

Commonwealth of Virginia

Department of Taxation

Report on

Recordation and Grantor Taxes

November 30, 2009



COMMONWEALTH of VIRGINIA

Department of Taxation

November 30, 2009

The Honorable Harry R. Purkey
Chairman, House Finance Committee
House of Delegates of Virginia
General Assembly Building, Room 415
Capitol Square
Richmond, Virginia 23219
(804) 698-1082

The Honorable Charles J. Colgan
Chairman, Senate Finance Committee
Senate of Virginia
General Assembly Building, Room 626
Capitol Square
Richmond, Virginia 23219
(804) 698-7529

Dear Sirs:

The Department of Taxation is pleased to transmit its report regarding the study of the Recordation and Grantor Taxes. This report is required pursuant to Item 269 of the 2009 Appropriations Act which authorized the Department of Taxation to convene a working group to study the fiscal and policy impact these taxes.

Please let me know if you have any further questions.

Sincerely,


Janie E. Bowen
Tax Commissioner



Preface

Authority

Item 269 of the 2009 Appropriations Act provided:

B. The Department of Taxation shall convene a working group to review and make recommendations, on or before November 30, 2009, to the Senate Finance Committee and to the House Finance Committee with respect to the basis on which recordation and grantor taxes are calculated on the transfer of real estate to the actual consideration for the real estate. The working group shall be comprised of representatives of interested parties identified by the Tax Commissioner, and shall include, without limitation, representatives of associations representing real estate businesses in Virginia, the Virginia Association of Realtors, the Virginia Court Clerks Association, the Virginia Association of Counties, and the Virginia Municipal League. The working group shall consider enforcement and implementation issues associated with § 58.1-812 of the Code of Virginia. The working group shall also review the fiscal impacts related to the current law and to proposed changes in the law. The fiscal impacts on state and local governments and the housing industry will be reviewed in terms of order of magnitude.

Staff Assigned to Report

Mark C. Haskins, Director, Policy Development Division

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Executive Summary

Legislation during the 2009 General Assembly Session was introduced that would have required the recordation tax and the grantor's tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed. There was some discussion over whether stated consideration or the actual value of the property conveyed should be the basis for calculating the recordation and the grantor's tax. The General Assembly decided to authorize a working group to further study this issue and produce a written report to be presented to the General Assembly.

Background

In 2001, Chapter 830, Acts of Assembly 2001, (HB 2814), amended *Va. Code* §§ 58.1-801 and 58.1-802, to require that the recordation taxes on deeds always be based on the amount of consideration paid for the property. However, the Act contained two additional enactments. The second enactment required the bill to be reenacted by the 2002 General Assembly, which did not occur. The third enactment directed TAX to collaborate with the Virginia Court Clerks Association to determine the impact that the Act would have on state and local recordation tax revenues.

The 2001 study showed that the Commonwealth and its localities would experience a loss of recordation tax revenues if House Bill 2814 were to be re-enacted. However, due to the lack of data, the magnitude of the loss could not be determined with any accuracy.

2009 Study

TAX, after convening a meeting with the representatives of the groups specified by the 2009 Appropriations Act, distributed two surveys to the clerks of the Circuit Courts. The first survey gathered data from clerks of the circuit courts in each of the localities regarding their general practices and procedures related to the evaluation and investigation (if necessary) into each deed. The second survey was sent to the clerks in the top 50 localities plus an additional 12 smaller localities that were chosen in order to gain geographic diversification. This data collection survey requested both the consideration of the deed and the adjusted value on which tax was assessed for each deed that was adjusted.

Findings

If the taxable basis were changed from the consideration or actual value, whichever is greater, to only the consideration, the total revenue loss that would incur is shown below.

Table 1: Total Revenue Loss

Fiscal Impact	(Amounts in \$ millions)	FY 2010	FY 2011
State: (Recordation and state share of Grantor's tax)		(6.5)	(6.5)
Local: (Recordation and local share of Grantor's tax)		(2.9)	(2.9)
	Total Revenue Loss:	(9.3)	(9.4)

*Estimates were rounded to the nearest \$100,000.

