(i) the conversion of a cooperative housing corporation to a condominium regime; or*

*(ii) the transfer of property to a person who:*

*1. does not occupy the property transferred; or*

*2. has received the credit allowed under this section for another property transferred as part of the same corporate termination.*

*(3) The exemption under paragraph (1) of this subsection shall apply only in a county that:*

*(i) does not levy a county property transfer tax; or*

*(ii) has, by law, adopted an exemption from any local transfer tax for property as described in this subsection.*

**NOTE:** This exemption is rarely applicable these days.

25. Conversion to LLC—TP § 12-108(y)

*(1)(i) In this subsection the following words have the meanings indicated.*

*(ii) "Foreign general partnership", "foreign limited partnership", "foreign limited liability partnership", "foreign limited liability limited partnership", and "foreign joint venture" mean, respectively, a partnership, limited partnership, limited liability partnership, limited liability limited partnership, or joint venture organized or formed under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States.*

*(iii) "Predecessor entity" includes a:*

*1. Maryland general partnership or foreign general partnership;*

*2. Maryland limited partnership or foreign limited partnership;*

*3. Maryland limited liability partnership or foreign limited liability partnership;*

*4. Maryland limited liability limited partnership or foreign limited liability limited partnership;*

*5. Maryland joint venture or foreign joint venture; and*

*6. sole proprietorship.*

*(iv) "Sole proprietorship" includes an individual who owns an interest in real property in the individual's name.*

*(2) An instrument of writing that transfers title to real property from a predecessor entity or a trustee or nominee of a predecessor entity to a limited liability company is not subject to recordation tax if:*

*(i) 1. the members of the limited liability company are identical to the partners of the converting general partnership, limited partnership, limited liability partnership, or limited liability limited partnership;*

*2. the members of the limited liability company are identical to the joint venturers of the converting joint venture; or*

*3. the sole member of the limited liability company is identical to the converting sole proprietor;*

*(ii) each member's allocation of the profits and losses of the limited liability company is identical to that member's allocation of the profits and losses of the converting predecessor entity; and*

*(iii) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to a limited liability company.*

**NOTE:** To qualify for this exemption, each separate partnership must "convert" to a separate corresponding LLC.

26. Maryland Stadium Authority Affiliates--TP § 12-108(aa)

*An instrument of writing pursuant to which the Maryland Stadium Authority transfers title to, or creates a leasehold interest in, real property is not subject to recordation tax if the transferee or lessee is an Authority affiliate as defined in § 10-601 of the Economic Development Article*

27. Conversion of Real Estate Enterprise to LLC--TP § 12-108(bb)

*(1) In this subsection, "real estate enterprise" means a business conducted by one or more individuals who own real property, including a sole proprietorship or a tenancy by the entirety, and are principally involved in buying, selling, leasing, or managing real property.*

*(2) An instrument of writing that transfers title to real property from the individual or individuals conducting a real estate enterprise to a limited liability company is not subject to recordation tax if:*

*(i) the transfer is for no consideration other than the issuance of membership interests in the limited liability company;*

*(ii) the members of the limited liability company are identical to the partners of the conveying real estate enterprise;*

*(iii) each member's allocation of the profits and losses of the limited liability company is identical to that member's allocation of the profits and losses of the conveying real estate enterprise;*

*(iv) the transfer is part of a discontinuation of the real estate enterprise; and*

*(v) all real property owned by the individuals and used in the conduct of any real estate enterprise is being conveyed to a single limited liability company.*

*(3) An individual's other business interests unrelated to the real estate enterprise and unaffected by the title transfer to a limited liability company may not affect the individual's ability to claim the exemption from the recordation tax described in this subsection.*

**NOTE:** All properties of the converting "real estate enterprise" must be transferred into one LLC. The requirement that the enterprise be a "business conducted… principally [in real estate]" means there must have been some on-going transaction of a real estate business for a

period of time before the conversion. Six months is sufficient to establish this. However, because TP §12-108(y) now includes joint venture and sole proprietorship in the definition of "predecessor entity" without any requirement to conduct business in real estate, this exemption may be used less infrequently.

28. Transfer to Conservation Land Trust--TP § 12-108(cc)

*(1)(i) In this subsection the following words have the meanings indicated.*

*(ii) "Land trust" means a qualified conservation organization that:*

*1. is a qualified organization under § 170(h)(3) of the Internal Revenue Code and regulations adopted under that section; and*

*2. has executed a cooperative agreement with the Maryland Environmental Trust.*

*(iii) "Conservation easement" means a restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, described in § 2-118 of the Real Property Article.*

*(2) An instrument of writing conveying or assigning a conservation easement to a land trust is not subject to recordation tax.*

*(3) An instrument of writing conveying fee simple title to a land trust is not subject to recordation tax if the land trust files a declaration of intent that the land will be used:*

*(i) to assist in the preservation of a natural area;*

*(ii) for the environmental education of the public;*

*(iii) to conserve agricultural land and to promote continued agricultural use of the land;*

*(iv) generally to promote conservation; or*

*(v) for the maintenance of a natural area for public use or a sanctuary for wildlife.*

29. Transfers of real property from an estate--TP § 12-108(dd)

*An instrument of writing that transfers real property or an interest in real property from an estate is not subject to recordation tax as provided in § 9-105(c) of the Estates and Trusts Article.*

Estates and Trusts Article §9-105(c) provides as follows:

*(c) Taxes. --*

*(1) In this subsection, "consideration" does not include the amount of any obligation under a mortgage or deed of trust encumbering the transferred property.*

*(2) A recordation tax, transfer tax, or any other State or local excise tax may not be imposed on the transfer by a personal representative of property or an interest in property without consideration or on the recordation of an instrument executed by a personal representative that transfers property or an interest in property without consideration.*

30. Transfers of real property to or from a trust to beneficiaries--TP § 12-108(ee)

*An instrument of writing that transfers real property or an interest in real property to a trust or from a trust to one or more beneficiaries under the circumstances specified in § 14.5-1001 of the Estates and Trusts Article is not subject to recordation tax.*

**NOTE:** E&T Article 14.5-1001 makes clear that "trust" for the purposes of this exemption does not include a real estate investment trust or a statutory trust. Specifically, such a deed if for no consideration (and consideration does not include any mortgage or deed of trust encumbering the transferred property) is exempt from state and local recordation and transfer taxes if:

(a) The transfer is to a trust or

(b) The transfer is from a trust to one or more beneficiaries of the trust AND

- The transfer would be exempt under TP Title 12 or TP Title 13 if made directly by the grantor of the trust (e.g., if the grantee is a child of the trust grantor) or
- The transfer is made during the lifetime of the grantor of the trust and the trustee of the trust originally acquired the property for adequate consideration or
- The transfer is made to a beneficiary of a revocable trust as a result of the death of the settlor of the trust.

