



## **Action Alert**

**To: AOBA Members with Residential Property in Montgomery County**

**From: Lesa Hoover, VP Government Affairs, MD**

**Date: February 2, 2009**

**Re: Indemnity Mortgages -- Contact Delegates**

Montgomery County Delegate Anne Kaiser (D) recently introduced bill MC 926-09 in the Montgomery County Delegation. This bill applies the recordation tax to an "indemnity mortgage" in the same manner as if the guarantor were primarily liable for the guaranteed loan.

An indemnity mortgage is the legal instrument manifesting a pledge of property used when a lender agrees to loan money to a borrower on two conditions: (1) that a third party guarantees repayment of the loan; and (2) that the guarantor executes a mortgage on real property to secure the guarantee. An indemnity mortgage is recorded so as to establish a lien on the property.

Current Maryland law authorizes Counties to impose a recordation tax on any business or person: (1) conveying title to real property; or (2) creating or giving notice of a security interest (i.e., a lien or encumbrance) in real or personal property, by means of an instrument of writing. Indemnity mortgages, as of now, are not subject to the recordation tax and the guarantor of an indemnity mortgage is not required to pay recordation tax on the instrument unless and until there is a default by the debtor.

MC 926-09, if enacted, would require the guarantor of the indemnity mortgage loan to pay a recordation tax when the indemnity mortgage is recorded despite the fact that the guarantor does not directly benefit from the loan.

This bill will:

- Impose a new tax on commercial and residential loan transactions secured by a deed of trust, increasing transactional costs
- Lead to a decrease in the number of loan transactions by making certain transactions not economically viable
- Increase the cost of the end product to consumers as a result of the increase in transaction costs that get passed through to consumers
- Further stifle the faltering economy by imposing a new tax at a time of economic recession when the business and residential community cannot afford to pay more taxes
- Dissuade guarantors from pledging real property to secure a loan, ultimately frustrating the ability of the business community to obtain loans.