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Maryland IDOTs Fall Victim to Revenue Enhancement Measures

Indemnity deeds of trust historically have afforded an opportunity to minimize recordation taxes on commercial real estate loan transactions in nearly all Maryland jurisdictions. Referred to as IDOTs, they are typically structured as a commercial loan made to a borrower that is evidenced by a promissory note. The note is guaranteed by the title holder of the real property pursuant to a separate guaranty, and the guaranty is secured by an IDOT encumbering the landowner's property. By virtue of a series of Maryland Attorney General opinions, no state recordation tax (currently ranging from 0.5% to 1.2% depending on the jurisdiction in which the real property is located) is due at the time an IDOT is recorded because it is deemed to secure a contingent obligation that has not yet matured, and therefore there is no taxable consideration. If there is a default under the note and a demand for payment is made against the guarantor, the secured obligation is no longer contingent and the recordation tax is due at that time.

The Maryland General Assembly, which the Governor called into special session in May 2012, enacted Senate Bill 1302. The Governor signed SB 1302 into law on May 22, 2012. This bill, entitled the "State and Local Revenue and Financing Act of 2012," effectively abolishes IDOTs as a financing technique. Under SB 1302, IDOTs recorded on or after July 1, 2012 will no longer be exempt from recordation tax. The only exemptions will be for IDOTs that secure a guarantee of payment of a loan for less than \$1,000,000, or to the extent that recordation tax is paid on another instrument of writing that secures payment of a guaranteed loan.

Recordation tax will thus be imposed on IDOTs recorded on or after July 1, 2012 that secure a guarantee of payment of a loan for \$1,000,000 or more. The new law does not affect the existing exemption for purchase money mortgages or deeds of trust, nor does it affect the techniques currently employed to minimize recordation taxes for amended and restated mortgages or deeds of trust.

Please contact Kevin L. Shepherd or Edward S. ("Ted") Evans, III, real estate partners, at klshepherd@venable.com (410.244.7772) or esevans@venable.com (410.244.7855) if you have any questions on this new law.

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