

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 457

(Delegate Embry, *et al.*)

Ways and Means

Budget and Taxation

Recordation Tax - Purchase Money Mortgage or Purchase Money Deed of Trust
- Extent of Exemption

This bill specifies that the recordation tax exemption for a purchase money mortgage or purchase money deed of trust only applies to the extent that it secures purchase money. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: Minimal general fund expenditure increase in FY 2024 at the Administrative Office of the Courts for computer programming changes. Revenues are not affected.

Local Effect: None. The bill codifies current practice with regard to application of the recordation tax exemption.

Small Business Effect: Minimal.

Analysis

Current Law: A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax.

A purchase money mortgage or purchase money deed of trust is a mortgage or deed of trust that (1) is given by the transferee of real property with respect to the property purchased; (2) is delivered as part of the same transaction as the instrument of writing that transfers the property purchased and that is subject to the recordation tax; (3) recites on its face that it secures, in whole or in part, the purchase money for the property or otherwise recites on its face that it is a purchase money mortgage or purchase money deed of trust; (4) is fully

executed within 30 days of the date that the instrument of writing transferring the property is fully executed; and (5) is recorded no later than 30 days after the date that the instrument of writing transferring the property is duly recorded.

The recordation tax is imposed on the following: (1) instruments conveying title to real property – the actual consideration paid; (2) instruments that create or give notice of a security interest in real property – the principal amount of debt secured; and (3) instruments that create or give notice of a security interest in personal property – the principal amount of debt secured. Recordation taxes are also imposed on the transfer of real property with a value of \$1.0 million or more when the transfer is achieved through the sale of a “controlling interest” in a specified corporation, partnership, limited liability company, limited liability partnership, or other form of unincorporated business. Controlling interest is defined as more than 80% of the total value of the stock or the interest in capital and profits. Recordation taxes are generally imposed on an “indemnity mortgage” in the same manner as if the guarantor were primarily liable for the guaranteed loan, unless the recordation tax is paid on another instrument of writing that secures the payment of the guaranteed loan or the indemnity mortgage secures a guarantee of repayment of a loan for less than \$3.0 million. An indemnity mortgage includes any mortgage, deed of trust, or other security interest in real property that secures a guarantee of repayment of a loan for which the guarantor is not primarily liable.

Additional information on local recordation tax rates and revenues can be found in the [County Revenue Outlook report](#). A copy of the report is available on the Department of Legislative Services website.

Local Fiscal Effect: The purpose of the current recordation tax exemption is that the buyer or borrower would only pay the recordation tax on the deed, and therefore assessing the same tax on the accompanying purchase money mortgage would be deemed a double tax. County governments have generally interpreted the law to only exempt the part of the mortgage that is purchase money, even though the statute does not exactly specify this requirement. The bill is intended to codify the current application of the purchase money exemption by specifying that the mortgage exemption only applies to the part that is purchase money rather than the entire mortgage. As a result, local recordation tax revenues are not expected to be affected.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 65 (Senator West) - Budget and Taxation.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2023
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