



February 10, 2023

The Honorable, Vanessa E. Atterbeary, Chair
House Ways and Means Committee
Room 131, House Office Building
Annapolis, Maryland 21401

Support: HB 371 – Recordation Tax - Indemnity Mortgage Exemption – Threshold Amount

Dear Chair, Atterbeary and Committee Members:

The NAIOP Maryland Chapters representing 700 companies involved in all aspects of commercial, industrial and Mixed-use real estate recommends your favorable report on House Bill 371 which increases the amount of an Indemnity Deed of Trust that is exempt from the recordation tax.

What is an Indemnity Mortgage?

An Indemnity Mortgage, sometimes called a “*Guaranty*” Deed of Trust, is a method of collateralizing a loan where a third party accepts a future, contingent liability on a piece of real property in order to guarantee a primary loan taken out by another person or entity. The Indemnity Mortgage is different than a conventional mortgage because no debt is incurred when an Indemnity Mortgage is recorded. Commercial construction is often guaranteed through an Indemnity Mortgage.

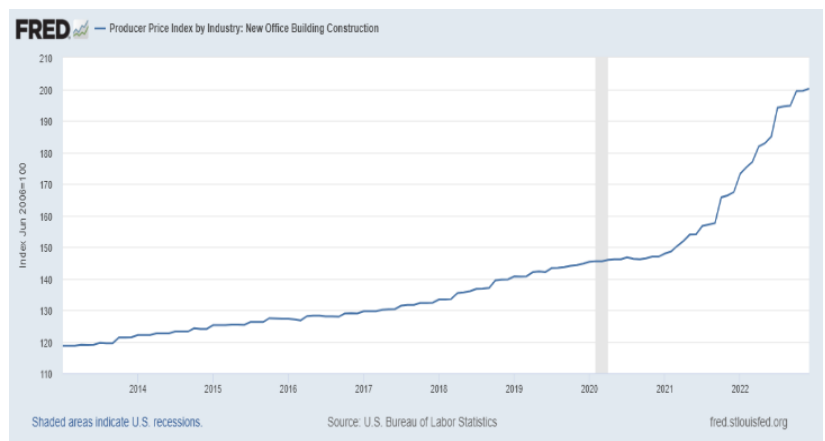
Increasing the Exemption Threshold

The legal principal behind the recordation tax exemption for Indemnity Mortgages has been that someone who guarantees a loan should not be taxed in the same way as a primary borrower. Current law exempts Indemnity Mortgages of \$3 million or less from the recordation tax. This exemption was established in 2013. HB 371 would increase the threshold to Indemnity Mortgages valued at \$15 million or less.

Rationale for Increasing the Threshold

Revenues to local government revenues from commercial real estate have increased substantially since the current threshold was established. When the current \$3 million threshold was established in 2013, recordation tax revenues were \$282 million. In FY2020 recordation tax revenues had risen to \$407 million.

Over that same time period the assessable base of commercial real property increased from \$145.3 billion to \$203 billion resulting in considerably higher revenues from commercial real estate taxes.



The exemption has become less meaningful as the cost of construction has increased. Between January of 2013 and December of 2022, the St. Louis Federal Reserve Bank’s index of New Office Building Construction

increased 69%. Applying the recordation tax to debt is a first cost that creates a barrier to investment capital and complicate project economics. These are capital investments that eventually increase the value and assessments of buildings.

These considerations weigh on development decisions in an uncertain market where the slow return to office and the shift to remote work are already delaying or scaling back construction projects.

For these reasons NAIOP respectfully requests your favorable report on House Bill 371.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.M. Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Ways and Means Committee Members
Nick Manis – Manis, Canning Assoc.