

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1008 (Delegates Healey and Norman)  
Environmental Matters

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**Real Property - Foreclosure - Mortgage Foreclosure Property Values Protection  
Act of 2013**

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This bill requires that, within 60 days after the entry of the final and nonappealable order of ratification in a foreclosure sale on residential property, the purchaser at the foreclosure sale must close on the transaction and record a deed transferring title to the property to the purchaser. If the transaction has not closed, the bill requires the purchaser to record the final order of ratification along with the contact information for the foreclosure purchaser, the person that can accept legal service for the purchaser, and the person that is responsible for the maintenance of the property.

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**Fiscal Summary**

**State Effect:** Special fund revenues increase beginning in FY 2014 for the Circuit Court Real Property Records Improvement Fund to the extent that the bill's requirement to record a final order of ratification results in a greater number of documents being recorded. General fund revenues also increase due to the bill's recordation requirement.

**Local Effect:** The bill's requirement to record a final order of ratification may have an operational impact on each circuit court's land records office. There is likely no material impact on revenues or expenditures, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Current Law:**

*Post-sale Procedures:* Under the Maryland Rules, a person authorized to make a foreclosure sale must file with the court, within 30 days after the sale, a complete report

of the sale and an affidavit of the fairness of the sale and the truth of the report. In addition, the purchaser must file an affidavit setting forth whether the purchaser is acting as an agent and, if so, information regarding the principals and stating that the purchaser has not directly or indirectly discouraged anyone from bidding for the property. A party and a holder of a subordinate interest in the property subject to the lien in an action to foreclose a lien may file exceptions to the sale within 30 days after receiving notice.

The court must then ratify the sale if (1) the time for filing exceptions has expired and either no exceptions were filed or the exceptions were overruled and (2) the court is satisfied that the sale was fairly and properly made. If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate. After the court has ratified the sale and the purchase money has been paid, the individual making the sale must convey the property to the purchaser or the purchaser's assignee.

*Recordation of Deed:* Generally no deed may pass or take effect unless it is executed and recorded. No deed, mortgage, or deed of trust may be recorded unless it meets the requirements specified by statute relating to form, necessary attached documents, and payment of taxes. Included in the necessary attached documents must be a copy of the deed for submission to the State Department of Assessments and Taxation (SDAT). The supervisor of assessments must transfer ownership of property in the assessment records upon receipt of this copy of the deed.

The proper jurisdiction for recording all deeds is the county in which the land is located. If the land is located in more than one county, the deed must be recorded in all such counties. After any document has been recorded in one county, a certified copy of the recorded document may be recorded in any other county.

### **Background:**

*Real-estate Owned (REO) Property:* According to the Maryland Foreclosure Task Force, the period of time between a foreclosure sale and the recordation of a deed transferring title to the property is estimated to range from 9 to 18 months. During this "limbo period," it is difficult for local governments to know who to contact about issues that may arise with the property. This is of special concern when the property is vacant. In addition, SDAT reports that many foreclosed residential properties are improperly retaining tax credits previously granted to individual homeowners because of the lengthy delays in recording deeds transferring legal title to the properties.

Generally, the longest delays do not occur when an individual purchaser buys property at a foreclosure sale because the recordation of a deed settles any question as to who owns the property. Rather, the longest delays often occur when a financial institution retains a property as a result of an unsuccessful foreclosure sale on the property. This acquisition

often occurs when the amount of the outstanding loan owed to the financial institution is greater than the value of the property. This type of property is referred to as REO property. In Maryland 3,988 properties were purchased by financial institutions after a foreclosure auction in 2012. Six jurisdictions (Prince George's, Baltimore, Montgomery, Anne Arundel, and Frederick counties and Baltimore City) represented approximately 71% of all lender purchases. **Exhibit 1** shows the number of REO purchases in each Maryland jurisdiction in 2012.

