

I. TAX-GENERAL ARTICLE

*A. Chapter 203 (HB 935) – Adds Section 10-912 to the Tax-General Article.

Budget Reconciliation and Financing Act of 2003 (Withholding Income Tax from Nonresidents at Closing)

New Section 10-912 of the Tax-General Article provides an additional means for the State to collect income tax from sellers of real property who are not Maryland residents. Sales by nonresidents are targeted, because it is believed that a sale by a nonresident involves property other than the transferor's primary residence and that such a sale would likely trigger a capital gain, taxable in Maryland. Unfortunately, the new Section will have a significant impact on real estate settlements, deed preparation and recording.

The new Section requires that every deed or other instrument that effects a change of ownership on the Assessment records, contain a statement of the "total payment," in the recitals or the acknowledgement, or in an accompanying affidavit made by the transferor or the transferor's agent. The term "total payment" means the net proceeds of the sale (i.e., the total sales price paid, less payments made at closing to satisfy mortgages and other liens on the property, and less other expenses of the transferor, arising out of the sale and disclosed on a settlement sheet prepared in connection with the sale.) In order to record the deed, nonresident individuals must pay 4.75% and nonresident entities must pay 7% of the "total payment." The funds are collected by the Clerk, or State Department of Assessments and Taxation (SDAT) as the case may be, and the Clerk or SDAT are required to pay the funds over to the Comptroller within 30 business days following collection.

There are several exemptions from the withholding and payment requirement. Withholding and payment is not required if the deed contains a certification in the recitals or the acknowledgement, or in an accompanying affidavit, made by the transferor or the transferor's agent, that the transferor is a Maryland resident or, alternatively, that the property being transferred is the transferor's principal residence. The requirement, also, does not apply to transfers pursuant to a mortgage foreclosure or deed in lieu, or to transfers by the United States or by the State and its political units or subdivisions. Additionally, the requirement is waived in whole or in part if the transferor presents a Comptroller's certification, indicating a predetermination that no tax, or a reduced amount of tax, is due or that the tax liability has been previously adequately secured or satisfied.

Neither the transferee nor the title agent will, ordinarily, be able to determine whether a transferor is, or is not, a Maryland resident. Although the applicable definitions for a resident and nonresident entity are straightforward (a resident entity is one formed under Maryland law, or otherwise qualified or registered to do business in Maryland), determining the status of an individual transferor is much more difficult. (See Section 10-101(h) for the definition of a Maryland resident for income tax purposes.) For that reason, the new Section provides that the transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, and real estate agent or broker are not liable for any amounts required to be collected and paid over to the Comptroller.

The Comptroller is required to adopt necessary regulations and establish procedures for issuing certificates and early refunds in appropriate cases.

II. REAL PROPERTY ARTICLE

A. **Chapter 189 (HB 992)** – Repeals and reenacts, with amendments, Section 3-104(b) and (c)(3) of the Real Property Article.

Real Property – Prerequisites to Recording

With respect to a deed transferring property to a county government, adds Baltimore City to the list of jurisdictions which do not require that all public taxes, assessments and charges currently due and owed, be paid prior to transferring the property on the Assessment records.

* B. **Chapter 348 (HB 1054)** – Repeals and reenacts with amendments, Section 3-105.1 of the Real Property Article and Sections 11-501(a) and (g) and 11-502(b)(1) and (11) and (c) of the Financial Institutions Article.

Real Property – Mortgage or Deed of Trust - Enforcement of Release

The existing release statute provides that, in a case where the holder of a debt secured by a mortgage or deed of trust on the borrower's principal dwelling does not record the release following payment in full within a reasonable time, the holder must forward the release to the "responsible person" (settlement agent) for recording. If the holder does not record the release or provide the release to the responsible person, the holder is required to furnish the release to the borrower, along with information on where to record the release and the estimated recording fee. The statute, prior to HB 1054, did not provide any specific time period within which the holder was required to record the release or provide the release to the responsible person.