
By: **Delegates Kaiser, Cardin, Dumais, Hixson, Lee, Madaleno, Marriott, McIntosh, Ramirez, Rosenberg, and Ross**

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Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2005

CHAPTER _____

1 AN ACT concerning

2 **Recordation and Transfer Taxes - Exemptions - Domestic Partners**

3 FOR the purpose of exempting from recordation tax and State and county transfer
 4 taxes certain instruments of writing transferring property between domestic
 5 partners and former domestic partners under certain circumstances; requiring
 6 the submission of certain documents under certain circumstances to qualify for
 7 certain exemptions; defining certain terms; and generally relating to certain
 8 exemptions from recordation and transfer taxes.

9 BY repealing and reenacting, with amendments,
 10 Article - Tax - Property
 11 Section 12-101, 12-108(c) and (d), 13-207(a)(2) and (3), and 13-403
 12 Annotated Code of Maryland
 13 (2001 Replacement Volume and 2004 Supplement)

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

16 **Article - Tax - Property**

17 12-101.

18 (a) In this title the following words have the meanings indicated.

19 (b) "Articles of transfer" has the meaning stated in § 1-101(c) of the
 20 Corporations and Associations Article.

1 (C) "DOMESTIC PARTNER" MEANS AN INDIVIDUAL WITH WHOM ANOTHER
2 INDIVIDUAL HAS ESTABLISHED A DOMESTIC PARTNERSHIP.

3 (D) "DOMESTIC PARTNERSHIP" MEANS A RELATIONSHIP BETWEEN TWO
4 INDIVIDUALS WHO:

5 (1) ARE AT LEAST 18 YEARS OLD;

6 (2) ARE NOT RELATED TO THE OTHER BY BLOOD OR MARRIAGE WITHIN
7 FOUR DEGREES OF CONSANGUINITY UNDER THE CIVIL LAW RULE;

8 (3) ARE NOT MARRIED OR A MEMBER OF A CIVIL UNION OR DOMESTIC
9 PARTNERSHIP WITH ANOTHER INDIVIDUAL;

10 (4) AGREE TO BE IN A RELATIONSHIP OF MUTUAL INTERDEPENDENCE
11 IN WHICH EACH DOMESTIC PARTNER CONTRIBUTES TO THE MAINTENANCE AND
12 SUPPORT OF THE OTHER DOMESTIC PARTNER AND THE RELATIONSHIP, EVEN IF
13 BOTH DOMESTIC PARTNERS ARE NOT REQUIRED TO CONTRIBUTE EQUALLY TO THE
14 RELATIONSHIP; AND

15 (5) SHARE A COMMON RESIDENCE WHERE BOTH DOMESTIC PARTNERS
16 LIVE, EVEN IF:

17 ~~(I) ONE DOMESTIC PARTNER LEAVES THE COMMON RESIDENCE~~
18 ~~ON A SHORT TERM OR LONG TERM BASIS, WITH THE INTENT TO RETURN TO THE~~
19 ~~COMMON RESIDENCE;~~

20 ~~(II) ONLY ONE OF THE DOMESTIC PARTNERS HAS THE RIGHT TO~~
21 ~~LEGAL POSSESSION OF THE COMMON RESIDENCE; OR~~

22 ~~(III) ONE OF THE DOMESTIC PARTNERS HAS AN ADDITIONAL~~
23 ~~RESIDENCE.~~

24 (E) "EVIDENCE OF A DOMESTIC PARTNERSHIP" MEANS:

25 (1) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO
26 INDIVIDUALS STATING THAT THEY HAVE ESTABLISHED A DOMESTIC PARTNERSHIP;
27 AND

28 (2) EVIDENCE OF ANY OF THE FOLLOWING:

29 (I) JOINT LIABILITY OF THE INDIVIDUALS FOR A MORTGAGE OR
30 LEASE;

31 (II) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE
32 PRIMARY BENEFICIARY UNDER A LIFE INSURANCE POLICY ON THE LIFE OF THE
33 OTHER INDIVIDUAL OR UNDER A RETIREMENT PLAN OF THE OTHER INDIVIDUAL;

