RECORDING SEMINAR
2002

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RECORDING TAXES - GENERALLY

1. Types of Taxes

a. There are two State recording taxes: State transfer tax, governed by Tax-Property Article, Title 13, Subtitles 1 and 2, and State recordation tax (also known as "documentary stamps"), governed by Tax-Property Article, Title 12. In several counties, there is also a county transfer tax governed by Public Local Law and by Tax-Property Article, Title 13, Subtitle 4.[1]

b. State transfer tax applies only to instruments that transfer an interest in real property, e.g., deed, lease, easement, contract, etc. State recordation tax applies to both instruments that transfer an interest in real property and instruments that create a security interest in real or personal property, e.g., mortgage, deed of trust, financing statement.

2. Nature of Tax

The recording taxes are excise taxes imposed on the privilege of recording, not property taxes. See 64 Opinions of the Attorney General 286 (1979); Dean v. Pinder, 312 Md. 154, 159 (1988). The taxes become due upon the submission of an instrument for recording. Tax-Property Article, §§12-102 and 13-202.

3. Rate of Tax

a. State transfer tax - The rate is normally .5% , except on qualifying first-time home buyer deeds, on which the rate is .25%. Tax-Property Article, §13-203.

b. State recordation tax - Generally, the rate is $_.__ per $500, or portion of $500 (round up to nearest $500). The rate is set by each county since the State gives the recordation tax (less the clerk's commission for collection) to the county. There is one exception; the rate is $ .55/$500 for security instruments on property in 2 or more counties and securing the corporate bond of a public utility. Tax-Property Article, §12-103.

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[1] These materials do not address the imposition of county transfer taxes or the exemptions therefrom.

DEEDS AND OTHER INSTRUMENTS OF TRANSFER

1. Consideration Issues

a. For deeds and other instruments that transfer an interest in property, recordation and transfer tax are imposed on the consideration payable. Tax-Property Article, §§12-103(a) and 13-203(a). "Consideration payable" is not limited to cash, but may include anything of economic value given to the grantor, such as other property (real or personal, tangible or intangible) or relief from responsibility for repayment of a debt. See Dean v. Pinder, 312 Md. 154 (1988).

b. The Clerk may investigate any recitation of consideration in an instrument presented for recording. See 41 Opinions of the Attorney General 395 (1955), 49 Opinions of the Attorney General 479, 493-94 (1964), 62 Opinions of the Attorney General 172 (1977).

c. Consideration includes the amount of outstanding principal balance of any mortgage or deed of trust assumed by the grantee. Tax-Property Article, §§12-103(a) and 13-203(a). When a grantee takes title subject to an open mortgage or deed of trust, there is a presumption the grantee is assuming responsibility to make the future payments on the secured debt, even if the grantee does not expressly assume personal liability for the debt. See Pritchett v. Kidwell, 55 Md. App. 206 (1983); 25 Opinions of the Attorney General 589 (1940). There is assumed indebtedness when one co-tenant acquires the interest of another co-tenant subject to an open mortgage or deed of trust on which both co-tenants are jointly and severally liable. See Pritchett v. Kidwell.

This general rule does not apply to a mortgage or deed or trust taken subject to and assumed by a: spouse/former spouse; child (including step-child)/child-in-law; parent (including step-parent)/parent-in-law; or grandchild (including step grandchild) of the grantor. Tax-Property Article, §§12-108(c) and 13-207(a)(2). This exemption for an assumed mortgage/deed of trust indebtedness does not apply when the grantor's prior mortgage/deed of trust is paid off and released and replaced by a new mortgage/deed of trust given by the grantee. See Letter of advice to Lynne G. Howell dated July 8, 2002.

d. If the consideration is truly zero - as on a gift to a family member or friend, donation to a charity, conveyance by the settlor (creator) to an inter vivos (created "during life") trust - the tax is zero. See 63 Opinions of the Attorney General 623 (1978); 49 Opinions of the Attorney General 508 (1964).

2. Instruments of writing that transfer property between spouses or former spouses are not subject to either recordation or transfer tax. Tax-Property Article, §§12-108(d) and 13-207(a)(3).

3. Property exchanges are subject to taxes. Each deed is taxable on the fair market value of the property conveyed. See 36 Opinions of the Attorney General 259 (1951); letter of advice to Carmen Cashman dated October 8, 2002 re reverse like-kind exchanges.

> Example 1: A transfers Whiteacre, valued at $60,000, to B and B conveys Blackacre, also valued at $60,000, to A. Both deeds are subject to recording taxes on $60,000.
>
> Example 2: A transfers Whiteacre, valued at $100,000, to B and, in exchange, B transfers Blackacre, valued at $125,000, to A for $25,000 cash consideration. The deed of Whiteacre is taxable on $100,000 because A is receiving, as consideration for the conveyance, a piece of real property (Blackacre) worth $125,000 less a cash payment A must give B. The deed of Blackacre is taxable on $125,000 because B is receiving, as consideration for the conveyance, a piece of real property (Whiteacre) worth $100,000 plus a $25,000 cash payment.