31. Residential real property from a CCDFI--TP § 12-108(ff)

*An instrument of writing that transfers residential real property from a certified community development financial institution [CCDFI] to the immediately preceding mortgagor or grantor of the property under the circumstances specified in § 7-105.1 of the Real Property Article and a purchase money mortgage or purchase money deed of trust related to that transfer are not subject to recordation tax.*

**NOTE**: CCDFIs are private financial institutions that are dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people

and communities join the economic mainstream. This exemption was enacted to assist families in financial crisis to stay in their homes.

32. Specified transfers of residential real property--TP § 12-108(gg)

*An instrument of writing that transfers residential real property is not subject to recordation tax if:*

> *(1) the property is subject to a purchase money mortgage or purchase money deed of trust;*
>
> *(2) the mortgagor filed a petition for bankruptcy under Title 11, Chapter 7 of the United States Code;*
>
> *(3) the mortgagor filed with the bankruptcy court a statement of intention to surrender the property;*
>
> *(4) the property was the principal residence of the mortgagor prior to the surrender of the property in bankruptcy; and*
>
> *(5) the property is transferred from the mortgagor to the holder of the purchase money mortgage or purchase money deed of trust.*

33. Racing facility sites--TP § 12-108(hh)

An instrument of writing is not subject to recordation tax if the instrument of writing transfers or grants a security interest in property that is:

> (i) located at or within the Laurel Park racing facility site, Pimlico racing facility site, or Pimlico site and the transfer or grant is by any combination of project entities, MJC Entities, Baltimore City, an entity designated by Baltimore City, Anne Arundel County, or an entity designated by Anne Arundel County; or
>
> (ii) the property identified as the Bowie Race Course Training Center under § 11-519 of the Business Regulation Article that is transferred by the owner of the property to a government entity.
>
> In this subsection, (1) "MJC Entities" means the Maryland Jockey Club of Baltimore City, Inc., Laurel Racing Association Limited Partnership, Laurel Racing Association, Inc., and TSG Developments Investments, Inc., and (2) "MJC Entities" includes an affiliate, an assignee, a designee, a successor, or a transferee of an MJC Entity.

34. Transfer on Death Deed--TP § 12-108(ii)

> Effective on October 1, 2026, the Real Property Article was amended to include Sections 14-1001 through 1014 known as the Maryland Transfer-On-Death-Deed Act. Refer to the statute for a full description. A transfer-on-death deed is an expedited way to transfer property that completely avoids probate. The deed is signed and

recorded by the property owner before their death; transfer of ownership is automatic upon death. This operates very much like a life estate, the major difference being that the transferor can revoke the deed at any time by another recording. If the transferor sells the property before their death, then the transfer-on-death deed becomes ineffective. The transfer-on-death deed supersedes anything to the contrary in the transferor's will.

Other sections of the Code affected by the new act were amended as well, including TP § 12-108(ii) which provides that a transfer on death deed is not subject to the recordation tax if the property "is a primary or a secondary residence of the transferor." Though not specified in the statute, it is a logical conclusion that a transfer on death deed would be treated as a no-consideration transfer and therefore not taxable irrespective of the character of the property, much like a no-consideration personal representative's deed from an estate is exempt under TP § 12-108(dd).

### M. Other Exemptions from Recordation Tax

1. Partial exemption--TP § 12-103(b)(2)

A county may provide for an exemption from the tax of a specified amount of the consideration payable on the conveyance of owner-occupied residential property if the buyer intends to use the property as the buyer's principal residence by actually occupying the residence for at least 7 months of a 12-month period.

**NOTE:** Montgomery County and Baltimore City have enacted laws to implement this exemption. Refer to local ordinances and clerks' office on the specifics.

2. Complete exemption--TP § 12-103(b)(3)

> [A] county . . . may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:
>
> (i) 1. the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and
>
> 2. the residence will be occupied by the grantee as the grantee's principal residence; **or**
>
> (ii) 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and
>
> 2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

3. Transfers from the federal government –

Recordation tax must be waived to the extent liability for recordation tax is allocated to the federal government as the grantor (because a state cannot tax the federal government) [*see* Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Feb. 13, 2002); Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (May 21, 1999)]. *See* TP §12-108(a) regarding transfers to governmental entities.

4. Estate transfer--ET § 9-105(c)

To the extent a personal representative is conveying property as a distribution in kind for no consideration, no recordation tax may be imposed on the deed

5. Electric cooperative—Corp. & Ass'ns § 5-649(c)

An electric cooperative (formed under subtitle 6 of CA Title 5 or a foreign corporation doing business in Maryland under that subtitle is not subject to excise or income tax, other than a $100 annual fee.

6. Condominium documents--RP § 11-102(c) –

The following condominium documents are exempt from recordation tax:

(i) declaration of condominium;

(ii) bylaws of the condominium (to the extent recordable);

(iii) condominium plat; and

(iv) statement of lien (pursuant to RP § 11-110(d) which incorporates the provisions of the Maryland Contract Lien Act [subtitle 2 of RP Title 14] – *see* RP § 14-203(h)&(j) for requirements and form).

