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By: **Delegate Finifter**

Introduced and read first time: January 26, 2001

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2001

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CHAPTER \_\_\_\_\_

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 transfer tax for certain instruments of writing  
9 that transfer title to real property from certain real estate enterprises to a  
10 limited liability company under certain circumstances; defining a certain term;  
11 providing that certain business interests of an individual may not affect the  
12 individual's ability to claim a certain exemption; and generally relating to a  
13 recordation tax exemption and State transfer tax exemption for an instrument  
14 of writing that transfers real property from certain real estate enterprises to a  
15 limited liability company.

16 BY repealing and reenacting, with amendments,  
17 Article - Tax - Property  
18 Section 12-108(y) and 13-207(a)(18)  
19 Annotated Code of Maryland  
20 (1994 Replacement Volume and 2000 Supplement)

21 BY adding to  
22 Article - Tax - Property  
23 Section 12-108(bb)  
24 Annotated Code of Maryland  
25 (1994 Replacement Volume and 2000 Supplement)

1 ~~BY repealing and reenacting, with amendments,~~  
 2 ~~Article Tax Property~~  
 3 ~~Section 13-207(a)(18)~~  
 4 ~~Annotated Code of Maryland~~  
 5 ~~(1994 Replacement Volume and 2000 Supplement)~~

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

8 **Article - Tax - Property**

9 12-108.

10 (y) (1) (i) In this subsection the following words have the meanings  
 11 indicated.

12 (ii) "Foreign general partnership", "foreign limited partnership",  
 13 "foreign limited liability partnership", "foreign limited liability limited partnership"[,  
 14 "foreign proprietorship"], and "foreign joint venture" mean, respectively, a  
 15 partnership, limited partnership, limited liability limited partnership,  
 16 [proprietorship,] or joint venture organized or formed under the laws of the United  
 17 States, another state of the United States, or a territory, possession, or district of the  
 18 United States.

19 (iii) "Predecessor entity" includes a:

20 1. Maryland general partnership or foreign general  
 21 partnership;

22 2. Maryland limited partnership or foreign limited  
 23 partnership;

24 3. Maryland limited liability partnership or foreign limited  
 25 liability partnership;

26 4. Maryland limited liability limited partnership or foreign  
 27 limited liability limited partnership; AND

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

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

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

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

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

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

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

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

14 (BB) (1) IN THIS SUBSECTION, "REAL ESTATE ENTERPRISE" MEANS A  
15 BUSINESS CONDUCTED BY ONE OR MORE INDIVIDUALS WHO OWN REAL PROPERTY,  
16 INCLUDING A SOLE PROPRIETORSHIP OR A TENANCY BY THE ~~ENTIRETY~~ ENTIRETY,  
17 AND ARE PRINCIPALLY INVOLVED IN BUYING, SELLING, LEASING, OR MANAGING  
18 REAL PROPERTY.

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

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

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

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

30 (IV) THE TRANSFER IS PART OF A DISCONTINUATION OF THE REAL  
31 ESTATE ENTERPRISE; AND

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

35 (3) AN INDIVIDUAL'S OTHER BUSINESS INTERESTS UNRELATED TO THE  
36 REAL ESTATE ENTERPRISE AND UNAFFECTED BY THE TITLE TRANSFER TO A  
37 LIMITED LIABILITY COMPANY MAY NOT AFFECT THE INDIVIDUAL'S ABILITY TO

1 CLAIM THE EXEMPTION FROM THE RECORDATION TAX DESCRIBED IN THIS  
2 SUBSECTION.

3 13-207.

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

6 (18) § 12-108(y) OR (BB) of this article (Transfer from predecessor entity  
7 OR REAL ESTATE ~~ENTITY~~ ENTERPRISE to limited liability company);

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