Note, when co-owners of a single property partition the property, this is not a taxable exchange. Thus, if A and B own undivided one-half interests in Whiteacre and then subdivide Whiteacre, each conveying to the other his or her interest in the other's half, these deeds are not subject to recordation and transfer taxes. See 23 Opinions of the Attorney General 629 (1938).

However, when co-owners of separate properties exchange their undivided interests in the separate properties, the deeds of exchange are taxable. Thus if A and B jointly own both Whiteacre and Blackacre, and A conveys A's half interest in Whiteacre to B and B conveys B's half interest in Blackacre to A, the deeds are taxable on the fair market value of the half interest conveyed, i.e., half the full value of the property. See 23 Opinions of the Attorney General 629; letter of advice to Frank W. Hales dated January 27, 1977.

4. Instruments conveying property to an inter vivos trust (trust created during the settlor's life) or a testamentary trust (a trust created under the settlor's will), or the trustee thereof, or from the trustee to a beneficiary of such a trust, for no consideration are subject to no tax. See 49 Opinions of the Attorney General 508 (1964); 42 Opinions of the Attorney General 126 (1957).

Note: A conveyance to the trustee of a "business trust", as defined in Corporations and Associations Article, §3-101(d), is taxable because the grantor is receiving a marketable investment interest in return for the contribution of property. Such a conveyance is comparable to a conveyance by a stockholder to a corporation. If the deed simply names a trustee as grantee, and does not indicate what type of trust is involved, the clerk may inquire as to the type of trust.[2]

5. Transfers to and from corporations (including business trusts), partnerships, and limited liability companies -

a. The law recognizes business entities (corporations partnerships, limited liability companies) as distinct and separate "persons" from the owners (shareholders, partners, members) of the entities. See Lopez v. Lopez, 250 Md. 491, 503 (1968).

b. With certain exceptions (see ¶¶c and d), taxes are imposed on transfers of property to business entities by persons receiving ownership interests in the entities; the taxes are calculated on the value of the property conveyed. See Pinder v. Dean, 70 Md. App. 252, aff'd 312 Md. 154 (1988); Scott v. Clerk of the Circuit Court for Frederick County, 112 Md. App. 234 (1996); 32 Opinions of the Attorney General 394 (1947); 42 Opinions of the Attorney General 372 (1957); 62 Opinions of the Attorney General 842 (1977). Taxes also are imposed even if no additional ownership interests (shares, partnership interests, membership interests) are received at the time of the transfer and the only consideration for the transfer is an increase in the value of the ownership interests already held by the grantors. See Dean v. Pinder 312 Md. 154 (1988).

c. One or more individuals conducting a "real estate enterprise", *i.e.* involved principally in buying, selling, leasing, or managing real property, may contribute the real property to a single limited liability company without payment of recordation or transfer taxes if: (1) the real estate enterprise is discontinued; (2) each grantor is a member of the grantee limited liability company and each member's allocation of profit and loss in the company is identical to that individual's interest and allocation of profit and loss in the real estate enterprise; and (3) all the

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[2] A conveyance to an inter vivos or testamentary trust may be made to either the trust or the trustee; a conveyance to a business trust may be made only to the trustee. See Real Property Article, §2-122.

real property held and leased and managed by the grantor(s) in the conduct of any real estate enterprise is contributed to the limited liability company.

d. Transfers of real property between and among parent and subsidiary corporations are <u>not</u> subject to the tax when there is no consideration other than the issuance, cancellation, or surrender of stock of the subsidiary corporation. Tax-Property Article, §§12-108(p) and 13-207(a)(9). Such a transfer qualifies as a "no consideration" conveyance even if an outstanding mortgage or deed of trust is being assumed by the grantee corporation. <u>See</u> <u>B.F. Saul Real Estate Investment Trust v. Anne Arundel County</u>, 110 Md.App. 455 (1996). The term "corporation" includes a business trust. <u>See</u> Memorandum to clerks dated June 11, 1998.

e. To the extent a corporation, partnership, or limited liability company conveys its property on dissolution, complete liquidation, or termination to its original shareholders, partners, or members (or to a direct descendant or relative of the original holder within 2 degrees or to a person who acquired the stock or partnership/membership interest from the original holder by gift or bequest) on a pro-rata basis, no taxes are imposed. Tax-Property Article, §§12-108(q) and 13-207(a)(10). <u>See</u> 24 <u>Opinions of the Attorney General</u> 973 (1939); 30 <u>Opinions of the Attorney General</u> 193 (1945); 32 <u>Opinions of the Attorney General</u> 394 (1947); 62 <u>Opinions of the Attorney General</u> 842 (1977); memorandum to clerks dated December 22, 1989. This is true even if the shareholders, partners, or members assume an outstanding mortgage. <u>See</u> Letter of advice to Charles C. Glos dated April 29, 1974).

