

## IX. Collections

### A. Statute of Limitations on Actions to Collect Recording Taxes

Must initiate an action to collect recordation and state transfer taxes within seven (7) years of the date the instrument was recorded –

TP § 14-864 – On or before 7 years from the date the tax is due, the State, a county, or a municipal corporation may initiate an action in a court of appropriate jurisdiction to collect any tax imposed under this article and within the time provided by law. . . .

- TP § 14-1101 –
- (a) Except as otherwise provided in this section and in this article, any tax imposed under this article may be collected only on or before 7 years from the date the tax is due.
  - (b) For any tax imposed under this article within the limitations of this subtitle, the tax may be collected by an action that is filed in court on or before 7 years from the date that the tax is due. Any judgment entered may be enforced or renewed as any other judgment.
  - (c) If a collector fails to collect a tax and a receiver or trustee is appointed within the period specified in subsection (a) of this section to complete the tax collection, the collection period is 2 years from the date of the appointment of the trustee or receiver or 7 years from the date the tax is due, whichever is later.

B. Duty of Collector to Request Action

TP § 14-865 – (a) Except as otherwise provided in subsection (b) of this section:

- (1) if [state transfer tax] is not paid when due to the State, the Governor, the Comptroller, or the Treasurer shall request the Attorney General to institute an action against the person responsible for the tax; and
- (2) if [recordation tax] is not paid when due to a county . . . , the collector shall request the attorney for the county . . . to institute an action against the person responsible for the tax.

(b) An officer of the State, a county, or a municipal corporation is not required to request the action under subsection (a) of this section if:

- (1) the taxes are sufficiently secured by a lien on real property under this title;<sup>1</sup> or
- (2) it is certain that no part of a judgment in the action would be collectible.

C. Duty of Attorney to Take Action

If the Attorney General or county attorney receives a request to initiate an action pursuant to § 14-865, such attorney is obligated to initiate such action

TP § 14-866(a) – If a request is made under [TP] § 14-865, the Attorney General or attorney requested to initiate an action shall initiate the action.

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<sup>1</sup> As excise taxes (and not property taxes), the recordation and state transfer taxes are not automatically liens on the real property pursuant to TP § 14-804. However, some county codes provide that unpaid recording taxes become liens against the property conveyed or encumbered in the same manner as property taxes. In such counties, a collection action can be initiated by first imposing a lien on the real property (rather than using the writ of attachment method under TP § 14-867).

D. Combination of Claims / Proper Plaintiff

If the recordation and state transfer tax were supposed to have been paid to one collector (the Clerk of the Circuit Court), the claims may be combined and pursued in one action

TP § 14-864 – . . . If a person owes State and county or municipal corporation taxes to the same collector, the action may combine claims of the State, county, and municipal corporation.

TP § 14-868 – The plaintiff named in an action under [TP] § 14-866 shall be . . .

- (4) for an action to collect more than 1 tax from the same person, the collector or other officer who is authorized to collect the taxes.

Otherwise, generally, recordation tax should be pursued in the name of the county and state transfer tax should be pursued separately in the name of the State

TP § 14-868 – The plaintiff named in an action under [TP] § 14-866 shall be:

- (1) for an action to collect State [transfer] tax:
  - (i) the State . . .
- (2) for an action to collect county tax [which would seem to include recordation tax which, although a state tax, is for the benefit of the counties]:
  - (i) the Mayor and City Council of Baltimore City or the governing body of the county; or
  - (ii) the county collector with a designation of authority

E. Proper Defendant

Each person who is liable for payment of the tax should be named a defendant

- 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.
    - (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.

F. Writ of Attachment

An action to collect unpaid recording taxes may be initiated by issuance of a writ of attachment against any asset of a defendant

- TP § 14-867 – (a) (1) An action under [TP] § 14-866 may be commenced by a writ of attachment against any asset of the defendant.
- (2) Except as otherwise provided in [the Tax-Property Article], the attachment shall be governed in all respects by the law and Maryland Rules applicable to attachments for liquidated damages against nonresidents [MD. RULE 2-115 for an action in the Circuit Court; MD. RULE 3-115 for an action in the District Court].
- (b) The plaintiff in the action under subsection (a) of this section is not required to file an attachment bond.

G. Priority of Action

If the State or county requests, an action to collect recording taxes shall have priority over all other civil cases

- TP § 14-869(a) – If the plaintiff in an action under [TP] § 14-866 requests, the case shall be brought to trial as soon as the case is at issue, and shall have precedence over all other civil cases.

## H. Burden of Proof / Persuasion Shifts to Defendant

In an action to collect recording taxes, a certificate from the collector of the taxes stating the amount of tax due, plus penalties and interest shifts the burden to the defendant to prove that the tax was paid or wasn't owed

TP § 14-869(b)(1) – In an action under [TP] § 14-866, the certificate of . . . the collector . . . showing the amount of tax due with all penalties and interest:

- (i) is prima facie evidence to entitle the plaintiff to judgment for the amount of the tax, penalty, and interest; and
- (ii) shall give the defendant the burden of proving that the tax has been paid or any other sufficient defense.

## I. Crimes

### 1. Negligent failure to provide required information

TP § 14-1001 – A person who negligently fails to provide any information as required under this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500.

### 2. Willful failure to provide required information / Failure to provide required information with intent to evade or prevent tax

TP § 14-1002(a) – A person who willfully or with the intent to evade payment of a tax under this article or to prevent the collection of a tax under this article fails to provide any information as required under this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 18 months or both.

NOTE: Conviction under TP § 14-1002(a) does not bar separate prosecution and conviction for perjury

TP § 14-1002(b) – A person who is convicted of a crime under subsection (a) of this section is also subject to prosecution for perjury.

3. Recording instrument without paying recordation tax

TP § 14-1010 – A person who records an instrument of writing subject to the recordation tax without paying the recordation tax under Title 12 of this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months.<sup>2</sup>

4. Willful misrepresentation of consideration paid

TP § 14-1012 – A person who willfully misrepresents the amount of consideration paid in a transaction by affixing to an instrument of writing evidence of a greater or lesser recordation tax paid than required under Title 12 of this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months.

5. Failure to pay additional recordation tax when additional debt incurred

TP § 14-1011 – If an instrument of writing that is recorded under Title 12 of this article is used to secure an additional debt, a person who fails to pay the additional recordation tax required in [TP] § 12-105(f) is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months.

6. Assaulting a tax collector

TP § 14-1013 – A person who assaults a collector who is performing a duty is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 12 months or both.

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<sup>2</sup> This may be a proper way to pursue and penalize persons not liable for the tax, but who recorded the instrument without paying the required tax. For example, if a closing agent records an instrument and pays the recordation tax with a bad check, the State or county would have to pursue the person(s) liable for payment of the recordation tax – but could seek to penalize the closing agent under this provision.

7. Willful failure of a tax collector to perform duty, with intent to prevent payment or collection of tax

TP § 14-1016 – An officer or employee of the State, a county, or municipal corporation who willfully fails to perform a duty required under this article with the intent to prevent the payment or collection of a tax under this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 2 years or both.