

VII. State Transfer Tax

A. Imposition

The state transfer tax is an excise tax imposed by the State for the privilege of recording an instrument in the Land Records which conveys title to, or a leasehold interest in, real property. The state transfer tax is imposed by the State, collected by the Clerks of the Circuit Courts, and remitted to the Comptroller for deposit into a special fund allocated as set forth in TP § 13-209.

For purpose of the state transfer tax, "**instrument of writing**" means "a written instrument that conveys title to, or a leasehold interest in, real property" (and "does not include a mortgage, deed of trust, or other contract that creates an encumbrance on real property") [TP § 13-101(c)]

B. Rate

1. Generally – TP § 13-203(a) – 0.5% of the consideration payable for each instrument of writing
2. Reduction of Rate for First-Time Maryland Home Buyers –
 - TP § 13-203(b) provides for a reduction of the rate to 0.25% of the consideration payable for certain instruments of writing transferring property to "first-time Maryland home buyers," and such reduced state transfer tax is payable entirely by seller [see *also* RP § 14-104(c)(2)]
 - Each "grantee" (meaning each new record owner of the property [see Memorandum of Advice from Julia Freit, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Aug. 21, 1996)]) must provide one or the other of the two kinds of required affidavits (must be clear as to which each grantee is giving [see Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 5, 2000)]) – either:
 - (i) an affidavit that the grantee is a "first-time Maryland home buyer" who will occupy the property as his or her principal residence (at least one grantee must provide this affidavit),
or
 - (ii) an affidavit that the grantee is just on title to join in a purchase money mortgage and will not be occupy the property as his or her principal residence.

- If any of the property will be used for a purpose other than "principal residence" (such as a farm or a duplex in which the second unit will be rented out), the rate reduction is unavailable [see Memorandum of Advice from Bruce L. Benshoof, Asst. Att'y Gen., to all Clerks of the Circuit Courts (Oct. 26, 2004)]

- A member-tenant of a housing cooperative has not thereby owned residential real property [see CA § 5-6B-16]

TP § 13-203(b) –

- (1) In this subsection, "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence.
- (2) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in [TP] § 12-108(i) for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.
- (3) Notwithstanding any other provision of law, for a sale of improved residential real property to a first-time Maryland home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing and the transfer tax shall be paid entirely by the seller.
- (4) To qualify for the exemption under paragraph (3) of this subsection, each grantee or an agent of the grantee shall provide a statement that is signed under oath by the grantee or agent of the grantee stating 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 article for the property; and
 2. the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.
- (5) A statement under paragraph (4) of this subsection by an agent of a grantee 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.

C. Calculation of Consideration Payable

1. TP § 13-203(a) – as with the recordation tax, the consideration payable includes the amount of any mortgage or deed of trust assumed by the grantee

2. TP § 13-205(d)(1) – as with the recordation tax, the consideration payable is fixed at "the value of the real property determined by [SDAT] at the date of finality immediately before the date of transfer" for "conveyances 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" unless exempted by § 13-207(a)(9), (10), (15), and (16)

3. Multiple properties –
 - (a) Although there is no provision in subtitle 2 of TP Title 13 comparable to TP § 12-105(a)(1) for transfers of property partly within and partly without the State, it is presumed that a similar allocation of the consideration based on the ratio of the value of property located in Maryland to the total value of all property transferred

 - (b) Although there is no provision in subtitle 2 of TP Title 13 comparable to TP § 12-110(b) for transfers of property in more than one Maryland county, one could presumably perform a similar allocation for the state transfer tax (because most of the funds collected from the state transfer tax go to the Comptroller, this allocation only matters as to the percentage thereof retained by each Clerk pursuant to CJP § 2-213)

4. Leases – "consideration payable" determined in the same manner as determined for recordation tax – TP § 13-205(a) is substantively the same as TP § 12-105(c) [ground lease]; TP § 13-205(b) is substantively the same as TP § 12-105(d) [regular lease]; and TP § 13-205(c) is substantively the same as TP § 12-105(e) [instrument that discloses an unrecorded lease]

D. Allocation of Liability

Generally, shared equally (0.25% for the grantor, 0.25% for the grantee), but (1) if the grantee is a "first-time Maryland home buyer," 0.25% for the grantor and no liability for the grantee; and (2) if a lease, the lessee is ultimately liable for payment of all of the state transfer tax due thereon

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 State . . . transfer tax shall be shared equally between the grantor and grantee. . . .

(c) . . .

