# DEPARTMENT OF TAXATION
# 2015 Fiscal Impact Statement

**1. Patron** J. Randall Minchew

**2. Bill Number** HB 2161

**House of Origin:**
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**
__X__ **In Committee**
_____ **Substitute**
_____ **Enrolled**

**3. Committee** Senate Finance

**4. Title** State Recordation Taxes and Fees

**5. Summary/Purpose:**

This bill would make substantive and technical changes to state recordation taxes and fees. It would require that the recordation tax on any deed of trust that is supplemental to an existing deed of trust be calculated only on that portion of the debt that is in addition to the original debt on which the tax has been paid instead of the existing debt. This bill would extend the current treatment of a single deed of trust conveying property within and without Virginia to separate deeds of trust conveying property in several states to secure the same obligation. The bill would also relieve Clerks of the Circuit Court from personal liability for uncollected recordation taxes and fees.

The bill would be effective for transactions occurring on or after July 1, 2015.

**6. Budget amendment necessary:** No.

**7. Fiscal Impact Estimates are:** Not available. (See Line 8.)

**8. Fiscal implications:**

The bill contains provisions that would reduce tax revenue as well as provisions that would increase revenue. The Department does not have sufficient data to estimate the revenue impact of these provisions or determine whether the net impact is positive or negative. The provisions that affect revenue are:

- When obligations are secured by property in Virginia and other states the deed of trust would be taxed under existing law as a situation in which the amount secured was not ascertainable or the obligation was under-secured, which would limit the tax to the value of the Virginia property conveyed. This bill would reduce the tax to reflect the portion of all property that secures the obligation when the value of the property in all states exceeds the amount of the obligation.
- When a previously recorded deed of trust is modified to reflect an increase in the obligation, existing law bases the tax on the increase over the existing debt. This bill would base the tax on the increase over the original debt, which would reduce the tax to the extent that principal payments had reduced the amount of the original debt.

- If the tax on the previously recorded deed of trust had been limited to the actual value of Virginia property conveyed to secure the obligation, any change in the value of that property would be ignored under existing law when calculating the tax on a modification of the deed of trust to reflect an increase in the secured obligation. This bill would increase the tax to the extent that the value of the real estate had increased from the date of the original recordation.

**9. Specific agency or political subdivisions affected:**

Clerks of the Circuit Courts
Department of Taxation

**10. Technical amendment necessary:** No.

**11. Other comments:**

Current Law

When a deed of trust conveys property partly in Virginia and partly in another state, the tax would be prorated based on the portion of property in Virginia, but this does not apply when separate deeds of trust are recorded in each state for property in that state. In that case the tax would be limited to the value of the Virginia property on the grounds that the amount secured is unascertainable or under-secured.

When a previously recorded deed of trust is subsequently modified to reflect an increase in the amount secured existing law bases the tax on the difference between the increased obligation and the existing debt (the original amount less principal payments). If the tax on the original deed of trust had been limited to the value of Virginia property, any increase in property value would be ignored in calculating the tax on the modified deed of trust.

Existing law is silent as to the ability of parties to a real estate transaction to shift the burden of recordation taxes among themselves. Clerks of the Circuit Court may be held personally liable for any uncollected recordation tax.

Proposed Legislation

This bill would require the tax to be limited to the portion of the debt secured by Virginia property when separate deeds of trust are recorded in other states to secure the same obligation. When a previously recorded deed of trust is subsequently modified to increase the amount secured, the tax would be based on the difference between the increased amount secured and the original amount secured. If the tax on the original deed of trust had been limited to the value of Virginia property because the amount secured was unascertainable or under-secured, additional tax would be charged to reflect any increase in the value of the Virginia property.

The parties to a recorded instrument may allocate responsibility for the payment of recordation taxes and fees among themselves. This does not affect imposition of the tax or exemptions from the tax. For example, the Grantors' tax imposed by § 58.1-802 would continue to be calculated based on the interest conveyed by the grantor even though the purchaser may have agreed to be responsible for its payment. An exemption granted to certain grantors would still reduce the tax charged for recording the instrument regardless of an agreement among the parties.

The Clerk of the Circuit Court would be relieved of any personal liability for uncollected recordation taxes if he acted in good faith. Existing law authorizes the Department of Taxation to assess and collect any unpaid recordation taxes.

This bill is a recommendation of the Real Estate Section of the Virginia Bar Association.

Similar Bills

**House Bill 1968** and **Senate Bill 999** would make clarifying changes relating to deeds of trust securing an open or revolving debt and subsequent modifications. The bills are similar to each other, but not identical.

cc : Secretary of Finance

Date: 2/13/2015 JPJ
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