f. No taxes are imposed on transfers in connection with a statutory conversion of a partnership or a proprietorship to a Maryland limited liability company. Corporations and Associations Article, §§4A-211, 4A-212, and 4A-213. <u>See</u> Memorandum to clerks dated December 4, 1997. A sole proprietorship may be converted to a limited liability company after the death of the proprietor by the decedent's personal representative or trustee. Estates & Trusts Article, §§7-401(u) and 15-102(s). Additionally, no taxes are imposed on a non-statutory conversion of a partnership to a limited liability company when the identity and share of profit and loss of the members of the limited liability company are the same as that of the partners of a dissolving partnership. Tax-Property Article, §12-108(y). <u>See</u> 84 <u>Opinions of the Attorney General</u> ___ [Opinion No. 99-015 (October 12, 1999)]; memoranda to clerks dated July 8, 1996.

g. Transfers from a corporation to its stockholders, a partnership to its partners, or a limited liability company to its members not fitting within the exemptions described in Tax-Property Article, §§12-108(p)and(q) [see ¶¶d and e above] or Tax-Property Article, §§12-108(v) [mergers] or (w) [consolidations] are subject to recordation and transfer taxes. Tax-Property Article, §§12-106 and 13-206. The taxes are computed on the full value of the property as determined by the Department of Assessments and Taxation as of the date of finality immediately before the date of transfer. Tax-Property Article, §§12-105(g) and 13-205(d).

h. An existing general partnership and an existing limited partnership may register with the State Department of Assessments and Taxation as a limited liability partnership (LLP) or limited liability limited partnership (LLLP), respectively. Corporations and Associations Article, §§9-801 and 10-805. This is not a change from one entity to another, like a change from a general partnership to a limited partnership. A confirmatory deed reflecting that a general or limited partnership has registered as a limited liability partnership or limited liability limited partnership, and adding the designation "LLP" or "LLLP" to its name, is not subject to recording taxes because there is neither a transfer (the grantor and grantee are the same person) nor consideration payable.

6. Conveyances to: (a) the United States; (b) the State; (c) an agency of the State; or (d) any political subdivision of the State are not subject to recordation and transfer taxes. Tax-Property Article, §§12-108(a)(1) and 13-207(a)(1). See 62 Opinions of the Attorney General 883 (1977) pertaining to federal agencies; memorandum to clerks dated February 13, 2002.

7. Conveyances to churches and charities are not exempt from recordation and transfer tax. See Letters of advice to Howard M. Smith dated April 22, 1971 and June 3, 1983. If a conveyance is a donation for no consideration, no tax is imposed. (The tax on zero consideration is zero.) See 63 Opinions of the Attorney General 623 (1978).

8. Deeds which merely confirm, correct, modify or supplement a previously recorded instrument are not subject to these taxes, if there is no consideration for the execution of the supplemental instrument. Tax-Property Article, §§12-101(g), 12-108(e), and 13-207(a)(4).

9. Deeds in lieu of foreclosure and deeds transferring property to the buyer at a foreclosure sale, even if the buyer is the

mortgagee, are subject to the tax. See 24 Opinions of the Attorney General 974 (1939); letter of advice to W. Garrett Larrimore dated November 3, 1976.

Tax on a deed in lieu of foreclosure is calculated on the outstanding principal balance due on the mortgage. If the lender proves to the clerk's satisfaction that: (1) the fair market value is less than the outstanding principal balance; and (2) the debtor is insolvent or the debt is non-recourse, tax may be based on the fair market value of the property. See 24 Opinions of the Attorney General 974 (1939); letter of advice to Elmer H. Kahline, Jr. dated December 9, 1981; letter of advice to Judson Wood dated September 17, 1993.

Tax on a deed in lieu of foreclosure or a trustee's deed resulting from a ratified foreclosure sale is based not only on the debt satisfied by the deed in lieu of foreclosure or the bid price payable for the trustee's deed, but also on any debt assumed by the grantee. For example, if the foreclosure is of a second mortgage on the property, and the purchaser is taking the property subject to a first mortgage, the consideration payable is the bid price plus the principal balance due on the first mortgage. See Letter of advice to E. Aubrey Collison dated August 3, 1984; letter of advice to Lynne G. Howell dated August 17, 1990.

Deeds to substitute purchasers of property sold at a foreclosure sale should comply with Maryland Rule 14-207(f)(3). Tax should be assessed on the total consideration payable to the original purchaser and the trustee. Absent a court order under Rule 14-207(f)(3), a deed conveying property from the trustee and the original purchaser to the substitute purchaser constitutes two conveyances in a single instrument and should be taxed on the bid payable by the original purchaser to the trustee and the full purchase price payable by the substitute purchaser to the original purchaser. See Letter of advice to Susan Braniecki dated October 1, 1992.

