

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Emmett W. Hanger, Jr.
3. **Committee** Passed Senate and House

2. **Bill Number** SB 409
House of Origin:
☐ Introduced
☐ Substitute
☐ Engrossed

4. **Title** Recordation: Restructures Tax Rate for
Refinanced Deeds of Trust

- Second House:**
☐ In Committee
☐ Substitute
☒ Enrolled

5. Summary/Purpose:

This bill would equalize the recordation tax rate for all refinanced deeds of trust by establishing a maximum recordation tax rate of 18 cents per \$100 on refinanced deeds of trust, regardless of whether the loan is refinanced with the same lender or a different lender.

This bill would also clarify that for deeds of trust or mortgages that are refinanced the term "value" would mean the portion of the amount of the bond or other obligation secured by the property conveyed by the deed of trust.

This bill would be effective for deeds of trust or mortgages recorded beginning July 1, 2012.

This is an Executive bill.

6. **Budget amendment necessary:** No.
7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)
8. **Fiscal implications:**

Administrative Costs

There would be no administrative costs to the Department of Taxation to implement this bill, as the recordation tax is collected by the clerks of the local Circuit Courts. The cost for the local courts to implement this bill is unknown, but this bill should reduce their time to record deeds of trust because they will not have to verify if a loan was refinanced with the same lender.

Revenue Impact

This bill is estimated to be revenue neutral and would have no impact on state and local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation
Clerks of the Circuit Courts
All Cities and Counties

10. Technical amendment necessary: No.

11. Other comments:

State Recordation Tax

Under current law, every deed of trust or mortgage admitted to record, except a deed exempt from taxation by law, is subject to a state recordation tax. This tax is imposed in the amount of twenty-five cents for every \$100 or fraction thereof of the amount of bonds or other obligations secured by the deed of trust. If the amount of the obligation cannot be ascertained, the tax is based on the fair market value of the property conveyed.

The maximum tax on the recordation of any deed of trust or mortgage or on any supplemental indenture is determined in accordance with the following schedule:

- 25 cents for every \$100 or portion thereof on the first \$10 million of value;
- 22 cents for every \$100 or portion thereof on the next \$10 million of value;
- 19 cents for every \$100 or portion thereof on the next \$10 million of value;
- 16 cents for every \$100 or portion thereof on the next \$10 million of value; and
- 13 cents for every \$100 or portion thereof on all over \$40 million of value.

The clerk of the court in which the deed or mortgage is recorded collects the tax and distributes the amount to the state treasury. Out of the total recordation tax collected, three cents per \$100 of value are deposited into the Transportation Trust Fund.

Recordation Tax Refinance Exemption

Under current law, a recordation tax exemption is allowed for any deed of trust or mortgage that is refinanced with the same lender for the principal amount of the original debt. Therefore, a deed of trust or mortgage is refinanced with the same lender, then there is no recordation tax owed unless additional funds are borrowed. If a deed of trust or mortgage is not deemed to be refinanced with the same lender, then it is subject to recordation tax, up to the maximum of 25 cents per \$100 of the consideration of the deed or the actual value of the property conveyed. A 1992 Virginia Attorney General opinion established that the phrase "existing debt with the same lender" means that the lender who holds the existing debt must be the same lender who is providing the refinancing. See 1992 Op. Va. Att'y Gen, at 181.

In discussions with clerks while conducting a study of other recordation tax issues (see 2009 RD 379), the clerks explained that this provision is difficult to administer. The clerks often are unable to determine who the current noteholder is because Virginia law does not require that an assignment of the note be recorded. Often the homeowner does not know who the noteholder is; he only knows who is servicing the loan. Reviewing the payoff statement for the loan being refinanced often shows only the servicer, not the noteholder. Recent financial upheaval in the banking industry has led to consolidations and mergers. This has further complicated identifying the noteholder.

As a result of the mortgage financing practice today, a greater level of effort on the part of the Clerks is required in order to properly identify the current noteholder.

Proposal

This bill would equalize the recordation tax rate for all refinanced deeds of trust by establishing a maximum recordation tax rate of 18 cents per \$100 on refinanced deeds of trust, regardless of whether the loan is refinanced with the same lender or a different lender.

The maximum tax on the recordation of any deed of trust or mortgage or on any supplemental indenture would be determined in accordance with the following schedule:

- 18 cents for every \$100 or portion thereof on the first \$10 million of value;
- 16 cents for every \$100 or portion thereof on the next \$10 million of value;
- 14 cents for every \$100 or portion thereof on the next \$10 million of value;
- 12 cents for every \$100 or portion thereof on the next \$10 million of value; and
- 10 cents for every \$100 or portion thereof on all over \$40 million of value.

This bill would also clarify that for deeds of trust or mortgages that are refinanced the term “value” would mean the portion of the amount of the bond or other obligation secured by the property conveyed by the deed of trust.

This bill would be effective for refinanced deeds of trust or mortgages recorded beginning July 1, 2012.

Similar Legislation

House Bill 509 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.

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.

cc : Secretary of Finance

Date: 3/7/2012 tlg
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