

VI. Recordation Tax

A. Imposition

The recordation tax is an excise tax imposed by the State for the privilege of recording an instrument in the Land Records (or, in some cases, with SDAT). Although imposed by the State, the recordation tax, to the extent collected by each clerk or county fiscal office, goes to such county's treasury (except, if collected by the clerk, the clerk retains a percentage of such collection as set forth in CJP § 2-213)

For purpose of the recordation tax, TP § 12-101(c) defines "**instrument of writing**" as:

"a written instrument that:

- (i) conveys [legal or beneficial] title to real property;
- (ii) creates or gives notice of a security interest in real property; or
- (iii) creates or gives notice of a security interest in personal property"

NOTE: Generally, an instrument that is "recordable" under RP § 3-101, RP § 3-102, or CL § 9-501(a)(1) [which includes most, but not all, instruments that are "recordable"] is an "instrument of writing" subject to the recordation tax

B. Rate

1. Generally – at a dollar amount per each \$500 or fraction of \$500 of (a) consideration payable **or** (b) the principal amount of the debt secured for an instrument of writing

NOTE: "fraction of \$500" means that the tax is in whole amounts (not a percentage) such that the tax is \$0 if the consideration payable or debt incurred is \$0, the tax is the applicable dollar amount of the rate ("X") if the consideration payable or debt incurred is \$0.01 through \$500.00, \$2X if between and including \$500.01 through \$1,000.00, \$3X if between and including \$1,000.01 through \$1,500.00, etc.

NOTE: except as discussed below, the recordation tax rate is set by the governing body of each county (currently ranges from low of \$2.20 per \$500 in Prince George's County to a high of \$5.00 per

\$500 in Baltimore City and Calvert, Caroline, Carroll, Charles, Dorchester, and Frederick counties)

2. Special Recordation Tax Rates –

(a) TP § 12-103(c) –

The recordation tax rate is 55 cents for an instrument of writing for property that:

- (1) is located in 2 or more counties; and
- (2) is security for a corporate bond of a public service company as defined in PUC § 1-101

(b) TP § 12-103(d) –

For articles of transfer, articles of merger, or articles of consolidation filed with SDAT under CA § 3-107, or other document filed with SDAT which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, the recordation tax rate is \$1.65.

SDAT collects the recordation tax when the articles of transfer, articles of merger, articles of consolidation, or other document which evidences a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships are filed

and such rate is applied to the assessed value pursuant to TP § 12-105(g)(2) –

For a transfer by articles of merger, articles of consolidation, or other documents which evidence a merger or consolidation of foreign corporations, foreign limited liability companies, foreign partnerships, or foreign limited partnerships, the recordation tax applies to the value of the real property determined by SDAT at the date of finality immediately before the date of the merger or consolidation.

C. Calculation of Consideration Payable

1. TP § 12-103(a) – the consideration includes the amount of any mortgage or deed of trust assumed by the grantee

NOTE: The assumption of debt is viewed as among the debtors, not in relationship to debtors' liability to the creditor [see Pritchett v. Kidwell, 55 Md. App. 206 (1983); 25 OP. ATT'Y GEN. 589 (1940); 22 OP. ATT'Y GEN. 799 (1937)] – so a cotenant taking another cotenant's interest subject to an existing mortgage would count as "assuming" that other cotenant's percentage of mortgage liability, because the purchasing cotenant is expressly or implicitly waiving the right to contribution from the selling cotenant, and indemnifying the selling cotenant against the liability (but if viewed in relationship to the creditor [as the taxpayers argued in Kidwell], each cotenant is already 100% liable to the creditor, so there wouldn't be anything assumed)

NOTE: The decision in the Kidwell case subtly changed the standard from that stated in the 1937 Attorney General's Opinion.

The 1937 Attorney General's Opinion stated that "the [recordation] tax is based on the 'consideration paid or to be paid,' and that [consists of] the total amounts paid [or to be paid] to obtain an unencumbered title to the property."

The Kidwell court agreed that it is an "economic fact" that a grantee would pay a debt secured by a lien on the property, even if the grantee did not expressly assume personal liability for such debt. However, such potential payment only counts as "consideration payable" to the extent such payment would relieve the grantor from liability to repay such indebtedness. Conversely, if the grantor is already relieved from liability to pay the debt (such as through a discharge in bankruptcy), payments by the grantee would not benefit the grantor and, thus, would not constitute "consideration payable." In other words, the Kidwell court seems to hold that a grantee taking subject to a mortgage for which the grantor was not personally liable should be viewed as analogous to taking subject to the obligation to pay taxes or rent when due.