7. Bankruptcy –11 U.S.C. 1146(c)

A deed conveying title pursuant to a confirmed plan in bankruptcy is exempt from recordation and transfer taxes. Such a deed should recite that the conveyance is in furtherance of a confirmed plan in bankruptcy and a copy of bankruptcy court order should be presented to the clerk with the deed. *See* Advice to Clerks by Julia Freit, Asst Atty Gen. August 12, 1987.

## N. Transfers of Controlling Interests

For many years, a transfer of property could be effected without payment of recordation and transfer taxes by conveying equity interests in the owner of the property, whether stock in a corporation, membership interest in an LLC, partnership interests in a partnership or beneficial interest in a statutory trust. In response to this practice, in 2007 the General Assembly enacted TP §12-117 which imposed the recordation tax on the transfer of the "controlling interest," which is more than 80% of the equity interests in a "real property entity," which tax is paid at the SDAT. Refer to the statutory language for details on the applicability, how the tax is imposed and the exemptions. TP §13-103 extends the State and County transfer taxes to transfers of controlling interests. After the enactment of these statutes, the practice of transferring equity interests to avoid recordation and transfer taxes largely stopped, and the parties that otherwise would have transferred controlling interests elected to effectuate their transfers by deed. At the time these code sections were enacted, the legislative findings included financial projections as to the extent of revenue expected to be generated by the transfer of controlling interests in real property entities. The revenue projections may have come to fruition, but they are included within the revenues from recordation and transfer taxes on deeds generally and are therefore indeterminable. Nonetheless, there are other reasons to transfer controlling interest in a real property entity, and from time-to-time questions arise regarding the applicability of exemptions. *See* TP §12-117(c) (applying the recordation tax exemptions in TP §12-108 to the transfer of controlling interests) and TP §13-207 (applying the transfer tax exemptions in TP §12-108 to the transfer of controlling interests). Note that the SDAT has issued regulations regarding the recordation and transfer taxes on the transfer of controlling interests. See COMAR 18.13.02.01 *et seq*.

## O. Apportionment of Consideration or Debt Among Different Jurisdictions

Where there is property in different counties in Maryland, the instruments are taxed in each county based upon the portion of the consideration or secured debt that bears the same ratio to the total debt secured as the value of the mortgaged property located in the county bears to the total value of all the properties being mortgaged. 50 Opinions of the Attorney General 441, 443 (1965); Tax-Property Article, §12-110(b). Instruments that include out-of-state properties are taxed in Maryland on that figure which bears the same ratio to the principal amount of debt secured by the mortgage as the value of the mortgaged property located in Maryland bears to the total value of all the property (in state and out of state) being mortgaged. Tax-Property Article, §12-105(a). Appraised values or assessed values may be used so long as the same type of value (appraised or assessed) is used consistently. *See* Letter of advice to A. James Smith dated March 4, 1985.

The following are the steps to follow in apportioning the consideration or debt.

1. Determine total "consideration payable" for the instrument

- or -

Determine total "debt secured by" the instrument (to the extent incurred – *see* TP § 12-105(f), *but see* TP § 12-105(f)(4) [may pay on maximum])

2. Where there is out-of-state property involved, reduce the consideration or debt to the percentage of the "consideration payable" or "debt secured" apportioned to the Maryland real property and Maryland non-exempt personal property –

> TP § 12-105(a)(1): For a deed . . . transferring title to real property located partly in the State, the recordation tax applies to the consideration payable . . . in the same ratio that the value of the real property that is located in the State bears to the value of the entire property.
>
> TP § 12-105(a)(1): For a . . . deed of trust, or mortgage transferring title to real property located partly in the State, the recordation tax applies to . . . the principal amount of the debt secured in the same ratio that the value of the real property that is located in the State bears to the value of the entire property
>
> TP § 12-105(a)(2): For a security agreement covering personal property that is not exempt under [TP] § 12-108(k) and is located partly in this State, recordation tax applies to the principal amount of the debt secured in the same ratio that the value of the nonexempt personal property located in this State bears to the value of the entire personal property
>
> TP § 12-105(a)(3): For transactions that involve instruments of writing described in both paragraphs (1) and (2) of this subsection, the recordation tax applies to . . . the principal amount of the debt secured in the same ratio that the sum of the values of the real property and the nonexempt personal property located in this State bears to the value of the entire property.

3. Apply any exemptions available under TP § 12-108 (*see Blumenthal v. Clerk of Circuit Court*, 278 Md. 398, 365 A.2d 279 (1976) (recordation tax is one unitary tax imposed by State, even though counties set different rates).

> For most cases, this will be either a purchase money exemption (where there is collateral in a different county in addition to the property being transferred) or a refinance exemption (where the financing transaction involves properties in several counties).

4. Apportion the remaining non-exempt "consideration payable" or "debt secured" between counties in accordance with TP § 12-110(b)

5. To the apportioned "consideration payable," apply any exemption enacted by the applicable county pursuant to TP § 12-103(b)(2) or (3)

Also, apply any of the other "exemptions" described above.

6. Apply applicable county rate to non-exempted amount apportioned to each county to determine tax payable in such county in accordance with TP § 12-110(b)(i).

## II. State Transfer Tax

### A. Imposition

The state transfer tax is an excise tax imposed by the State for the privilege of recording an instrument in the Land Records which conveys title to, or a leasehold interest in, real property. The state transfer tax is imposed by the State, collected by the Clerks of the Circuit Courts, and remitted to the Comptroller for deposit into a special fund allocated as set forth in TP § 13-209.

For purpose of the state transfer tax, "**instrument of writing**" means "a written instrument that conveys title to, or a leasehold interest in, real property" (and "does not include a mortgage, deed of trust, or other contract that creates an encumbrance on real property") [TP § 13-101(c)].