The estimated revenue impact is derived from the adjustments for deeds recorded in August 2009, as reported by the clerks who responded to the second survey. The reported adjustments were projected to the forecasted recordation tax revenue for FY 2010 and FY 2011. Recordation tax revenue is both seasonal and highly sensitive to the economy. Because August is part of the peak season for recording deeds, and the economy was in recession during 2009, the actual revenue loss from the proposed statutory change could be significantly greater or smaller than these estimates.

Conclusions

The 2009 study, though affected by data limitations, provided more useful information and a better fiscal analysis than did the 2001 study. Based on this analysis it is evident that if that statutory language were changed so that recordation and grantor's taxes were based solely on the consideration of the deed, there would be a revenue loss.

The working group identified several issues affecting enforcement of the recordation tax that affect not only the collection of the property tax, but the accuracy of the data used to distribute state funds to localities and for real estate professionals to accurately appraise property. The working group was unable to fully investigate these enforcement issues in the time frame of this study. If these issues are considered significant, then it may be appropriate to extend the study to investigate issues related to the enforcement of recordation tax law and policies, and to develop strategies to resolve any problems identified.

A Study of The Recordation and Grantor Taxes

Background

Nature of Recordation Taxes

The state and local recordation taxes on deeds are not taxes on the transfer of real estate but on the recordation of a document. A deed need not be recorded to be effective, at least between the parties. Real estate is conveyed merely by delivery of a deed. Recordation protects the new owner from the possibility of an innocent purchaser or creditor acquiring an interest in real estate through dealings with the former owner.

A recordation tax is imposed on the privilege of recording any deed, lease, contract, or mortgage relating to real estate. In general, the recordation taxes are imposed on the person who submits the document for recordation. The additional recordation tax paid by grantors (the "grantor's tax") is imposed on the seller; however, by contract or price adjustment, the economic incidence of the tax may be passed on to the buyer.

The state recordation tax is imposed on deeds at a rate of \$.25 per \$100, or fraction thereof, of the consideration of the deed or the actual value of the property, whichever is greater. The state grantor's tax is imposed on deeds or other writings admitted to record at a rate of \$.50 per \$500, or fraction thereof.

Localities are authorized to impose a local recordation tax in an amount equal one-third of the amount of the state recordation tax. Almost all cities and counties have exercised this authority and enacted a local recordation tax. Localities are not authorized to "piggy-back" the grantor's tax; however, Virginia law provides that one-half of the grantor's tax be deposited into the state treasury and the other half goes to the locality or localities where the property conveyed is located. Clerks of the circuit court collect the state and local portions of the recordation taxes. If a document is taxable, the clerks are authorized to retain 5% of the tax collected as compensation for their services in collecting and accounting for the tax.

Portions of the state recordation tax collections are distributed among the cities and counties and several funds. The first \$40 million of recordation collections is distributed to the U.S. Route 58 Corridor Development Fund. The second \$40 million is distributed to cities and counties in proportion to the amount each locality collected, however, for localities in the Northern Virginia Transportation District and parts of the Potomac and Rappahannock Transportation District, their portion is distributed to the Northern Virginia Transportation District Fund.

Any recordation taxes collected in excess of the required distributions remain in the General Fund. Historically, Virginia's recordation tax revenue has been significant, but very volatile, as shown by the table below.

Table 2: Virginia's recordation tax revenue (from the 2008 Annual Report)

	<u>Fiscal Year</u> 2004	<u>Fiscal Year</u> 2005	<u>Fiscal Year</u> 2006	<u>Fiscal Year</u> 2007	<u>Fiscal Year</u> 2008
Total Cities	\$74,308,666	\$128,380,820	\$160,165,640	\$140,183,201	\$118,260,210
Total Counties	\$257,055,541	\$443,871,169	\$509,776,853	\$420,930,111	\$319,831,531
Aggregate	\$331,364,208	\$572,251,989	\$669,942,493	\$561,113,312	\$438,091,741

2001 Legislation

In 2001, Chapter 830, Acts of Assembly 2001, (HB 2814), amended *Va. Code* §§ 58.1-801 and 58.1-802, to require that the recordation taxes on deeds always be based on the amount of consideration paid for the property. However, the Act contained two additional enactments. The second enactment stated that the Act would not become effective unless it was reenacted by the 2002 General Assembly. The 2002 General Assembly did not re-enact HB 2814, thereby continuing to require that the recordation or grantor's taxes be based on the consideration of the deed or the actual value of the real property conveyed.