2. TP §§ 12-105(g)(1) & 12-106 –

unless exempt under TP § 12-108(p),(q), (v) or (w), the consideration payable for an instrument "that transfer the real property of a corporation to its stockholders, the real property of a limited liability company to its members, or the real property of a partnership to its partners" is fixed at "the value of the real property determined by [SDAT] at the date of finality immediately before the date of transfer"

3. If the consideration payable for an instrument is really zero, then the recordation tax is zero – but there are times where there is "hidden" consideration (and other times where a transferee is apparently "assuming" a mortgage or deed of trust, but it's still a "zero consideration" deed)

- (a) The prototypical "zero consideration" deed is a deed gifting property from one natural person to another for no consideration (other than "love and affection"), free and clear of any liens

Another prototypical "zero consideration" deed is a deed transferring property from any person (natural or artificial) to charity, free and clear of any liens¹

- (b) Typical "hidden" consideration issues:

(i) As discussed above, assumed debt is "consideration payable" (which includes any debt secured by a lien subject to which the grantee is taking title to the property, even if the grantee is not formally "assuming" liability, if payment of such debt would relieve the grantor of an obligation to do so)

(ii) Pay off of existing debt is "hidden" purchase money (because the grantee is paying off the debt on behalf of the grantor, it is viewed the same as if the grantee had given that amount to the grantor in cash, and then the grantor has used the money to pay off the existing debt)

(iii) Ownership interests received or increased in value [see Dean v. Pinder, 312 Md. 154, 538 A.2d 1184 (1988)]

¹ But note that there is a solid argument that such transfer is for the consideration of receiving the income tax benefits of the charitable gift. It certainly benefits the grantor (and benefit to the grantor seems to have been the touchstone of the Kidwell decision). It would be difficult to determine the value of that tax benefit, so one might argue that the assessed value should be presumed as the amount of consideration payable. On the other hand, one could argue that the tax benefit is not given by the grantee (but rather given by a third party – the government – to encourage such gifts) and should not be viewed as "consideration."

- (iv) If performance (or a promise of performance) is given as consideration and the value of such performance (or promise of performance) is not readily ascertainable, one may presume that the amount of "consideration payable" is equal to the assessed value of the property [see 23 OP. ATT'Y GEN. 624 (1938)]
- (v) If property is given as consideration (rather than, or in addition to, cash), the value of the property given must be included in the amount of "consideration payable"
- (vi) If properties are being swapped, the consideration payable for the deed conveying out one parcel is the value of the other parcel (and vice versa) [see 36 OP. ATT'Y GEN. 259 (1951)]
- (vii) **BUT** deed(s) between cotenants for a self-partition of a single property are not taxable [see 23 Op. Att'y Gen. 629 (1938)]; however, deed(s) between cotenants for exchanging interests in multiple properties are taxable [see 23 OP. ATT'Y GEN. 629; Letter of Advice to Frank W. Hales (Jan. 27, 1977)]

For example, if A and B own >< as equal tenants-in-common and decide to partition it without judicial partition, they may divide >< into A owning 100% of separate > and B owning 100% of separate < without paying recordation or transfer taxes

HOWEVER, if A and B own Property X and Property Y as equal tenants-in-common as to both properties and decide to make Property X solely A's and Property Y solely B's, then the deed to A of B's ½ interest in Property X will be subject to recording taxes based on ½ the value of Property Y – and the deed to B of A's ½ interest in Property Y will be subject to recording taxes based on ½ the value of Property X

- (c) Instruments viewed as "zero consideration," even with debt being "assumed" [because they are transfers of bare legal title without change of the underlying beneficial ownership]:
 - (i) Deed to trustee of an *inter vivos* trust
 - (ii) Deed from trustee of an *inter vivos* trust back to original settlor of such trust
 - (iii) Deed from trustee of an *inter vivos* trust out to the residuary beneficiaries upon the death of the settlor(s)

- (iv) Deed from agent, nominee or "straw man" to "real" beneficial owner of property [see 43 OP. ATT'Y GEN. 116 (1958)]
 - (v) Deed from "real" beneficial owner of property to agent, nominee or "straw man"
- (d) IRC § 1031 "like-kind exchanges" and "reverse like-kind exchanges" [see Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 28, 2004); cf. 43 OP. ATT'Y GEN. 116 (1958)]
- (i) The basic exchange is a property swap subject to recording taxes as discussed above
 - (ii) The tricky part is that some steps in more complicated exchanges involve the use of the modern equivalent to the "straw man": the "qualified intermediary" or "accommodation party"
 - (iii) When the relinquished property is transferred to the qualified intermediary from the exchangor, the qualified intermediary is acting as the nominee for the exchangor and it is a zero consideration transfer
 - (iv) When the relinquished property is transferred from the qualified intermediary to its purchaser, the deed is taxable on the consideration paid
 - (v) When the replacement property is transferred to the qualified intermediary, the qualified intermediary is acting as the nominee for the exchangor in purchasing the property and the deed is taxable on the consideration paid
 - (vi) When the replacement property is transferred from the qualified intermediary to the exchangor, the deed is merely transferring legal title from the nominee to the "true" purchaser and it is a zero consideration transfer

