

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 989
Judiciary

(Delegate Redmer, *et al.*)

Real Property - Principal Family Residence - Trusts - Creditors' Claims

This bill provides that the principal family residence of a husband and wife who hold the property as tenants by the entireties that is conveyed to their joint revocable trust or in equal shares to their separate revocable trusts is not subject to a claim by their separate creditors to the same extent as if it remained in a tenancy by the entireties as long as: (1) the husband and wife remain married to each other; (2) the property continues to be held in the trust or trusts; and (3) the property continues to be the principal family residence of the husband and wife.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Maryland recognizes the common law tenancy by the entireties. A tenancy by the entireties may only be created in married couples. At common law, the separate creditors of the spouses are prohibited from attaching a lien against property held in a tenancy by the entireties. Only the couple's joint creditors may attach a lien against the property.

The tenancy may not be severed without the consent of both the husband and the wife. By operation of law, the surviving spouse becomes the sole owner of the property upon the death of the other spouse. A divorce destroys the tenancy and creates a tenancy in common.

Background: Approximately 20 states recognize tenancies by the entireties, including Virginia. Virginia has enacted similar legislation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Assessments and Taxation, Registers of Wills, Department of Legislative Services

Fiscal Note History: First Reader – March 13, 2001
ncs/jr

Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510