

SENATE BILL 18

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Q6

2001 Regular Session
(11r0745)

ENROLLED BILL

-- Budget and Taxation/Ways and Means --

Introduced by **Senator Haines**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 573

1 AN ACT concerning

2 **Recordation and Transfer Tax - Transfer from Real Estate Enterprise to**
3 **Limited Liability Company**

4 FOR the purpose of altering certain exemptions from the recordation tax to provide
5 for a separate exemption for certain instruments of writing that transfer title to
6 real property from certain real estate enterprises to a limited liability company
7 under certain circumstances; making conforming changes; adding an exemption
8 to the recordation tax and ~~State~~ *State and county* transfer tax for certain
9 instruments of writing that transfer title to real property from certain real
10 estate enterprises to a limited liability company under certain circumstances;
11 defining a certain term; providing that certain business interests of an
12 individual may not affect the individual's ability to claim a certain exemption;
13 and generally relating to a recordation tax exemption and State transfer tax
14 exemption for an instrument of writing that transfers real property from certain
15 real estate enterprises to a limited liability company.

16 BY repealing and reenacting, with amendments,

1 Article - Tax - Property
 2 Section 12-108(y) and ~~13-207(a)(18)~~, 13-207(a)(18), and 13-405(c)
 3 Annotated Code of Maryland
 4 (1994 Replacement Volume and 2000 Supplement)

5 BY adding to
 6 Article - Tax - Property
 7 Section 12-108(bb)
 8 Annotated Code of Maryland
 9 (1994 Replacement Volume and 2000 Supplement)

10 ~~BY repealing and reenacting, with amendments,~~
 11 ~~Article - Tax - Property~~
 12 ~~Section 13-207(a)(18)~~
 13 ~~Annotated Code of Maryland~~
 14 ~~(1994 Replacement Volume and 2000 Supplement)~~

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Tax - Property**

18 12-108.

19 (y) (1) (i) In this subsection the following words have the meanings
 20 indicated.

21 (ii) "Foreign general partnership", "foreign limited partnership",
 22 "foreign limited liability partnership", "foreign limited liability limited partnership" [,
 23 "foreign proprietorship"], and "foreign joint venture" mean, respectively, a
 24 partnership, limited partnership, limited liability limited partnership,
 25 [proprietorship,] or joint venture organized or formed under the laws of the United
 26 States, another state of the United States, or a territory, possession, or district of the
 27 United States.

28 (iii) "Predecessor entity" includes a:

29 1. Maryland general partnership or foreign general
 30 partnership;

31 2. Maryland limited partnership or foreign limited
 32 partnership;

33 3. Maryland limited liability partnership or foreign limited
 34 liability partnership;

35 4. Maryland limited liability limited partnership or foreign
 36 limited liability limited partnership; AND

1 5. [Maryland proprietorship or foreign proprietorship,
 2 comprised of one or more individuals, which is involved principally in buying, selling,
 3 leasing, or managing real property; and

4 6.] Maryland joint venture or foreign joint venture.

5 (2) An instrument of writing that transfers title to real property from a
 6 predecessor entity or a trustee or nominee of a predecessor entity to a limited liability
 7 company is not subject to recordation tax if:

8 (i) 1. the members of the limited liability company are identical
 9 to the partners of the converting general partnership, limited partnership, limited
 10 liability partnership, or limited liability limited partnership; OR

11 2. [the members of the limited liability company are
 12 identical to the individual or individuals of the converting proprietorship; or

13 3.] the members of the limited liability company are identical
 14 to the joint venturers of the converting joint venture;

15 (ii) each member's allocation of the profits and losses of the limited
 16 liability company is identical to that member's allocation of the profits and losses of
 17 the converting predecessor entity; and

18 (iii) the instrument of writing that transfers title to real property
 19 represents the dissolution of the predecessor entity for purposes of conversion to a
 20 limited liability company.

21 (BB) (1) IN THIS SUBSECTION, "REAL ESTATE ENTERPRISE" MEANS A
 22 BUSINESS CONDUCTED BY ONE OR MORE INDIVIDUALS WHO OWN REAL PROPERTY,
 23 INCLUDING A SOLE PROPRIETORSHIP OR A TENANCY BY THE ~~ENTIRETIES~~ ENTIRETY,
 24 AND ARE PRINCIPALLY INVOLVED IN BUYING, SELLING, LEASING, OR MANAGING
 25 REAL PROPERTY.

26 (2) AN INSTRUMENT OF WRITING THAT TRANSFERS TITLE TO REAL
 27 PROPERTY FROM THE INDIVIDUAL OR INDIVIDUALS CONDUCTING A REAL ESTATE
 28 ENTERPRISE TO A LIMITED LIABILITY COMPANY IS NOT SUBJECT TO RECORDATION
 29 TAX IF:

30 (I) THE TRANSFER IS FOR NO CONSIDERATION OTHER THAN THE
 31 ISSUANCE OF MEMBERSHIP INTERESTS IN THE LIMITED LIABILITY COMPANY;

32 (II) THE MEMBERS OF THE LIMITED LIABILITY COMPANY ARE
 33 IDENTICAL TO THE PARTNERS OF THE CONVEYING REAL ESTATE ENTERPRISE;

34 (III) EACH MEMBER'S ALLOCATION OF THE PROFITS AND LOSSES OF
 35 THE LIMITED LIABILITY COMPANY IS IDENTICAL TO THAT MEMBER'S ALLOCATION
 36 OF THE PROFITS AND LOSSES OF THE CONVEYING REAL ESTATE ENTERPRISE;

1 (IV) THE TRANSFER IS PART OF A DISCONTINUATION OF THE REAL
2 ESTATE ENTERPRISE; AND

3 (V) ALL REAL PROPERTY OWNED BY THE INDIVIDUALS AND USED
4 IN THE CONDUCT OF ~~THE~~ ANY REAL ESTATE ENTERPRISE IS BEING CONVEYED TO A
5 SINGLE LIMITED LIABILITY COMPANY.

6 (3) AN INDIVIDUAL'S OTHER BUSINESS INTERESTS UNRELATED TO THE
7 REAL ESTATE ENTERPRISE AND UNAFFECTED BY THE TITLE TRANSFER TO A
8 LIMITED LIABILITY COMPANY MAY NOT AFFECT THE INDIVIDUAL'S ABILITY TO
9 CLAIM THE EXEMPTION FROM THE RECORDATION TAX DESCRIBED IN THIS
10 SUBSECTION.

11 13-207.

12 (a) An instrument of writing is not subject to transfer tax to the same extent
13 that it is not subject to recordation tax under:

14 (18) § 12-108(y) OR (BB) of this article (Transfer from predecessor entity
15 OR REAL ESTATE ~~ENTITY~~ ENTERPRISE to limited liability company);

16 13-405.

17 (c) A corporate, limited liability company, or partnership transfer as described
18 in § 12-108(p), (q), (v), (w), [and] (y), AND (BB) of this article is not subject to the
19 county transfer tax.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2001.