The third enactment directed TAX to collaborate with the Virginia Court Clerks Association to determine the impact that the Act would have on state and local recordation tax revenues. Pursuant to this enactment, TAX worked with the Virginia Court Clerk's Association to determine the impact that the provisions of House Bill 2814 would have on state and local recordation tax revenues. Thirty-two localities responded to a survey, however, not all localities were able to answer all questions. Many of the responses were subject to interpretation and were not easily quantifiable. The limited response rate combined with the high variability between localities and the inherent subjectivity of the survey, made a precise fiscal impact estimate impossible.

The 2001 survey results indicated that the clerks' estimates of the number of undervalued properties varied widely from locality to locality. The data did not support either accepting or rejecting a 10% assumption made previously by TAX. Moreover, the difference between sales price and assessed value varies between localities and for every property. The data did not suggest a reliable average to use, but did suggest that the difference is likely higher than the 5% that was previously assumed by TAX. Overall, the data limitations prevented a practical refinement of the original illustrative estimate.

The 2001 survey asked the clerks to estimate the revenue impact for their locality. Due to the limited available data and the infrequent (in many localities) number of cases that involved different values, many clerks were unable to quantify the impact. Of the 32 responses, only 13 were able to estimate the revenue impact. These 13 localities represented roughly 16% of real estate sales based on 1999 data. The total estimated impact for the 13 localities was about \$339,000. Extrapolating that to all Virginia localities, the data yielded an estimated total impact of about \$2.1 million. This impact can be allocated to a \$1.4 million impact on the General Fund and a \$0.7 million

dollar impact on local revenue. This impact, however, was a very rough estimate that attempted to aggregate highly variable individual localities based on estimates for just a few (13) localities.

The 2001 study showed that the Commonwealth and its localities would experience a loss of recordation tax revenues if House Bill 2814 were to be re-enacted. However, due to the lack of data, the magnitude of the loss could not be determined with any accuracy.

2007 Statutory Change

In 2007 the grantor's recordation tax was amended to be consistent with the recordation tax. Chapter 748, Acts of Assembly 2007, (HB 2059), amended *Va. Code* § 58.1-802 so that the grantor's recordation tax is applied to the greater of the consideration paid for an interest in real property or the value of the interest. Prior to this change, the tax was applied to the consideration paid for the interest; the actual value was used only if the consideration could not be ascertained.

2009 General Assembly

The 2009 General Assembly considered this matter again. Three bills were introduced that would have changed the basis for which recordation taxes were determined.

- House Bill 1823 would have required the recordation tax and the grantor's tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed. If the consideration was nominal or when the sale is through foreclosure or other similar sale, HB 1823 would have required that the recordation tax and the grantor's tax be based upon the appraised value of the property.
- House Bill 2135 would have required the recordation tax and grantor's tax on deeds to be based upon stated consideration, even when it is less than the actual value of the real estate conveyed by the deed.
- Senate Bill 1157 would have required the recordation tax and grantor's tax on deeds to be based solely upon consideration, even when it is less than the actual value of the real estate conveyed by the deed.

The 2009 General Assembly did not pass any of these bills as introduced, and instead directed TAX to convene a working group to study the fiscal and policy impacts if the basis for which recordation and grantor taxes were determined, were change to only be based solely on the consideration of the deed. Two of the bills, House Bill 2135 (Chapter 95) and Senate Bill 1157 (Chapter 686), were amended to provide that any understatement of the consideration of a deed would result in a 100% penalty equal to the tax due that would be added to the amount of tax due.

Policy Implications

Under current law, the recordation taxes for admitting deeds to record and the grantor's tax are both based on the greater of the consideration paid for the property or the actual value of the property ("actual value" is synonymous with fair market value). According to the Legislator's Guide to Taxation in Virginia, "[t]his option is placed in the statute as a safeguard to ensure that the consideration is not understated as a tax avoidance measure." In addition to addressing tax avoidance, the option also addresses situations in which the transaction is a type that is not likely to be at fair market value, such as a foreclosure sale.