### B. Rate

1. Generally – TP § 13-203(a)

0.5% of the consideration payable for each instrument of writing

2. First-Time Maryland Home Buyers –

TP § 13-203(b) provides for a reduction of the rate to 0.25% of the consideration payable for certain instruments of writing transferring property to "first-time Maryland home buyers," and such reduced state transfer tax is payable entirely by seller [*see also* RP § 14-104(c)(2)]

Each "grantee" (meaning each new record owner of the property [*see* Memorandum of Advice from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Aug. 21, 1996)]) must provide one or the other of the two kinds of required affidavits (must be clear as to which each grantee is giving [*see* Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 5, 2000)]) – either:

(i) an affidavit that the grantee is a "first-time Maryland home buyer" who will occupy the property as the grantee's principal residence (at least one grantee must provide this affidavit),

**or**

(ii) an affidavit that the grantee is just on title to join in a purchase money mortgage and will not be occupy the property as such grantee's principal residence.

If any of the property will be used for a purpose other than "principal residence" (such as a farm or a duplex in which the second unit will be rented out), the rate reduction is unavailable [*see* Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 26, 2004)].

A member-tenant of a housing cooperative has not thereby owned residential real property [*see* CA § 5-6B-16]

TP § 13-203(b) –

(1) In this subsection, "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence.

(2) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in [TP] § 12-108(i) for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(3) Notwithstanding any other provision of law, for a sale of improved residential real property to a first-time Maryland home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing, and the transfer tax shall be paid entirely by the seller.

(4) To qualify for the exemption under paragraph (3) of this subsection, each grantee or an agent of the grantee shall provide a statement that is signed under oath by the grantee or agent of the grantee stating that:

(i) 1. the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and

2. the residence will be occupied by the grantee as the grantee's principal residence; or

(ii) 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this article for the property; and

2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) A statement under paragraph (4) of this subsection by an agent of a grantee shall state that the statement:

(i) is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and

(ii) is true to the best of the knowledge, information, and belief of the agent.

3. Transaction Including More Than Real Property

As noted above with respect to recordation taxes, in a sale of business assets that includes both real property and other types of property, the consideration paid for the other types of property are not subject to the state transfer taxes. Shelter Senior Living IV, LLC v. Baltimore County, Maryland, et al., 251 Md. App.129 (2021)

**C. Calculation of Consideration Payable**

TP § 13-203(a) – as with the recordation tax, the consideration payable includes the amount of any mortgage or deed of trust assumed by the grantee.

TP § 13-205(d)(1) – as with the recordation tax, the consideration payable is fixed at "the value of the real property determined by [SDAT] at the date of finality immediately before the date of transfer" for "conveyances that transfer the real property of a corporation to its stockholders, the real property of a limited liability company to its members, or the real property of a partnership to its partners" unless exempted by § 13-207(a)(9), (10), (15), and (16).

Multiple properties –

a) Although there is no provision in subtitle 2 of TP Title 13 comparable to TP § 12-105(a)(1) for transfers of property partly within and partly without the State, it is presumed that a similar allocation of the consideration based on the ratio of the value of property located in Maryland to the total value of all property transferred is appropriate,

b) Although there is no provision in subtitle 2 of TP Title 13 comparable to TP § 12-110(b) for transfers of property in more than one Maryland county, one could presumably perform a similar allocation for the state transfer tax. (Because most of the funds collected from the state

transfer tax go to the Comptroller, this allocation only matters as to the percentage thereof retained by each Clerk pursuant to CJP § 2-213.)

Leases – "consideration payable" determined in the same manner as determined for recordation tax – TP § 13-205(a) is substantively the same as TP § 12-105(c) [ground lease]; TP § 13-205(b) is substantively the same as TP § 12-105(d) [regular lease]; and TP § 13-205(c) is substantively the same as TP § 12-105(e) [instrument that discloses an unrecorded lease]

**D. Allocation of Liability**

Generally, shared equally (0.25% for the grantor, 0.25% for the grantee), but (1) if the grantee is a "first-time Maryland home buyer," 0.25% for the grantor and no liability for the grantee; and (2) if a lease, the lessee is ultimately liable for payment of all of the state transfer tax due thereon.

RP § 14-104 –

> (b) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of . . . any State . . . transfer tax shall be shared equally between the grantor and grantee. . . .
>
> (c) . . .
>
> (2) The entire amount of State transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence.
>
> (3) This subsection does not apply to tax sales of property under [TP] Title 14, Subtitle 8.

TP § 13-203(b)(3) –

> Notwithstanding any other provision of law, for a sale of improved residential real property to a first-time Maryland home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing <u>and the transfer tax shall be paid entirely by the seller.</u>

TP § 13-205(c)(3) –

> Subject to [TP] § 13-102 [transfer tax may be allocated by agreement], the lessee is chargeable with transfer tax on the original lease. If a lessee fails or refuses to pay transfer tax after a demand is made, the party offering the original lease for recordation may:

(i) pay the recordation tax [*as in statute, but should be "transfer tax"*]; and

(ii) sue the lessee to recover the amount of transfer tax paid, with interest from the date of payment of transfer tax.

**E. Exemptions**

1. Imported from TP § 12-108 per TP § 13-207(a)

(1) § 12-108(a) (Transfer to government or public agency);

(2) § 12-108(c) (Transfer between relatives and domestic partners);

(3) § 12-108(d) (Transfer between spouses and domestic partners);

(4) § 12-108(e) (Supplemental instrument);

(5) § 12-108(f) (Previously recorded instrument);

(6) § 12-108(l) (Judgments);

(7) § 12-108(n) (Order of satisfaction);

(8) § 12-108(o) (Participation agreement);

(9) § 12-108(p) (Transfer of property between related business entities);

(10) § 12-108(q) (Corporate or partnership conveyance);

(11) § 12-108(r) (Land installment contracts);

(12) § 12-108(s) (Options to purchase real property);

(13) § 12-108(t) (Deed for prior contract of sale);

(14) § 12-108(u) (Leases of 7 years or less);

(15) § 12-108(v) (Mergers);

(16) § 12-108(w) (Consolidations);

(17) § 12-108(x) (Cooperative housing corporations);

(18) § 12-108(y) or (bb) (Transfer from predecessor entity or real estate enterprise to limited liability company);

(19) § 12-108(z) (Transfer from a Class I Railroad Carrier to its wholly owned limited liability company);

(20) § 12-108(aa) (Transfers involving certain Maryland Stadium Authority affiliates);

(21) § 12-108(cc) (Certain transfers to land trusts);

(22) § 12-108(dd) (Transfer from an estate);

(23) § 12-108(ee) (Transfer to a trust and transfer from a trust under specified circumstances);

(24) § 12-108(ff) (Transfer from a certified community development financial institution); or

(25) § 12-108(gg) (Transfer of principal residence surrendered in bankruptcy).