- (e) "Transfers" that aren't really transfers (and are not subject to recording taxes) –
- (i) Deed confirming conversion of a partnership into a Maryland limited liability company pursuant to CA § 4A-211 is not really a transfer (as stated in CA § 4A-213(a): "A general or limited partnership that has been converted to a limited liability company pursuant to [CA] § 4A-211 shall be deemed for all purposes the same entity that existed before the conversion.") – **BUT** if the property was not titled in the name of the partnership prior to such conversion, recording taxes would be due for the implicit transfer into the partnership prior to the conversion [see Memorandum from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Dec. 4, 1997)]
 - (ii) Deed confirming registration of a general partnership as a limited liability partnership (pursuant to CA § 9A-1001) or of a limited partnership as a limited liability limited partnership (pursuant to CA § 10-805) – **BUT** if the property was not titled in the name of the partnership prior to such registration, recording taxes would be due for the implicit transfer into the partnership prior to the conversion [see Memorandum from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Dec. 4, 1997)]

4. Calculation of "consideration payable" for leases

(a) Leases for a term of 7 years or less –

Exempt from recordation tax pursuant to TP § 12-105(d) & TP § 12-108(u)

(b) Ground leases –

TP § 12-105(c) –

If a lease of real property creating a perpetually renewable ground rent is recorded without a transfer of the reversionary estate for full consideration other than the ground rent being recorded at the same time, the recordation tax applies to the redemption sum as determined under [RP] § 8-110, plus any additional consideration payable.

The redemption sum under RP § 8-110(b)(2)(i) is equal to "a sum equal to the annual rent reserved multiplied by:

1. 25 (which is capitalization at 4%), if the lease was executed from April 8, 1884 to April 5, 1888, both inclusive;
2. 8.33 (which is capitalization at 12%), **if the lease was or is created after July 1, 1982;** or
3. 16.66 (which is capitalization at 6%), if the lease was created at any other time (*i.e.* on or before April 7, 1884; or from April 6, 1888 to June 30, 1982, inclusive)

If the lease is recorded at the same time with the transfer of the reversionary estate created for full consideration, the lease is not subject to recordation tax.

(c) All other leases –

TP § 12-105(d) –

For a lease of real property for a term of more than 7 years not perpetually renewable, the recordation tax applies to:

- (1) the average annual rent over the term of the lease, including renewals, capitalized at 10% plus any additional consideration payable, other than rent; or
- (2) if the average annual rent cannot be determined, the greater of:
 - (i) 105% of the minimum average annual rent as determined by the lease, capitalized at 10% plus any additional consideration payable, other than rent; or
 - (ii) 60% of the assessment of the real property subject to lease

(d) Documents that give constructive notice of an unrecorded lease –

TP § 12-105(e) –

- (1) In this subsection, "document":
 - (i) means any document that publicizes or gives constructive notice of an unrecorded lease; and
 - (ii) includes:
 1. an attornment agreement;
 2. a memorandum of a lease; and
 3. an assignment of a lease
- (2) **A document may be recorded only if the original lease is submitted and recordation tax on the document and the original lease is paid.** [see *also* RP § 3-101(e) (must submit copy of lease when recording memorandum of lease)]

- (3) Subject to [TP] § 12-111 [recordation tax may be allocated by agreement], the lessee is chargeable with recordation tax on the original lease. If a lessee fails or refuses to pay recordation tax after a demand is made, the party offering for recordation the original lease may:
 - (i) pay recordation tax; and
 - (ii) sue the lessee to recover the amount of recordation tax paid, with interest from the date of payment of recordation tax.

- (4) Recordation tax has to be paid on the original lease only if the original lease was required to be recorded under RP § 3-101 (*i.e.* no recordation tax due if "lease for an initial term not exceeding seven years if each renewal term under the lease (i) is for seven years or less, and (ii) by the provisions of the lease, may be effected or prevented by a party to the lease or his assigns")

D. Calculation of Debt Incurred

TP § 12-105(f) — debt not yet "incurred"

1. General procedure for debt not yet "incurred" —

- TP § 12-105(f) –
- (1) [I]f the total amount of secured debt has not been incurred at the time of recording or filing the instrument of writing, the recordation tax applies only to the principal amount of the debt incurred at that time
 - (2) [O]n or before 7 days after any additional debt is incurred after recording or filing an instrument of writing, a statement under oath of the amount of additional debt shall be filed with the clerk of the circuit court or with [SDAT], and the recordation tax shall be paid on the additional debt by the debtor

2. TP § 12-105(f)(4) — Option to pay recordation tax on maximum amount secured

3. Indemnity Mortgages and Indemnity Deeds of Trust

- (a) Guaranty Mortgage – the mortgage secures a guaranty by the grantor of the obligations of another person
- (b) "True" Indemnity Mortgage – the mortgage secures obligations of the grantor which are in an unknown amount and/or may or may not become due
- (c) For either kind, the recordation tax is not due until the debt is incurred (and, if and when incurred, recordation tax is due and payable pursuant to TP § 12-105(f)(2)) [see 74 OP. ATT'Y GEN. 281 (1989); 60 OP. ATT'Y GEN. 722 (1975); 58 OP. ATT'Y GEN. 792 (1973); 49 OP. ATT'Y GEN. 503 (1964) (guaranty mortgage); 29 OP. ATT'Y GEN. 201 (1944) (indemnity mortgage)]

E. Allocation of Liability

Generally, liability for payment of the recordation tax is shared equally among the parties, but (1) in the absence of agreement to the contrary, seller pays all of recordation tax if transferring to a first-time Maryland home buyer, (2) in the absence of agreement to the contrary, the mortgagor/grantor pays all of the recordation tax due on a mortgage or deed of trust, and (3) liability for recordation tax may always be otherwise allocated by agreement.

