



FREDERICK COUNTY GOVERNMENT

DIVISION OF FINANCE

Department of Treasury

Change in Recordation Tax Law:

Senate Bill 436 and House Bill 1209 of the 2013 legislative session amend the law dealing with the taxability of indemnity deeds of trusts and mortgagees (IDOT's) and also amend the laws affecting supplemental instruments and refinance instruments. The new law applies to instruments of writing that are recorded on or after July 1, 2013.

Indemnity Deeds of Trust

In accordance with Tax Property Article 12 Section 12-105(f)(7), on or after July 1, 2013, recordation tax will be collected on all Indemnity Mortgages presented for recordation among the Land Records of Frederick County, Maryland, unless the Indemnity Mortgage is within one of the following three exceptions:

- (1) To the extent the recordation tax was paid on another instrument of writing that secures payment of the guaranteed loan; or
- (2) The IDOT qualifies for the refinance exemption; or
- (3) The Indemnity Mortgage secures a guarantee of repayment of a loan in the amount less than three million dollars.

All Indemnity Mortgages presented to the Treasury Department must be accompanied with the following documents:

- (1) Guaranty
- (2) Promissory Note
- (3) Loan Agreement
- (4) Closing Statement/HUD 1
- (5) Affidavit for Indemnity Deed of Trust (Treasury Department Form)
- (6) Refinance Affidavit (if applicable)

Series of Loans That Are Part of the Same Transaction:

The Treasury Department will examine the substance and all the surrounding circumstances of the transaction for any Indemnity Mortgage presented for recording in order to determine whether steps have been taken to avoid recordation tax on the Indemnity Mortgage. The new law specifically confirms that a "series of loans that are part of the same transaction" are to be treated as a single loan for purposes of determining whether the three million dollar threshold has been reached. If the transaction for the Indemnity Mortgage qualifies for aggregation with any other Indemnity Mortgage, whether previously recorded or also presented for recording, the Treasury Department will collect recordation tax on the aggregate amount of such Indemnity Mortgages.

Supplements:

The bills clarify that supplemental instruments include instruments that confirm, correct, modify, or "amend and reinstate" existing IDOT's, as well as other lien instruments.

Supplemental instruments, including supplements to existing IDOTs, are taxable only on the "new money" regardless of whether any tax was paid on the original instrument, if the amount of the guaranteed loan crosses the three million dollar threshold. There is new money if the face amount of the supplemental instrument, or the amount of debt secured, exceeds the outstanding principal balance of the existing loan.

As a reminder, a supplemental instrument is also taxable if there is any consideration being paid for the execution of the supplement.



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AFFIDAVIT FOR INDEMNITY DEED OF TRUST

For Recordation Tax Use Only – NOT FOR RECORDING

By signing below, I hereby certify, affirm, and declare, under penalties of perjury, that the following information is true with respect to the Indemnity Deed of Trust ("IDOT") presented for purposes of computing Recordation Tax in accordance with the laws of the State of Maryland:

- The proceeds of the loan have not been used to acquire the property secured by the IDOT.
- The amount of the note referenced in the IDOT is \$_____
- The amount of the secured debt is \$_____
- The IDOT is secured by the parcel with identification number _____

Signed this _____ day of _____

By _____

Print Name _____

Name of Company: _____

Company or Individual is the Lender _____, Grantor _____, or Settlement Agent _____.