(26) § 12-108(hh) (Transfer of real property within the Laurel Park racing facility site, Pimlico racing facility site, Pimlico site, or Bowie Race Course Training Center property).

(27) § 12-108(ii) (Transfer on death deed).

2. Agricultural land -- TP § 13-207(b)

(1) An instrument of writing that transfers agricultural land that the transferee is acquiring for the purpose of maintaining the character of the land as agricultural land is not subject to the transfer tax, if the transferee:

(i) is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code [tax exempt status for charitable, religious, educational, scientific, amateur athletic and literary organizations];

(ii) is incorporated, qualified, or registered to do business in the State [of Maryland];

(iii) has as its principal purpose the preservation of agricultural land, including the temporary ownership of an interest in land for the purpose of preserving the character of the land as agricultural land; and

(iv) has been certified by the Department as meeting the requirements of this paragraph.

If a transferee notifies the Department at least 7 days before the date of transfer of property to the transferee, the Department shall notify, in writing, the clerk of the circuit court for the county in which the property being transferred is located of the name and address of each transferee that has been certified under paragraph (1) of this subsection.

3. From governmental entity-- TP § 13-207(c)

An instrument of writing is not subject to the state transfer tax if the instrument of writing transfers property <u>from</u>:

(1) the United States;
(2) the State;
(3) an agency of the State; or
(4) a political subdivision in the State

**NOTE:** In 1985 Article 81 §278A of the Annotated Code of Maryland was recodified into the Tax Property Article. The former section exempted from the state transfer tax "conveyances ***by*** or to" a governmental entity. However, during the recodification process apparently a mistake was made and the exemption of a transfer from a governmental agency was dropped in the language of TP § 13-207(a) which incorporated the more limited recordation tax exemptions in TP § 12-108(a). It took until 2019 for corrective action to be taken with the enactment of TP § 13-207(c) (Ch. 290, SB 780) to make clear that transfers ***by*** a governmental agency to a private party may also be exempt from the state transfer tax. Counties that collect a transfer tax and that follow the state transfer tax exemption may similarly be prohibited from collecting a transfer tax when a governmental entity conveys property to a private entity depending on the enabling legislation that authorize that county to collect a local transfer tax. *See* discussion below on home rule counties and charter counties.

**NOTE:** This exemption applies only to the State transfer tax. It does not apply to the State recordation tax or to any county transfer tax that does not follow the state exemption.

4. Estate Transfer -- ET § 9-106(c)

   As with recordation tax, to the extent a personal representative is conveying property as a distribution in kind for no consideration, no state transfer tax can be imposed on the deed

5. Electric cooperative -- CA § 5-649(c)

   As with the recordation tax, to the extent liability for state transfer tax is allocated to an electric cooperative, there is an exemption from the tax.

6. Condominium documents-- RP § 11-102(c)

   As with the recordation tax, the following condominium documents are exempt from state transfer tax:

   (i) Declaration of Condominium;

   (ii) Bylaws of the Condominium (to the extent recordable);

   (iii) Condominium Plat; and

   (iv) Statement of Lien (pursuant to RP § 11-110(d) which incorporates the provisions of the Maryland Contract Lien Act [subtitle 2 of RP Title 14] – *see* RP § 14-203(h) & (j) for requirements and form) [note: a statement of lien would not be subject to state transfer tax anyway].

# III. County Transfer Taxes

## A. Allocation of Liability for County Transfer Tax

Pursuant to RP § 14-104(b), except with respect to (i) mortgages or deeds of trust, or (ii) transfers to first-time Maryland home buyers, it is presumed (in the absence of agreement to the contrary) that liability for any county transfer tax will be shared equally between the grantor and grantee.

Pursuant to RP § 14-104(c)(1), unless there is an express agreement to the contrary, the grantor shall pay all county transfer tax that may be due if the transferred property is improved residential real property being sold to a first-time Maryland home buyer who will occupy the property as a principal residence

For allocation of liability for county transfer tax with respect to mortgages and deeds of trust in Prince George's County, please see the Prince George's County Code.

## B. Transfers of Properties in More than One County

TP § 13-406 – In a transfer of property located in 2 or more counties, the county transfer tax of the counties where the property that is transferred is located is apportioned as required under [TP] § 12-110(b).

## C. Taxation of Conveyances on Dissolution

For conveyances from a corporation to its stockholders, a limited liability company to its members, or a partnership to its partners on liquidation, dissolution or termination, TP § 13-405(b) mandates that the SDAT-assessed value of the property be used as the "consideration payable" (or "consideration paid or to be paid") for purposes of county transfer taxes, just as under TP § 12-105(g)(1) for recordation tax and TP § 13-205(d)(1) for state transfer tax (subject to the exemptions provided by TP § 13-405(c)).

## D. Collection of County Transfer Taxes by SDAT

Collection of county transfer taxes by SDAT on articles of consolidation or articles of merger is mandated by TP § 13-404(a), but limited by the exemptions set forth in TP § 13-404(b).

## E. Mandatory Exemptions for All County Transfer Taxes

1. Spouses and domestic partners-- TP § 13-403

An instrument of writing that transfers property between spouses or former spouses or between domestic partners or former domestic partners in accordance with a property settlement, divorce decree, or dissolution of a domestic

partnership is not subject to a county transfer tax. To qualify as a domestic partner under this section, an individual shall submit evidence of a domestic partnership. To qualify as a former domestic partner under this section, an individual shall submit evidence of dissolution of a domestic partnership. The exemption for transfers between domestic partners or former domestic partners applies only to an instrument of writing for residential property.

