
By: **Delegates Petzold and Vallario**

Introduced and read first time: February 4, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Personal Representatives, Trustees, and Fiduciaries -**
3 **Donation of Conservation Easement**

4 FOR the purpose of authorizing a personal representative to donate a conservation
5 easement on real property under certain circumstances; authorizing certain
6 trustees or fiduciaries to donate a conservation easement on real property or
7 consent to a donation of a conservation easement on real property by the
8 personal representative of an estate under certain circumstances; providing
9 certain immunity from civil liability to a personal representative, trustee, or a
10 fiduciary as a result of a donation of a conservation easement on real property
11 under certain circumstances; providing for the application of this Act; and
12 generally relating to donations of conservation easements on real property by a
13 personal representative, trustee, or fiduciary under certain circumstances.

14 BY repealing and reenacting, with amendments,
15 Article - Estates and Trusts
16 Section 7-401(a)
17 Annotated Code of Maryland
18 (1991 Replacement Volume and 1999 Supplement)

19 BY adding to
20 Article - Estates and Trusts
21 Section 7-401(dd), 14-111, and 15-102(aa)
22 Annotated Code of Maryland
23 (1991 Replacement Volume and 1999 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article - Estates and Trusts
26 Section 15-102(a) and (b)
27 Annotated Code of Maryland
28 (1991 Replacement Volume and 1999 Supplement)

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

3 **Article - Estates and Trusts**

4 7-401.

5 (a) (1) In the performance of [his] A PERSONAL REPRESENTATIVE'S duties
6 pursuant to § 7-101 OF THIS TITLE, a personal representative may exercise all of the
7 power or authority conferred upon [him] THE PERSONAL REPRESENTATIVE by
8 statute or in the will, without application to, the approval of, or ratification by the
9 court.

10 (2) Except as validly limited by the will or by an order of court, a
11 personal representative may, in addition to the power or authority contained in the
12 will and to other common-law or statutory powers, exercise the powers enumerated
13 in this section.

14 (DD) (1) A PERSONAL REPRESENTATIVE MAY DONATE A CONSERVATION
15 EASEMENT ON ANY REAL PROPERTY IN ORDER TO OBTAIN THE BENEFIT OF THE
16 ESTATE TAX EXCLUSION ALLOWED UNDER § 2031(C) OF THE UNITED STATES
17 INTERNAL REVENUE CODE OF 1986, AS AMENDED, IF:

18 (I) THE WILL DIRECTS THE PERSONAL REPRESENTATIVE TO
19 DONATE A CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

20 (II) EACH PERSON IN BEING WHO HAS AN INTEREST IN THE REAL
21 PROPERTY THAT WOULD BE AFFECTED BY THE CONSERVATION EASEMENT
22 CONSENTS IN WRITING TO THE DONATION.

23 (2) A PERSONAL REPRESENTATIVE WHO ACTS IN GOOD FAITH MAY NOT
24 BE LIABLE CIVILLY FOR A DECREASE IN THE VALUE OF THE REAL PROPERTY AS A
25 RESULT OF DONATING A CONSERVATION EASEMENT UNDER THIS SUBSECTION.

26 14-111.

27 (A) A TRUSTEE MAY DONATE A CONSERVATION EASEMENT ON ANY REAL
28 PROPERTY, OR CONSENT TO THE DONATION OF A CONSERVATION EASEMENT ON ANY
29 REAL PROPERTY BY A PERSONAL REPRESENTATIVE OF AN ESTATE OF WHICH THE
30 TRUSTEE IS A LEGATEE, IN ORDER TO OBTAIN THE BENEFIT OF THE ESTATE TAX
31 EXCLUSION ALLOWED UNDER § 2031(C) OF THE UNITED STATES INTERNAL REVENUE
32 CODE OF 1986, AS AMENDED, IF:

33 (1) THE GOVERNING INSTRUMENT DIRECTS THE DONATION OF A
34 CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

35 (2) EACH PERSON IN BEING WHO HAS AN INTEREST IN THE REAL
36 PROPERTY THAT WOULD BE AFFECTED BY THE CONSERVATION EASEMENT
37 CONSENTS IN WRITING TO THE DONATION.

1 (B) A TRUSTEE THAT ACTS IN GOOD FAITH MAY NOT BE HELD LIABLE CIVILLY
2 FOR A DECREASE IN THE VALUE OF THE REAL PROPERTY AS A RESULT OF A
3 DONATION OF A CONSERVATION EASEMENT UNDER THIS SECTION.

4 15-102.

5 (a) (1) In this section, "fiduciary" means a trustee acting under a deed, will,
6 declaration of trust or other instrument in the nature of a trust or appointed by a
7 court, a committee or guardian of the property of a minor or a disabled person,
8 whether the trust or estate be created or the appointment made prior or subsequent
9 to the effective date of this subtitle.

10 (2) "Fiduciary" does not include a receiver, trustee of a trust for the
11 benefit of creditors, executor, administrator, or personal representative.

12 (b) (1) A fiduciary may perform the functions and duties enumerated in this
13 section without application to, approval of, or ratification by a court.

14 (2) Except as expressly limited in the governing instrument, the powers
15 of a fiduciary under this section are in addition to those derived from common law,
16 statute, or the governing instrument.

17 (3) The powers listed in this section may be extended or limited by the
18 appropriate court, and the court may also eliminate any limitation imposed by a court
19 on a fiduciary.

20 (AA) (1) A FIDUCIARY MAY DONATE A CONSERVATION EASEMENT ON ANY
21 REAL PROPERTY, OR CONSENT TO THE DONATION OF A CONSERVATION EASEMENT
22 ON ANY REAL PROPERTY BY A PERSONAL REPRESENTATIVE OF AN ESTATE OF WHICH
23 THE FIDUCIARY IS A GUARDIAN FOR A MINOR OR DISABLED PERSON, IN ORDER TO
24 OBTAIN THE BENEFIT OF THE ESTATE TAX EXCLUSION ALLOWED UNDER § 2031(C) OF
25 THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED, IF:

26 (I) THE GOVERNING INSTRUMENT DIRECTS THE DONATION OF A
27 CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

28 (II) EACH PERSON IN BEING WHO HAS AN INTEREST IN THE REAL
29 PROPERTY THAT WOULD BE AFFECTED BY THE CONSERVATION EASEMENT
30 CONSENTS IN WRITING TO THE DONATION.

31 (2) A FIDUCIARY THAT ACTS IN GOOD FAITH MAY NOT BE HELD LIABLE
32 CIVILLY FOR A DECREASE IN THE VALUE OF THE REAL PROPERTY AS A RESULT OF A
33 DONATION OF A CONSERVATION EASEMENT UNDER THIS SUBSECTION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
35 construed only prospectively and may not be applied or interpreted to have any effect
36 on or application to the donation of a conservation easement from an estate of a
37 decedent who died before January 1, 1998.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2000.