MORTGAGES AND OTHER SECURITY INSTRUMENTS

Mortgages and other security instruments (hereinafter collectively referred to as "mortgages") are subject to only recordation tax.

1. Mortgages that qualify as purchase money mortgages under Tax-Property Article, §12-108(i) are exempt from tax. To qualify as a purchase money mortgage, the mortgage must:

a. be given on the property purchased and delivered as part

of the same transaction as the instrument that conveys the property and that is itself subject to recordation tax;

b. recite that the sum so secured is in whole or in part the purchase price of the property purchased;

c. be executed within 30 days of the date the instrument transferring the property is fully executed; and

d. be recorded within 30 days of the date the instrument transferring the property is recorded.

Note: Ordinarily, the date an instrument is "fully executed" is the date the grantor, or last of multiple grantors, signs the instrument as evidenced by the acknowledgment of the grantor's signature by the notary. The date at the beginning of the deed is usually the date of delivery at settlement, which may or may not be the same day as the one on which the grantor signs the deed. However, for purposes of the purchase money mortgage exemption, the date the instrument transferring the property is "fully executed" is the date of the last acknowledgment or the date written on the front of the instrument, whichever is later. Tax-Property Article, §12-108(i)(2).

An otherwise qualifying purchase money mortgage does not become disqualified simply because given on property in addition to the property purchased. See Letter of advice to A. James Smith dated March 27, 1981.

2. Instruments given to a governmental entity to secure repayment of a debt are exempt. Tax-Property Article, §12-108(a)(1). However, the governing body of a county or Baltimore City may impose the recordation tax on such instruments that secure repayment of debt created by the sale of bonds authorized under Article 41, Title 14, Subtitle 1, often referred to as industrial revenue bonds (IRBs). Tax-Property Article, §12-108(a)(2).

3. Instruments of writing given by churches or charities to secure repayment of a debt are not exempt from recordation tax. See 43 Opinions of the Attorney General 366 (1958); 49 Opinions of the Attorney General 501 (1964); letter of advice to Howard M. Smith dated January 14, 1971.

4. Guaranty Mortgages (frequently called Indemnity Deeds of Trust/Mortgages) at the time of recording are not subject to tax pursuant to Tax-Property Article, §12-105(f) on the theory that the obligation secured by the mortgage has not yet been incurred.

Such an instrument secures a guaranty of repayment of a loan made to someone other than the mortgagor; it does not secure the borrow's current obligations under the note or other instrument (e.g., loan agreement) evidencing the debt. The guarantor's liability which is secured by the mortgage is a future, contingent one; it arises only if the borrower defaults on the loan. If the borrower defaults and the guarantor becomes presently liable for the debt, the tax becomes due on the previously recorded guaranty mortgage. See 74 Opinions of the Attorney General 281 (1989).

IMPORTANT: The Clerk should make certain that the guarantor is not a party primarily liable, e.g., a co-maker of the note, and that the mortgage does not directly secure the note. The Clerk can determine this by an examination of the note, or other instrument evidencing the underlying obligation, and the mortgage. See 49 Opinions of the Attorney General 503 (1964); 58 Opinions of the Attorney General 792 (1973); and 60 Opinions of the Attorney General 722 (1975).

5. Refinancing Exemption -

Mortgages for refinancing the principal balance due on an existing mortgage may be recorded without payment of recordation tax under Tax-Property Article, §12-108(g), if the mortgage contains or is accompanied by a statement under oath by the mortgagor or the mortgagor's agent indicating:

a. that the mortgagor is the original mortgagor;*

b. that the mortgaged property is the principal residence of the mortgagor; and

c. the principal balance due on the existing mortgage.

* An individual who assumes a mortgage when purchasing his or her principal residence, and pays tax on the actual consideration including the amount of mortgage debt assumed, is treated as an original mortgagor. Tax-Property Article, §12-108(g)(1).

Any amount of money secured that is greater than the outstanding principal balance due on the existing mortgage is fully subject to the tax. Tax-Property Article, §12-108(g)(2). The original mortgage is released.

Miscellaneous principles relating to the refinancing exemption:

(A) Principal residence is that residence where the mortgagor

intends to remain permanently or at least for an indefinite period of time. Thus, the refinancing exemption does not apply if the mortgagor has a present intention of moving to another residence.

(B) When the mortgagors on the new mortgage do not all qualify for the refinance exemption, because they are not "original mortgagors" or the mortgaged property is not their principal residence, only partial credit for the principal balance due on the mortgage being refinanced is afforded on the recording of the new mortgage; the refinance credit afforded should be equal to the pro rata interest(s) in the property of every mortgagor who qualifies for the refinance exemption. See Letters of advice to Lynne G. Howell dated July 8, 2002 and October 4, 2002. If the property is only partly the principal residence of the mortgagor, only partial credit equal to that percentage of the property that is the mortgagor's principal residence is given. See Letter of advice to Frank W. Hales dated September 25, 1981.

