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MYLESTITLE'S 2ND QUARTER 2013
ADVISORY COUNCIL BREAKFAST & SEMINAR

Solutions to Key Maryland Real Estate Issues

THE "NEW" REAL ESTATE PARADIGM:
KEY ISSUES FOR 2013 AND BEYOND

**RECENT REAL ESTATE LEGISLATION & PRACTICAL
CONSIDERATIONS IN THE DAYS AHEAD**

- ❖ **INVESTORS & DEVELOPERS:** *Discover the impact and nuances of how recent legislation, both Maryland Law & UCC Amendments, raise and answer questions about Maryland real estate transactions in the days to come.*
- ❖ **ATTORNEYS & LENDERS:** *Learn about immediate opportunities and hurdles that exist when dealing with real estate issues in Maryland.*

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UCC ARTICLE 9 AMENDMENT HIGHLIGHTS

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MARYLAND REAL ESTATE LEGISLATIVE UPDATE

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THE EVER-CHANGING MARYLAND IDOT ISSUE

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HIGHLIGHTS OF THE UCC ARTICLE 9 AMENDMENTS

By Anne-Thérèse Béchamps, Venable LLP

I. NEW RULES CONCERNING DEBTOR'S NAME

A. Registered Organizations

1. Revised definition of “registered organization”—CL § 9-102(a)(72)¹

“Registered organization” means an organization formed or organized solely under the law of a single state or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

2. New definition: “public organic record”—CL § 9-102(a)(69)

“Public organic record” means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

¹ “CL” refers to the Commercial Law Article of the Maryland Code, effective July 1, 2013. All other references are to the AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9 drafted by the National Conference of Commissioners on Uniform State Laws and The American Law Institute (2010 Official Text with Comments, April 27, 2011).

3. Name of the debtor on a financing statement must be “the name that is stated to be the registered organization’s name on the public organic record most recently filed with or issued or enacted by the registered organization’s jurisdiction of organization which purports to state, amend, or restate the registered organization’s name.” CL § 9-503(a)(1)

B. Individuals

1. Two alternatives. Maryland has chosen Alternative A. CL § 9-503(a)(4)

Alternative A: If the debtor is an individual to whom the state where the financing statement is filed has issued a driver’s license or identification card that has not expired, the financing statement must provide the name indicated on the driver’s license or identification card (no abbreviations and even if the driver’s license contains an error). In all other cases, the financing statement must provide the individual name of the debtor or the surname and first personal name of the debtor.

Alternative B: The financing statement must provide (a) the individual name of the debtor, or (b) the surname and first personal name of the debtor, or (c) the name indicated on a driver’s license that is issued by the state where the financing statement is filed and that has not expired.

2. If the State has issued more than one driver’s license or identification card, the name must be the one on the most recently issued driver’s license or identification card. CL § 9-503(g)
3. This new rule also applies when a non-registered organization has no name, and therefore the names of the partners, members, associates or other persons comprising the debtor must be provided. CL § 9-503(a)(6)(B)
4. The one exception is a mortgage or deed of trust serving as a fixture filing or financing statement covering as-extracted collateral or timber to be cut, where the name of the debtor is sufficient if it provides the individual name of the debtor or the surname and first personal name of the debtor (even if a driver’s license or identification card has been issued by the applicable state). CL § 9-502(c)

C. Decedent’s Estates

1. If the collateral is being administered by the personal representative of a decedent, the financing statement must provide the name of the decedent as the name of the debtor (Box 1) **and in a separate part of the financing statement** indicate that the collateral is being administered by a personal representative (now Box 5 instead of Addendum Box 17). CL § 9-503(a)(2)

2. The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent.” CL § 9-503(f). This is a safe harbor, but is not mandatory.

D. Trusts That Are Not Registered Organizations

1. If the organic record of the trust specifies a name for the trust, the financing statement must provide the name so specified as the name of the debtor (Box 1) and in a separate part of the financing statement indicate that the collateral is held in trust (Box 5). CL § 9-503(a)(3)(A)(i) & (B)(i)
2. If the organic record of the trust does not specify a name for the trust, the financing statement must provide the name of the settlor or testator as the name of the debtor (Box 1) and in a separate part of the financing statement provide additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicate that the collateral is held in a trust, unless the additional information so indicates (Boxes 5 & 17). CL § 9-503(a)(3)(A)(ii) & (B)(ii)
3. The “name of the settlor or testator” means (a) if the settlor is a registered organization, the name in its public organic record, or (b) in all other cases, the name of the settlor or testator indicated in the trust’s organic record. CL § 9-503(h)

E. Errors and Post-Filing Name Changes

1. The safe harbors for errors and omissions in § 9-506 remain unchanged, but revisions to the Comments make clear that omission of the additional information required for trusts and estates means that the financing statement does not substantially comply with the requirements of Part 5 of Article 9 and is therefore ineffective.
2. Changes to § 9-507(c) make a filed financing statement effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading (rather than when the name change occurs), *e.g.*, individual debtor changes name by court order but does not change driver’s license. See additional examples in revised Comment 4 to § 9-507.

II. OTHER FINANCING STATEMENT CHANGES

- A. Organization’s type, state of organization and organizational identification number are no longer required, but you still must indicate whether the debtor is an individual or an organization.

- B. Correction statements are now called information statements, and the secured party may file an information statement to counter one filed by the debtor. CL § 9-516
- C. New national forms (Rev. 4/20/11)—see attached

III. CHANGES IN GOVERNING LAW

- A. With respect to security interests that attach within four months after a debtor changes location (e.g., after-acquired property), a financing statement filed in the old jurisdiction that would have been effective had the debtor not changed location is effective to perfect a security interest in such collateral until the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the old jurisdiction. CL § 9-316(h)
- B. If a financing statement is filed against an original debtor in one jurisdiction and the collateral is acquired by a new debtor located in another jurisdiction, the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound until the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the original debtor's jurisdiction, provided the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor. CL § 9-316(i). **SEARCHERS BEWARE: This means that a financing statement that is not filed in the jurisdiction of a debtor's location can be effective to perfect a security interest in the debtor's assets, but such a perfected security interest is subordinate to any security interest perfected another way. CL § 9-326(a)**

IV. COMMENTARY CLARIFICATIONS

- A. **Comment 3 to § 9-104** clarifies with an example that a bank where a deposit account is maintained can have control of the deposit account as agent for other lenders.
- B. **Comment 5.b to § 9-301** clarifies that fixture filings against transmitting utilities must be filed in each State where the fixtures are located.
- C. **Comment 2 to § 9-307** explains that the typical common-law trust is not itself a juridical entity capable of owning property and therefore would not be a "debtor"; rather, the debtor with respect to most property held in a common-law trust is typically the trustee acting in the capacity of trustee. Yet, under amended § 9-503(a)(3), the name of the debtor for trusts that are not registered organizations is the name of the trust or if the trust has no name, the name of the settlor or testator, not the name of the trustee.

- D. **Comment 6 to § 9-509:** Authorization to file a financing statement amendment does not need to be an authenticated record.
- E. **Comment 5 to § 9-512:** Adding a debtor to a previously filed financing statement constitutes an “initial financing statement” as to that additional debtor for purposes of satisfying § 9-508(b)(2).
- F. **Comment 2 to § 9-610** sanctions public and private dispositions conducted over the Internet.
- G. **Comment 7 to § 9-610:** A secured party’s purchase of collateral at its own private disposition is equivalent to a “strict foreclosure” and is governed by §§ 9-620, 9-621 and 9-622, which provisions are waivable only to the extent provided in § 9-624(b).
- H. **Comment 2 to § 9-613** provides guidance for notifications of public dispositions conducted electronically. With respect to the time and place, the notification is sufficient if it provides the time the auction is scheduled to begin and states the electronic location, such as the URL or other Internet address, where the site of the public disposition can be accessed.

V. **TRANSITION RULES (NEW PART 8 OF ARTICLE 9)**

- A. **Transition rules are similar to the transition rules in 2001.**
- B. **A financing statement filed and effective before July 1, 2013 (“Pre-Effective Date Financing Statement”), unless continued in accordance with the transition rules, ceases to be effective:**
 - 1. If the financing statement is filed in this State, at the time the financing statement would have ceased to be effective if the new amendments had not taken effect. CL § 9-806(b)(1)
 - 2. If the financing statement is filed in another jurisdiction, at the earlier of the time the financing statement would have ceased to be effective in the other jurisdiction or June 30, 2018. CL § 9-806(b)(2). As a practical matter this later date would only apply to transmitting utilities, public-finance transactions and manufactured-home transactions.
- C. **Continuation of Pre-Effective Date Financing Statements**
 - 1. If the law governing perfection is the same, filing a continuation statement in the same office continues the effectiveness of a Pre-Effective Date Financing Statement, provided that the Pre-Effective Date Financing Statement, together with the continuation statement, satisfies the requirements under the Article 9 Amendments for an initial financing statement.