34 (III) THE DESIGNATION OF ONE OF THE INDIVIDUALS AS THE
35 PRIMARY BENEFICIARY OF THE WILL OF THE OTHER INDIVIDUAL;

1 (IV) A DURABLE POWER OF ATTORNEY FOR HEALTH CARE OR
 2 FINANCIAL MANAGEMENT GRANTED BY ONE OF THE INDIVIDUALS TO THE OTHER
 3 INDIVIDUAL;

4 (V) JOINT OWNERSHIP BY THE INDIVIDUALS OF A MOTOR VEHICLE,
 5 A JOINT CHECKING ACCOUNT, OR A JOINT CREDIT ACCOUNT; OR

6 (VI) A RELATIONSHIP OR COHABITATION CONTRACT THAT
 7 OBLIGATES EACH OF THE INDIVIDUALS TO PROVIDE FOR THE SUPPORT OF THE
 8 OTHER.

9 (F) "EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP" MEANS:

10 (1) A DEATH CERTIFICATE; OR

11 (2) AN AFFIDAVIT SIGNED UNDER PENALTY OF PERJURY BY TWO
 12 INDIVIDUALS WHO FORMERLY ESTABLISHED A DOMESTIC PARTNERSHIP STATING
 13 THAT THE DOMESTIC PARTNERSHIP HAS BEEN DISSOLVED.

14 (G) "FORMER DOMESTIC PARTNER" MEANS AN INDIVIDUAL WITH WHOM
 15 ANOTHER INDIVIDUAL HAD ESTABLISHED A DOMESTIC PARTNERSHIP THAT HAS
 16 SUBSEQUENTLY BEEN DISSOLVED.

17 [(c)] (H) (1) "Instrument of writing" means a written instrument that:

18 (i) conveys title to or creates or gives notice of a security interest in
 19 real property; or

20 (ii) creates or gives notice of a security interest in personal
 21 property.

22 (2) "Instrument of writing" includes:

23 (i) a deed or contract;

24 (ii) a mortgage, deed of trust, or other contract that creates an
 25 encumbrance on real property;

26 (iii) a lease of real property;

27 (iv) an assignment of a lessee's interest in real property;

28 (v) articles of transfer;

29 (vi) a security agreement;

30 (vii) articles of merger or other document which evidences a merger
 31 of foreign corporations, foreign partnerships, foreign limited liability companies, or
 32 foreign limited partnerships; and

1 (viii) articles of consolidation or other document which evidences a
2 consolidation of foreign corporations.

3 [(d)] (I) "Recordation tax" means the tax imposed under this title.

4 [(e)] (J) (1) "Security agreement" means an agreement that creates or
5 provides for a security interest.

6 (2) "Security agreement" includes a financing statement filed under the
7 Maryland Uniform Commercial Code to perfect a security interest.

8 [(f)] (K) (1) "Security interest" means an interest in real property or
9 personal property that secures payment or performance of an obligation.

10 (2) "Security interest" includes a lien or encumbrance on real property or
11 personal property.

12 [(g)] (L) (1) "Supplemental instrument of writing" means an instrument of
13 writing that confirms, corrects, modifies, or supplements a previously recorded
14 instrument of writing.

15 (2) "Supplemental instrument of writing" includes an instrument of
16 writing that secures a debt and grants a security interest in property in addition to or
17 in substitution for property described in the previously recorded instrument of
18 writing.

19 [(h)] (M) "Successor" has the meaning stated in § 1-101(u) of the Corporations
20 and Associations Article.

21 [(i)] (N) "Articles of merger" means a document filed with the Department
22 under § 3-107, § 4A-703, § 9A-903, or § 10-208 of the Corporations and Associations
23 Article which evidences a merger involving at least one Maryland corporation,
24 Maryland limited liability company, Maryland partnership, or Maryland limited
25 partnership.