Examples:

(1) Original mortgagor A adds a son and daughter-in-law, B and C, to title to A's principal residence and receives no consideration. While B and C each receive a ⅓ interest in the property subject to A's outstanding mortgage, neither is assuming any responsibility, and A expects no contributions from them, for payment of the mortgage debt. Even if B and C were assuming responsibility for the mortgage debt, no tax would be due on the deed because of the exemption under Tax-Property Article, §12-108(c). A year later, because interest rates are down, A, B, and C refinance A's mortgage indebtedness. Only ⅓ credit for the principal balance being refinanced is allowed because B and C are not original mortgagors.

(2) Original mortgagors A and B jointly own property that is A's, but not B's, principal residence. A and B refinance the mortgage. Only ½ credit is allowed because only A qualifies for the exemption; B does not qualify since the property is not B's principal residence.

(3) A owns a duplex; half is A's principal residence and other half is leased to a tenant. A refinances his mortgage on the property. Only ½ credit is allowed because only ½ the property is A's principal residence.

6. Instruments supplemental to mortgages are exempt from recordation tax. Tax-Property Article, §12-108(e).

To qualify for this exemption:

a. The supplemental instrument must be a subsequent instrument and cannot be executed as part of the transaction in which the original mortgage (the one to which the offered instrument is allegedly supplemental) was executed. Note: In a single transaction when a loan is secured by multiple properties (real, personal, or mixed), no instrument covering the transaction is deemed "supplemental" even if the properties are classified as principal collateral and additional collateral. See 50 Opinions of the Attorney General 445 (1965).

b. The original instrument must continue in existence and not be released of record; the supplemental instrument must not extinguish the old debt. See 61 Opinions of the Attorney General 817 (1976).

c. The secured party (creditor) on the supplemental instruments may be the same as on the original instrument or an assignee.

d. The debtor on the original and supplemental instruments must be the same. Substitution of a new debtor constitutes a new transaction, and the exemption does not apply. See 49 Opinions of the Attorney General 461 (1964); 53 Opinions of the Attorney General 77 (1968); 60 Opinions of the Attorney General 724, 729 (1975).

e. Generally, the supplemental instrument is exempt only to the extent of the principal balance due on the original; any debt secured over that balance is taxable. If the instrument being supplemented secures a line-of-credit loan on which the tax was prepaid on the maximum face amount, the supplement is exempt to the extent of that face amount on which the tax was previously paid. See Memoranda to clerks dated April 16, 1990 and May 24, 1990.

See Hammond v. Philadelphia Electric Power Co., 192 Md. 179 (1949); Hampton Plaza Joint Venture, Inc. v. Clerk, 55 Md. App. 50 (1983); 24 Opinions of the Attorney General 966 (1939); 43 Opinions of the Attorney General 116 (1958); 44 Opinions of the Attorney General 373 (1959).

7. Mortgages Securing Loans Not Fully Disbursed -

Mortgages securing debts not fully disbursed at the time of settlement include such instruments as home equity mortgages, pursuant to which the debtor may borrow money as desired over time so long as the outstanding balance due at any given time does not

the maximum amount stated in the instrument, reverse annuity mortgages, pursuant to which the mortgagor receives monthly payments during the remainder of the mortgagor's life which are not repayable until after the mortgagor's death, construction loan mortgages, pursuant to which the full amount that may be borrowed is paid out in installments as construction progresses, etc.

a. General Rule: The general rule is that when the instrument is recorded, recordation tax is to be paid on the amount of the debt incurred at the time of recording. Tax-Property Article, §12-105(f)(1). Thus, if the line of credit mortgage secures a loan of <u>up to</u> $100,000 and a statement in the instrument or accompanying affidavit indicates that an initial disbursement of only $20,000 has been made, recordation tax is computed on the $20,000 debt incurred. The debtor thereafter must file a statement under oath every time an additional debt is incurred and pay recordation tax thereon within 7 days after the disbursement is made. Tax-Property Article, §12-105(f)(2). Failure to do so may subject the debtor to criminal penalties. Tax-Property Article, §14-1011. A new disbursement will not be subject to tax if used simply to repay a previous disbursement from the same account. Tax-Property Article, §12-105(f)(3).

b. Pre-payment Option: A debtor may elect to pay, at the time of recording the instrument, recordation tax computed on the maximum face amount stated in the instrument to be secured. <u>See</u> Tax-Property Article, §12-105(f)(4). Thereafter, no additional tax is due, even if the disbursements (advances and readvances)in the aggregate exceed the full face amount.

c. If the debtor elects to prepay the recoration tax on the maximum face amount stated in the instrument, the debtor is not entitled to a refund if the full amount of the debt is never incurred. <u>See</u> 82 <u>Opinions of the Attorney General</u> ___ (1997) [Opinion No. 97-015 (June 11, 1997)].

