

Christine Wellons, Assistant Solicitor

Department of Law

Interpretation of Baltimore City Code Article 28, § 16-2

Ralph S. Tyler  
City Solicitor

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As you will recall, the Attorney General's Office issued a letter of advice to the Clerk of the Circuit Court of Baltimore City on September 13, 2004 with respect to the City's recently enacted recordation tax, and more particularly, the \$22,000 exemption from that tax. Because we believed that the advice was incorrect, we requested reconsideration of the advice and submitted a memorandum in support of that request. On October 14, 2004, in response to our request, Assistant Attorney General Bruce L. Benshoof sent another letter to the Clerk (copy attached) that effectively reverses the prior advice by granting a "waiver" on terms consistent with how we believe the exemption should be interpreted.

This exemption issue is of considerable practical and financial importance to a wide variety of persons and entities, including homebuyers, real estate agents and brokers, and title companies. Accordingly, this memorandum is intended to: (1) circulate and explain Mr. Benshoof's October 14 letter to the Clerk of the Circuit Court for Baltimore City, regarding the partial exemption from the recordation tax provided in Article 28, Section 16-2 of the Baltimore City Code; and (2) clarify that home buyers, as opposed to sellers, are the intended recipients of the § 16-2 exemption.

In the October 14 letter, Mr. Benshoof explained that the amount of the § 16-2 exemption, \$22,000, does not vary depending upon the size of a down payment. In particular, the § 16-2 exemption does not (as Mr. Benshoof previously indicated in a letter to Mr. Conaway dated September 13, 2004) reduce the exemption available for purchase money mortgages and purchase money deeds of trust under § 12-108(i) of the Maryland Code, Tax-Property Article.

The practical effect of the October 14 letter is that each conveyance of owner-occupied residential property – regardless of the size of the down payment involved – qualifies for the entire \$22,000 exemption under § 16-2.<sup>1</sup> For example, an owner-occupied residential property that sells for \$70,000 with a \$50,000 purchase money deed of trust and a \$10,000 down payment would incur a recordation tax of \$480 (1% of \$48,000). If this same property sells for \$70,000 with no purchase money mortgage or purchase money deed of trust, the recordation tax would be \$480. And if this property sells for \$70,000 with a \$70,000 purchase money deed of trust and a \$0 down payment, the recordation tax would be \$480.

Importantly, the October 14 letter supports § 16-2's purpose, which is to provide a monetary incentive for home ownership by providing financial assistance to all home buyers who become owner-occupiers. Pegging the exemption to the size of the down payment would have

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<sup>1</sup> This assumes, however, that the property is sold for at least \$22,000.

undermined this purpose; indeed, only home buyers who could afford a down payment of \$22,000 or more would have received the full exemption.

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To fulfill the Mayor and City Council's intent to benefit home buyers and promote homeownership, it is clear that the buyer should receive the benefit of the entire exemption. The seller should not share in the exemption, notwithstanding any contractual provisions concerning the division of taxes between the buyer and seller.<sup>2</sup>

cc: The Honorable Martin O'Malley  
Michael Enright  
Peggy Watson  
Edward Gallagher  
Douglas Brown  
Linda C. Barclay  
Elena DiPietro  
Elizabeth Harris

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<sup>2</sup> It is also clear that the source of a buyer's down payment should not affect the availability, or amount, of the § 16-2 exemption. For instance, the fact that a down payment was a gift from the buyer's relative should not diminish the exemption.