2. If the law governing perfection changes with the Article 9 Amendments, it will be necessary to file an initial financing statement in lieu of a continuation statement in the new jurisdiction. The “in lieu” initial financing statement must satisfy the requirements of an initial financing statement under Article 9, as amended, provide the office, file number and date of filing of the Pre-Effective Date Financing Statement and the most recent continuation statement, and indicate that the Pre-Effective Date Financing Statement is still effective. CL § 9-807(c)

D. Amendment of Pre-Effective Date Financing Statements

1. A financing statement that indicates that the debtor is a decedent’s estate satisfies the new requirement of indicating that the collateral is being administered by a personal representative. CL § 9-806(e). However, this safe harbor does not seem to address the requirement that the indication appear in a separate part of the financing statement.
2. A financing statement that indicates that the debtor is a trust or a trustee acting with respect to property held in trust satisfies the new requirement of indicating that the collateral is held in a trust. CL § 9-806(e). However, this safe harbor does not seem to address the requirement that the indication appear in a separate part of the financing statement.
3. Except for termination statements, after July 1, 2013, a Pre-Effective Date Financing Statement can be amended only in accordance with the law of the jurisdiction governing perfection pursuant to Article 9, as amended.

VI. ENACTMENT STATUS (AS OF MAY 8, 2013)

State	Status	Bill #	Effective Date [Brackets indicate effective date indicated in draft legislation]
Alabama	Introduced	HB 284/ SB 39	[July 1, 2013]
Alaska	To Governor	HB 9	[July 1, 2013]
Arizona	Introduced	SB 1039/HB 2491	[September 1, 2013]
Arkansas	Enacted	SB 219	July 1, 2013
California	Introduced	AB 502	[July 1, 2014]
Colorado	Enacted	HB 12-1262	July 1, 2013
Connecticut	Enacted	HB 6274	July 1, 2013
Delaware	To Governor	HB 8	[July 1, 2013]
District of Columbia	Enacted	B 19-0222	July 1, 2013
Florida	Enacted	H 483	July 1, 2013
Georgia	To Governor	SB 185	[July 1, 2013]
Hawaii	Enacted	HB 2162	July 1, 2013
Idaho	Enacted	S 1307	July 1, 2013
Illinois	Enacted	SB 3764	July 1, 2013
Indiana	Enacted	HB 1321	July 1, 2013
Iowa	Enacted	HF 2321	July 1, 2013
Kansas	Enacted	HB 2621	July 1, 2013
Kentucky	Enacted	SB 97	July 1, 2013
Louisiana	Enacted	HB 369	July 1, 2013
Maine	Introduced	LD 1384	[July 1, 2013]
Maryland	Enacted	HB 713	July 1, 2013
Massachusetts	Introduced	HB 28	[July 1, 2013]
Michigan	Enacted	HB 5083	July 1, 2013
Minnesota	Enacted	SF 194	July 1, 2013
Mississippi	Enacted	SB 2609	July 1, 2013
Missouri	To Governor	HB 212	[July 1, 2013]
Montana	Enacted	HB 212	July 1, 2013
Nebraska	Enacted	LB 90	July 1, 2013
Nevada	Enacted	AB 109	July 1, 2013
New Hampshire	Enacted	SB 204	July 1, 2013
New Jersey	To Governor	S 2144	[July 1, 2013]
New Mexico	Enacted	SB 146	July 1, 2013
New York	Not Introduced		
North Carolina	Enacted	HB1068	July 1, 2013
North Dakota	Enacted	HB 1137	July 1, 2013
Ohio	Enacted	SB 208	July 1, 2013
Oklahoma	Introduced	SB 371	[July 1, 2014]
Oregon	Enacted	HB 4035	July 1, 2013
Pennsylvania	Introduced	HB 24/SB 381	[July 1, 2013]
Puerto Rico	Enacted	HB 2965	[January 17, 2013]
Rhode Island	Enacted	H 5573	July 1, 2013
South Carolina	Introduced	S 323	[July 1, 2013]
South Dakota	Enacted	HB 1059	July 1, 2013
Tennessee	Enacted	SB 2931	July 1, 2013
Texas	Enacted	SB 782	July 1, 2013
Utah	Enacted	SB 41	July 1, 2013
Vermont	Introduced	H 483	[July 1, 2013]
Virgin Islands	Not Introduced		

Virginia	Enacted	SB 51	July 1, 2013
Washington	Enacted	HB 1492	July 1, 2013
West Virginia	Enacted	HB 4251	July 1, 2013
Wisconsin	Enacted	SB 416	July 1, 2013
Wyoming	Enacted	SF 13	July 1, 2013

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME				
OR	1b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME				
OR	3b. INDIVIDUAL'S SURNAME			
	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, Item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box: Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility Agricultural Lien Non-UCC Filing

6b. Check only if applicable and check only one box: Bailor/Bailor Licensee/Licensee

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailor/Bailor Licensee/Licensee

8. OPTIONAL FILER REFERENCE DATA:

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; If line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME	
OR	
9b. INDIVIDUAL'S SURNAME	
FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME				
OR				
10b. INDIVIDUAL'S SURNAME				
INDIVIDUAL'S FIRST PERSONAL NAME				
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				SUFFIX

10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11. ADDITIONAL SECURED PARTY'S NAME or ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME			
OR			
11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
 covers timber to be cut covers as-extracted collateral is filed as a fixture filing

<p>16. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):</p>	<p>16. Description of real estate:</p>

17. MISCELLANEOUS:



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER	1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS File: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
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2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9
For partial assignment, complete items 7 and 8 and also indicate affected collateral in item 8

4. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. **PARTY INFORMATION CHANGE:**
Check one of these two boxes: Debtor or Secured Party of record
AND Check one of these three boxes to: CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c ADD name: Complete item 7a or 7b, and item 7c DELETE name: Give record name to be deleted in item 6a or 6b

6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b)

6a. ORGANIZATION'S NAME
OR
6b. INDIVIDUAL'S SURNAME
FIRST PERSONAL NAME
ADDITIONAL NAME(S)/INITIAL(S)
SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name)

7a. ORGANIZATION'S NAME
OR
7b. INDIVIDUAL'S SURNAME
INDIVIDUAL'S FIRST PERSONAL NAME
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)
SUFFIX

7c. MAILING ADDRESS
CITY
STATE
POSTAL CODE
COUNTRY

8. **COLLATERAL CHANGE:** Also check one of these four boxes: ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral
Indicate collateral:

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT:** Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME
OR
9b. INDIVIDUAL'S SURNAME
FIRST PERSONAL NAME
ADDITIONAL NAME(S)/INITIAL(S)
SUFFIX

10. **OPTIONAL FILER REFERENCE DATA:**

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form

12a. ORGANIZATION'S NAME	
OR	
12b. INDIVIDUAL'S SURNAME	
FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction Item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit

13a. ORGANIZATION'S NAME			
OR			
13b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral):

<p>15. This FINANCING STATEMENT AMENDMENT:</p> <p><input type="checkbox"/> covers timber to be cut <input type="checkbox"/> covers as-extracted collateral <input type="checkbox"/> is filed as a fixture filing</p> <p>16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):</p>	<p>17. Description of real estate:</p>
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18. MISCELLANEOUS:

**SUMMARY OF LEGISLATION OF INTEREST TO REAL PROPERTY
LAWYERS PASSED BY THE 2013 MARYLAND GENERAL ASSEMBLY**

John P. Machen
Special Chief Solicitor
Baltimore City Law Department

Below are summaries of select legislation passed by the Maryland General Assembly in its 2013 legislative session. The legislation is organized by Code Article. Over 2,600 bills were introduced this past session. The full text of all bills introduced in this year's session can be found on the Maryland General Assembly's website at: <http://mgaleg.maryland.gov>

Portions of the bill summaries have been extracted from Fiscal and Policy Notes for individual bills and from the "90 Day Report," provided courtesy of the Maryland Department of Legislative Services. The full text of the "90 Day Report" can be found on the Maryland General Assembly's website at:

<http://mgaleg.maryland.gov/Pubs/legislegal/2013rs-90-day-report.pdf>

Many thanks to the members of the Real Property Section's Legislative Committee for their dedication in reviewing and commenting upon these and numerous other bills. Special thanks to J. Paul Reiger, Jr. and Carson Mills for their significant participation in preparing this Summary.