Fiscal Concerns

Changing the statutory language for the taxable basis on which recordation and grantor's taxes are based would pose certain fiscal concerns. Occasionally the consideration of the deed is different from the fair market value. A buyer may pay more than fair market value for the property if the sale includes below market financing, tangible or intangible property, or if the property is the only way to provide for access or drainage of a much larger adjacent parcel. A seller may accept less than fair market value for the property if he is compelled to sell in foreclosure or to avoid bankruptcy. Therefore, if the law is changed and the consideration of the deed were the only basis for determining the taxable amount, then the state and localities would lose revenue attributable to the difference between the consideration of the deed and the actual value.

Administrative Concerns - Consideration

The current law poses administrative challenges for local clerks' offices. They are required to collect the tax at the time a deed is recorded and must exercise due diligence to collect the correct tax in addition to their other judicial responsibilities. The clerks are encountering difficulties in determining both the consideration and the actual value.

When determining consideration the clerks must initially rely on the amount stated by the person presenting the deed for recordation because the full amount is often not set forth in the body of the deed. Investigating stated consideration may involve questioning the person who presented the deed, asking for a copy of the HUD-1 settlement statement, the contract or other documentation.

It would appear that 2009 HB 1823 and HB 2135 as introduced, which would have based the tax solely on stated consideration, would have relieved the clerks of any obligation to investigate consideration.

Administrative Concern – Actual Value

When determining the actual value the clerks initially rely on the assessed value for property tax purposes, but may accept other evidence of value such as an appraisal. In addition to ensuring that consideration is not understated for tax avoidance purposes, this alternative measure also picks up situations in which the consideration, while accurately reported, does not represent the fair market value of the property, such as foreclosure sales.

The term "actual value" is synonymous with "fair market value." Prior opinions of the Attorney General and TAX rulings have found that the value at which property has been assessed for real property tax purposes may be used to determine FMV.¹ These rulings were based on the fact that Art. X, 2 of the Constitution of Virginia and *Va. Code* § 58.1-3201 require that real property be assessed at 100% of FMV.

While the assessed value is a valuable tool in determining the FMV or actual value, it does not always reflect the true FMV.² There are a number of reasons why the assessed value may not represent FMV:

- The recordation tax is measured by the actual value on the date the deed is recorded to the grantee from the grantor, while the assessed value is as of the preceding January 1. Thus, significant changes in the local market or in the property itself after January 1 would not be reflected in the assessed value.³
- The assessed values in the locality may be generally over or under the FMV because the locality may have used sales or other information for some substantial period prior to January 1. The department's sales assessment ratio study may be used to adjust for a general over or under assessment, but its use is not required.⁴
- The assessed value may be erroneous. The owner may not have initiated proceedings to correct the assessed value.

Placing a value on real estate is entirely a factual determination that is best made by one who is thoroughly familiar with the property itself and local market conditions. The clerks of the circuit courts are not required to be licensed real estate appraisers and generally lack the training, expertise and time to appraise real estate. Each jurisdiction has an official who is charged with real estate assessment. This official is usually the commissioner of the revenue, but some localities have assigned this responsibility to other officials. At present the process for recording a deed, or resolving a dispute over the actual value, does not formally involve the official in the

¹ 1982 Att'y Gen. Rep. at 593; 1984 Att'y Gen. Rep. at 378; Department of Taxation P.D. 89-80 (2/23/89) and P.D. 91-146 (8/2/91)

² 1982 Att'y Gen. Rep. at 593.

³ 1987 Att'y Gen. Rep. at 572

⁴ 1982 Att'y Gen. Rep. at 593

jurisdiction who is charged with the responsibility for assessing real estate for property tax purposes. We understand that there are informal arrangements for such consultations in a few localities.

Administrative Concern – Annual Assessment/Sales Ratio Study

The consideration or actual value that is taxed upon recordation is used for other purposes as well. Both the general reassessment for real estate tax purposes and private appraisals for mortgage financing and other purposes rely on the reported (i.e., taxed) values of recent sales of comparable real estate. Thus, if one sale is for less than fair market value it may drag down the appraised value of other real estate.