2. Maryland Stadium Authority-- TP § 13-403.1

An instrument of writing pursuant to which the Maryland Stadium Authority transfers title to, or creates a leasehold interest in, real property if the transferee or lessee is an Authority affiliate [as defined in the Economic Development Article § 10-601] is not subject to any county transfer tax.

ED § 10-601(c) defines "Authority affiliate" as "means a for-profit or nonprofit entity in which the Authority directly or indirectly owns any membership interest or equity interest."

3. Certain Business Transactions Filed with County or SDAT-- TP § 13-404

SDAT shall collect county transfer tax at the rate set by each county for articles of consolidation or articles of merger filed with the SDAT as required by § 3-107, § 4A-703, § 9A-903, or § 10-208 of the Corporations and Associations Article, or other document filed with the clerk of the circuit court of a county or the SDAT which evidences a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships.

**Exceptions to county transfer tax**

Articles of merger or other document which evidences a merger of foreign corporations are not subject to county transfer tax if the articles of merger or other document which evidences a merger of foreign corporations are for a transfer of real property from:

(i) a parent corporation to its subsidiary corporation;

(ii) a subsidiary corporation to its parent corporation where the parent corporation:

1. previously owned the real property;

2. owns the stock of the subsidiary and has owned that stock for a period greater than 18 months; or

3. acquires the stock of a subsidiary corporation which has been in existence and has owned the real property for a period of 2 years;

(iii) a corporation merging out of existence to its successor corporation where recordation tax and, if then required to have been paid, transfer tax were paid when the corporation merging out of existence acquired title to the real property; or

(iv) a corporation merging out of existence pursuant to reorganizations described in § 368(a) of the Internal Revenue Code.

(2) Articles of consolidation or other document which evidences a consolidation of foreign corporations are not subject to county transfer tax if the articles of consolidation or other document which evidences a consolidation of foreign corporations are for a transfer of real property from a consolidating corporation to its successor where recordation tax and, if then required to have been paid, transfer tax were paid when the corporation consolidating acquired title to the real property.

4. Transfers to stockholders, partners and members- TP § 13-405

**In general**

(a) Except as provided in subsection (c) of this section, county transfer tax applies to conveyances that transfer the real property of a corporation to its stockholders, a limited liability company to its members, or a partnership to its partners on:

(1) liquidation;

(2) dissolution; or

(3) termination.

**Tax on value of real property at the date of finality before date of transfer**

(b) For a conveyance that is taxable under this section, county transfer tax applies to the value of the real property determined by the Department at the date of finality immediately before the date of transfer.

**Exceptions**

(c) A corporate, limited liability company, or partnership transfer as described in TP § 12-108(p), (q), (v), (w), (y), and (bb) of is not subject to the county transfer tax.

5. Apportionment TP §13-406.

In a transfer of property located in 2 or more counties, the county transfer tax of the counties where the property that is transferred is located is apportioned as required under TP § 12-110(b).

6. Conservation Easement--TP § 13-410

An instrument of writing that is exempt from recordation tax under TP § 12-108(cc) (transfers of conservation easements to land trusts) is not subject to the county transfer tax

7. Transfers from the federal government –

As with the recordation tax and state transfer tax, to the extent liability for county transfer tax is allocated to the federal government as the grantor, the county must waive that amount of the county transfer tax otherwise due (because a county cannot tax the federal government).

8. Estate Transfer--ET § 9-105(c)(2)

As with recordation tax and state transfer tax, to the extent a personal representative is conveying property as a distribution in kind for no consideration, no county transfer tax can be imposed on the deed.

9. Electric Cooperative--CA § 5-649(c)

As with the recordation tax and state transfer tax, to the extent liability for county transfer tax is allocated to an electric cooperative, there is an exemption from the tax.

10. Condominiums--RP § 11-102(c)

As with the recordation and state transfer taxes, the following condominium documents are exempt from any county transfer tax:

(a) Declaration of Condominium;

(b) Bylaws of the Condominium (to the extent recordable);

(c) Condominium Plat; and

(d) Statement of Lien (pursuant to RP § 11-110(d) which incorporates the provisions of the Maryland Contract Lien Act [subtitle 2 of RP Title 14] – *see* RP § 14-203(h)&(j) for requirements and form)

As noted above with respect to recordation taxes, in a sale of business assets that includes both real property and other types of property, the consideration paid for the other types of property are not subject to the state transfer taxes. Shelter Senior Living IV, LLC v. Baltimore County, Maryland, et al., 251 Md. App.129 (2021)

## F. Transaction Including More Than Real Property

As noted above, in a sale of business assets that includes both real property and other types of property, the consideration paid for the other types of property are not subject to the county transfer taxes. S*helter Senior Living IV, LLC v. Baltimore County, Maryland, et al.*, 251 Md. App.129 (2021)

## G. Prince George's County Transfer Tax

Note that only Prince George's County imposes its county transfer tax on deeds of trust and mortgages

## H. Baltimore City Yield Tax

Baltimore City imposes an additional "Yield Tax" on all transactions "whose value exceeds" $1,000,000. The Yield Tax is a function of the recordation tax and the City transfer tax actually collected. The amount of the Yield Tax is 15% of the recordation tax collected and 40% of the City's transfer tax collected. Baltimore City Code, Article 28 §17.1. If no recordation tax or City transfer tax is due, then there is no Yield Tax. Note that if the value of the transaction exceeds $1,000,000 but the taxable base is less than $1,000,000, then the Yield Tax still applies. For example, an existing loan of $1,200,000 with an outstanding balance of $900,000 is refinanced at $1,200,000. Under TP §12-108(g) only the new money of $300,000 is subject to the recordation tax, but since the value of transaction exceeds $1,000,000, the Yield Tax applies to the recordation tax collected on $300,000.

## I. Mandatory Exemptions for Home Rule Counties –

TP § 13-402.1(b)(2) – county transfer tax imposed by a home-rule county "does not apply to an instrument of writing exempt from the State transfer tax under [TP] § 13-207."