Reference	Description
<p>Chapters ____ and ____ (SB 161 / HB 286) <u>Real Property 14-204</u></p>	<p><u>Real Property – Common Ownership Communities – Foreclosure of Liens</u></p> <p>This bill limits the situations in which the governing body of a common ownership community (condominium or homeowner's association) may foreclose on a contract lien against a unit owner or lot owner. The governing body may foreclose on the lien only if the damages secured by the lien consist solely of (1) delinquent periodic or special assessments and (2) reasonable costs and attorney's fees directly related to filing of the lien and not exceeding the amount of the delinquent assessments. The damages may not include fines imposed by the governing body or attorney's fees related to recovering the fines. The bill does not preclude a governing body from enforcing a lien through any other means.</p> <p>Effective October 1, 2013 and construed to apply prospectively, only, and not to have any effect on, or application to, any lien filed before October 1, 2013.</p>

Reference	Description
<p>Chapters 205 and</p> <hr/> <p>(SB 199 / HB 88)</p> <p><u>Real Property 7-112 [or 113]</u></p>	<p><u>Real Property – Refinance Mortgage – Priority over Junior Liens</u></p> <p>This bill provides a means by which a mortgage or deed of trust (collectively, “mortgage”) having a junior lien position, will remain subordinate upon refinance of the senior mortgage on residential property. Specifically, a mortgage on residential property which refinances, in full, a first mortgage at an interest rate lower than the first mortgage will, upon recording, have the same lien priority as the first mortgage being refinanced provided that: (1) the principal amount secured by the junior mortgage does not exceed \$150,000; (2) the principal amount secured by the refinance mortgage does not exceed the unpaid outstanding principal balance secured by the first mortgage plus an amount to pay closing costs not exceeding \$5,000 and (3) the refinance mortgage contains the following statement in bold or capitalized letters:</p> <p>“This is a refinance of a deed of trust/mortgage/other security instrument recorded among the Land Records of County/City, Maryland in liber no. folio, in the original principal amount of, and with the unpaid outstanding principal balance of The interest rate provided for in the evidence of indebtedness secured by this refinance mortgage is lower than the applicable interest rate provided for in the evidence of indebtedness secured by the deed of trust/mortgage/other security instrument being refinanced.”</p> <p>The bill does not alter priorities between or among junior liens and has no subordinating effect on junior judgments and contract liens. Residential real property is defined as “real property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation.”</p> <p>The bill also provides that it may not be construed to preempt or abrogate the operation or effect of, or ability of a court to apply the principles of, equitable subrogation or equitable subordination.</p> <p>Effective October 1, 2013 and construed to apply prospectively, only, and not to have any effect on, or application to, a refinance mortgage recorded or having an effective date prior to October 1, 2013.</p>

Reference	Description
<p data-bbox="207 894 464 928">Chapters ____ and</p> <p data-bbox="207 961 423 1031">_____ (SB 642 / HB 1308)</p> <p data-bbox="207 1073 496 1129"><u>Real Property 7-112 for 113], 8-216, and 8A-1102</u></p>	<p data-bbox="558 264 1273 327"><u>Residential Real Property – Prohibition on Nonjudicial Evictions</u></p> <p data-bbox="558 348 1344 873">This bill supersedes the Maryland Court of Appeal’s decision in <i>Nickens v. Mount Vernon Realty Group, et al.</i>, 429 Md. 53 (2012). It prohibits a party claiming the right to possession (including pursuant to a contract, lease, foreclosure or court order) from taking possession or threatening to take possession of residential property from a protected resident (including an owner, former owner and such owner’s tenants and sub tenants - but not a trespasser or squatter) by (1) locking the resident out of the residential property; (2) engaging in willful diminution of services to the protected resident; or (3) taking any other action that deprives the protected resident of actual possession. Possession may only be taken from a protected resident in accordance with a writ of possession issued by a court and executed by a sheriff or constable. Residential property is defined as a building, structure, or portion of a building or structure that is designed principally and is intended for human habitation.</p> <p data-bbox="558 894 1338 1325">The bill authorizes a party claiming the right of possession of residential property to use nonjudicial self-help to take possession of the property if the party reasonably believes the protected resident has abandoned or surrendered possession of the property based on a reasonable inquiry into the property’s occupancy status. The party must also provide a specified notice and receive no responsive communication to that notice within 15 days after the later of posting or mailing the notice. The notice must be posted on the front door of the residential property and mailed by first-class mail, addressed to “all occupants,” and contain the statement “Important notice to all occupants: eviction information enclosed; open immediately” in a specified form on the outside of the envelope.</p> <p data-bbox="558 1346 1349 1640">The nonexclusive remedies granted to a protected resident are (1) possession of the property, if no other person then resides in the property; (2) actual damages; and (3) reasonable attorney’s fees and costs. In the case of a tenant or a tenant holding over, the bill may not be construed to prevent a landlord from taking temporary measures, such as changing the locks, to secure an unsecured residential property. However, a landlord must first make good faith attempts to provide reasonable notice to the tenant that the tenant may promptly be restored to possession of the property.</p> <p data-bbox="558 1661 1279 1717">Slightly different provisions apply to tenants under residential leases and tenants in a mobile home park.</p> <p data-bbox="558 1738 862 1772">Effective June 1, 2013.</p>

Reference	Description
<p>Chapter 110 (HB 388) <u>Real Property 11-109.1</u></p>	<p><u>Maryland Condominium Act – Closed Meetings of Board of Directors</u></p> <p>This bill allows a condominium’s board of directors to hold a closed session in order to consider terms or conditions of a business transaction in the negotiation stage if disclosure through an open session could adversely affect the economic interests of the council of unit owners.</p> <p>Effective October 1, 2013.</p>
<p>Chapters 326 and 327 (SB 849 / HB 1090) <u>Real Property 8-212.3, 8-401(b) and (c)</u> <u>Public Utilities 7-309</u></p>	<p><u>Public Utilities – Consumer Relations – Tenant Payment of Landlord Utility Bills</u></p> <p>This bill authorizes the tenant of an “affected dwelling unit” to have utility service restored, or to prevent termination of utility service, when the landlord responsible for utility payments defaults. A tenant facing threatened or actual termination of utility service may apply for a new utility service account in the tenant’s name and may not incur liability for charges due on the landlord’s account. However, a utility service provider may require a tenant to pay a deposit and past due balances from previous accounts in the tenant’s name. A tenant may deduct the amount of payments made to a utility service provider from the rent due to the landlord under specified conditions. A tenant’s right to deduct these payments cannot be waived in any lease.</p> <p>A written complaint filed by a landlord with the District Court for the repossession of any premises for failure of a tenant to pay rent must subtract the amount of any utility bills, fees, or security deposits paid by a tenant under the bill. If the District Court enters a judgment in favor of the landlord for possession of a dwelling unit, any utility bills, fees, or security deposits paid by a tenant under the bill are credited to the amount of rent and late fees owed to the landlord by the tenant.</p> <p>The bill also establishes specified notification requirements for termination of utility service if the service address is different from, or the same as, the billing address of the affected dwelling unit.</p> <p>Effective January 1, 2014.</p>

Reference	Description
<p data-bbox="203 751 467 789">Chapters ____ and</p> <p data-bbox="203 863 410 894">(SB 696 / HB 794)</p> <p data-bbox="203 932 526 1020"><u>Real Property 8B-101, 8B-102(a), and 8B-202(b) and (c)</u></p>	<p data-bbox="553 260 1330 296"><u>Manufactured Homes – Affixation to Real Property – Liens</u></p> <p data-bbox="553 359 1347 863">This bill clarifies the lien information that must accompany an affidavit of affixation when an owner of a manufactured home intends to convert a manufactured home to real property and is unable to locate an original certificate of title or a manufacturer’s certificate. If the owner is unable to locate an original certificate of title or a manufacturer’s certificate of origin, the affidavit of affixation must be accompanied by a report prepared and acknowledged by an attorney licensed to practice in the State or a title insurance producer licensed to do business in the State that (1) identifies the party preparing the report; (2) states that a search has been conducted of the appropriate county’s land record and the records of the MVA; and (3) identifies all liens on the manufactured home, including for each lien:</p> <ol data-bbox="553 898 1008 1041" style="list-style-type: none"> 1. the name of the lien holder; 2. the nature of the lien; 3. the date the lien was created; and 4. the amount of the lien. <p data-bbox="553 1058 1347 1241">Prior law required a statement that that no lien, encumbrance, or other security interest had been found for the manufactured home, which seldom occurred where the home had already been affixed to the land under the common law of fixtures and was subject to traditional mortgage liens.</p> <p data-bbox="553 1257 1317 1398">The bill also defines the term “lien” and clarifies and makes consistent the references to lien information that must be included in an affidavit of affixation under various circumstances.</p> <p data-bbox="553 1415 859 1451">Effective June 1, 2013.</p>

