

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Sandusky

Typed by: Alan

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Proofread by _____

Checked by _____

By: **Montgomery County Delegation**

A BILL ENTITLED

1 AN ACT concerning

2 **Montgomery County – Transfer Tax**

3 **MC 6–10**

4 FOR the purpose of altering certain authority for the governing body of Montgomery
5 County to impose, by law, a county tax on certain transfers of interests in real
6 property; exempting certain instruments of writing from the tax; providing that
7 on the refinancing of property by certain mortgagors, the tax shall apply only to
8 the amount of consideration over and above the amount of the original mortgage
9 or deed of trust; defining a certain term; and generally relating to the county
10 transfer tax in Montgomery County.

11 BY repealing and reenacting, with amendments,
12 The Public Local Laws of Montgomery County
13 Section 52–20
14 Article 16 – Public Local Laws of Maryland
15 (2004 Edition and October 2009 Supplement, as amended)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article 16 – Montgomery County**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 52–20.

2 (a) The county council for Montgomery County is empowered and authorized
3 to levy and impose by resolution or ordinance a tax to be paid and collected on the
4 transfer in Montgomery County of:

5 (1) **[Any] SUBJECT TO SUBSECTION (F) OF THIS SECTION, ANY** fee
6 simple interest in real property, **[except] INCLUDING** by way of mortgage, deed of
7 trust, or deed of trust for the benefit of creditors;

8 (2) Stock or other evidence of ownership in a cooperative housing
9 corporation or similar entity; **[and]**

10 (3) Any leasehold interest in real property, where such lease contains
11 a covenant for perpetual renewal; and

12 (4) Any nonresidential leasehold interest in real property where there
13 is a simultaneous or subsequent transfer of the fee interest in the real property to:

14 (i) Any transferee or assignee of the leasehold; or

15 (ii) Any entity in which a transferee or assignee of the leasehold
16 has any interest.

17 (b) The rate of such tax shall not exceed:

18 (1) Six percent of the value of the consideration for any transfer of
19 land, excluding improvements thereon, which, while owned by the transferor, has been
20 assessed at any time during the five years preceding transfer on the basis of being
21 actively devoted to farm or agricultural use. The tax shall be paid by the transferor of
22 such land; or

23 (2) Six percent of the value of the consideration for any transfer of real
24 property which, after the effective date of any such rate of tax has been rezoned to a
25 more intensive use at the instance of the transferor, transferee, or any other person
26 who has or had at the time of application for rezoning a financial, contractual, or
27 proprietary interest in the property, but excluding the value of improvements
28 constructed after such rezoning; or

1 (3) Four percent of the value of the consideration for the initial
2 transfer of a residential unit subject to a condominium regime offered for rent for
3 residential purposes prior to the establishment of the condominium regime. The tax
4 shall be paid by the initial transferor of the residential unit. The tax shall be in
5 addition to the tax provided in paragraph (5) of this subsection; or

6 (4) Four percent of the value of the consideration for the initial
7 transfer of stock or other evidence of membership in a cooperative housing corporation
8 or similar entity where such stock corresponds to a residential unit which is being
9 converted from rental status to a system of cooperative housing corporation ownership
10 under which title to a multi-unit residential facility is held by a corporation, the
11 shareholders or members of which, by virtue of such ownership or membership, are
12 entitled to enter into an occupancy agreement for a particular residential unit. This
13 tax shall not be applicable to transfers made pursuant to the purchase of a building by
14 or on behalf of a bona fide tenants association. The tax shall be paid by the initial
15 transferor of the residential unit and shall be in addition to the tax provided in
16 paragraph (5) of this subsection; or

17 (5) One percent of the value of the consideration for any other transfer
18 including any nonresidential leasehold interest and fee interest under subsection (a)(4)
19 of this section based on the:

20 (i) Average annual rent over the term of the lease, including
21 renewals, capitalized at 10 percent plus any additional consideration payable, other
22 than rent; or

23 (ii) If the average annual rent can not be determined, the
24 greater of:

25 1. 105 percent of the minimum average annual rent, as
26 determined by the lease, capitalized at 10 percent, plus any additional consideration
27 payable, other than rent; or

28 2. 150 percent of the assessment of the real property
29 subject to lease.

30 (c) No transfer of any interest in such property shall be taxed hereunder
31 where the transfer is to any nonprofit hospital or nonprofit religious or charitable

1 organization, association or corporation, nor to any municipal, county or State
2 government, or instrumentalities, agencies or political subdivisions thereof; provided,
3 that no exemption shall be granted hereunder to a transfer under paragraph (b)(1) of
4 this section unless the transferor is a nonprofit hospital or nonprofit religious or
5 charitable organization, association or corporation, or a municipal, county or State
6 government, or instrumentality, agency or political subdivision thereof. The county
7 council may provide for any additional exemptions from the provisions of this section.

8 (d) No tax levied pursuant to this section shall apply to transfers pursuant to
9 contracts or agreements entered into prior to the effective date of such tax.

10 (e) The county council is further empowered and authorized to fix a penalty
11 not in excess of one thousand dollars or imprisonment not exceeding six months, or
12 both such fine and imprisonment, for violation of the provisions of any resolution or
13 ordinance of the county council adopted pursuant to this section.

14 **(F) (1) THE TAX AUTHORIZED UNDER THIS SECTION DOES NOT APPLY**
15 **TO A PURCHASE MONEY MORTGAGE, A PURCHASE MONEY DEED OF TRUST, AN**
16 **ASSIGNMENT OF A MORTGAGE OR DEED OF TRUST, OR A RELEASE.**

17 **(2) ON ANY REFINANCING OF PROPERTY BY THE ORIGINAL**
18 **MORTGAGOR OR MORTGAGORS, THE TAX AUTHORIZED UNDER THIS SECTION**
19 **SHALL APPLY ONLY TO THE CONSIDERATION OVER AND ABOVE THE AMOUNT OF**
20 **THE ORIGINAL MORTGAGE OR DEED OF TRUST.**

21 **(3) (I) IN THIS PARAGRAPH, "INDEMNITY MORTGAGE"**
22 **INCLUDES ANY MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST IN**
23 **REAL PROPERTY THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR**
24 **WHICH THE GUARANTOR IS NOT PRIMARILY LIABLE.**

25 **(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS**
26 **PARAGRAPH, THE TAX AUTHORIZED UNDER THIS SECTION APPLIES TO AN**
27 **INDEMNITY MORTGAGE IN THE SAME MANNER AS IF THE GUARANTOR WERE**
28 **PRIMARILY LIABLE FOR THE GUARANTEED LOAN.**

29 **(III) THE TAX AUTHORIZED UNDER THIS SECTION DOES NOT**
30 **APPLY TO AN INDEMNITY MORTGAGE TO THE EXTENT THE TAX IS PAID ON**
31 **ANOTHER INSTRUMENT OF WRITING THAT SECURES PAYMENT OF THE**
32 **GUARANTEED LOAN.**

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1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2010.