Each year TAX conducts a study that compares the reported sales price to the value assessed for property tax purposes.⁵ The results of this study are used as a factor in Virginia's basic school aid distribution formula as well as an element in the determination of assessment levels of public service corporation property in each locality of the State. Data from the clerk's office on deeds conveying real estate are compiled by the local commissioner of the revenue or assessing official and reported to TAX. The local officials review the data to ensure that the sales used in the annual assessment/sales ratio study are bona fide sales for fair market value. For example, bulk sales, foreclosure sales and sales between family members some of the types of sales that are eliminated from the data used for the study. This requires manual review by one who is familiar with the local market.

Administrative Concern - General

As a practical matter the clerks in offices with a high volume of real estate transactions do not have the resources to investigate consideration or look up the assessed value for every transaction. They typically look for indications that the transaction is not at arm's length between willing parties (e.g., a foreclosure sale) or where the consideration reflects a discount for a bulk sale⁶.

If the Clerk and the party recording a deed (typically a representative of the purchaser) disagree about the FMV of the property conveyed there are serious practical difficulties in resolving the matter. First, the Clerk will typically only have access to the assessed value for property tax purposes. The purchaser may or may not have ready access to a contemporary appraisal or other evidence of value. The deed cannot be recorded until the proper tax has been paid.⁷ If time is of the essence, as it is in many real estate closings, the purchaser will have to pay the disputed tax and seek a refund administratively from TAX or apply to the Circuit Court.

⁵ See *Va. Code* § 58.1-207. The most recent report can be found in the Publications section of TAX's website at www.tax.virginia.gov.

⁶ See, for example, *West Creek Associates, LLC v. County of Goochland*, 665 SE2d 834 (2008) in which the Court held that for property tax purposes the assessed value of 144 parcels conveyed to different entities could not be based on the price paid for 2,500 acres in a bulk sale.

⁷ *Va. Code* § 58.1-812.

2009 Recordation and Grantor Taxes Study

Methodology

TAX distributed two surveys, a general survey which went to all the clerks of the Circuit Courts and a data collection survey that was sent to the clerks of the circuit courts in the top 50 localities plus and 12 additional smaller localities were chosen in order to gain geographic diversification. TAX deemed it important to obtain responses from different geographic areas of the state because localities in certain regions have different market conditions, different fraud rates and different number of deeds processed and adjusted. Since some circuit courts serve multiple localities, the survey was sent to 59 different circuit courts.

The first survey sought to gather data from each of the offices regarding their general practices and procedures related to the evaluation and investigation into each deed. Although 64 of the 134 (47.8%) of the offices, from various localities across the Commonwealth, did respond to the general survey, in a majority of instances they returned it without answering all of the questions. Without complete data from a statistically sufficient number of clerks' offices, TAX was unable to produce a statistically valid analysis of general practices that prevail among the clerks. (See Attachment A to view the general survey.) However, some general observations can be made.

Of the types of deeds that were adjusted:

- 54% - general deeds;
- 2% - special warranty deeds;
- 0.4% - deed of gift;
- 23% - foreclosure;
- 1.3% - deed of exchange;
- 0.9% - suspected fraud; and
- 1.3% - form of deed indicated other than non-arms length transactions.

For those deeds other than non-arms length transactions, some offices mentioned they adjusted quit claim deeds and tax deeds and special Commissioner Deeds.

The deeds of trust that the clerks' offices most often adjusted for tax purposes:

- 42% - were refinances with the same lender;
- 9% - were erroneously claimed to be a refinance with the same lender;
- 46% - did not claim to be a refinance with the same lender; and
- 4% - were for other reasons.

These estimates are based on the responses provided by less than half of the clerks offices surveyed. Of those who responded, in some instances they did not fully answer the question, and the answers they did provided did not total 100%.

The data from which the revenue estimate was derived was taken from the second survey. (See Attachment B to view the data collection survey.) The second survey requested the clerks to provide both the consideration of the deed and the adjusted value on which tax was assessed. The clerks' were requested to fill out one survey for each deed they adjusted in the months of June, July and August of 2009. The months of June and July only drew eight responses apiece. No data was obtained from the clerks' offices for the other nine months of the year. Therefore, the majority of the responses received were from August. There were a total of 25 localities, from various localities throughout the Commonwealth that responded with data for this particular month. The localities that responded to the study accounted for 47.78% of the Recordation Tax Revenue Collections in Virginia.