NOTE: As of the date of this Guide, the following jurisdictions are "home-rule" counties under Article XI-F of the Maryland Constitution:

Allegany County
Caroline County
Charles County
Kent County
Queen Anne's County

Worcester County

## J. Charter Counties

Other than the mandatory exemptions described above, a charter county may impose and/or limit its county transfer tax within whatever bounds are set forth in its charter. In addition to the City of Baltimore (which has both charter provisions within the Maryland Constitution and a separate charter pursuant to Article XI-A of the Maryland Constitution), as of the date of this Guide, the following jurisdictions are "charter" counties under Article XI-A of the Maryland Constitution:

Anne Arundel County
Baltimore County
Cecil County
Dorchester County
Frederick County
Harford County
Howard County
Montgomery County
Prince George's County*
Talbot County
Wicomico County

## K. Code Counties –

To the extent a code county has a county transfer tax, it is pursuant to a public local law enacted by the State. Then, to the extent authorized in such public local law, the county commissioners may refine the county transfer tax by adopting ordinances pursuant to such public local law

As of the date of this Guide, the following jurisdictions are "code" counties as defined in Article XI-F, § 1 of the Maryland Constitution:

Calvert County
Carroll County
Cecil County
Garrett County
Frederick County
St. Mary's County
Somerset County
Washington County

# IV. APPENDIX **Recordation and Transfer Tax Rates in Maryland**

***Collected and Explained by Edward J. Levin, Gordon Feinblatt LLC***

**This information is as of November 2025. Transfer and recordation tax rates are subject to change, so you should always verify the latest information with the clerk of the applicable circuit court. Additionally, there are recording fees on the recordation of instruments in the land records. Furthermore, there are a number of exemptions to recordation and transfer taxes that are set forth in Md. Code, Tax-Property Article §§12-108 and 13-207 as well as in the codes of the local jurisdictions.**

In connection with the recordation of documents among the land records of Baltimore City and the 23 counties in Maryland (collectively called the "jurisdictions"), taxes are generally required to be paid before documents are accepted. For example, deeds are subject to three separate taxes, except in Baltimore City where deeds for sales of property in excess of $1 million are subject to four taxes. The taxes are:

1. Recordation tax imposed by Title 12 of the Tax-Property Article of the Maryland Code. Although State law establishes and imposes the recordation tax, the rate of recordation tax is set by each individual jurisdiction. Unless there is an applicable exemption, a recordation tax is applicable to every "instrument of writing," which term when used in connection with recordation tax includes deeds, contracts, leases, certain assignments, and security instruments, such as mortgages and deeds of trust. Recordation taxes are formally expressed as a specific dollar amount on each $500 (or portion of $500) of the consideration paid or debt secured. For ease of understanding the recordation tax, but at the expense of precision in some cases, the chart below expresses the recordation tax as a percentage of the consideration paid or debt secured.

2. State transfer tax imposed by Title 13 of the Tax-Property Article of the Maryland Code. This is a State imposed tax at the State-set rate of .5% of the consideration. It is imposed on deeds and other instruments that trigger recordation tax, except that the State transfer tax is not applicable to security instruments, including mortgages and deeds of trust. The State transfer tax is .25% of the consideration when the buyer is a first-time Maryland homebuyer, and in such cases the State transfer tax must be paid by the seller.

3. Local transfer tax imposed, if at all, by the applicable county or Baltimore City. State law permits the counties and Baltimore City to impose their own transfer taxes, and most, but not all, have done so. Where there is a local transfer tax it is imposed on deeds and other instruments of writing other than security instruments, except in Prince George's County where the local transfer tax is also imposed on security instruments.

4. Baltimore City Yield Tax. In Baltimore City for transactions whose value exceeds $1 million there is also a yield tax. The yield tax is a surcharge in an amount equal to 15% of the recordation tax collected and 40% of the Baltimore City transfer tax collected. To

the extent that there is an exemption for either the recordation tax or the Baltimore City transfer tax, then there is no yield tax surcharge on the exempted amount. The chart below includes the yield tax in the calculations of the recordation tax and the local transfer tax in Baltimore City.

The first chart below was prepared to set forth in one place the taxes on instruments of writing that are recorded in the Maryland land records. Because of the intricacies of these taxes and certain of the exemptions to them, the chart is heavily footnoted. Additionally, Titles 12 and 13 of the Tax-Property Article of the Maryland Code and most of the codes for the jurisdictions contain other exemptions, which may reduce or eliminate one or more of these taxes in applicable situations. Also, under the U.S. Bankruptcy Code, a transfer pursuant to a confirmed Chapter 11 plan is exempt from state and local recordation and transfer taxes.

Payment of these taxes may be made as the parties to the instruments may determine, except that the State transfer tax where there is a first-time homebuyer must be paid by the seller, and that rule is applicable in certain counties that apply the same type of exemption to their local transfer tax.