8. Wraparound Mortgages -

A wraparound mortgage is subject to tax on money borrowed to pay off an old debt (unless the refinancing exemption applies) and any new money borrowed, but is not taxable on an old debt referred to in the wraparound mortgage that is not being paid off. <u>See</u> <u>Prince George's County v. Mahon</u>, 59 Md. App. 682 (1984).

9. Mortgages covering property in two or more counties -

These instruments are taxed in each county based upon the

portion of the secured debt that bears the same ratio to the total debt secured as the value of the mortgaged property located in the county bears to the total value of all the properties being mortgaged. 50 Opinions of the Attorney General 441, 443 (1965); Tax-Property Article, §12-110(b).

Example: In order to secure repayment of a $500,000 loan, A mortgages 3 properties: one in Carroll County valued at $100,000; one in Frederick County valued at $350,000; and one in Allegany County valued at $150,000. The tax is calculated as follows:

Allegany County
$150,000 (value of Allegany mortgage property) = 25%
$600,000 (value of all mortgage property)
Therefore, tax 25% of total debt secured, or 25% x $500,000 = $125,000

Carroll County
$100,000 (value of Carroll mortgage property) = 16.667%*
$600,000 (value of all mortgage property)
Therefore, tax 16.667% of total debt secured, or 16.667% x $500,000 = $83,335

Frederick County
$350,000 (value of Frederick mortgage property) = 58.333%*
$600,000 (value of all mortgage property)
Therefore, tax 58.333% of total debt secured, or 58.333% x $500,000 = $291,665.

*round off to third place after decimal

10. Mortgages covering property in Maryland and property outside Maryland - These instruments are taxed in Maryland on that figure which bears the same ratio to the principal amount of debt secured by the mortgage as the value of the mortgaged property located in Maryland bears to the total value of all the property (in state and out of state) being mortgaged. Tax-Property Article, §12-105(a). Appraised values or assessed values may be used so long as the same type of value (appraised or assessed) is used consistently. See Letter of advice to A. James Smith dated March 4, 1985. Calculations are made in the same manner as for properties located in two or more counties. (See Section 9 above.)

11. When in a single transaction a loan is secured by real property and personal property, the recordation tax should be computed on the portion of the secured debt that bears the same ratio to the

total debt secured as the value of the real property and non-exempt personal property bears to the value of all the property securing the debt. <u>See</u> 50 <u>Opinions of the Attorney General</u> 445 (1965).

<u>Example</u>:

The total debt secured is $500,000.
The value of the real property is $325,000.
The value of the personal property is $300,000, but half of the personal property is exempt (e.g., inventory, accounts receivable, etc.); thus, the value of the non-exempt personal property is $150,000.

$$\frac{\text{value of real and non-exempt personal property}}{\text{value of all property}} \times \text{total amount of debt secured} = \text{amount of debt subject to tax}$$

$$\frac{\$475,000}{\$625,000} \times \$500,000 = \$380,000$$

REAL PROPERTY LEASES

Leases for which every term, original and renewal, is for 7 years or less are not required to be recorded and, if recorded, are exempt from tax. Tax-Property Article, §§12-108(u) and 13-207(a)(14). Leases for which any term, original or renewal, is more than 7 years are subject to recordation and transfer tax when recorded; the method of computing the tax is set forth in Tax-Property Article, §§12-105(d) and 13-205(b). In determining average annual rent, the original term <u>and</u> all renewal terms are to be used. Tax-Property Article, §§12-105(d)(1) and 13-205(b)(1).

Examples:

1. Lease for a term of 8 years at an annual rent of $2,400 per year.

    A. $2,400 is the average annual rental

    B. $2,400 ÷ 10% (or $2,400 ÷ .1) = $24,000 (average annual rental capitalized at 10%)

    C. Recordation and transfer tax then calculated at the applicable rate on $24,000 plus any additional consideration.

2. Lease for a term of 10 years at the following annual rent:

Years 1 and 2 - \$3,000 per year or \$6,000
Years 3 and 4 - \$4,000 per year or \$8,000
Years 5 through 10 - \$5,000 per year or \$30,000

A. \$6,000 + \$8,000 + \$30,000 = \$44,000 (rent for entire term of lease).

B. \$44,000 ÷ 10 = \$4,400 (average annual rental).

C. \$4,400 ÷ 10% (or \$4,400 ÷ .1) = \$44,000 (average annual rental capitalized at 10%).

D. Recordation and transfer tax then calculated at the applicable rate on \$44,000 plus any additional consideration.

3. Lease for a term of ten years at a minimum annual rent of \$10,000 plus ½ of all profits.

A. Calculate minimum average annual rent: \$10,000.

B. Multiply by 105% = \$10,500.

C. Capitalize at 10% (divide by 10% or .1) = \$105,000.

D. Compare to 60% of the assessment of the real property subject to the lease.

E. Tax the greater of C or D.

<u>See</u> 40 <u>Opinions of the Attorney General</u> 591 (1955); 26 <u>Opinions of the Attorney General</u> 399 (1941); 28 <u>Opinions of the Attorney General</u> 307 (1943).