Reference	Description
<p data-bbox="204 835 467 869">Chapters ____ and</p> <p data-bbox="204 940 412 974">(SB 383 / HB 291)</p> <p data-bbox="204 1012 513 1159"><u>Real Property 7-501-511</u> <i>[creates new subtitle</i> <i>“Subtitle 5. 34 Maryland</i> <i>Mortgage Assistance Relief</i> <i>Services Act”]</i></p> <p data-bbox="204 1197 451 1255"><u>Commercial Law 14-</u> <u>1901(e)(3)</u></p>	<p data-bbox="558 264 1256 323"><u>Real Property –Maryland Mortgage Assistance Relief Services Act</u></p> <p data-bbox="558 348 1344 806">Federal law enacted in 2009 clarified the Federal Trade Commission’s (FTC’s) rulemaking authority and specified that rulemaking “shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive practices involving loan modifications and foreclosure rescue services.” Pursuant to that authority and the FTC’s finding that deceptive and unfair trade practices were common among providers of mortgage assistance relief services, the FTC adopted the Mortgage Assistance Relief Services Rule which went into effect on December 29, 2010. This bill expresses the intent of the General Assembly, in enacting Title 7, Subtitle 5 of the Real Property Article, to implement in State law the consumer protections available under the FTC rules governing mortgage assistance relief service providers.</p> <p data-bbox="558 831 1344 1255">The bill requires a mortgage assistance relief service provider providing mortgage assistance relief services in connection with a dwelling in the State to comply with specified federal regulations issued by the Consumer Financial Protection Bureau. The bill gives the Commissioner of Financial Regulation, the Attorney General, and State’s Attorneys specified investigatory and enforcement authority over violations of the bill. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions. The bill expresses legislative intent to implement in State law the consumer protections available under federal regulations governing mortgage assistance relief service providers.</p> <p data-bbox="558 1276 1344 1734">The bill creates a private right of action for damages incurred as the result of a violation of the bill. The person may do so without having first exhausted the bill’s administrative remedies and regardless of the status of an administrative action or a criminal prosecution, if any. The bill authorizes a person who is awarded damages in an action to also seek reasonable attorney’s fees. If the court finds a violation, the court may award damages equal to three times the amount of actual damages. The bill clarifies that the attorney exemptions in the specified federal regulations at 12 C.F.R. § 1015.7 apply only to an individual admitted to practice law in the State who provides mortgage assistance relief services as part of the individual’s regular exempts, as of July 1, 2013, aN assistance relief service provider regulated under the bill’s provisions from the Maryland Credit practice of law.</p> <p data-bbox="558 1755 977 1789">The bill Services Businesses Act.</p> <p data-bbox="558 1810 850 1843">Effective July 1, 2013.</p>

Reference	Description
<p>Chapters 267 and 268</p> <p>(SB 436 / HB 1209)</p> <p><u>Tax - Property 12-101(l), 12-105 (f)(7), and 12-108 (e) and (g)</u></p>	<p><u>Recordation Taxes – Exemptions</u></p> <p>This bill clarifies that the provision in Section 12-105 (f) (7) effective on July 1, 2012 which provided that secured debt with respect to an indemnity mortgage (IDOTs) is deemed to be incurred for taxation purposes, only applies to those IDOTs recorded on or after July 1, 2012. The bill increases the amount of debt deemed to not be incurred under an IDOT for taxation purposes from “less than \$1,000,000.” to “less than \$3,000,000.” The bill also clarifies that a series of IDOTs that are part of the same transaction are considered as one for purposes of the recordation tax.</p> <p>The bill adds as another exception from the “debt is deemed incurred” provision, an IDOT that amends or restates an existing IDOT (a “supplemental instrument”) regardless of the fact that no recordation tax had been paid on the previously recorded IDOT, “to the extent of the outstanding principal balance of the guaranteed loan immediately prior to the time the supplemental instrument of writing is entered into.” (Debt would be deemed incurred and taxable on the difference between the outstanding principal balance immediately prior to the amendment and the amount secured under the amended and restated IDOT).</p> <p>The bill also specifies that an IDOT recorded in multiple counties is not subject to the recordation tax on the full value of the consideration in each county and can be allocated as in the case of any other mortgage or based upon “the amount of the debt stated to be secured.”</p> <p>The bill clarifies the existing exemption from recordation tax relating to supplemental instruments, to: (1) define a supplemental instrument as one that amends and restates a previously recorded instrument of writing regardless of whether the recordation tax was paid on such an instrument and (2) provide that recordation taxes are payable based on the difference between the unpaid principal balance of the original debt secured and the amount as amended.</p> <p>The bill also allows non-residential mortgages, including IDOTs, to be refinanced without incurring recordation tax in the same manner as residential mortgages, and exempts those refinance mortgages or deeds of trust from recordation tax as to the amount of debt secured by the existing mortgage at the time of refinancing. As in the case of refinances of residential property, an affidavit is required regarding the amount of principal debt outstanding at the time of the refinance, but the revised affidavit now eliminates references to the property being used as a principal residence.</p> <p>Effective July 1, 2013.</p>

Reference	Description
<p>Chapters ____ and ____</p> <p>(SB 202 / HB 372)</p> <p><u>Tax - Property 12-108(p)</u> <u>and 13-207 (a)(9)</u></p>	<p><u>Recordation and Transfer Taxes – Transfer of Property Between Related Entities – Exemption</u></p> <p>This bill expands the existing 12-108 (p) exemptions from State recordation and transfer taxes available to corporations to include limited liability companies. Corporations and limited liability companies are now defined in the bill as “business entities.” The bill provides that transfers of real property from a parent business entity to its wholly owned subsidiary or between subsidiaries wholly owned by the same parent business entity, are exempt from State recordation and transfer taxes 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 and if the instrument of writing is for no consideration; nominal consideration; or consideration that comprises only the issuance, cancellation, or surrender of ownership interest a subsidiary business entity.</p> <p>Likewise, that a transfer of real property from a subsidiary to its parent business entity is exempt from State recordation and transfer taxes if the parent previously owned the real property; currently owns the ownership interest of the subsidiary and has owned that ownership interest for a period greater than 18 months; or acquires the ownership interest of the subsidiary business entity which has been in existence and has owned the real property for a period of 2 years, and provided that the transfer is for no consideration, nominal consideration or consideration that comprises only issuance, cancellation, or surrender of a subsidiary’s ownership interest.</p> <p>Effective July 1, 2013, and applicable to all instruments of writing recorded on or after July 1, 2013.</p>
<p>Chapters ____ and ____</p> <p>(SB 366 / HB 521)</p> <p><u>Real Property 8-110</u></p>	<p><u>Baltimore City – Extinguishment or Redemption of Ground Rents</u></p> <p>This bill repeals the requirement that Baltimore City must condemn property before it may apply to the State Department of Assessments and Taxation (SDAT) to extinguish or redeem a ground rent on the property. The bill authorizes the City to apply to SDAT to extinguish or redeem a ground rent on property acquired by the City by any means. The bill alters the content of an affidavit that the City must file with SDAT to extinguish or redeem a ground rent on property that was acquired or is being acquired by the City by certifying that the landlord has not registered the ground lease with SDAT. The bill also authorizes a landlord of property acquired by the city whose ground rent has been redeemed to collect a redemption amount.</p> <p>Effective October 1, 2013.</p>

Reference	Description
<p>Chapters ____ and ____</p> <p>(SB 900 / HB 335)</p> <p><u>Tax - Property 7-504.3</u></p>	<p><u>Baltimore City - Payment in Lieu of Taxes Agreements – Economic Development Projects</u></p> <p>This bill authorizes Baltimore City to enter into payment in lieu of taxes (PILOT) agreements for economic development projects located in any part of Baltimore City rather than only for projects located in specified urban renewal areas of Baltimore City.</p> <p>Effective June 1, 2013 and applicable to all taxable years beginning after June 30, 2013.</p>
<p>Chapters ____ and ____</p> <p>(SB 730 / HB 1236)</p> <p><u>Tax - Property 12-103(a), 13-203(a), and 13-412</u></p>	<p><u>Recordation and Transfer Taxes – Low Income Housing Projects – Controlling Interest</u></p> <p>With respect to the taxation of the transfer of a controlling interest in an entity that has developed real property under Section 42 of the Internal Revenue Code, (the Low Income Housing Tax Credit Program), this bill specifies that for purposes of State and County recordation and transfer taxes, the taxable consideration is the actual payment made by the purchaser to the seller for the interest. Consideration in such case would not include any mortgage, deed of trust, or other lien on the real property directly or beneficially owned by the real property entity.</p> <p>Effective July 1, 2013, and applicable to all instruments of writing recorded on or after July 1, 2013.</p>
<p>Chapter 361</p> <p>(HB 235)</p> <p><u>Tax - Property 14-201 (b) (4)</u></p>	<p><u>Valuation of Residential Real Property – Database</u></p> <p>This bill requires the State Department of Assessments and Taxation (SDAT) to maintain a database, available to the public on the department’s website and searchable by individual property, that relates to the valuation of single-family residential real property and includes for each property: (1) the square footage of the enclosed improvements above ground; (2) the square footage of the completed improvements below ground; (3) the number of bathrooms; (4) the number of garages; and (5) the date of the initial assessment of the most recently completed improvements assessed after July 1, 2000.</p> <p>Effective October 1, 2013.</p>