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**Exhibit 1**  
**2012 REO Purchases in Maryland Jurisdictions by Quarter**

<b><u>Jurisdiction</u></b>	<b><u>Q1</u></b>	<b><u>Q2</u></b>	<b><u>Q3</u></b>	<b><u>Q4</u></b>
Allegany	8	4	2	6
Anne Arundel	71	83	56	64
Baltimore	124	111	99	120
Baltimore City	141	173	143	197
Calvert	17	11	16	21
Caroline	5	8	7	9
Carroll	14	11	16	27
Cecil	149	9	7	21
Charles	43	42	23	50
Dorchester	9	9	5	10
Frederick	38	49	33	42
Garrett	5	6	3	2
Harford	37	33	25	27
Howard	23	23	18	23
Kent	4	3	4	5
Montgomery	48	46	31	81
Prince George's	289	264	264	273
Queen Anne's	7	9	5	7
St. Mary's	11	12	9	14
Somerset	5	2	4	7
Talbot	4	9	2	6
Washington	16	33	37	45
Wicomico	18	16	16	16
Worcester	8	9	9	13
<b>Total</b>	<b>1,094</b>	<b>975</b>	<b>834</b>	<b>1,086</b>

Source: Department of Housing and Community Development (with corrected totals)

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*Recordation and Transfer Taxes:* Often when a financial institution has acquired the property after a foreclosure sale, it delays the recording of the deed until it sells the property to another party, thus avoiding the payment of any recordation tax or transfer tax

until absolutely necessary. When it does sell the property, the financial institution will record the deed twice and pay the taxes twice: once for the transfer between the foreclosed-on property owner and the financial institution and again for the transfer between the financial institution and the new purchaser.

The range for recordation tax rates is \$2.50 per \$500 of transaction in Baltimore and Howard counties to \$6.00 per \$500 of transaction in Frederick and Talbot counties. There is no State recordation tax. Local transfer tax rates range from 0.5% in six counties (Allegany, Caroline, Kent, Queen Anne’s, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Six counties (Calvert, Carroll, Charles, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers. The State transfer tax is 0.5%. **Exhibit 2** shows the recordation taxes and transfer taxes for each county.

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**Exhibit 2**  
**County Recordation Taxes and Transfer Taxes**

<b>County</b>	<b>Recordation per \$500 of Transaction FY 2013</b>	<b>Transfer FY 2013</b>
Allegany	\$3.50	0.5%
Anne Arundel	3.50	1.0%
Baltimore City	5.00	1.5%
Baltimore	2.50	1.5%
Calvert	5.00	0.0%
Caroline	5.00	0.5%
Carroll	5.00	0.0%
Cecil	4.10	\$10/deed
Charles	5.00	0.0%
Dorchester	5.00	0.75%
Frederick	6.00	0.0%
Garrett	3.50	1.0%
Harford	3.30	1.0%
Howard	2.50	1.0%
Kent	3.30	0.5%
Montgomery	3.45	1.0%
Prince George’s	2.75	1.4%
Queen Anne’s	4.95	0.5%
St. Mary’s	4.00	1.0%
Somerset	3.30	0.0%
Talbot	6.00	1.0%
Washington	3.80	0.5%
Wicomico	3.50	0.0%
Worcester	3.30	0.5%

Source: Department of Legislative Services

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As shown in Exhibit 2, the recordation tax in Baltimore City is \$5.00 for each \$500 of transaction and transfer taxes are 1.5% for the city and 0.5% for the State. If a house sells in Baltimore City for \$100,000, the recordation tax is \$1,000 and the transfer taxes are \$1,500 for the city and \$500 for the State.

*Homestead Property Tax Credit Program:* The Homestead Property Tax Credit Program (assessment caps) provides tax credits against State, county, and municipal real property taxes for owner-occupied residential properties for the amount of real property taxes resulting from an annual assessment increase that exceeds a certain percentage or “cap” in any given year. The State requires the cap on assessment increases to be set at 10% for State property tax purposes; however, local governments have the authority to set their caps between 0% and 10%.

A majority of local subdivisions have assessment caps below 10%: 20 counties in fiscal 2012 and 21 counties in fiscal 2013 and 2014. One county (Prince George’s) lowered its assessment cap for fiscal 2014.

The Homestead Property Tax Credit Program is administered as follows:

- Increases in property assessments are equally spread out over three years. For example, if a property’s assessment increased by \$120,000, from \$300,000 to \$420,000, the increase would be phased in through increments of \$40,000 annually for the next three years.
- If the assessment cap were set at 10%, however, the amount of assessment subject to taxes would increase by only \$30,000 in the first year, \$33,000 in the following year, and \$36,300 in the third year.
- Since the assessment cap was set lower than the actual market increase, the homeowner does not have to pay taxes on the property’s full assessed value.

**Exhibit 3** lists county assessment caps for fiscal 2014, the number of homestead accounts, and the average tax credit for a property.

