

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor

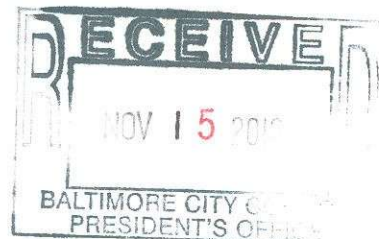


DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

November 14, 2012

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 12-0149—Recordation Tax—Stepped Rates

Dear President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 12-0149. This bill addresses the problem that foreclosure purchasers of real property often do not promptly pay the recordation tax and record their deeds. The bill creates an effective financial incentive to cause foreclosure purchasers to promptly record their deeds, ensuring that the City's land records are accurate, and ensuring that the City receive, in a timely manner, all of the recordation tax revenue it is due. Many foreclosure purchasers do eventually record their deeds when reselling to a third party purchaser. However, many purchasers in the context of mortgage foreclosures, skip a recordation tax cycle and only the third party purchaser pays the tax and records its deed.

The City is authorized to set the tax rate pursuant to the authority granted by the General Assembly in Section 12-103(b) of the Tax-Property Article of the Maryland Code. Currently the City recordation tax is 1% of the consideration paid, regardless of when the tax is paid. City Code, Art. 28 § 16-1 (“in the case of instruments conveying title to property, \$5 for each \$500 or fractional part of \$500 of the actual consideration paid or to be paid.”).¹

The Maryland Constitution does not limit the City's authority to impose a stepped recordation tax, since its requirement of uniformity applies only to real property taxes. Md. Const. Art. 15 (“[T]hat the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, . . .; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land. . .”). The recordation tax is an excise tax, not a real property tax. See *Prince George's County v. Brown*, 334 Md. 650, 662 (1994); *Dean v. Pinder*,

¹ There is a partial exemption for purchasers who will use the property as their principal residence. City Code, Art. 28 § 16-2.

312 Md. 154, 159 (1988)(“Although this tax is computable on the amount of consideration transferred, it is not considered a tax on property but rather an excise tax imposed upon the privilege of recording the deed.”).

The Law Department approves City Council Bill 12-0149 for form and legal sufficiency.

Very truly yours,


Suzanne Sangree
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Ashlea Brown, Special Assistant Solicitor
Hilary Ruley, Assistant Solicitor
Victor Tervalva, Assistant Solicitor