

SENATE BILL 999

Q6

8lr3280

By: **Senators Peters and DeGrange**

Introduced and read first time: February 5, 2018

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Recordation Tax – Exemptions**

3 FOR the purpose of altering an exemption from recordation tax to include certain
4 transactions of an original mortgagor; altering the definition of “business entity” to
5 include a partnership and business trust to exempt from the recordation tax
6 transfers between certain related business entities; altering an exemption from
7 recordation tax for certain transfers of a controlling interest; and generally relating
8 to the recordation tax.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – Property
11 Section 12–108(g) and (p) and 12–117(c)
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2017 Supplement)

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

16 **Article – Tax – Property**

17 12–108.

18 (g) (1) In this subsection, “original mortgagor” includes:

19 (i) a person that assumed a debt secured by real property that the
20 person purchased and paid the recordation tax on the consideration paid for the property;
21 [and]

22 **(II) A PERSON THAT RECEIVED THE PROPERTY FROM THE**
23 **ORIGINAL MORTGAGOR UNDER A DEED THAT IS EXEMPT FROM RECORDATION TAX**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 UNDER THIS SECTION; AND

2 [(ii)] (III) the trustee of an inter vivos trust if the trustee or the
3 settlor of the trust originally assumed or incurred the debt secured by the mortgage or deed
4 of trust.

5 (2) A mortgage or deed of trust is not subject to recordation tax to the
6 extent that it secures the refinancing of an amount not greater than the unpaid principal
7 amount secured by an existing mortgage, indemnity mortgage, or deed of trust at the time
8 of refinancing if the mortgage or deed of trust secures the refinancing of real property that
9 is:

10 (i) being refinanced by the original mortgagor or by the original
11 mortgagor and, if applicable, the spouse of the original mortgagor; or

12 (ii) being refinanced by the settlor of an inter vivos trust if the
13 mortgage or deed of trust is given by a trustee of the trust.

14 (3) To qualify for an exemption under paragraph (2) of this subsection an
15 original mortgagor or agent of the original mortgagor shall include a statement in the
16 recitals or in the acknowledgment of the mortgage or deed of trust, or submit with the
17 mortgage or deed of trust, an affidavit under oath, signed by the original mortgagor or agent
18 of the original mortgagor, stating:

19 (i) that the person is the original mortgagor or agent of the original
20 mortgagor; and

21 (ii) the amount of unpaid outstanding principal of the original
22 mortgage, indemnity mortgage, or deed of trust that is being refinanced.

23 (4) A statement under paragraph (3) of this subsection by an agent of the
24 original mortgagor shall state that the statement:

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

27 (ii) is true to the best of the knowledge, information, and belief of the
28 agent.

29 (p) (1) (i) In this subsection the following words have the meanings
30 indicated.

31 (ii) "Business entity" means a limited liability company [or],
32 corporation, **PARTNERSHIP, OR BUSINESS TRUST**.

33 (iii) "Owner" means a member or stockholder of a business entity.

1 (iv) "Ownership interest" means a membership interest or stock.

2 (2) An instrument of writing is not subject to recordation tax if the
3 instrument of writing is:

4 (i) a transfer of title to real property between a parent business
5 entity and its wholly owned subsidiary business entity or between 2 or more subsidiary
6 business entities wholly owned by the same parent business entity, if the parent business
7 entity is an original owner of the subsidiary business entity, or became an owner through
8 gift or bequest from an original owner of the subsidiary business entity, for:

9 1. no consideration;

10 2. nominal consideration; or

11 3. consideration that comprises only the issuance,
12 cancellation, or surrender of the ownership interests of a subsidiary business entity;

13 (ii) an instrument of writing made pursuant to the reorganization of
14 a business entity as described in § 368(a) of the Internal Revenue Code; or

15 (iii) a transfer of title to real property from a subsidiary business
16 entity to its parent business entity for no consideration, nominal consideration or
17 consideration that comprises only the issuance, cancellation, or surrender of a subsidiary's
18 ownership interest, where the parent business entity:

19 1. previously owned the real property;

20 2. currently owns the ownership interest of the subsidiary
21 and has owned that ownership interest for a period greater than 18 months; or

22 3. acquires the ownership interest of a subsidiary business
23 entity which has been in existence and has owned the real property for a period of 2 years.

24 12-117.

25 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, the
26 transfer of a controlling interest in a real property entity is not subject to recordation tax if
27 the transfer of the real property owned by the real property entity between the same
28 transferor and transferee of the controlling interest and under the same circumstances
29 would have been exempt under § 12-108 of this title.

30 (ii) Subparagraph (i) of this paragraph does not apply to transactions
31 under § 12-108(y)(2)(i)3 of this subtitle.

32 (2) The recordation tax is not imposed on the transfer of a controlling
33 interest in a real property entity effected in more than one transaction if:

1 (i) the transfer is completed over a period of more than 12 months;
2 or

3 (ii) the transfer is not made in accordance with a plan of transfer.

4 (3) The recordation tax is not imposed on the transfer of a controlling
5 interest in a real property entity to another entity if the ownership interests in the
6 transferee entity are owned, directly or indirectly, by the same persons and in the same
7 proportions as those persons own, directly or indirectly, the transferor entity [or the real
8 property entity the controlling interest of which was transferred].

9 (4) The recordation tax is not imposed on the transfer of a controlling
10 interest in a real property entity if the transferee of the controlling interest in the real
11 property entity is:

12 (i) a nonstock corporation organized under Title 5, Subtitle 2 of the
13 Corporations and Associations Article; and

14 (ii) registered with the Department of Aging as a continuing care
15 retirement community under § 10–408 of the Human Services Article.

16 (5) The real property entity has the burden of establishing to the
17 satisfaction of the Department the applicability of any exemption referred to in paragraphs
18 (1) through (4) of this subsection.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
20 1, 2018.