<u>Perpetually renewable ground rent leases</u> are subject to recordation tax and transfer tax. Tax-Property Article, §§12-105(c) and 13-205(a). Tax is assessed on the redemption sum as determined under §8-110 of the Real Property Article, plus any additional consideration payable pursuant to the lease. The redemption sum is usually the annual ground rent multiplied by the applicable multiplication factor set by §8-110. For leases dated on or after July 1, 1982, the factor is 8.33. For leases dated after April 5, 1888 and before July 1, 1982, the factor is 16.66. The redemption sum may be a sum specified in the lease so long as it is less than the annual ground rent multiplied by the applicable factor.

Examples:

1. Lease dated in 1980 creating a perpetually renewable ground rent with an annual ground rent of $180. No other consideration.

   A. $180 x 16.66 (same as capitalization at 6%) = $2,999.

   B. $2,999 + $0 (actual consideration) = $2,999.

   C. Recordation and transfer tax assessed on $2,999.

2. Lease dated in 1983 creating a perpetually renewable ground rent with an annual ground rent of $120 plus $2,000 in actual consideration.

   A. $120 x 8.33 (same as capitalization at 12%) = $1,000.

   B. $1,000 + $2,000 (actual consideration) = $3,000.

   C. Recordation and transfer tax assessed on $3,000.

3. Lease dated in 1989 creating a perpetually renewable ground rent with an annual ground rent of $300 and a special redemption sum of $2,000.

   A. $300 x 8.33 = $2,499.

   B. Redemption sum of $2,000 is less.

   C. Recordation and transfer tax assessed on $2,000.

Certain unrecorded leases are subject to tax. Tax-Property Article, §§12-105(e) and 13-205(c). When any leasehold mortgage, memorandum of lease, assignment of lease by the tenant, or other document publicizing or giving constructive notice of the existence of a lease that has not been recorded is presented for recording, the original lease must be presented and taxes paid thereon, if due, before the document may be recorded. Tax-Property Article, §§12-105(e)(2) and 13-205(c)(2).

ASSIGNMENTS

Whether assignments are subject to tax depends on the nature of what is being assigned:

a. Assignments of leases by lessees are taxable. See 43

Opinions of the Attorney General 120 (1958).

b. Assignments of contracts of sale are taxable. See Letter of advice to C. Merritt Pumphrey dated April 6, 1983.

c. The following assignments are not taxable:

of mortgages and deeds of trust - Tax-Property Article, §12-108(j);

of security agreements See 40 Opinions of the Attorney General 603 (1955);

of rents (lessor interest in lease) See 49 Opinions of the Attorney General 469 (1964); letter of advice to Joseph W. T. Smith dated May 18, 1971.

RELEASES

Releases are not subject to the tax. Tax-Property Article, §12-108(m). This exemption refers to releases of mortgages and deeds of trust. It does not apply to an instrument entitled "Release" that is actually a reconveyance of a leasehold or contract interest. See Letter of advice to Dorsey Hile dated September 27, 1991.

EASEMENTS

Transfer and recordation taxes are imposed upon the recording of easements calculated on the consideration payable. See 22 Opinions of the Attorney General 736 (1937). See also the definition of "real property" in Tax-Property Article, §1-101(cc).

OPTIONS

No tax is imposed on the recording of options. Tax-Property Article, §§12-108(s) and 13-207(a)(12). See 26 Opinions of the Attorney General 425 (1941).

CONTRACTS OF SALE

Tax is imposed on the recording of contracts of sale. See 49 Opinions of the Attorney General 467 (1964). However, when the deed is subsequently recorded, no tax is due so long as the same parties are involved. Tax-Property Article, §§12-108(t) and 13-207(a)(13). See 22 Opinions of the Attorney General 768 (1937); letter of advice to C. Merritt Pumphrey dated April 6, 1983.

LAND INSTALLMENT CONTRACTS

No tax is imposed upon the recording of a land installment contract described in §10-101(b) of the Real Property Article. Tax-Property Article, §§12-108(r) and 13-207(a)(11). Section 10-101(b) of the Real Property Article describes a land installment contract as an agreement under which (1) a vendor agrees to sell an interest in property to a purchaser, who must be a natural person, i.e., not a corporation or partnership, (Real Property Article, §10-101(e)) and the purchaser agrees to pay the purchase price in five or more subsequent payments exclusive of the down payment, if any, and (2) the vendor retains title as security for the purchaser's obligation. The purchaser must occupy the dwelling or, if the property is unimproved, the purchaser must intend to improve the property for personal residential purposes.