Reference	Description
<p>Chapters 25 and 26</p> <p>(SB 158 / HB 128)</p> <p><u>Tax - Property</u> 9-105(d)(6)</p>	<p><u>Homestead Tax Credit – Eligibility Verification and Application</u></p> <p>This emergency bill extends, from December 31, 2012, to December 30, 2013, the date by which homeowners must file a specified application for the Homestead Property Tax Credit with the State Department of Assessments and Taxation (SDAT). The bill also alters the date by which an application for the Homestead Property Tax Credit must be filed for a newly purchased home by requiring the application to be filed by May 1 preceding the first taxable year for which the property tax is allowed.</p> <p>Effective April 9, 2013.</p>
<p>Chapters ____ and ____</p> <p>(SB 489/HB 1211)</p> <p><u>Estates and Trusts</u> 17-101, 17-108, 17-201, 17-202, 17-203</p>	<p><u>Estates and Trusts – Slayer’s Statute (Ann Sue Metz Law)</u></p> <p>This bill codifies and enhances Maryland’s common law “slayer’s rule.” The bill provides that a person who feloniously and intentionally kills, conspires to kill, or procures the killing of a decedent is disqualified from inheriting, taking, enjoying, receiving, or otherwise benefitting from the death, probate estate, or nonprobate property of the decedent. The person is also disqualified from receiving a general or special power of appointment conferred by the will or trust of the decedent and serving as a personal representative, guardian, or trustee of a trust created by the decedent. A disqualified person is treated as if the person disclaimed the property or interest in the property at the time of the decedent’s death and existing provisions preventing a legacy from lapsing or failing because the legatee predeceases the testator do not apply. A final conviction of felonious and intentional killing is conclusive for the purposes of the bill, and in the absence of such a conviction, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of the bill.</p> <p>A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is not liable for or obligated to return the payment, item of property, or benefit. However, a person who is not a bona fide purchaser or recipient, is personally liable and obligated to return the payment or item of property. If a distribution is erroneously made to a disqualified person, the disqualified person must make full restitution to the heir, legatee, beneficiary, or joint tenant who should have received the distribution.</p> <p>Effective October 1, 2013 and construed to apply prospectively, only, and to have no effect on, or application to, the estate or property of a person who dies before October 1, 2013.</p>

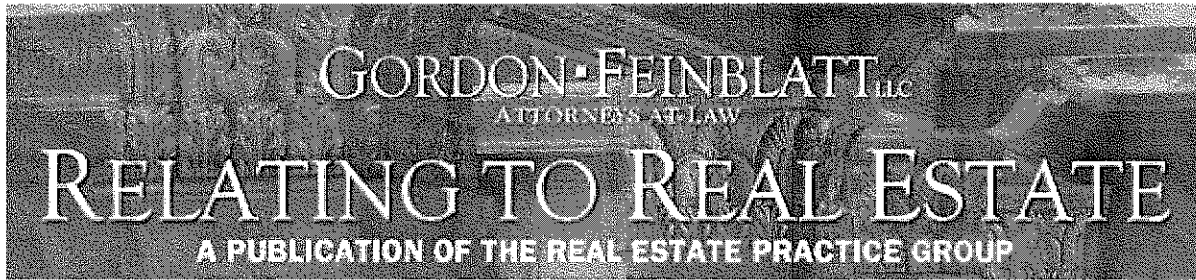
Reference	Description
<p data-bbox="207 825 464 856">Chapters ____ and</p> <p data-bbox="207 884 289 894">_____</p> <p data-bbox="207 932 423 963">(SB 697 / HB 1140)</p> <p data-bbox="207 1001 509 1087"><u>Corporations and Associations miscellaneous sections</u></p>	<p data-bbox="558 264 1252 327"><u>Corporations and Associations – Limited Liability Act – Revisions</u></p> <p data-bbox="558 348 1349 699">This bill authorizes the conversion of specified entities to an “other entity,” as defined by the bill. “Other entity” is defined in the bills to mean a foreign corporation, a domestic limited liability company (LLC), a foreign LLC, a partnership, a limited partnership, a foreign limited partnership, a business trust, or another form of unincorporated business formed under state or federal laws or the laws of a foreign country. The term also includes other types of business entities, as specified in the bill, depending on the type of conversion authorized.</p> <p data-bbox="558 726 1341 1045">The bills establish procedures for the conversion of an entity to an “other entity” that include approving the conversion in a specified manner and filing for record with the State Department of Assessments and Taxation (SDAT) properly executed articles of conversion. In addition, the bills specify the required contents of articles of conversion, the effects of a conversion, the completion date of a conversion, and a method by which a conversion may be abandoned, and establish a fee for filing articles of conversion with SDAT.</p> <p data-bbox="558 1073 1341 1608">Generally, upon conversion the converting entity continues to exist as the entity into which it converted. The two entities are for all purposes of the laws deemed to be the same. All the assets of the converting entity shall vest in and devolve on the other entity without further act or deed. The title to any real property vested by deed or otherwise in the converting entity shall not revert or be in any way impaired by reason of the conversion. Confirmatory deeds, assignments, or similar instruments to evidence the conversion may be executed and delivered at any time in the name of the converting entity by the appropriate authorized persons, or by the appropriate authorized persons of the other entity. The other entity remains liable for all the debts and obligations of the converting entity and conversion does not impair the rights of creditors or any liens on the property of converting entity.</p> <p data-bbox="558 1629 902 1661">Effective October 1, 2013.</p>

Reference	Description
<p data-bbox="203 478 464 516">Chapters ____ and _____</p> <p data-bbox="203 583 410 621">(SB 766 / HB 828)</p> <p data-bbox="203 657 509 835"><u>Business Occupations and Professions Section 10.5-101 through 10.5-107 to be under the new title "Title 10.5. Oil and 19 Gas Land Professionals"</u></p>	<p data-bbox="553 262 1300 327"><u>Business Occupations – Oil and Gas Land Professionals – Registration</u></p> <p data-bbox="553 348 1347 667">This bill establishes a mandatory registration program for land professionals. "Land professionals," or landmen, are contractors who meet with landowners and negotiate leases on behalf of companies seeking to mine or drill on a plot of land. Before obtaining any mineral rights in oil or gas from a property owner, a land professional must provide proof to the property owner that he or she is registered as a land professional in the State. A violation of the law is a misdemeanor.</p> <p data-bbox="553 688 1317 940">Registration is valid for two years and may be renewed. The bill requires the Department of Labor, Licensing, and Regulation (DLLR) to facilitate public access to the registry and to adopt regulations to establish a registration form and fees for registration and to provide registration numbers and certificates and establish any other requirements and procedures necessary to implement registration.</p> <p data-bbox="553 961 857 999">Effective June 1, 2013.</p>
<p data-bbox="203 1098 464 1136">Chapters ____ and _____</p> <p data-bbox="203 1203 402 1241">(SB 671/ HB 409)</p> <p data-bbox="203 1276 509 1314"><u>Land Use - various sections</u></p>	<p data-bbox="553 1066 1105 1104"><u>Land Use – Clarifications and Corrections</u></p> <p data-bbox="553 1125 1328 1220">This bill makes various changes to the Land Use Article in response to issues identified by the Land Use Article Review Committee during the code revision process.</p> <p data-bbox="553 1241 906 1278">Effective October 1, 2013.</p>

Reference	Description
<p data-bbox="203 661 467 703">Chapters _____ and _____</p> <p data-bbox="203 766 414 808">(SB 671 / HB 409)</p> <p data-bbox="203 840 511 934"><u>Land Use 1-207, 1-416, 1-417, 1-509, 3-301, and 3-303</u></p>	<p data-bbox="552 262 1274 336"><u>Land Use – Local Comprehensive Planning and Zoning Cycle</u></p> <p data-bbox="552 346 1347 745">This bill increases the time period of a local government’s comprehensive planning and zoning cycle to 10 years, instead of 6 years, to better coincide with the release of U.S. decennial census data. The bill also requires that, at least once within the five-year period after the adoption or review of the local jurisdiction’s comprehensive plan, the annual report a planning commission must file with the legislative body of the local jurisdiction contain a specified narrative on the implementation status of the plan. By December 1, 2015, the Maryland Department of Planning, along with the Maryland Association</p> <p data-bbox="552 766 1347 976">of Counties and the Maryland Municipal League, must create a schedule to transition local governments from a 6-year cycle to a 10-year cycle that, to the extent practicable, coincides with the release of census data and allows a local jurisdiction access to that data at the beginning of the comprehensive plan review process.</p> <p data-bbox="552 997 1347 1281">A local jurisdiction that, as of the bills’ effective date, has not incorporated the growth tiers under the Sustainable Growth and Agricultural Preservation Act of 2012 into the jurisdiction’s comprehensive plan must do so at the time the jurisdiction was scheduled to conduct its six-year comprehensive plan review prior to the bills taking effect. Failure to do so causes the growth tiers not to be considered as adopted.</p> <p data-bbox="552 1302 901 1344">Effective October 1, 2013.</p>