(2) The entire amount of State 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.

(3) This subsection does not apply to tax sales of property under [TP] Title 14, Subtitle 8.

TP § 13-203(b)(3) –

Notwithstanding any other provision of law, for a sale of improved residential real property to a first-time Maryland home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing and the transfer tax shall be paid entirely by the seller.

TP § 13-205(c)(3) –

Subject to [TP] § 13-102 [transfer tax may be allocated by agreement], the lessee is chargeable with transfer tax on the original lease. If a lessee fails or refuses to pay transfer tax after a demand is made, the party offering the original lease for recordation may:

(i) pay the recordation tax [*as in statute, but should be "transfer tax"*]; and

(ii) sue the lessee to recover the amount of transfer tax paid, with interest from the date of payment of transfer tax.

E. Exemptions

1. TP § 13-207(a) – Exemptions imported from the exemptions to recordation tax in TP § 12-108 [see *applicable section of Part VI*]:

(1)	§ 12-108(a) – Transfer to government
(2)	§ 12-108(c) – Consideration consisting of debt assumed by certain relatives
(3)	§ 12-108(d) – Transfer between spouses or former spouses
(4)	§ 12-108(e) – Supplemental instrument for no additional consideration
(5)	§ 12-108(f) – Previously recorded instrument ("true" re-recordings; not supplements)
(6)	§ 12-108(l) – Judgment
(7)	§ 12-108(n) – Order of Satisfaction
(8)	§ 12-108(o) – Participation Agreement
(9)	§ 12-108(p) – Certain transfers among affiliated corporations
(10)	§ 12-108(q) – Transfer to certain beneficial owners of legal entity upon liquidation, dissolution, or termination
(11)	§ 12-108(r) – Land installment contract (recorded pursuant to RP § 10-104)
(12)	§ 12-108(s) – Option to purchase real property (or memorandum of option)
(13)	§ 12-108(t) – Deed effecting transfer contemplated in a contract of sale previously recorded and taxed (other than a land installment contract)
(14)	§ 12-108(u) – Leases for a term of 7 years or less
(15)	§ 12-108(v) – Certain Articles of Merger
(16)	§ 12-108(w) – Certain Articles of Consolidation
(17)	§ 12-108(x) – Transfer from a cooperative housing corporation to owner(s) of cooperative interest

(18)	<p>§ 12-108(y) – Conversion of a partnership into a limited liability company</p> <p>§ 12-108(bb) – Conversion of a "real estate enterprise" into a limited liability company</p>
(19)	§ 12-108(z) – ABROGATED
(20)	§ 12-108(aa) – Transfer from Maryland Stadium Authority to an "Authority affiliate"
(21)	§ 12-108(cc) – Conveyance or assignment of conservation easement, or conveyance of fee simple title, to qualified land trust

2. TP § 13-207(b) – *Transfer of agricultural land to an income-tax-exempt transferee acquiring for the purpose of maintaining as agricultural land –*

- (1) An instrument of writing that transfers agricultural land that the transferee is acquiring for the purpose of maintaining the character of the land as agricultural land is not subject to the transfer tax, if the transferee:
 - (i) is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code [tax exempt status for charitable, religious, educational, scientific, amateur athletic and literary organizations];
 - (ii) is incorporated, qualified, or registered to do business in the State [of Maryland];
 - (iii) has as its principal purpose the preservation of agricultural land, including the temporary ownership of an interest in land for the purpose of preserving the character of the land as agricultural land; and
 - (iv) has been certified by the Department as meeting the requirements of this paragraph.

- (2) If a transferee notifies the Department at least 7 days before the date of transfer of property to the transferee, the Department shall notify, in writing, the clerk of the circuit court for the county in which the property being transferred is located of the name and address of each transferee that has been certified under paragraph (1) of this subsection.

3. Other exemptions from state transfer tax –

(a) Transfers from the federal government –

As with the recordation tax, state transfer tax must be waived to the extent liability for state transfer tax is allocated to the federal government as the grantor (because a state cannot tax the federal government)

(b) ET § 9-106(c) – As with recordation tax, to the extent a personal representative is conveying property as a distribution in kind for no consideration, no state transfer tax can be imposed on the deed

(c) CA § 5-637(c) – As with the recordation tax, to the extent liability for state transfer 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)

(d) RP § 11-102(c) – As with the recordation tax, the following condominium documents are exempt from state transfer 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) [note: a statement of lien would not be subject to state transfer tax anyway]