Tax is imposed when the deed is recorded. See 50 Opinions of the Attorney General 438 (1965).

COVENANTS NOT TO CONVEY OR ENCUMBER

Covenants not to convey or encumber are not recordable. See 73 Opinions of the Attorney General 345 (1988).

TRANSFER OF DEVELOPMENT RIGHTS

Instruments transferring development rights are not subject to recording taxes. See Letter of advice to Jeffrey Bridner dated August 20, 1996; memorandum to clerks dated October 8, 1996.

FINANCING STATEMENTS

Only financing statements recordable in land records - because the collateral is or includes fixtures, timber to be cut, or minerals to be extracted - are acceptable for recording by the clerks. Financing statements perfect a security interest in personal property, rather than real property. Except as otherwise provided by law, they are subject to recordation tax when the collateral is tangible personal property, including tangible personal property attached to real property such as fixtures and standing timber. Tax-Property Article, §12-107. The exemptions include those applicable to other instruments, such as the exemption for instruments that grant a security interest to a government agency, and those specifically relating to financing statements and set forth in Tax-Property Article, §12-108(k). The exemption from tax for financing statements filed with the Department of Assessment and Taxation under Tax-Property Article,

§12-108(k)(2), does not apply to financing statements filed with the clerks.

Formal requisites for recording are:

1. names of debtor and secured party;

2. addresses of debtor and secured party;

3. Description of:

   a. collateral; and

   b. real property concerned;

4. Statement of record owner if real property not owned by debtor;

5. Recital "To be Recorded in the Land Records"; and

6. If subject to tax, statement of amount of principal debt secured. The <u>full</u> amount of the principal debt secured should be stated even if only a portion of the debt is subject to tax because of the exemptions in Tax-Property Article, §12-108(k)(1).

Note: A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient if:

(1) the security agreement so provides, or

(2) the original has been filed in Maryland.

A financing statement is exempt from tax if the secured party is the seller of the pledged collateral who is taking back a security interest in the collateral to secure payment of the purchase price. Tax-Property Article, §12-108(k)(1)(iv).] A financing statement is exempt from tax if the financing statement is recorded simply to publicize the lease of the collateral described therein and states on its face that it does not create a security interest. Tax-Property Article, §12-108(k)(1)(v).

If a financing statement submitted for recording in the land records covers not only fixtures, timber to be cut, or minerals, but also inventory, accounts, contract rights, general intangibles, equipment, or furniture, or any combination thereof, the amount of the principal debt secured that is subject to recordation tax will

be the same percentage as the taxable collateral bears to the total collateral pledged. Generally, tangible personal property other than equipment used in farming operations and farm products is nonexempt collateral.

Example:

The total debt secured is $500,000.
The value of the taxable collateral (fixtures, equipment not used in farming operations, and furniture) is $400,000.
The value of the exempt collateral (inventory, accounts, contract rights, etc.) is $225,000.

$$\frac{\text{value of non-exempt collateral}}{\text{value of all collateral}} \times \text{total amount of debt secured} = \text{amount of debt subject to tax}$$

$$\frac{\$400,000}{\$625,000} \times \$500,000 = \$320,000$$

CLAIMS FOR REFUND

Claims for refund of State transfer and recordation taxes that are alleged to have been wrongfully assessed or paid are authorized by §14-907 and §14-908 of the Tax-Property Article. The claim is to be submitted on a required form to the collector of the taxes.[3] Tax-Property Article, §14-914(b)(3). The Clerk may obtain forms from the Office of the Comptroller and provide them to claimants upon request.

Claims for refund of recordation or transfer tax must be filed within 3 years from the date the tax is paid. Tax-Property Article, §14-915(2) and (3). A refund claim may not be paid if not submitted within this time period. Tax-Property Article, §14-916(b)(2).

Determination of refund claims is governed by Tax-Property Article, §14-911. The Clerk must investigate the claim and must notify the claimant of the opportunity for a hearing. Tax-Property Article, §14-911(c). Letter of Advice to Wylie L. Ritchey, Jr. dated April 4, 1986. If no action is taken on the claim within 6

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[3] In jurisdictions in which the State recordation tax now is being collected by a county collector, the claim for refund should be submitted to the person who was the tax collector at the time of payment of the tax for which the refund is sought.

months after its submission, the claimant <u>may</u> treat the claim as denied and file a petition for appeal with the Maryland Tax Court. Tax-Property Article, §14-911(b).

The claimant is entitled to 6% per year interest on the refund claim unless the overpayment of tax was due to a mistake or error attributable <u>only</u> to the claimant. Tax-Property Article, §§14-917 and 14-916(a).