Reference	Description
<p>Chapter 11</p> <p>(SB 60)</p> <p><u>Housing and Community Developments 11-507, 11-508.1, 11-511, 11-513.1, 11-603, 11-603.1, 11-604, 11-608</u></p>	<p><u>Community Development Administration – Residential Mortgage Loans – Financial Assistance for Families of Limited Income</u></p> <p>This departmental bill authorizes CDA of the Department of Housing and Community Development (DHCD) to make, participate in making, and undertake a commitment for financial assistance to a family of limited income, subject to terms and qualifications as determined by the Secretary of Housing and Community Development. Financial assistance, including grants, may be made (1) for maintaining or modifying an existing residential mortgage loan or (2) in conjunction with a new residential mortgage loan to enable a homeowner to refinance an existing residential mortgage loan.</p> <p>Effective July 1, 2013.</p>
<p>Chapter 108</p> <p>(HB 378)</p> <p><u>Agriculture 2-505 (c)</u></p>	<p><u>Maryland Agricultural Land Preservation Fund – Easement Restriction – Reimbursement</u></p> <p>This bill authorizes the Comptroller to use agricultural land preservation funds to reimburse money paid by a landowner for a preliminary release of a lot. With board approval and in accordance with specified regulations, the Maryland Agricultural Land Preservation Foundation (MALPF) may reimburse money it received from a landowner for a lot that had been preliminarily released for the purpose of constructing a dwelling house for a landowner or his/her child. MALPF may reimburse the person for whom the lot was preliminarily released, the person who originally paid for the preliminary release, or another appropriate person for the amount paid to MALPF, if specified conditions are met.</p> <p>Effective July 1, 2013.</p>

Reference	Description
<p>Chapter 119 (HB 472) (miscellaneous sections of code)</p>	<p><u>Local Government Article</u> This code revision bill revises, restates, and recodifies the laws of the State that relate to local government law. The new Local Government Article as a whole governs the laws relating to counties, municipalities, and other local political subdivisions. The article is composed of 13 different former articles of the code that are revised in their entirety in the new Local Government Article. Effective October 1, 2013.</p>
<p>Chapter 136 (HB 733) <u>Various sections of the Annotated Code</u></p>	<p><u>Local Government – Cross-References and Corrections</u> This companion bill to the revision, corrects cross-references to the new Local Government Article that appear in other parts of the Annotated Code of Maryland. Effective October 1, 2013.</p>



SENATE BILL 436 AND HOUSE BILL 1209 CHANGE THE LAW RELATING TO IDOTS AND TO REFINANCINGS GENERALLY

By Edward J. Levin*

Summary

Senate Bill 436 and House Bill 1209 (Chapters 267 and 268 of the Laws of Maryland of 2013) entitled "Recordation Taxes – Exemptions." Effective July 1, 2013.

These bills raise the loan amount before indemnity deeds of trust become taxable from \$1 million to \$3 million.

They provide that all loans, including those involving IDOTs, incur recordation tax when they are refinanced on the "new money" – the difference between the then current principal balance of the existing loan and the face amount of the new loan.

Discussion

Background on IDOTs and Recordation Taxes

For decades, indemnity deeds of trust or indemnity mortgages ("IDOTs") were the financing device of choice by Maryland real estate finance practitioners in refinancing transactions. One of the key witnesses in the trial in *My Cousin Vinnie* said, "No self-respecting Southerner uses instant grits," but in this state it might have been said, "No self-respecting Marylander refinances a loan without looking hard at an IDOT."

Alas, the glory years of IDOTs have come to pass.

* Edward J. Levin is a member of Gordon Feinblatt LLC and was a member of the Indemnity Mortgage and Deed of Trust Workgroup under Senate Bill 1302.

IDOTs are security instruments that are given by a person who is not the borrower of the subject loan. Generally, the grantor of the IDOT guarantees the loan and executes the IDOT as security for the guaranty. Under §12-105(f) of the Tax-Property Article of the Maryland Code (“TP”), recordation tax is not due at the time when an instrument is recorded if, or to the extent that, the debt has not been incurred. The substance of this statute has been in place since 1939. The use of this statute to support IDOTs was first endorsed by an opinion of the Maryland Attorney General in 1944. Subsequent opinions of the Maryland Attorney General published in 1973 and 1989 confirmed this position. The 1989 opinion said that the recordation tax becomes due when the debt becomes incurred, which in the case of an IDOT occurs when the borrower defaults under the underlying loan. At that time, the guarantor has the obligation to pay the tax, but the State does not have a lien to collect it.

Recordation taxes are imposed on instruments of writing recorded in the land records in Maryland or at the State Department of Assessments and Taxation (SDAT) under Title 12 of the Tax-Property Article of the Maryland Code. Each of the 24 Maryland jurisdictions is entitled to set its own tax rate, which rates range from 0.5% to 1.2%. Although recordation taxes are a creature of Maryland law and therefore should be administered consistently throughout the State, a number of jurisdictions have imposed their own rules about them.

Prior Legislative Attempts and 2012 Legislation on IDOTs

Perhaps unsurprisingly, tax collectors became annoyed about the situations when the IDOT guarantor and the borrower were related parties and many potential tax dollars were not collected in IDOT transactions. For many years, bills were submitted to the Maryland General Assembly that would have ended the use of IDOTs, but before 2012 none of those bills made it out of committee.¹ However, in the First Special Session of 2012, the Maryland General Assembly passed Senate Bill 1302 (Chapter 2), which was a general revenue act. Section 3 of Senate Bill 1302 provides that IDOTs that are given in loan transactions in the amount of \$1 million or more are taxable when they are recorded.

The Making of Senate Bill 436 and House Bill 1209

On the assumption that Senate Bill 1302 had widely overshot its mark in attempting to raise about \$36 million, representatives of the real estate community submitted Senate Bill 436 and House Bill 1209. The bills as originally drafted would have set the threshold for making IDOTs taxable at \$5 million. Further, they provided that recordation taxes on refinancing instruments would be based on the increase of the principal amount that may be secured thereby in excess of the principal face amount of the original security instrument (rather than the amount of the then outstanding principal balance of the loan). Of considerable importance, the bills provided that all loans, whether they be residential or commercial or secured by IDOTs, would be subject to this rule.

¹ Between 2004 and 2011 seven bills were introduced in the Maryland General Assembly that would have ended the tax advantage of IDOTs in Maryland loan transactions. Another bill would have ended the advantageous use of IDOTs in Montgomery County. All of those bills failed.

After hearings in both the Senate and House committees, the sponsors of Senate Bill 436 and House Bill 1209 and the Maryland Association of Counties (MACO) compromised on the final versions of the two bills. The bills were then unanimously passed by both houses of the General Assembly, and Governor O'Malley signed them into law on May 2. The versions of the bills as enacted are described below.

Senate Bill 436 and House Bill 1209 as Enacted

Senate Bill 436 and House Bill 1209 (Chapters 267 and 268) are entitled "Recordation Taxes – Exemptions." They amend provisions of Title 12 of the Tax-Property Article of the Maryland Code effective as of July 1, 2013. These bills do the following:

1. IDOTs that secure guaranties given in connection with loans that are below a certain amount are not taxable when they are recorded. Currently, that amount is \$1 million. As of July 1, 2013, this amount will rise to \$3 million. Senate Bill 436 and House Bill 1209 require that all loans in a series that are part of the same transaction must be aggregated to determine if the \$3 million threshold is reached. TP §12-105(f)(7)(iii)(2).
2. Senate Bill 436 and House Bill 1209 change the definition of "supplemental instrument of writing" to specifically provide that IDOTs are instruments that may be amended by a "supplemental instrument" even if recordation tax was not paid on them. TP §12-101(l)(1). We believe that the provisions that permit IDOTs to be amended by supplemental instruments merely *clarify* existing law but do not change it, and I testified to this effect before the Senate Budget and Taxation Committee and the House Ways and Means Committee. The reason for this is that TP §12-105(f)(7)(i), which was added as part of Senate Bill 1302, defines and taxes "indemnity mortgages" (or IDOTs) that are given in loan transactions of \$1 million or more, but Senate Bill 1302 does not limit the effect of exemptions in other sections of the Tax-Property Article, including the exemption for "supplemental instruments of writing" in TP §12-108(e).² Therefore, the exception for supplemental instruments of writing under TP §12-108(e) should not be lost as a result of the 2012 law. Instead, the exception should maintain its validity, even before the effective date of Senate Bill 436 and House Bill 1209.

² The exemption from recordation taxes in TP §12-108(e) now provides as follows:

(e) Supplemental instruments. -- 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 debt is increased by the supplemental instrument of writing.

The definition of "supplemental instrument of writing" is set forth in TP §12-101(l) as follows:

(1) "Supplemental instrument of writing" means an instrument of writing that confirms, corrects, modifies, or supplements a previously recorded instrument of writing.

(2) "Supplemental instrument of writing" 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.