**Exhibit 3**  
**County Homestead Property Tax Credit Statistics**

<b>County</b>	<b>FY 2014 Assessment Cap</b>	<b>Number of Homestead Tax Credit Accounts</b>	<b>Average Homestead Property Tax Credit</b>
Allegany	7%	1,781	\$9,662
Anne Arundel	2%	108,620	98,755
Baltimore City	4%	81,025	38,596
Baltimore	4%	108,704	29,928
Calvert	10%	125	42,042
Caroline	5%	1,772	21,824
Carroll	5%	3,480	18,391
Cecil	8%	291	18,914
Charles	7%	1,167	20,684
Dorchester	5%	2,166	26,391
Frederick	5%	4,409	19,851
Garrett	5%	3,834	22,997
Harford	5%	1,256	15,597
Howard	5%	34,600	33,263
Kent	5%	2,734	54,060
Montgomery	10%	3,407	36,031
Prince George's	2%	97,668	29,695
Queen Anne's	5%	4,948	42,917
St. Mary's	5%	12,072	33,920
Somerset	10%	229	16,472
Talbot	0%	8,925	199,971
Washington	5%	3,461	13,273
Wicomico	5%	368	12,976
Worcester	3%	8,104	38,419
<b>Total</b>		<b>495,146</b>	

Source: State Department of Assessments and Taxation, Department of Legislative Services

**State Fiscal Effect:** Special fund revenues increase for the Circuit Court Real Property Records Improvement Fund beginning in fiscal 2014 to the extent that the bill's requirement to record a final order of ratification (if the transaction has not closed) results in more documents recorded with each circuit court's land records office.

Created by Chapter 327 of 1991, the Circuit Court Real Property Records Improvement Fund consists of surcharges assessed on instruments recorded in the land records and the financing statement records, document copying revenues, and accumulated interest revenue. The nonlapsing fund supports all personnel and operating costs within the land records offices of the clerks of the circuit court. It further supports the maintenance costs of the Electronic Land Records Online Imagery System and its website for making images accessible to the public. The Budget Reconciliation and Financing Act of 2011 (Chapter 397/HB 782) increased the surcharge on all recordable instruments that support the fund, from \$20 to \$40, for fiscal 2012 through 2015.

General fund revenues also increase beginning in fiscal 2014 to the extent the bill's requirement to record a final order of ratification (if the transaction has not closed) results in more documents recorded with each circuit court's land records office. Recording fees are generally based on the length of the instrument being recorded. The cost to record documents in land records is \$20 if the document is fewer than nine pages and \$75 if nine or more pages. According to the land records department at various circuit courts, most final orders of ratification are one to two pages. However, the bill's requirement that the final order of ratification include specified contact information may increase the length of the document to nine or more pages.

This estimate assumes that most financial institutions that acquire a property after a foreclosure sale will continue to delay the recordation of the deed until another purchaser is found. In these situations, the financial institution must record the final order of ratification within the bill's 60-day time limit and then record the deed twice when another purchaser is found. By continuing to delay the recordation of the deed, the financial institution avoids the removal of the homestead property tax credit and is able to delay the payment of any recordation tax and transfer tax owed until the recordation of the deed.

For prior introductions of this legislation, Baltimore City noted that it would monitor the recordation of a final order ratifying a sale in order to remove the homestead property tax credit. As noted above, property owned by a financial institution may not receive a homestead property tax credit. There is no current requirement to report the recordation of a final order ratifying a sale to the local supervisor of assessments; however, if the city does so, both local property tax revenues and State general fund revenues increase. The responsibility of monitoring the recordation of a final order ratifying a sale would be the responsibility of each jurisdiction.

**Local Fiscal Effect:** This estimate assumes that most financial institutions that acquire a property after a foreclosure sale will continue to delay the recordation of the deed until another purchaser is found. Therefore, there is likely no material fiscal impact on local revenue or expenditures from the receipt of recordation taxes and transfer taxes. However, the increased filings from the bill's requirement to record a final order of ratification (if the transaction has not closed) may have an operational impact on each circuit court's land records office. Additionally, to the extent that more foreclosure purchasers record a *deed* within 60 days of a final and nonappealable order ratifying a sale, local revenues may increase due to the more efficient removal of the homestead property tax credit as well as the investment earnings from an earlier receipt of recordation taxes and transfer taxes.

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### Additional Information

**Prior Introductions:** HB 508 of 2012, as amended, passed the House and was heard by the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Baltimore, Carroll, Cecil, Harford, Montgomery, and Queen Anne's counties; State Department of Assessments and Taxation; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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