<u>An Endangered Species That's Still Surviving</u>

Maryland Recordation and Transfer Tax Exemptions

By: Cynthia L. Spell

Despite Maryland's almost complete elimination in recent years of the Indemnity Deed of Trust exemption, which developers and lenders had relied on for decades as a means of avoiding payment of Maryland recordation taxes, planning opportunities are still available for those seeking to reduce the amount of recordation and/or transfer taxes that might otherwise be payable on a commercial real estate transaction.

<u>IDOTS</u>. The Indemnity Deed of Trust ("IDOT") exemption remains in effect, but on a much smaller scale than was previously the case. While recordation taxes are now assessed on most IDOTS, those which secure the guaranty of a loan (or series of loans) of less than $3 Million are still exempt. Additionally, an instrument which supplements, modifies or restates an Indemnity Deed of Trust that was previously recorded is exempt from tax, up to the amount of the outstanding debt secured by the IDOT at the time the supplemental instrument is recorded.

<u>Purchase Money and Refinancings</u>. Additionally, Maryland's purchase money exemption from recordation taxes remains in place. Thus, a Deed of Trust or Mortgage is exempt from recordation tax to the extent that it secures the purchase price paid for real property. This exemption can be put to use as a planning tool when coupled with Maryland's recently expanded refinancing exemption. Historically, Maryland's refinancing exemption was only available for residential transactions. However, a change to Maryland law in 2013 extended the refinancing exemption to commercial transactions. Thus, a Deed of Trust or Mortgage which secures the refinancing of an existing loan is exempt from recordation tax up to the amount of the loan which is outstanding at the time of the refinancing. If a buyer has the means to pay cash for a real property acquisition, it may be more advantageous, for planning purposes, for the purchaser to instead borrow the purchase price from a related entity, and secure the repayment of the loan with a purchase money Mortgage or Deed of Trust (which, under the purchase money exemption can be recorded without payment of recordation tax). Then, if the buyer wants to borrow money in the future, it will be able to structure the new loan as a refinancing of the initial purchase money loan without payment of recordation tax, up to the amount of the initial purchase money loan.

<u>Transfers Among Related Entities</u>. Finally, since 2013 Maryland has permitted transfers among certain related entities to be exempt from recordation and transfer taxes. While under previous law this exemption was only available for corporations, the exemption is now also available to limited liability companies, frequently the entity of choice for commercial real estate developers. Under the expanded exemption, a deed between a "parent" limited liability company and its wholly owned subsidiary, or between two or more subsidiary limited liability companies which are both wholly owned by the same parent, is exempt from transfer and recordation taxes so long as the transfer is for no or nominal consideration. Transfers from a subsidiary to a parent for no or nominal consideration are also exempt from tax under certain specified conditions.

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