

# SENATE BILL 436

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3lr1602  
CF HB 1209

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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

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 21, 2013

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## CHAPTER \_\_\_\_\_

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.

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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~~ 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 ~~the~~ 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:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.