26 [(j)] (O) "Articles of consolidation" means a document filed with the
27 Department under § 3-107 of the Corporations and Associations Article which
28 evidences a consolidation of at least one Maryland corporation with another
29 corporation to form a new Maryland corporation.

30 [(k)] (P) "Documents which evidence the merger or consolidation of foreign
31 corporations, foreign partnerships, foreign limited liability companies, or foreign
32 limited partnerships" means those documents that are filed or recorded with:

33 (1) the Department under § 3-117, § 4A-1012, § 9A-910, or § 10-912 of
34 the Corporations and Associations Article; or

35 (2) the clerk of the circuit court of a county evidencing that title to real
36 property has been conveyed through a merger or consolidation of 2 or more foreign

1 corporations, foreign limited liability companies, foreign partnerships, or foreign
2 limited partnerships.

3 [(1)] (Q) "Subsidiary corporation" includes any corporation that is a subsidiary
4 of either a parent corporation or any other subsidiary corporation of the parent
5 corporation.

6 12-108.

7 (c) (1) When property is transferred subject to a mortgage or deed of trust,
8 the recordation tax does not apply to the principal amount of debt assumed by the
9 transferee, if the instrument of writing transfers the property from the transferor to
10 a:

11 [(1)] (I) spouse or former spouse;

12 [(2)] (II) son, daughter, stepson, or stepdaughter;

13 [(3)] (III) parent or stepparent;

14 [(4)] (IV) son-in-law, daughter-in-law, stepson-in-law, or
15 stepdaughter-in-law;

16 [(5)] (V) parent-in-law or stepparent-in-law; [or]

17 [(6)] (VI) grandchild or stepgrandchild; OR

18 (VII) DOMESTIC PARTNER OR FORMER DOMESTIC PARTNER.

19 (2) (I) TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS
20 SUBSECTION AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC
21 PARTNERSHIP.

22 (II) TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS
23 SUBSECTION AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A
24 DOMESTIC PARTNERSHIP.

25 (d) (1) An instrument of writing that transfers property between [spouses
26 or former spouses] THE FOLLOWING INDIVIDUALS is not subject to recordation tax:

27 (I) SPOUSES OR FORMER SPOUSES; OR

28 (II) DOMESTIC PARTNERS OR FORMER DOMESTIC PARTNERS.

29 (2) (I) TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS
30 SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC
31 PARTNERSHIP.

32 (II) TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS
33 SUBSECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A
34 DOMESTIC PARTNERSHIP.

1 13-207.

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

4 (2) § 12-108(c) of this article (Transfer between relatives AND DOMESTIC
5 PARTNERS);

6 (3) § 12-108(d) of this article (Transfer between spouses AND DOMESTIC
7 PARTNERS);

8 13-403.

9 (A) IN THIS SECTION, "DOMESTIC PARTNER", "EVIDENCE OF A DOMESTIC
10 PARTNERSHIP", "EVIDENCE OF DISSOLUTION OF A DOMESTIC PARTNERSHIP", AND
11 "FORMER DOMESTIC PARTNER" HAVE THE MEANINGS STATED IN § 12-101 OF THIS
12 ARTICLE.

13 (B) An instrument of writing that transfers property between spouses or
14 former spouses OR BETWEEN DOMESTIC PARTNERS OR FORMER DOMESTIC
15 PARTNERS in accordance with a property settlement [or], divorce decree, OR
16 DISSOLUTION OF A DOMESTIC PARTNERSHIP is not subject to a county transfer tax.

17 (C) (1) TO QUALIFY AS A DOMESTIC PARTNER UNDER THIS SECTION, AN
18 INDIVIDUAL SHALL SUBMIT EVIDENCE OF A DOMESTIC PARTNERSHIP.

19 (2) TO QUALIFY AS A FORMER DOMESTIC PARTNER UNDER THIS
20 SECTION, AN INDIVIDUAL SHALL SUBMIT EVIDENCE OF DISSOLUTION OF A
21 DOMESTIC PARTNERSHIP.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect July 1, 2005.