RP § 14-104 –

- (b) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.
- (c) (1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.
- (3) This subsection does not apply to tax sales of property under Title 14, Subtitle 8 of the Tax - Property Article.

TP § 12-111 –

By agreement, recordation tax may be paid by any person.

F. Exemptions Pursuant to TP § 12-108 –

1. Governmental –

(a) TP § 12-108(a) – To Government – An instrument of writing is not subject to recordation tax if the instrument of writing transfers property to, or grants a security interest to:

(i) the United States [including, generally, all agencies and instrumentalities thereof];

(ii) the State [of Maryland];

(iii) an agency of the State [of Maryland]; or

(iv) a political subdivision in the [State of Maryland, which includes counties, cities and other municipalities, and agencies and instrumentalities thereof – such as boards of education, etc.]

– PROVIDED, HOWEVER, that each county (including the City of Baltimore) may decide whether or not to tax instruments that secure repayment of debt created by the sale of Industrial Revenue Authority Bonds

(b) TP § 12-108(aa) – From Md. Stadium Auth. to Auth. affiliate – An instrument of writing pursuant to which the Maryland Stadium Authority transfers title to, or creates a leasehold interest in, real property if the transferee or lessee is an Authority affiliate (as defined in FI § 13-701(t) – "Authority affiliate" means any corporation, partnership, limited liability company or other entity, whether organized on a for profit or not for profit basis, if the [Maryland Stadium] Authority directly or indirectly owns any outstanding shares of capital stock, partnership interests, membership interests, or other equity interests of such entity.)

2. Familial –

- (a) TP § 12-108(d) – *Spouse* – An instrument of writing that transfers property between spouses or former spouses is not subject to recordation tax

NOTE: This exemption was previously limited to transfers "in accordance with a property settlement or divorce decree." This limitation was removed from TP § 12-108(d), but remains in TP § 13-403 [see Part VIII-E-1]

NOTE: This exemption only applies to instruments that transfer property (such as deeds and leases). It does not apply to instruments that grant a security interest from one spouse to another (such as a mortgage or deed of trust).

- (b) TP § 12-108(c) – *Debt Assumed in Transfers to Certain Lineal Relatives* – When property is transferred subject to a mortgage or deed of trust, the recordation tax does not apply to the principal amount of debt assumed by the transferee, if the instrument of writing transfers the property from the transferor to a:

- (1) spouse or former spouse [*Note: this is unnecessary now that TP § 12-108(d) is a complete exemption for all transfers between spouses*];
- (2) son, daughter, stepson, or stepdaughter;
- (3) parent or stepparent;
- (4) son-in-law, daughter-in-law, stepson-in-law, or stepdaughter-in-law;
- (5) parent-in-law or stepparent-in-law; or
- (6) grandchild or stepgrandchild

NOTE: this only exempts consideration that consists of "assumed debt" – it is not a complete exemption like TP § 12-108(d) – other "consideration payable" results in tax

NOTE: this exemption does not exempt "purchase money" – if existing debt is being paid off as part of the same transaction in which the property is being transferred, the debt is not being "assumed" (thus there is "consideration payable" in the amount paid off) [see Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (July 12, 2002)]

NOTE: Does not include transfers to grandparents; also does not include transfers to siblings, cousins, uncles, aunts, etc.

3. Refinance –

TP § 12-108(g) – *Refinance* –

- (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 secured by an existing 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 the spouse of the original mortgagor; or
 - (ii) used as a principal residence 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 is the original mortgagor or agent of the original mortgagor;
 - (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 principal of the original 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.
- (1) In this subsection, "original mortgagor" includes:
- (i) an individual who assumed a debt secured by real property that the individual 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.

NOTE: To be an "original mortgagor" by assumption (*i.e.* under TP § 12-108(g)(1)(i)), one must pay recordation tax on the assumption of the debt (*i.e.*, cannot have used TP § 12-108(c) to exclude the assumed debt from "consideration payable" for purposes of calculating the recordation tax on the deed)

For example, if father conveys property to son subject to an existing mortgage, and son claims the exemption under TP § 12-108(c) to exclude the assumed debt from the "consideration payable," then son cannot claim to be an "original mortgagor" with respect to the existing debt.

NOTE: If only part of the property securing the debt to be refinanced is the principal residence, existing debt must be allocated and only principal-residence-portion may be used toward refinancing exemption. Note, however, that it is the security for the existing loan that matters – additional collateral for the new loan doesn't affect the amount available.

