



BILL NO.: House Bill 420
TITLE: Recordation Tax – Indemnity Mortgages
POSITION: **SUPPORT**
DATE: February 23, 2011
COMMITTEE: Ways and Means
CONTACT: Andrea Mansfield

The Maryland Association of Counties (MACo) **SUPPORTS** House Bill 420. This bill would apply the recordation tax to an indemnity mortgage in the same manner as if the guarantor were primarily liable for the guaranteed loan. The recordation tax would not apply if the recordation tax was paid on another instrument of writing that secures payment of the guaranteed loan, or if the indemnity mortgage is for less than \$5 million.

An indemnity mortgage is recorded to establish a lien on the property. It typically occurs when a business entity creates a LLC to purchase property and the original business entity serves as a third party guarantor. Under current law, the recordation tax does not apply because the total amount of secured debt has not been incurred. MACo would argue that these business relationships are created for the sole purpose of avoiding taxation. A “google” search confirms this conclusion. When entering the term “indemnity deed of trust” the first sentence, from a reputable source, USLEGAL.com, reads as follows:

"An indemnity deed of trust is a real estate recordable document used in Maryland to avoid payment of recordation and transfer taxes in real estate transactions."

HB 420 closes this loophole in the current law and would ensure that all entities are paying the appropriate taxes on real estate transactions. The \$5 million threshold provides a sufficient floor to focus the bill on high dollar business transactions.

At a time when State aid to local governments has been reduced significantly and property assessment declines are affecting the county’s largest source of revenue, the property tax, counties need to have the ability to fairly and justifiably collect taxes that are rightly theirs. For these reasons, MACo **SUPPORTS** HB 420 and requests that the Committee issue a **FAVORABLE REPORT**.