## Recordation and Transfer Tax Rates in Maryland

| COUNTY (CITY) | RECORDATION TAX[1] | LOCAL TRANSFER TAX[2] | STATE TRANSFER TAX[3] | TOTAL FOR DEEDS[4] |
|---|---|---|---|---|
| Allegany | .7% | .5%[5] | .5% | 1.7% |
| Anne Arundel | .7% | 1.0% or 1.5% if consideration is $1MM or more | .5% | 2.2% or 2.7% if consideration is $1MM or more |
| Baltimore City | 1.0% or 1.15% if transaction size exceeds $1MM[6] | 1.5% or 2.1% if transaction size exceeds $1MM[7] | .5% | 3% or 3.75% if transaction size exceeds $1MM |
| Baltimore Co. | .5% | 1.5%[8] | .5% | 2.5% |
| Calvert | 1.0% | -0- | .5% | 1.5% |
| Caroline | 1.0% | .5%[9] | .5% | 2% |
| Carroll | 1.3% | -0- | .5% | 1.8% |
| Cecil | .82% | .5%[10] | .5% | 1.82% |
| Charles | 1.4% | .5% | .5% | 2.4% |
| Dorchester | 1.0% | .75%[11] | .5% | 2.25% |
| Frederick | 1.4% | -0- | .5% | 1.9% |
| Garrett | .7% | 1.0%[12] | .5% | 2.2% |
| Harford | .66% | 1.0% | .5% | 2.16% |
| Howard | .5% | 1.25% | .5% | 2.25% |
| Kent | .66% | .5% | .5% | 1.66% |
| Montgomery | See chart below[13] | 1.0%[14] | .5% | See chart below |
| Prince George's | .55% | 1.4%[15] | .5% | 2.45% |
| Queen Anne's | .99% | .5%[16] | .5% | 1.99% |
| St. Mary's | .8% | 1%[17] | .5% | 2.3% |
| Somerset | .66% | -0- | .5% | 1.16% |
| Talbot | 1.2% | 1%[18] | .5% | 2.7% |
| Washington | .76% | .5% [19] | .5% | 1.76% |
| Wicomico | .7% | -0- | .5% | 1.2% |
| Worcester | .66% | .5%[20] | .5% | 1.66% |

## Montgomery County Recordation Tax

As a result of Bill 17-23, as of October 1, 2023, recordation taxes in Montgomery County are:

| Consideration* | Rate of Recordation Tax on this portion of the debt | Amount of Recordation Tax on this portion of the debt | Total amount of Recordation Tax on the top amount of the debt shown on the left |
|---|---|---|---|
| First $500,000 | $4.45/$500 = .89% | $4,450 | $4,450 |
| $500,000.01 to $600,000 | $6.75/$500 = 1.35% | $1,350 | $5,800 |
| $600,000.01 to $750,000 | $10.20/$500 = 2.04% | $3,060 | $8,860 |
| $750,000.01 to $1,000,000 | $10.78/$500 = 2.156% | $5,390 | $14,250 |
| $1,000,000.01 and over | $11.35/$500 = 2.27% | | |

* The first $100,000 of the consideration payable on the conveyance of any owner-occupied residential property is exempt from the recordation tax if the buyer is an individual and intends to use the property as the buyer's principal residence by actually occupying the residence for at least 7 months of the 12-month period immediately after the property is conveyed.

## Endnotes to Appendix

[1] Recordation tax rates are actually stated as $X per $500 of consideration, with the consideration rounded up to the nearest $500. This chart converts the recordation tax to a percentage for each county. If the base is not evenly divisible by $500, to calculate the recordation tax, round up to the next closest number that is evenly divisible by $500 and then apply the stated percentage

[2] For a first-time Maryland homebuyer who will occupy the property as a principal residence, the rate is .25%, and it must be paid by the seller.

[3] For a first time Maryland homebuyer purchasing a principal residence, the rate is .25% and the transfer tax must be paid entirely by the seller.

[4] The column headed "Total for Deeds" is the total of the recordation and transfer taxes (and the Baltimore City yield tax, if applicable) on deeds recorded in the respective jurisdictions. Note that the "Total for Deeds" must be reduced for any applicable exemption.

[5] The first $50,000 of the consideration payable on an instrument of writing for residentially improved owner-occupied real property is exempt if the buyer provides a statement under oath that the buyer will occupy the residence.

[6] The additional amount for larger transactions in Baltimore City is called the yield tax. Also, the first $22,000 of the amount payable on the conveyance of owner-occupied residential property is exempt if the buyer signs a statement under oath that the property will be buyer's principal residence for at least 7 of the 12 months following the conveyance.

[7] The additional amount for larger transactions in Baltimore City is called the yield tax. Also, the first $22,000 of the amount payable on the conveyance of owner-occupied residential property is exempt if the total amount payable is less than $250,000 and the buyer signs a statement under oath that the property will be buyer's principal residence for at least 7 of the 12 months following the conveyance.

[8] The first $22,000 of the price of residential owner-occupied property is exempt.

[9] The first $25,000 of the amount payable on the conveyance of owner-occupied residential property if the buyer signs a statement under oath that the property will be the buyer's principal residence for at least 7 of the next 12 months. The first $75,000 of the amount payable on the conveyance of owner-occupied residential property if the buyer signs a statement under oath that the buyer a first-time Maryland homebuyer.

[10] The rate is .25% for a first-time Maryland homebuyer who will occupy the property as the buyer's principal residence.

[11] The first $30,000 of consideration is exempt if the buyer files an affidavit stating the property will be owner-occupied.

[12] The transfer tax does not apply to the first $50,000 of the consideration payable for the transferred real property.

[13] The Montgomery County recordation tax is very complicated. The chart titled Montgomery County Recordation Tax sets this out.

[14] The Montgomery County transfer tax is generally 1%. However, the rates on improved residential property are: (1) 0.25% on property where the value of the full consideration is less than $40,000.00; (2) 0.50% on property where the value of the full consideration is $40,000.00 or more, but less than $70,000.00; and (3) 1% on property where the value of the full consideration is $70,000.00 or more. Also, there are special rates for farmland, rezoned land, and condominium and cooperative conversions.

[15] In Prince George's County only, the local transfer tax applies to mortgages and deeds of trust as well as to deeds.

[16] The rate is .25% for a first-time Maryland homebuyer who will occupy the property as the buyer's principal residence.

[17] The transfer tax does not apply to the $30,000.00 of consideration payable on the conveyance of owner-occupied residential property if the buyer intends to use the property as the buyer's principal residence by actually occupying the residence for at least 7 months of a 12-month period.

[18] The first $50,000 of consideration for an owner-occupied residence is exempt.

[19] The transfer tax does not apply to the first $50,000 of the consideration payable for the transferred real property. Also, there is a reduced rate of .25% for a deed to a first time Washington County homebuyer who will use the property as the individual's principal residence, who has been a resident of Washington County for 12 months prior to the purchase, and has purchased the residence for less than $115,000.

[20] The first $50,000 of the purchase price is exempt from the county transfer tax if the property will be the buyer's principal residence and occupied for at least 7 months of the year.