"**principal residence**," although not defined in the Real Property Article, has been interpreted for over two decades to mean only the residential structure and its curtilage (yard), even if that amount of real property is otherwise part of a larger structure or tract of land. [see Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 22, 2004); Letter of Advice from Bonnie A. Travieso, Asst. Att'y Gen., to Hon. Frank W. Hales, Jr., Clerk of the Circuit Court for Worcester County (Sept. 24, 1981)]

For example, if an existing loan, with an outstanding principal balance of \$200,000, is secured by a mortgage encumbering the borrower's principal residence (valued at \$250,000) and another property (valued at \$100,000), then the refinancing exemption is only available in the amount of \$143,000 ($\$250,000 / \$350,000 = 71.5\%$; 71.5% of \$200,000 is \$143,000).

As noted with respect to recording fees, a farm has been viewed as consisting of both a portion of the farm that is a "principal residence" (the farmhouse and its yard) and the remainder that is not part of the "principal residence" (the farmlands), and the existing debt would need to be allocated accordingly. Also as noted with respect to recording fees, if a person is occupying one unit in or on a property, and renting out other units in or on the same property (such as a duplex), the existing debt would need to be allocated accordingly. [see Memorandum of Advice

from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 22, 2004); Letter of Advice from Bonnie A. Travieso, Asst. Att'y Gen., to Hon. Frank W. Hales, Jr., Clerk of the Circuit Court for Worcester County (Sept. 24, 1981); see *also* note to Part V-A-1 above]

NOTE: if only some of the borrowers can claim the refinancing exemption, then those borrowers that can claim it may claim it, but only may use their portion of the debt toward the amount of the refinancing exemption

For example, mother and daughter co-own the house in which only the mother resides. The existing loan, with an outstanding principal balance of \$100,000, is secured by a mortgage originally given by both mother and daughter. When refinancing, only the mother's half of the existing debt (\$50,000) may be used, because the daughter cannot make the statement required under TP § 12-108(g)(3)(ii).

NOTE: "**refinance**" was defined in Springhill Lake Investors Limited Partnership v. Prince George's County, 114 Md. App. 420, 431-33, 690 A.2d 535, 540-41 (1997) as including "when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer," or an "increasing or altering" of one existing loan to pay off another

Thus, the refinancing exemption can be used with respect to a modification of one existing mortgage loan that increases the debt under that existing mortgage loan in order to pay off another existing mortgage loan.

4. Prior Instrument on which Recordation Tax Was Paid –

(a) TP § 12-108(e) – *Supplement* – 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 debt is increased by the supplemental instrument of writing.

(b) TP § 12-108(i) – *Purchase Money Mortgage or Deed of Trust* –

(3) A purchase money mortgage or a purchase money deed of trust is not subject to recordation tax [to the extent of the amount of "consideration payable" on which recordation tax was paid on the purchase deed]

(1) In this subsection, "purchase money mortgage" or "purchase money deed of trust" means a mortgage or deed of trust that:

- (i) is given by the transferee of real property with respect to the property purchased;
- (ii) 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;
- (iii) 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;
- (iv) is fully executed within 30 days of the date that the instrument of writing transferring the property is fully executed; and
- (v) is recorded no later than 30 days after the date that the instrument of writing transferring the property is duly recorded.

(2) For the purpose of this subsection, the date that an instrument is fully executed is the later of:

- (i) the date of the last acknowledgment; or
- (ii) the date on the instrument of writing.

NOTE: Generally, may only use amount of purchase money on which recordation tax was paid on the deed toward purchase money mortgage exemption (*i.e.*, purpose of purchase money mortgage exemption is to avoid taxing the same dollars twice, but it is not to avoid taxing such dollars once) – *but see* Item VI-G-1 below

- (c) TP § 12-108(t) – *Deed Consummating Recorded Contract of Sale* – A deed conveying title to real property is not subject to recordation tax if recordation tax was paid on a prior contract of sale between the same parties for the real property [which was recorded, to the extent of the "consideration payable" on which recordation tax was paid on the contract of sale]

5. Type of Document –

- (a) TP § 12-108(f) – *Re-recording* – Any instrument of writing previously recorded in the land records of the same county or another Maryland county

NOTE: does not apply to instruments previously recorded outside of Maryland

NOTE: Must be the original, an identical counterpart, or a certified copy pursuant to RP § 3-104(e)(1)(last sentence) without any substantive amendment, addition or other change [but a cover page or last page may be added to meet the requirements of RP § 3-501(b) for recording in Montgomery County, or other non-substantive recording requirements such as the election district of the property and the like]

- (b) TP § 12-108(j) – *Mortgage Assignment* – An assignment of a mortgage or deed of trust is not subject to recordation tax

- (c) TP § 12-108(m) – *Lien Release* – A release [of a mortgage, deed of trust, or other lien] is not subject to recordation tax

- (d) TP § 12-108(o) – *Participation Agreement* – A participation agreement . . . is not subject to recordation tax

NOTE: "**Participation Agreement**" is defined as an "agreement that shows an interest of a person in a note, mortgage, or deed of trust that is based on a previously recorded loan to the mortgagor or grantor under a deed of trust"

