

Chapter 268

(House Bill 1209)

AN ACT concerning

Recordation Taxes – Exemptions

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

BY repealing and reenacting, with amendments,

Article – Tax – Property

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

Annotated Code of Maryland

(2012 Replacement Volume)

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

Article – Tax – Property

12–101.

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

12–105.

(f) (7) (i) In this paragraph, “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.

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

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

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

(iii) This paragraph does not apply:

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

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

3. ~~TO A SUPPLEMENTAL INSTRUMENT OF WRITING AS DEFINED IN § 12-101(L) OF THIS SUBTITLE~~ THAT CONFIRMS, CORRECTS, MODIFIES, SUPPLEMENTS, OR AMENDS AND RESTATES A PREVIOUSLY RECORDED INSTRUMENT OF WRITING REGARDLESS OF WHETHER RECORDATION TAX WAS PAID ON THE INSTRUMENT OF WRITING, **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.**

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

12-108.

(e) 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 UNPAID OUTSTANDING PRINCIPAL debt ~~SECURED~~ is increased by the supplemental instrument of writing.

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

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

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

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

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

(2) 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 amount~~ ~~DEBT~~ secured by an existing mortgage, INDEMNITY MORTGAGE, or deed of trust at the time of refinancing if the mortgage or deed of trust secures the refinancing of real property that is:

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 2, 2013.