



OLDE KEY TITLE

RESIDENTIAL AND COMMERCIAL CLOSING SERVICES SINCE 1982

MEMORANDUM

From: Olde Key Title

Date: December 22, 2009

Re: "Montgomery County – Refinance of Existing Debt by Two or More Deeds of Trust / Deeds from HUD, FNMA, FHLMC and FDIC"

Scenario: "Borrowers obtain more than one deed of trust in order to refinance, pay off, and release an existing deed(s) of trust"

- "Sometimes in these instances, the borrowers may be able to maximize their refinance exemption credit by *combining* the new deeds of trust that are being used to pay off the existing deed(s) of trust that is being refinanced."
- The following is an example ("Example A") from Bulletin MD-907:
 - o Unpaid Principal Balance of Deed of Trust being Paid Off \$550,000
 - o New 1st Deed of Trust \$470,000
 - o New 2nd Deed of Trust \$150,000
 - o Combined New DOT's \$620,000
- "Recordation Tax Calculation for Example A:"
 - o New 1st Deed of Trust of \$470,000 is EXEMPT \$0
 - o New 2nd Deed of Trust of \$150,000 is PARTIALLY
 - EXEMPT
 - \$80,000 is EXEMPT \$0
 - TAXABLE
 - \$70,000 is TAXABLE
 - o \$70,000 x (\$10/\$1000) \$700
 - o NOTE: "The higher recordation tax rate is used in this example because the borrower has chosen to combine the two new deeds of trust for refinance exemption purposes. Therefore, the two new deeds of trust are combined for ALL purposes in the transaction. Since the combined transaction is exempt from \$0 to \$550,000, then the additional \$70,000 is over and above the \$500,000 threshold for the higher recordation tax rate."
- The following is an example ("Example B") from Bulletin MD-907:
 - o Unpaid Principal Balance of Deed of Trust being Paid Off \$475,000
 - o New 1st Deed of Trust \$400,000
 - o New 2nd Deed of Trust \$200,000
 - o Combined New DOT's \$600,000
- "Recordation Tax Calculation for Example B:"

- New 1st Deed of Trust of \$400,000 is EXEMPT \$0
- New 2nd Deed of Trust of \$200,000 is PARTIALLY
 - EXEMPT
 - \$75,000 is EXEMPT \$0
 - TAXABLE
 - \$125,000 is TAXABLE
 - \$475,000 to \$500,000 = \$25,000 is taxable at \$6.90/\$1,000 \$172.50
 - \$500,000 to \$600,000 = \$100,000 is taxable at \$10/\$1,000 \$1,000
 - TOTAL Recordation Tax – 2nd New \$1,172.50
- NOTE: “Both recordation tax rates are used in this example because part of the taxable amount is below the \$500,000 threshold and part of the taxable amount is above the \$500,000 threshold.”

Scenario: “Deeds from HUD and other Federal Entities including Fannie Mae, Freddie Mac, and FDIC”

- Assume the following for the examples below:
 - Deed Consideration \$150,000
 - “The \$50,000 County exemption for Recordation Tax applies on the deed only”
 - Deed of Trust \$140,000
 - Grantor: HUD, Fannie Mae, Freddie Mac, FDIC or other Federal entity
 - Grantee: Maryland First Time Homebuyer
- Examples:
 - #1: “State presumption in Section 14-104(c) of the Real Property Article applies and the parties have not contractually provided otherwise”
 - Deed is fully EXEMPT from Recordation Tax \$0
 - Deed is fully EXEMPT from County Transfer Tax \$0
 - Deed of trust is fully TAXABLE for Recordation Tax
 - \$140,000 x (\$3.45/\$500) \$966
 - #2: “Parties have contractually agreed to split the taxes 50%-50%”
 - Deed is TAXABLE as to ½ for Recordation Tax
 - (\$150,000-\$50,000) x ½ = 50,000 x (3.45/500) \$345
 - Deed is TAXABLE as to ½ for County Transfer Tax
 - (\$150,000 x ½) x 1.0% \$750
 - Deed of trust is EXEMPT ONLY “up to the amount of consideration that was taxed on the deed”
 - (\$140,000-\$50,000) x (3.45/500) \$621
 - #3: “Parties have agreed in the contract that the Buyer pays all taxes”
 - Deed is TAXABLE on the FULL consideration (LESS County exemption) for Recordation Tax (\$100,000 x (3.45/500) \$690
 - Deed is FULLY TAXABLE for County Transfer Tax
 - \$150,000 x 1.0% \$1,500
 - Deed of trust will receive full purchase money exemption \$0

- #4: For this example the Grantor is HUD, Fannie Maw, Freddie Mac, FDIC or other Federal Entity; the Grantee is NOT a Maryland First Time Homebuyer
 - Deed is TAXABLE on the FULL consideration (LESS County exemption) for Recordation Tax ($\$100,000 \times (3.45/500)$) \$690
 - Deed is FULLY TAXABLE for County Transfer Tax
 - $\$150,000 \times 1.0\%$ \$1,500
 - Deed of trust will receive full purchase money exemption \$0

Source: Fidelity National Title Insurance Company and Lawyers Title Insurance Company's Bulletin MD-907, dated March 3, 2009