The determination that the exemption for supplemental instruments of writing is currently in effect with respect to IDOTs, including those recorded between July 1, 2012 and June 30, 2013 and including those securing \$1 million or more, has the following consequences:

- a. Any supplemental instrument of writing that does not increase the amount secured by the original mortgage or deed of trust should not be taxable. This would include any document that substitutes a trustee, assigns a mortgage or deed of trust, corrects an error, adds collateral, or makes any other change in the underlying instrument that does not increase the amount secured.
- b. Consolidations or combinations of two instruments of record should not be taxable instruments if they do not increase the amount secured over the sum of the amounts secured by the combined instruments.
- c. If the amount secured by an IDOT is increased as a result of the recordation of a supplemental instrument, the supplemental instrument should be taxable only to the extent of the amount of debt that is increased thereby.

Despite this analysis, a number of county attorneys have taken the position that if an IDOT is amended before July 1, 2013, taxes must be paid on the full amount of the new indebtedness, without any credit for the amount secured by the original IDOT. This is based on the general feeling that Senate Bill 1302 indicated that the General Assembly does not like IDOTs,³ but it is not based on any specific legislative provision. When Senate Bill 436 and House Bill 1209 become effective, it will be crystal clear that IDOTs may be modified by supplemental instruments of writing.

Therefore, a prudent course of action would be to wait until July 1 to refinance a transaction that is now secured by an IDOT.

3. Senate Bill 436 and House Bill 1209 provide that the recordation tax on a supplemental instrument will apply to the difference between the new loan amount and the outstanding principal balance secured by the instrument being modified "immediately prior to the time the supplemental instrument of writing is entered into," *i.e.*, the "new money." TP §12-105(f)(7)(iii)(3) and TP §12-108(e)(2). The latter section currently provides that supplemental instruments of writing are only taxable on the amount of the *increase in the debt secured* by the supplemental instrument. The debt secured is the amount stated in the security instrument as the maximum principal amount that may be secured thereby.

This change will supersede a memorandum of advice from the Maryland Attorney General's Office dated April 1, 2005 that provided that the recordation tax on a supplemental instrument applied to the difference between the new loan amount and the maximum principal balance secured by the instrument being modified. Certain county

³ In fact, Senate Bill 1302 contains the first specific legislative expression of endorsement of IDOTs, albeit for those IDOTs executed in connection with loans of no more than a stated amount.

attorneys have not been following the advice from the Attorney General's office. Presumably, they will follow Senate Bill 436 and House Bill 1209.

The effect of the changes described in paragraphs numbered 2 and 3 above is that IDOTs and other mortgages and deeds of trust will be treated in the same way for recordation tax purposes upon refinancings. They may be supplemented and increased, and the recordation tax will be based on the amount of the increase over the principal amount of the debt just before the supplemental instrument is signed.

Example: Consider a situation in which the original loan was \$100 and it was paid down to \$90, and then a supplemental instrument increases the loan to \$110. Under the current law (effective until June 30, 2013), the recordation tax would be based on \$10 (which is \$110 minus \$100). Under Senate Bill 436 and House Bill 1209, the recordation tax would be based on \$20 (\$110 minus \$90) for IDOTs or regular mortgages or deeds of trust. (Unfortunately, and in our view inappropriately, a number of counties are now basing the recordation on the full amount of \$110 if IDOTs are involved, and some counties are basing the tax on \$20 now.)

4. Senate Bill 436 and House Bill 1209 provide that recordation tax may be calculated on an IDOT that secures property within and without Maryland by comparing the value of the property within Maryland to the value of all of the property that is security for the loan (as may be done with other mortgages or deeds of trust), or the tax may be calculated on the amount of debt stated to be secured by the IDOT. TP §12-105(f)(7)(iv).
5. Currently, a commercial borrower may avoid or reduce recordation taxes on refinancings by arranging for the current lender to sell the loan to a new lender, which will restate the loan documents' provisions in accordance with the new financing commitment. This is often a cumbersome and expensive procedure. Recordation taxes are due only to the extent that the new loan is larger than the maximum principal balance of the old loan.

Senate Bill 436 and House Bill 1209 provide that 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 secured by an existing mortgage, deed of trust, or IDOT at the time of refinancing, if the refinancing is by the original mortgagor. TP §12-108(g). This change will enable borrowers (including commercial borrowers) to get the benefit of the refinance exemption even if their original lenders do not sell their loans to new lenders and even if IDOTs are involved. Under current law, this exemption is available only on the principal residence of an individual borrower. Moreover, because the focus of this provision is on the refinancing by an original mortgagor, rather than on the type of security instrument used, a refinancing transaction that uses a regular deed of trust or mortgage to refinance a previously existing IDOT should qualify for the exemption.

6. Senate Bill 436 and House Bill 1209 state that only IDOTs recorded after July 1, 2012 are subject to the provision in TP §12-105(f)(7)(ii), which was added by Senate Bill 1302, that secured debt under IDOTs is deemed to be incurred when and to the same extent as debt is incurred on the underlying loan. Older IDOTs are not subject to this rule.

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SENATE BILL 436

Q6

3lr1602
CF HB 1209

By: Senators Peters, DeGrange, Brinkley, Colburn, Currie, Edwards, ~~and Robey Robey, and Kittleman~~

Introduced and read first time: January 30, 2013

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 21, 2013

CHAPTER 267

1 AN ACT concerning

2 **Recordation Taxes - Exemptions**

3 FOR the purpose of exempting certain indemnity mortgage transactions from the
4 recordation tax; making certain indemnity mortgage transactions subject to
5 recordation tax after a certain date; authorizing a certain calculation or
6 allocation of recordation tax on indemnity mortgage transactions; altering the
7 information required to be included in a certain recital, acknowledgment, or
8 affidavit; altering the transaction amount that is subject to the recordation tax
9 for supplemental instruments of writing; making certain refinancing
10 instruments exempt from the recordation tax; altering a certain definition; and
11 generally relating to exemptions from the recordation tax.

12 BY repealing and reenacting, with amendments,

13 Article - Tax - Property

14 Section 12-101(l), 12-105(f)(7), and 12-108(e) and (g)

15 Annotated Code of Maryland

16 (2012 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Tax - Property**

20 12-101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (1) (1) "Supplemental instrument of writing" means an instrument of
 2 writing that confirms, corrects, modifies, [or] supplements, **OR AMENDS AND**
 3 **RESTATES** a previously recorded instrument of writing, **REGARDLESS OF WHETHER**
 4 **RECORDATION TAX WAS PAID ON SUCH INSTRUMENT OF WRITING.**

5 (2) "Supplemental instrument of writing" includes an instrument of
 6 writing that secures a debt and grants a security interest in property in addition to or
 7 in substitution for property described in the previously recorded instrument of writing.

8 12-105.

9 (f) (7) (i) In this paragraph, "indemnity mortgage" includes any
 10 mortgage, deed of trust, or other security interest in real property that secures a
 11 guarantee of repayment of a loan for which the guarantor is not primarily liable.

12 (ii) Except as provided in subparagraph (iii) of this paragraph:

13 1. secured debt with respect to an indemnity mortgage
 14 **RECORDED ON OR AFTER JULY 1, 2012**, is deemed to be incurred for purposes of
 15 this subsection when and to the same extent as debt is incurred on the guaranteed
 16 loan; and

17 2. the recordation tax applies under this subsection in
 18 the same manner as if the guarantor were primarily liable for the guaranteed loan.

19 (iii) This paragraph does not apply:

20 1. to the extent that recordation tax is paid on another
 21 instrument of writing that secures payment of the guaranteed loan; [or]

22 2. to an indemnity mortgage ~~that~~ secures a guarantee
 23 of repayment of a loan **OR SERIES OF LOANS THAT ARE PART OF THE SAME**
 24 **TRANSACTION** for ~~EVIDENCING A LIEN OF~~ less than ~~[\$1,000,000]~~ **\$5,000,000**
 25 **\$3,000,000; OR**

26 3. **TO A SUPPLEMENTAL INSTRUMENT OF WRITING**
 27 ~~AS DEFINED IN § 12-101(L) OF THIS SUBTITLE~~ THAT CONFIRMS, CORRECTS,
 28 MODIFIES, SUPPLEMENTS, OR AMENDS AND RESTATES A PREVIOUSLY
 29 RECORDED INSTRUMENT OF WRITING REGARDLESS OF WHETHER
 30 RECORDATION TAX WAS PAID ON THE INSTRUMENT OF WRITING, TO THE
 31 EXTENT OF THE OUTSTANDING PRINCIPAL BALANCE OF THE GUARANTEED
 32 LOAN IMMEDIATELY PRIOR TO THE TIME THE SUPPLEMENTAL INSTRUMENT OF
 33 WRITING IS ENTERED INTO.

1 (IV) RECORDATION TAX THAT IS OTHERWISE DUE ON THE
 2 RECORDING OF AN INDEMNITY MORTGAGE MAY BE ALLOCATED IN THE SAME
 3 MANNER DESCRIBED IN SUBSECTION (A) OF THIS SECTION OR CALCULATED ON
 4 THE AMOUNT OF THE DEBT STATED TO BE SECURED.

5 12-108.

6 (e) A supplemental instrument of writing is not subject to recordation tax
 7 except to the extent that:

8 (1) actual consideration is payable on the supplemental instrument of
 9 writing; or

10 (2) the amount of UNPAID OUTSTANDING PRINCIPAL debt
 11 ~~SECURED~~ is increased by the supplemental instrument of writing.

