

FIRST-TIME MARYLAND HOME BUYER

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In a business filled with all types of confusing requirements, language challenges and sometimes dated biases and practices, this topic should be pretty straightforward: “First-Time Maryland Home Buyer”. I was pretty sure I knew what each of those words mean and I thought I would be smart enough to use them all in one sentence and know what I was talking about. I was wrong. Let’s begin to explore my shortcomings by looking at the actual Maryland law on the subject:

Maryland Real Property Section 14-104

Article - Real Property § 14-104.

(a) In this section, "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence.

(b) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.

(c) (1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.

(2) The entire amount of State transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time

Maryland home buyer who will occupy the property as a principal residence.

(3) This subsection does not apply to tax sales of property under Title 14, Subtitle 8 of the Tax - Property Article.

(4) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax - Property Article for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) Paragraphs (1) and (2) of this subsection apply only if each grantee or an agent of the grantee provides a statement that is signed under oath by the grantee or agent of the grantee stating that:

(i) 1. The grantee is a first-time Maryland home buyer as defined under subsection (a) of this section; and

2. The residence will be occupied by the grantee as the grantee's principal residence; or

(ii) 1. The grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax - Property Article for the property; and

2. The grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

(6) A statement under paragraph (5) of this subsection by an agent of a grantee shall state that the statement:

(i) Is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and

(ii) Is true to the best of the knowledge, information, and belief of the agent.

OK – so be it! However, there are some exceptions to the Maryland law.

Maryland's Department of Housing and Community Development administers the Maryland Mortgage Program

<http://mmp.maryland.gov/Pages/About-CDA.aspx> which offers wonderful opportunities for home buyers in Maryland and offers a special exception to the definition of “first-time” found in the law:

First-Time Homebuyer Eligibility

Someone who has not owned residential property for three years or more is considered a “First-Time Homebuyer.” First-Time Homebuyers who meet household income limits (see next section) can use the Maryland Mortgage Program to purchase a home anywhere in Maryland.

Homebuyers who are not First-Time Homebuyers, and who meet household income limits, may use the Maryland Mortgage Program, but can only purchase properties that are located within Targeted Areas.

There are lots of other benefits and provisions in this program that are worth looking at closely. Talk with your lender and REALTOR® about them.

The U.S. Department of Housing and Urban Development (HUD) has a few other twists and turns to consider when possible:

HUD HOC Reference Guide

First-Time Homebuyers

Chapter 3 - Miscellaneous Policies - Page 3-02

One of FHA's highest priorities is to assist homebuyers with the purchase of their first home.

FHA tracks the number of first-time buyers assisted by our programs. Consequently, it is very important that the information is entered accurately in FHA Connection.

In order to help lenders properly identify first-time homebuyers, we are clarifying the definition of what constitutes a first-time homebuyer. A first-time homebuyer is an individual who meets any of the following criteria:

- An individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers).*
- A single parent who has only owned with a former spouse while married.*
- An individual who is a displaced homemaker and has only owned with a spouse.*
- An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations.*
- An individual who has only owned a property that was not in compliance with state, local or model building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.*

The Maryland REALTORS® Association ***Residential Contract of Sale*** provides the following boilerplate language for the benefit of first-time home buyers:

25. TRANSFER CHARGES:

A. IN GENERAL. Section 14-104(b) of the Real Property Article, Annotated Code of Maryland provides that, unless otherwise negotiated in the contract or provided by State or local law, the cost of any recordation tax or any State or local Transfer Tax shall be shared equally between the Buyer and Seller.

B. FIRST-TIME BUYER. Under Section 14-104(c) of the Real Property Article, the entire amount of recordation and local transfer tax shall be paid by the Seller of property that is sold to a first-time Maryland homebuyer, unless there is an express agreement that the recordation tax or any state or local transfer tax will not be paid entirely by the Seller.

RECORDATION AND LOCAL TRANSFER TAX. If the Buyer is a first-time Maryland homebuyer, Buyer and Seller expressly agree, in accordance with Section 14-104(c) of the Real Property Article, Annotated Code of Maryland, that payment of recordation tax and local transfer tax shall be shared equally between the Buyer and Seller unless a "First-time Maryland Homebuyer Transfer and Recordation Tax Addendum" is attached, which contains a different express agreement. STATE TRANSFER TAX: Under Section 13-203(b) of the Tax-Property Article, Annotated Code of Maryland, the amount of state transfer tax due on the sale of property to a first-time Maryland homebuyer is reduced from 0.50 % to 0.25% and shall be paid entirely by the Seller. Buyer is hereby notified that to ensure receipt of the above reduction, Buyer should so indicate on Page 10 of this Contract and complete the required affidavit at settlement indicating that the Buyer is a first-time Maryland homebuyer.