The data collected for this study, though it still has some limitations, was far better than the data produced in the 2001 Recordation and Grantor Taxes Study. The data collected from the Clerks are based on the recorded documents whereby the taxable basis was adjusted to reflect the fair market value. Therefore, the data shows the amount of revenue that would have been lost if the recordation tax were based solely on consideration of the deed instead of the greater of the consideration or actual value of the deed.

The estimated revenue is derived from the adjustments for deeds recorded in August 2009, as reported by the clerks who responded to the second survey. The reported adjustments were projected to the forecasted recordation tax revenue for FY 2010 and FY 2011. Recordation tax revenue is both seasonal and highly sensitive to the economy. Because August is part of the peak season for recording deeds, and the economy was in recession during 2009, the actual revenue loss from the proposed statutory change could be significantly greater or smaller than these estimates.

The housing market is currently declining, as demonstrated in Appendix C. This has an impact on the manner in which clerks offices verify and record deeds. Because the assessed value is fixed as of January 1, based on sales occurring for some earlier period, sales that occur many months later, while the market is declining, will frequently be for less than the assessed value. This can cause clerk's to question the consideration of more deeds. In these instances, the assessed value is an inadequate tool for validating the consideration.

Total Revenue Impact

Table 3 below shows the estimates using actual revenue for FY 2008 and FY 2009, and forecasted revenue for FY 2010 and FY 2011.

Table 3: Total revenue impact (2009-2011)

<u>Fiscal Year</u>	<u>Total Revenue Impact</u>	<u>Revenue Impact Recordation Tax</u>	<u>Revenue Impact Grantor's Tax</u>
2008	\$ (5,984,020)	\$ (4,513,830)	\$ (1,470,190)
2009	\$ (8,559,733)	\$ (6,558,461)	\$ (2,001,271)
2010	\$ (9,332,878)	\$ (7,138,903)	\$ (2,193,975)
2011	\$ (9,359,823)	\$ (7,176,891)	\$ (2,182,932)

Impact According to Fund Source

The estimates were also divided to illustrate how much was generated by each tax and to which level of government the proceeds would have been directed. The recordation tax is currently \$.25/\$100 at the state level. Of this amount, \$.22/\$100 are directed to the General Fund and the remainder is deposited into the Transportation Trust Fund. Localities impose a recordation tax that is equal to one-third of the state's tax, or \$.0833/\$100. The grantor's tax is a state tax that is imposed at a rate of \$.50/\$500. However, the state and the localities share the proceeds generated from this tax evenly (50% to the state, 50% to the localities).

When projected for future fiscal years, TAX estimates that the General Fund Revenue loss in recordation tax would be 4.7 million for FY 2010 and 2011. If the grantor's tax were also changed to be based solely on the consideration, the General Fund would be reduced by an additional \$1.1 million in FY 2010 and 2011.

Table 4: Distribution of recordation and grantor's taxes (2000-2011)

<u>Fiscal Year</u>	<u>Recordation Tax General Fund – (\$.22/\$100)</u>	<u>Recordation Tax Transportation Trust Fund – (\$.03/\$100)</u>	<u>Recordation Tax Local (\$.083/\$100)</u>	<u>Grantor's Tax General Fund – (\$.25/\$500)</u>	<u>Grantor's Tax Local (\$.25/\$500)</u>
2008	\$ (2,979,128)	\$ (406,245)	\$ (1,128,458)	\$ (735,095)	\$ (735,095)
2009	\$ (4,328,584)	\$ (590,262)	\$ (1,639,615)	\$ (1,000,636)	\$ (1,000,636)
2010	\$ (4,711,676)	\$ (642,501)	\$ (1,784,726)	\$ (1,096,988)	\$ (1,096,988)
2011	\$ (4,736,748)	\$ (645,920)	\$ (1,794,223)	\$ (1,091,466)	\$ (1,091,466)

Conclusion

The data shows that if the statutory language were changed so that recordation and grantor's taxes were based solely on the consideration of the deed, there would be a revenue loss. There are some weaknesses in the data that affect the accuracy of these estimates. One weakness is that the clerks' offices sampled for this study were not part of a random sample. Another is that data was concentrated on the month of August, which is normally a peak season for deed recordation. There is also the possibility that the revenue estimates could be slightly under or over estimated because data collection occurred during a severe recession when the number of distress sales may be elevated.