12 (g) (1) In this subsection, "original mortgagor" includes:

13 (i) [an individual who] A PERSON THAT assumed a debt
 14 secured by real property that the [individual] PERSON purchased [as a principal
 15 residence] and [who] paid the recordation tax on the consideration paid for the
 16 property; and

17 (ii) the trustee of an inter vivos trust if[:

18 1. the mortgaged property is used as a principal
 19 residence of the settlor of the trust; and

20 2.] the trustee or the settlor of the trust originally
 21 assumed or incurred the debt secured by the mortgage or deed of trust.

22 (2) A mortgage or deed of trust is not subject to recordation tax to the
 23 extent that it secures the refinancing of an amount not greater than the {unpaid
 24 principal amount} ~~DEBT~~ secured by an existing mortgage, INDEMNITY MORTGAGE,
 25 or deed of trust at the time of refinancing if the mortgage or deed of trust secures the
 26 refinancing of real property that is:

27 (i) [1. used as a principal residence by the original
 28 mortgagor; and

29 2.] being refinanced by the original mortgagor or by the
 30 original mortgagor and, IF APPLICABLE, the spouse of the original mortgagor; or

31 (ii) [used as a principal residence] BEING REFINANCED by the
 32 settlor of an inter vivos trust if the mortgage or deed of trust is given by a trustee of
 33 the trust.

1 (3) To qualify for an exemption under paragraph (2) of this subsection
2 an original mortgagor or agent of the original mortgagor shall include a statement in
3 the recitals or in the acknowledgment of the mortgage or deed of trust, or submit with
4 the mortgage or deed of trust, an affidavit under oath, signed by the original
5 mortgagor or agent of the original mortgagor, stating:

6 (i) that the [individual] PERSON is the original mortgagor or
7 agent of the original mortgagor; AND

8 (ii) [that the mortgaged property is the principal residence of
9 the original mortgagor or of the settlor of an inter vivos trust if the mortgage or deed
10 of trust is given by a trustee of the trust; and

11 (iii)] the amount of {unpaid OUTSTANDING principal of} the
12 original mortgage, INDEMNITY MORTGAGE, or deed of trust that is being refinanced.

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 July 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.

HOUSE BILL 1209

Q6

3lr2975

CF SB 436

By: Delegates Frick, Aumann, Barve, Bohanan, Boteler, Branch, Cardin,
Clagett, Fisher, George, Holmes, Myers, Serafini, Stukes, Szeliga, and
Walker

Introduced and read first time: February 8, 2013

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2013

CHAPTER 268

1 AN ACT concerning

2 **Recordation Taxes - Exemptions**

3 FOR the purpose of exempting certain indemnity mortgage transactions from the
4 recordation tax; making certain indemnity mortgage transactions subject to
5 recordation tax after a certain date; authorizing a certain calculation or
6 allocation of recordation tax on indemnity mortgage transactions; altering the
7 information required to be included in a certain recital, acknowledgment, or
8 affidavit; altering the transaction amount that is subject to the recordation tax
9 for supplemental instruments of writing; making certain refinancing
10 instruments exempt from the recordation tax; altering a certain definition; and
11 generally relating to exemptions from the recordation tax.

12 BY repealing and reenacting, with amendments,
13 Article - Tax - Property
14 Section 12-101(l), 12-105(f)(7), and 12-108(e) and (g)
15 Annotated Code of Maryland
16 (2012 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Tax - Property**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 12-101.

2 (l) (1) "Supplemental instrument of writing" means an instrument of
3 writing that confirms, corrects, modifies, [or] supplements, **OR AMENDS AND**
4 **RESTATES** a previously recorded instrument of writing, **REGARDLESS OF WHETHER**
5 **RECORDATION TAX WAS PAID ON SUCH INSTRUMENT OF WRITING.**

6 (2) "Supplemental instrument of writing" includes an instrument of
7 writing that secures a debt and grants a security interest in property in addition to or
8 in substitution for property described in the previously recorded instrument of writing.

9 12-105.

10 (f) (7) (i) In this paragraph, "indemnity mortgage" includes any
11 mortgage, deed of trust, or other security interest in real property that secures a
12 guarantee of repayment of a loan for which the guarantor is not primarily liable.

13 (ii) Except as provided in subparagraph (iii) of this paragraph:

14 1. secured debt with respect to an indemnity mortgage
15 **RECORDED ON OR AFTER JULY 1, 2012,** is deemed to be incurred for purposes of
16 this subsection when and to the same extent as debt is incurred on the guaranteed
17 loan; and

18 2. the recordation tax applies under this subsection in
19 the same manner as if the guarantor were primarily liable for the guaranteed loan.

20 (iii) This paragraph does not apply:

21 1. to the extent that recordation tax is paid on another
22 instrument of writing that secures payment of the guaranteed loan; [or]

23 2. to an indemnity mortgage ~~that~~ secures a guarantee
24 of repayment of a loan **OR SERIES OF LOANS THAT ARE PART OF THE SAME**
25 **TRANSACTION** for ~~EVIDENCING A LIEN OF~~ less than **[\$1,000,000] \$5,000,000**
26 **\$3,000,000; OR**

27 3. **TO A SUPPLEMENTAL INSTRUMENT OF WRITING**
28 **AS DEFINED IN § 12-101(L) OF THIS SUBTITLE THAT CONFIRMS, CORRECTS,**
29 **MODIFIES, SUPPLEMENTS, OR AMENDS AND RESTATES A PREVIOUSLY**
30 **RECORDED INSTRUMENT OF WRITING REGARDLESS OF WHETHER**
31 **RECORDATION TAX WAS PAID ON THE INSTRUMENT OF WRITING, TO THE**
32 **EXTENT OF THE OUTSTANDING PRINCIPAL BALANCE OF THE GUARANTEED**
33 **LOAN IMMEDIATELY PRIOR TO THE TIME THE SUPPLEMENTAL INSTRUMENT OF**
34 **WRITING IS ENTERED INTO.**

1 (IV) RECORDATION TAX THAT IS OTHERWISE DUE ON THE
 2 RECORDING OF AN INDEMNITY MORTGAGE MAY BE ALLOCATED IN THE SAME
 3 MANNER DESCRIBED IN SUBSECTION (A) OF THIS SECTION OR CALCULATED ON
 4 THE AMOUNT OF THE DEBT STATED TO BE SECURED.

5 12-108.

6 (e) A supplemental instrument of writing is not subject to recordation tax
 7 except to the extent that:

8 (1) actual consideration is payable on the supplemental instrument of
 9 writing; or

10 (2) the amount of UNPAID OUTSTANDING PRINCIPAL debt
 11 ~~SECURED~~ is increased by the supplemental instrument of writing.

12 (g) (1) In this subsection, "original mortgagor" includes:

13 (i) [an individual who] A PERSON THAT assumed a debt
 14 secured by real property that the [individual] PERSON purchased [as a principal
 15 residence] and [who] paid the recordation tax on the consideration paid for the
 16 property; and

17 (ii) the trustee of an inter vivos trust if[:

18 1. the mortgaged property is used as a principal
 19 residence of the settlor of the trust; and

20 2.] the trustee or the settlor of the trust originally
 21 assumed or incurred the debt secured by the mortgage or deed of trust.

22 (2) A mortgage or deed of trust is not subject to recordation tax to the
 23 extent that it secures the refinancing of an amount not greater than the [unpaid
 24 principal amount] ~~DEBT~~ secured by an existing mortgage, INDEMNITY MORTGAGE,
 25 or deed of trust at the time of refinancing if the mortgage or deed of trust secures the
 26 refinancing of real property that is:

27 (i) [1. used as a principal residence by the original
 28 mortgagor; and

29 2.] being refinanced by the original mortgagor or by the
 30 original mortgagor and, IF APPLICABLE, the spouse of the original mortgagor; or

31 (ii) [used as a principal residence] BEING REFINANCED by the
 32 settlor of an inter vivos trust if the mortgage or deed of trust is given by a trustee of
 33 the trust.

1 (3) To qualify for an exemption under paragraph (2) of this subsection
 2 an original mortgagor or agent of the original mortgagor shall include a statement in
 3 the recitals or in the acknowledgment of the mortgage or deed of trust, or submit with
 4 the mortgage or deed of trust, an affidavit under oath, signed by the original
 5 mortgagor or agent of the original mortgagor, stating:

6 (i) that the [individual] PERSON is the original mortgagor or
 7 agent of the original mortgagor; AND

8 (ii) [that the mortgaged property is the principal residence of
 9 the original mortgagor or of the settlor of an inter vivos trust if the mortgage or deed
 10 of trust is given by a trustee of the trust; and

11 (iii)] the amount of {unpaid OUTSTANDING principal of} the
 12 original mortgage, INDEMNITY MORTGAGE, or deed of trust that is being refinanced.

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 20 July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.