And, indeed, this line appears at the very end of the contract at the bottom of page 10: *Check if First-Time Maryland Homebuyer*

CAUTION: Read this language through several times – it is not crystal clear to many people. There are two separate issues to consider – not just one: Recordation and Local Transfer Tax and, State Transfer Tax.

The default language in the contract is pretty favorable to the buyer(s) and might be left well enough alone. No further action is necessary – except to remember to check the block specified at the very end of the contract at the bottom of page 10. The First-Time Maryland Homebuyer Transfer and Recordation Tax Addendum need only be used when either or both parties want to agree to do something different. Many buyer agents are getting this wrong to the detriment of their clients.

But, if desired, the referenced Addendum needs to be completed and attached:



**FIRST-TIME MARYLAND HOMEBUYER
TRANSFER AND RECORDATION TAX ADDENDUM**

FOR USE IN TRANSACTIONS WHERE BUYER IS A FIRST-TIME MARYLAND HOMEBUYER AND TRANSFER AND RECORDATION TAXES WILL NOT BE SHARED EQUALLY BETWEEN BUYER AND SELLER

ADDENDUM dated _____ to Contract of Sale
between Buyer _____
and Seller _____
for Property known as _____.

FOR USE ONLY WHEN AN INDIVIDUAL HAS NEVER OWNED RESIDENTIAL REAL PROPERTY IN THE STATE OF MARYLAND AND THE PARTIES INTEND TO PROVIDE FOR AN EXPRESS AGREEMENT ON TERMS DIFFERENT FROM THOSE CONTAINED IN PARAGRAPH 25 OF THE CONTRACT OF SALE. TO QUALIFY AS A FIRST-TIME MARYLAND HOMEBUYER, EACH BUYER MUST SIGN A STATEMENT UNDER OATH STATING THAT:

- (A.) THE BUYER HAS NEVER OWNED RESIDENTIAL REAL PROPERTY IN MARYLAND THAT HAS BEEN THE INDIVIDUAL'S PRINCIPAL RESIDENCE; AND
- (B.) THE RESIDENCE WILL BE OCCUPIED AS A PRINCIPAL RESIDENCE; OR
- (C.) THE BUYER IS A CO-MAKER OR GUARANTOR OF A MORTGAGE OR DEED OF TRUST TO BE SECURED BY THE PROPERTY AND THE CO-MAKER OR GUARANTOR WILL NOT OCCUPY THE PROPERTY AS A PRINCIPAL RESIDENCE.

BUYER IS A FIRST-TIME MARYLAND HOMEBUYER WHO WILL OCCUPY THE IMPROVED, RESIDENTIAL REAL PROPERTY AS A PRINCIPAL RESIDENCE.

1. STATE TRANSFER TAX

- (A) SECTION 13-203(B) OF THE TAX-PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND PROVIDES THAT THE RATE OF THE STATE TRANSFER TAX IS REDUCED FROM 0.50% TO 0.25% OF THE CONSIDERATION PAYABLE FOR THE INSTRUMENT IN WRITING AND SHALL BE PAID ENTIRELY BY THE SELLER.
- (B) SECTION 14-104(C)(2) OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND PROVIDES THAT THE ENTIRE AMOUNT OF STATE TRANSFER TAX SHALL BE PAID BY THE SELLER.

2. RECORDATION TAX AND LOCAL TRANSFER TAX

SECTION 14-104(C)(1) OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND PROVIDES THAT THE ENTIRE AMOUNT OF RECORDATION TAX AND LOCAL TRANSFER TAX SHALL BE PAID BY THE SELLER UNLESS THERE IS AN EXPRESS AGREEMENT BETWEEN THE PARTIES THAT THE RECORDATION TAX AND LOCAL TRANSFER TAX WILL NOT BE PAID ENTIRELY BY THE SELLER.

BUYER AND SELLER EXPRESSLY AGREE THAT THE COST OF RECORDATION TAX AND LOCAL TRANSFER TAX SHALL BE PAID AS FOLLOWS: (**BUYER AND SELLER TO INITIAL ONE**)

_____/_____/_____/_____/_____/_____ SELLER TO PAY
 _____/_____/_____/_____/_____/_____ BUYER TO PAY
 _____/_____/_____/_____/_____/_____ OTHER AS FOLLOWS:

All other terms and conditions of the Contract of Sale remain in full force and effect.

Buyer Signature Date Seller Signature Date

Buyer Signature Date Seller Signature Date



DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, MRP-Military Relocation Professional, and Workforce Housing Certification.

Please note that this article was written by John to provide objective information and to also reflect his opinion of good practice at the time of its' writing for the general benefit of those considering sale or purchase of real estate. It is not intended as definitive legal advice and you should not act upon it as such without seeking independent legal and financial counsel. Frequent changes in the law and standards of practice may cause this information to become outdated and no longer applicable or incorrect.