



Senate Bill 999

Recordation Tax - Exemptions

MACo Position: **SUPPORT**

To: Ways and Means Committee

Date: April 3, 2018

From: Barbara Zektick

The Maryland Association of Counties (MACo) **SUPPORTS** SB 999, as amended. This bill would exempt certain property transfers from recordation taxes – some of which are already exempt under existing law, or else a solid policy reason exists to make them exempt through this bill.

MACo Concurs That Limited Partnerships Should Receive Exemption

Under existing law, there is a recordation tax exemption for a property transfer between a related corporation or limited liability company (LLC) and another entity with the exact same ownership interests. This makes sense; the equitable ownership essentially remains the same, and it is just the type of business entity which has changed.

Limited partnerships are like corporations and LLCs, in that they too must file formation documentation with the State Department of Assessments and Taxation (SDAT). Since the exemption applies to corporations and limited partnerships, there is no logical basis to deny the exemption to limited partnerships. MACo has no objections to adding limited partnerships to the exemption currently enjoyed by corporations and LLCs.

The Senate amended out of the bill the exemption for general partnerships, at MACo's request. General partnerships—unlike corporations, LLCs, and limited partnerships—are not required to file formation documents with SDAT. What constitutes a general partnership is sometimes a question of subjective intent. A general partnership can exist even without a written agreement. An individual owning property can merely assert his or her intent that the property is held as partnership property. It would be very difficult, if not impossible, for a county to determine whether a transfer from such a partnership to an LLC or corporation is merely a change in business entity, or if it actually constitutes a transfer of ownership to new equity owners.

“Original Mortgagor” Provision Substantively Changes Existing Exemption

Also under existing law, there is an exemption from recordation taxes for certain refinancing made by the “original mortgagor.” As originally introduced, the proposed legislation would have expanded this exemption by including in the definition of “original mortgagor” any entity that acquired title by a

deed that is exempt from recordation taxes. However, the Senate limited this expansion to a reasonable number of transactions. Therefore, MACo no longer has objections to this provision of the bill.

MACo appreciates the willingness of the bill sponsor and stakeholders, including the Maryland Chapters of NAIOP, to work with county tax attorneys to amend this bill so that it truly serves as a “clean up” corrective bill. Accordingly, MACo recommends the Committee issue a **FAVORABLE** report on SB 999, as amended.