- (e) TP § 12-108(r) – *Land Installment Contract* – A land installment contract (as described in [RP] § 10-101(b)) is not subject to recordation tax

NOTE: Recording taxes are due on the deed given when the final installment is paid. Recording taxes may also be due if the buyer reconveys the property back to the seller (whether such instrument of reconveyance is called a "quitclaim," "release," or other title). [see Memorandum of Advice from Julia M. Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Sept. 27, 1991)]

- (f) TP § 12-108(s) – *Option Agreement* – An option agreement for the purchase of real property is not subject to recordation tax

- (g) TP § 12-108(u) – *Lease for 7 Years or Less* – A lease of 7 years or less (which is not required to be recorded under RP § 3-101), is not subject to recordation tax

(h) TP § 12-108(cc) – *Transfer to Conservation Land Trust* –

- (2) An instrument of writing conveying or assigning a conservation easement to a land trust is not subject to recordation tax.
- (3) An instrument of writing conveying fee simple title to a land trust is not subject to recordation tax if the land trust files a declaration of intent that the land will be used:
 - (i) to assist in the preservation of a natural area;
 - (ii) for the environmental education of the public;
 - (iii) to conserve agricultural land and to promote continued agricultural use of the land;
 - (iv) generally to promote conservation; or
 - (v) for the maintenance of a natural area for public use or a sanctuary for wildlife.
- (1)
 - (i) In this subsection the following words have the meanings indicated.
 - (ii) "Land trust" means a qualified conservation organization that:
 - 1. is a qualified organization under § 170(h)(3) of the Internal Revenue Code and regulations adopted under that section; and
 - 2. has executed a cooperative agreement with the Maryland Environmental Trust.
 - (iii) "Conservation easement" means a restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, described in [RP] § 2-118.

6. Transfers Among Legal Entities –

(a) TP § 12-108(p) – *Affiliated Corporations* – An instrument of writing is not subject to recordation tax if the instrument of writing is:

- (1) a transfer of title to real property between a parent corporation and its subsidiary corporation or between 2 or more subsidiary corporations wholly owned by the same parent corporation, if the parent corporation is an original stockholder of the subsidiary corporation, or subsidiary corporations, or became a stockholder through gift or bequest from an original stockholder of the subsidiary corporation, or subsidiary corporations, for:
 - (i) no consideration;
 - (ii) nominal consideration; or
 - (iii) consideration that comprises only the issuance, cancellation, or surrender of stock of a subsidiary corporation;
- (2) an instrument of writing made pursuant to reorganizations described in § 368(a) of the Internal Revenue Code; or
- (3) a transfer of title to real property from a subsidiary corporation to its parent corporation for no consideration, nominal consideration or consideration that comprises only the issuance, cancellation, or surrender of a subsidiary's stock, where the parent corporation:
 - (i) previously owned the real property;
 - (ii) owns the stock of the subsidiary and has owned that stock for a period greater than 18 months; or
 - (iii) acquires the stock of a subsidiary corporation which has been in existence and has owned the real property for a period of 2 years.

NOTE: Pursuant to TP § 1-101(f), "**corporation**," when used in the Tax-Property Article includes more than just chartered corporations, but also includes associations, clubs, joint stock companies, common-law business trusts, real estate investment trusts, "Massachusetts" trusts, and registered business trusts. [see Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Aug. 5, 2004); Memorandum of Advice from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (June 11, 1998)]

- (b) TP § 12-108(q) – *Transfer on Liquidation* – An instrument of writing that transfers real property from a corporation, limited liability company, or partnership on its liquidation, dissolution, or termination is not subject to recordation tax, if the transferee is:
- (1) an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership;
 - (2) a direct descendant or relative within 2 degrees of an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership counting by the civil law method; or
 - (3) a stockholder, member, or partner who became a stockholder, member, or partner through gift or bequest from an original stockholder of the corporation, an original member of the limited liability company, or an original partner of the partnership.

(c) TP § 12-108(y) – *Conversion of Partnership to LLC* –

- (2) An instrument of writing that transfers title to real property from a predecessor entity or a trustee or nominee of a predecessor entity to a limited liability company is not subject to recordation tax if:
- (i)
 - 1. the members of the limited liability company are identical to the partners of the converting general partnership, limited partnership, limited liability partnership, or limited liability limited partnership; or
 - 2. the members of the limited liability company are identical to the joint venturers of the converting joint venture;
 - (ii) each member's allocation of the profits and losses of the limited liability company is identical to that member's allocation of the profits and losses of the converting predecessor entity; and
 - (iii) the instrument of writing that transfers title to real property represents the dissolution of the predecessor entity for purposes of conversion to a limited liability company.
- (1) (i) In this subsection the following words have the meanings indicated.
- (ii) "Foreign general partnership", "foreign limited partnership", "foreign limited liability partnership", "foreign limited liability limited partnership", and "foreign joint venture" mean, respectively, a partnership, limited partnership, limited liability limited partnership, or joint venture organized or formed under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States.
- (iii) "Predecessor entity" includes a:
- 1. Maryland general partnership or foreign general partnership;
 - 2. Maryland limited partnership or foreign limited partnership;
 - 3. Maryland limited liability partnership or foreign limited liability partnership;
 - 4. Maryland limited liability limited partnership or foreign limited liability limited partnership; and
 - 5. Maryland joint venture or foreign joint venture.