Despite these limitations, this data quality exceeds that of the 2001 study both in scope and depth. The 2001 study did not include analysis of grantor's tax, which at that time was based solely on the consideration of the deed. Because the recordation tax rate was increased in 2004 from \$.15 to \$.25/\$1.00, the revenue impact of the proposed change was similarly increased.

The working group identified several issues affecting enforcement of the recordation tax that affect not only the collection of the property tax, but the accuracy of the data used to distribute state funds to localities and for real estate professionals to accurately appraise property. The working group was unable to fully investigate these enforcement issues in the time frame of this study. If these issues are considered significant, then it may be appropriate to extend the study to investigate issues related to the enforcement of recordation tax law and policies, and to develop strategies to resolve any problems identified.

Appendix A
General Survey

SURVEY

A STUDY ON THE RECORDATION AND GRANTOR TAXES

1. In what city or county are you located?

2. When presented with a deed and consideration has been noted, please indicate how you treat that deed:

- | | |
|--|--------------------|
| a. Always accept it | Yes _____ No _____ |
| b. Compare it to the assessed value in every case | Yes _____ No _____ |
| b. Compare it to the assessed value only when something is out of the ordinary | Yes _____ No _____ |

3. What causes you to further investigate if the consideration value for the transfer of real estate is the fair market value?

4. Of the deeds whose tax you have adjusted to reflect fair market value, based on your experience what are types of deeds or other circumstances were involved? Please estimate the percentages for each below.

- _____ % Deed (General)
- _____ % Special Warranty deed
- _____ % Deed of Gift
- _____ % Foreclosure (including deed in lieu of foreclosure)
- _____ % Deeds of exchange
- _____ % Form of deed or other circumstances indicated that it was not an arm's length transaction between a willing buyer and seller.
- _____ % Suspected Fraud
- _____ % Other: _____
- 100%

5. Of the deeds of trust you have recorded, based on your experience how many were:

_____ % Refinance with the same lender
_____ % Erroneously claimed to be a refinance with the same lender
_____ % Did not claim to be a refinance with the same lender
_____ % Other: _____

100%

6. When you determine that consideration does not reflect the fair market value, do you consider evidence outside of the assessed value to determine what the recordation tax should be?

a.) Yes _____ No _____

b.) If yes, what?

7. Please share any comments you have about administrative issues that affect collection of the recordation tax, e.g. most frequent erroneously claimed exemptions.

Please return the survey by August 31, 2009 via email at TaxSurveys@tax.virginia.gov, or via U.S. mail to:

**Todd Gathje
Commonwealth of Virginia
Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185**

Appendix B
Data Collection Survey

DATA COLLECTION FORM

FOR THE RECORDATION AND GRANTOR TAX STUDY

Please use this form to note the following information for each recorded document in which you adjusted the taxable basis (consideration or actual value).

**Document recorded in the Clerk's Office of the Circuit Court
for the [City / County] of _____**

1. Description of Document:

ID No. _____ *

* In case questions arise and we need to request a copy of this document.

____ Deed

____ Deed of Trust

2. Please specify the type deed that was adjusted:

____ General

____ Special warranty deed

____ Foreclosure

____ Deeds in lieu of foreclosure

____ Quitclaim

____ Deeds of gift

Other type of deed: _____

3. Please indicate the dollar amounts for the following information:

\$ _____ Stated consideration amount

\$ _____ Adjusted amount on which tax was based

4. Reason for the adjustment:

____ Transaction not at arm's length (Ex. Foreclosure)

____ Refinancing exemption erroneously claimed (not same lender)

____ Other exemption erroneously claimed

_____ Suspected fraud

_____ Other: _____

5. What evidence did you consider (besides assessed value) for the adjustment?

Please submit this information as soon as possible after June, July and August, 2009, but no later than September 15, 2009 via email at TaxSurveys@tax.virginia.gov, or via U.S. mail to Todd Gathje, Policy Development, Department of Taxation, Post Office Box 27185, Richmond, Virginia 23261-7185.

**Appendix C:
Home Price Index**

