

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** T. Scott Garrett

2. **Bill Number** HB 509

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Recordation tax; deeds of trust

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would clarify that, in any case in which the obligations described in a deed of trust are not fully secured because they exceed the fair market value of the property conveyed, the recordation tax is based on the fair market value of the property conveyed.

This bill is consistent with the Department's long-standing policy to impose the recordation tax only on the value of the security interest created by a deed of trust.

This bill would be effective January 1, 2014, provided, however, that in any jurisdiction in which the clerk of the circuit court had been taxing deeds of trust in accordance with the provisions of the Department's regulation 23 VAC 10-320-40 before January 1, 2011, such clerk would be required to continue to comply with the regulation.

This is a Department of Taxation bill.

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

7. **No Fiscal Impact.** (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

This bill would have no revenue impact since the Department is already applying this policy, and has been doing so since 1985.

9. Specific agency or political subdivisions affected:

Department of Taxation
Circuit Court Clerks

10. Technical amendment necessary: No.

11. Other comments:

Background

Under Virginia law, a deed is effective between the parties when the grantor delivers it to the grantee. Virginia offers a recordation system in each circuit court to record deeds and has enacted laws providing certain protections for buyers and lenders who rely on the information recorded in the circuit courts. Accordingly, Virginia imposes a tax for the privilege of using the recordation system to record deeds.

For deeds of trust, a tax is imposed on the amount of bonds or other obligations secured thereby. The amount of the tax is 25 cents on every \$100 or portion thereof of the amount of bonds or other obligations secured by the deed of trust. If the amount which is secured under a deed of trust or mortgage is not ascertainable, the tax is based on the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage. The fair market value of the property includes the value of any realty required by the terms of the deed of trust or mortgage to be constructed thereon.

In cases where the amount of obligations described in a deed of trust exceed the fair market value of the property conveyed, the Department interprets *Va. Code* § 58.1-803 as imposing a recordation tax on the amount of obligations secured by a deed of trust. In 1984, the Department announced this interpretation through the promulgation of a regulation, 23 VAC 10-320-40. This regulation states that, when a deed of trust is secured by real estate with a lesser value than the note, the tax is based upon the value of the real estate. This regulation also explains that, when a note is secured by both personal property and a deed of trust on real estate and perfection of the security interest on the personal property will be filed under the Uniform Commercial Code, the recordation tax is only computed upon the real estate under the deed of trust.

In a recent opinion (Attorney General Opinion 11-073 (05/27/2011)), the Attorney General interpreted *Va. Code* § 58.1-803 as imposing a recordation tax measured by the amount of the obligation described in the deed of trust even if it exceeds the value of the property conveyed to secure it. The rationale for this interpretation is that the current law allows the recordation tax to be based on the fair market value of the property if the amount of the obligation secured is not ascertainable, but is silent with regard to fair market value when the loan amount is ascertainable. The Attorney General's interpretation allows the imposition of tax on an obligation, whether it is fully secured or not. This interpretation would adversely affect large commercial loans where security may include real estate in other states, equipment, inventory, accounts receivable, and other property, none of which is subject to Virginia's recordation system and tax.

Proposed Legislation

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Similar Legislation

House Bill 734 would require that a deed or other document regarding conveyance of real property state on its first page the actual consideration for the conveyance before it can be admitted to record.

Senate Bill 409 would establish a maximum recordation tax rate of 18 cents per \$100 on all refinanced deeds of trust, regardless of whether the loan is refinanced with the same lender or a different lender.

cc : Secretary of Finance

Date: 2/27/2012 KLC
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