NOTE: Each separate partnership must "convert" to a separate corresponding LLC.

(d) TP § 12-108(bb) – *Conversion of Real Estate Enterprise to LLC* –

- (2) An instrument of writing that transfers title to real property from the individual or individuals conducting a real estate enterprise to a limited liability company is not subject to recordation tax if:
- (i) the transfer is for no consideration other than the issuance of membership interests in the limited liability company;
 - (ii) the members of the limited liability company are identical to the partners of the conveying real estate enterprise;
 - (iii) each member's allocation of the profits and losses of the limited liability company is identical to that member's allocation of the profits and losses of the conveying real estate enterprise;
 - (iv) the transfer is part of a discontinuation of the real estate enterprise; and
 - (v) all real property owned by the individuals and used in the conduct of any real estate enterprise is being conveyed to a single limited liability company.
- (1) In this subsection, "real estate enterprise" means a business conducted by one or more individuals who own real property, including a sole proprietorship or a tenancy by the entirety, and are principally involved in buying, selling, leasing, or managing real property.
- (3) An individual's other business interests unrelated to the real estate enterprise and unaffected by the title transfer to a limited liability company may not affect the individual's ability to claim the exemption from the recordation tax described in this subsection.

NOTE: All properties of the converting "real estate enterprise" must be transferred into one LLC

(e) TP § 12-108(v) – *Articles of Merger* – Articles of merger or other document which evidences a merger of foreign corporations are not subject to recordation tax if there is a transfer of real property:

- (1) from a parent corporation to its subsidiary corporation;
- (2) from a subsidiary corporation to its parent corporation where the parent corporation;
 - (i) previously owned the real property;
 - (ii) owns the stock of the subsidiary and has owned that stock for a period greater than 18 months; or
 - (iii) acquires the stock of a subsidiary corporation which has been in existence and has owned the real property for a period of 2 years; or
- (3) from a corporation merging out of existence to its successor corporation where recordation tax and, if then required to have been paid, transfer tax were paid when the corporation merging out of existence acquired title to the real property.

NOTE: "Articles of merger" and "documents which evidence the merger or consolidation of foreign corporations" are defined in TP § 12-101(i) and (k), respectively.

(f) TP § 12-108(w) – *Articles of Consolidation* – Articles of consolidation or other documents that evidence a consolidation of foreign corporations are not subject to recordation tax if recordation tax and, if then required to have been paid, transfer tax were paid when the corporation consolidating to form a new corporation acquired title to the real property.

NOTE: "Articles of consolidation" and "documents which evidence the merger or consolidation of foreign corporations" are defined in TP § 12-101(j) and (k), respectively.

(g) TP § 12-108(x) – *Termination of a Cooperative Housing Corporation* –

- (1) Except as provided in this subsection, an instrument of writing that transfers real property from a cooperative housing corporation on its termination to an owner of a cooperative interest in the cooperative housing corporation is not subject to recordation tax if the cooperative housing corporation consists of single residential units and was established on or before January 1, 1970.
- (2) The exemption under paragraph (1) of this subsection does not apply to:
 - (i) the conversion of a cooperative housing corporation to a condominium regime; or
 - (ii) the transfer of property to a person who:
 1. does not occupy the property transferred; or
 2. has received the credit allowed under this section for another property transferred as part of the same corporate termination.
- (3) The exemption under paragraph (1) of this subsection shall apply only in a county that:
 - (i) does not levy a county property transfer tax; or
 - (ii) has, by law, adopted an exemption from any local transfer tax for property as described in this subsection.

NOTE: Rarely applicable these days.

7. UCC –

- (a) TP § 12-108(k) – *Exempt Collateral* – A security agreement filed or recorded under the Maryland Uniform Commercial Code is not subject to recordation tax . . . if it is filed or recorded: (i) to perfect a security interest in inventory; (ii) to perfect a security interest in contract rights, general intangibles, or accounts; (iii) to perfect a security interest in farm products or in equipment used in farming operations; (iv) to perfect a security interest taken or retained by a seller of collateral to secure all or part of its price; or (v) to publicize a lease of goods or fixtures, provided that the security agreement states on its face that it does not create a security interest; or . . . with [SDAT] under CL § 9-501(a)(2)

- (b) TP § 12-108(h) – *Lien on Farm Products or Equipment* – An instrument of writing of a mechanic's lien or crop lien that relates to farm products or equipment used in farming operations is not subject to recordation tax.

