
By: **Delegates Petzold and Vallario**
Introduced and read first time: February 4, 2000
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 14, 2000

CHAPTER _____

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; defining a certain term;~~ providing for the
12 application of this Act; and generally relating to donations of conservation
13 easements on real property by a personal representative, trustee, or fiduciary
14 under certain circumstances.

15 BY repealing and reenacting, with amendments,
16 Article - Estates and Trusts
17 Section 7-401(a) and 15-102(a)
18 Annotated Code of Maryland
19 (1991 Replacement Volume and 1999 Supplement)

20 BY adding to
21 Article - Estates and Trusts
22 Section 7-401(dd), 14-111, and 15-102(aa)
23 Annotated Code of Maryland
24 (1991 Replacement Volume and 1999 Supplement)

1 BY repealing and reenacting, without amendments,
 2 Article - Estates and Trusts
 3 Section ~~15-102(a) and (b)~~ 15-102(b)
 4 Annotated Code of Maryland
 5 (1991 Replacement Volume and 1999 Supplement)

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

8 **Article - Estates and Trusts**

9 7-401.

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

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

19 (DD) ~~(H)~~ A PERSONAL REPRESENTATIVE MAY DONATE A CONSERVATION
 20 EASEMENT ON ANY REAL PROPERTY IN ORDER TO OBTAIN THE BENEFIT OF THE
 21 ESTATE TAX EXCLUSION ALLOWED UNDER § 2031(C) OF THE UNITED STATES
 22 INTERNAL REVENUE CODE OF 1986, AS AMENDED, IF:

23 ~~(H)~~ (1) THE WILL DIRECTS THE PERSONAL REPRESENTATIVE TO
 24 DONATE A CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

25 ~~(H)~~ (2) EACH ~~PERSON IN BEING~~ INTERESTED PERSON WHO HAS
 26 AN INTEREST IN THE REAL PROPERTY THAT WOULD BE AFFECTED BY THE
 27 CONSERVATION EASEMENT CONSENTS IN WRITING TO THE DONATION.

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

31 14-111.

32 (A) (1) IN THIS SECTION, "BENEFICIARY" MEANS AN ASCERTAINABLE
 33 PERSON WHO HAS A PRESENT OR FUTURE INTEREST IN A TRUST ESTATE.

34 (2) "BENEFICIARY" INCLUDES:

35 (1) IF THE BENEFICIARY IS A MINOR, THE BENEFICIARY'S
 36 NATURAL OR LEGAL GUARDIAN; OR

1 (II) IF THE BENEFICIARY IS A DISABLED PERSON, AS DEFINED IN §
 2 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE BENEFICIARY
 3 UNDER A GUARDIANSHIP, CONSERVATORSHIP, OR COMMITTEE.

4 ~~(A)~~ (B) A TRUSTEE MAY DONATE A CONSERVATION EASEMENT ON ANY REAL
 5 PROPERTY, OR CONSENT TO THE DONATION OF A CONSERVATION EASEMENT ON ANY
 6 REAL PROPERTY BY A PERSONAL REPRESENTATIVE OF AN ESTATE OF WHICH THE
 7 TRUSTEE IS A LEGATEE, IN ORDER TO OBTAIN THE BENEFIT OF THE ESTATE TAX
 8 EXCLUSION ALLOWED UNDER § 2031(C) OF THE UNITED STATES INTERNAL REVENUE
 9 CODE OF 1986, AS AMENDED, IF:

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

12 (2) ~~EACH PERSON IN BEING BENEFICIARY~~ WHO HAS AN INTEREST IN
 13 THE REAL PROPERTY THAT WOULD BE AFFECTED BY THE CONSERVATION
 14 EASEMENT CONSENTS IN WRITING TO THE DONATION.

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

18 15-102.

19 (a) (1) ~~In this section, "fiduciary" means~~ IN THIS SECTION THE FOLLOWING
 20 WORDS HAVE THE MEANINGS INDICATED.

21 (2) (I) "BENEFICIARY" MEANS AN ASCERTAINABLE PERSON WHO HAS
 22 A PRESENT OR FUTURE INTEREST IN A TRUST ESTATE.

23 (II) "BENEFICIARY" INCLUDES:

24 1. IF THE BENEFICIARY IS A MINOR, THE BENEFICIARY'S
 25 NATURAL OR LEGAL GUARDIAN; OR

26 2. IF THE BENEFICIARY IS A DISABLED PERSON, AS DEFINED
 27 IN § 13-101 OF THIS ARTICLE, ANY PERSON ACTING ON BEHALF OF THE BENEFICIARY
 28 UNDER A GUARDIANSHIP, CONSERVATORSHIP, OR COMMITTEE.

29 (3) (I) "FIDUCIARY" MEANS a trustee acting under a deed, will,
 30 declaration of trust or other instrument in the nature of a trust or appointed by a
 31 court, a committee or guardian of the property of a minor or a disabled person,
 32 whether the trust or estate be created or the appointment made prior or subsequent
 33 to the effective date of this subtitle.

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

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

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

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

7 (AA) ~~(H)~~ A FIDUCIARY MAY DONATE A CONSERVATION EASEMENT ON ANY
8 REAL PROPERTY, OR CONSENT TO THE DONATION OF A CONSERVATION EASEMENT
9 ON ANY REAL PROPERTY BY A PERSONAL REPRESENTATIVE OF AN ESTATE OF WHICH
10 THE FIDUCIARY IS A ~~GUARDIAN FOR A MINOR OR DISABLED PERSON~~ LEGATEE, IN
11 ORDER TO OBTAIN THE BENEFIT OF THE ESTATE TAX EXCLUSION ALLOWED UNDER
12 § 2031(C) OF THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED,
13 IF:

14 ~~(H)~~ (1) THE GOVERNING INSTRUMENT DIRECTS THE DONATION
15 OF A CONSERVATION EASEMENT ON THE REAL PROPERTY; OR

16 ~~(H)~~ (2) EACH ~~PERSON IN BEING~~ BENEFICIARY WHO HAS AN
17 INTEREST IN THE REAL PROPERTY THAT WOULD BE AFFECTED BY THE
18 CONSERVATION EASEMENT CONSENTS IN WRITING TO THE DONATION.

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
23 construed ~~only prospectively and may not be applied or interpreted to have any effect~~
24 ~~on or application retroactively and shall be applied and interpreted to apply to the~~
25 donation of a conservation easement from an estate of a decedent who died ~~before~~ on
26 or after January 1, 1998.

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