- (c) TP § 12-108(b) – *Lien on Vehicle or Vessel* – A security agreement is not subject to recordation tax, if the security agreement is: (1) on a vehicle and is perfected by filing with the Motor Vehicle Administration; or (2) on a vessel and is perfected by filing with the Department of Natural Resources

8. Judicial –

- (a) TP § 12-108(l) – *Judgement* – A judgment of a court is not subject to recordation tax

- (b) TP § 12-108(n) – *Order of Satisfaction* – An order of satisfaction is not subject to recordation tax

G. Other Exemptions from Recordation Tax

1. Exemptions enacted by a county pursuant to TP § 12-103(b)(2) or (3)

(a) Partial exemption pursuant to TP § 12-103(b)(2)

[A] county may provide for an exemption from the tax of a specified amount of the consideration payable on the conveyance of owner-occupied residential property if the buyer intends to use the property as the buyer's principal residence by actually occupying the residence for at least 7 months of a 12-month period

NOTE: Currently enacted in Montgomery County and Baltimore City. Baltimore City has adopted the following interpretations, in which the Clerk consents: (i) for purposes of the purchase money mortgage exemption [TP § 12-108(i)], treat as if exemption not applied to reduce "consideration payable" on deed (*i.e.* if the deed is for \$100,000, but only taxed on \$78,000, the purchaser still gets to count \$100,000 toward the purchase money exemption); (ii) full exemption allowed even if there are grantees in addition to the buyer who will actually occupy the property as a principal residence; and (iii) full exemption allowed so long as a portion of the property will be occupied by a buyer as a principal residence, even if some of the property will not be (*e.g.*, a buyer of a duplex can claim exemption if buyer will occupy one unit, even if renting out the other unit). We understand that Montgomery County may apply a similar interpretation.

(b) Complete exemption pursuant to TP § 12-103(b)(3)

[A] county . . . may provide for an exemption from the recordation tax for an instrument of writing for residentially improved owner-occupied real property if the instrument of writing is accompanied by a statement under oath signed by each grantee that:

- (i)
 - 1. the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and
 - 2. the residence will be occupied by the grantee as the grantee's principal residence; **or**
- (ii)
 - 1. the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this title for the property; and
 - 2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

2. Transfers from the federal government –

Recordation tax must be waived to the extent liability for recordation tax is allocated to the federal government as the grantor (because a state cannot tax the federal government) [see Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Feb. 13, 2002); Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (May 21, 1999)]

3. ET § 9-106(c) – To the extent a personal representative is conveying property as a distribution in kind for no consideration, no recordation tax may be imposed on the deed

4. CA § 5-637(c) – To the extent liability for recordation tax is allocated to an electric cooperative (formed under subtitle 6 of CA Title 5 – which was first codified in 2001 from 1976 MD. LAWS 179)

5. RP § 11-102(c) – The following condominium documents are exempt from recordation tax:

- (i) Declaration of Condominium;
- (ii) Bylaws of the Condominium (to the extent recordable);
- (iii) Condominium Plat; and
- (iv) Statement of Lien (pursuant to RP § 11-110(d) which incorporates the provisions of the Maryland Contract Lien Act [subtitle 2 of RP Title 14] – see RP § 14-203(h)&(j) for requirements and form)

H. Apportionment

1. Determine total "consideration payable" for instrument

- or -

Determine total "debt secured by" the instrument (to the extent incurred – see TP § 12-105(f), *but see* TP § 12-105(f)(4) [may pay on maximum])

2. Reduce to the percentage of the "consideration payable" apportioned to Maryland –

TP § 12-105(a)(1): For a deed . . . transferring title to real property located partly in the State, the recordation tax applies to the consideration payable . . . in the same ratio that the value of the real property that is located in the State bears to the value of the entire property

- or -

Reduce to the percentage of the "debt incurred" that is secured by Maryland real property and Maryland non-exempt personal property –

TP § 12-105(a)(1): For a . . . deed of trust, or mortgage transferring title to real property located partly in the State, the recordation tax applies to . . . the principal amount of the debt secured in the same ratio that the value of the real property that is located in the State bears to the value of the entire property

TP § 12-105(a)(2): For a security agreement covering personal property that is not exempt under [TP] § 12-108(k) and is located partly in this State, recordation tax applies to the principal amount of the debt secured in the same ratio that the value of the nonexempt personal property located in this State bears to the value of the entire personal property

TP § 12-105(a)(3): For transactions that involve instruments of writing described in both paragraphs (1) and (2) of this subsection, the recordation tax applies to . . . the principal amount of the debt secured

in the same ratio that the sum of the values of the real property and the nonexempt personal property located in this State bears to the value of the entire property.

3. Apply any exemptions available under TP § 12-108 (see Blumenthal v. Clerk of Circuit Court, 278 Md. 398, 365 A.2d 279 (1976) (recordation tax is one unitary tax imposed by State, even though counties set different rates))
 4. Apportion remaining non-exempt "consideration payable" or "debt secured" between counties in accordance with TP § 12-110(b)
 5. To apportioned "consideration payable," apply any exemption enacted by the applicable county pursuant to TP § 12-103(b)(2) or (3) [see Part VI-G-1 above]
- Also, apply any of the other "exemptions" described in Part VI-G-2 through 5 above
6. Apply applicable county rate to non-exempted amount apportioned to each county to determine tax payable in such county in accordance with TP § 12-110(b)(i)