

HOUSE BILL 188

N1, N2

(7lr1292)

ENROLLED BILL

— *Judiciary/Judicial Proceedings* —

Introduced by **Delegate Rosenberg**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Estates, Trusts, and Real Property – Rule Against Perpetuities**

3 FOR the purpose of establishing that the common-law rule against perpetuities as
4 now recognized in this State does not apply to certain options, rights to acquire
5 land, rights or privileges to acquire interests in certain business entities, or
6 nondonative property interests; establishing the effective date of certain
7 nondonative property interests; establishing that certain nondonative property
8 interests shall be void unless the interests are not subject to the common-law
9 rules against perpetuities or the interests have become effective, been exercised,
10 or become vested within certain periods of time under certain circumstances;
11 providing that certain executory interests and powers of appointment are

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



subject to the common-law rule against perpetuities as modified by this Act; defining certain terms; making stylistic changes; and generally relating to the common-law rule against perpetuities.

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 11–102
Annotated Code of Maryland
(2001 Replacement Volume and 2006 Supplement)

BY adding to
Article – Estates and Trusts
Section 11–102.1
Annotated Code of Maryland
(2001 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,
Article – Real Property
Section 2–116(d)
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

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

Article – Estates and Trusts

11–102.

(A) IN THIS SECTION, “USUFRUCTUARY” MEANS A PERSON HAVING A USUFRUCT OR RIGHT TO ENJOY A THING IN WHICH THE PERSON HAS NO PROPERTY INTEREST.

(B) Subject to §§ 4–409 and 11–103, the common-law rule against perpetuities as now recognized in the State is preserved, but the rule does not apply to the following:

~~(a)~~ **(1)** A legacy or inter vivos conveyance having a value of \$5,000 or less, or of any burial lot of any value, in trust or otherwise, for the purpose of providing for the perpetual care or keeping in good order and condition, or making repairs to, any lot, vault, mausoleum, or other place of sepulture belonging to any individual or several individuals in any cemetery or graveyard, the lots in which are intended for

1 the burial of members of the family, family connections, relatives, or friends of the
2 owners, or their successors in ownership;

3 ~~(b)~~ **(2)** A legacy or inter vivos conveyance intended to transfer assets from
4 any corporation incorporated for charitable objects, to any other charitable corporation
5 on a contingency or future event;

6 ~~(c)~~ **(3)** A trust created by an employer as part of a pension, stock bonus,
7 disability, death benefit, profit-sharing, retirement, welfare, or other plan for the
8 exclusive benefit of some or all of the employees of the employer or their beneficiaries,
9 to which contributions are made by the employer or employees, or both the employer
10 and employees, for the purpose of making distributions to or for the benefit of
11 employees or their beneficiaries out of the income or principal or both the income and
12 principal of the trust, or for any other purposes set out in the plan;

13 ~~(d)~~ **(4)** A trust for charitable purposes, which shall include all purposes as
14 are within the spirit or letter of the statute of 43 Elizabeth Ch. 4 (1601), commonly
15 known as the statute of charitable uses;

16 ~~(e)~~ **(5)** A trust in which the governing instrument states that the rule
17 against perpetuities does not apply to the trust and under which the trustee, or other
18 person to whom the power is properly granted or delegated, has the power under the
19 governing instrument, applicable statute, or common law to sell, lease, or mortgage
20 property for any period of time beyond the period that is required for an interest
21 created under the governing instrument to vest, so as to be good under the rule
22 against perpetuities;

23 ~~(f)~~ **(6)** **AN OPTION OF A TENANT TO RENEW A LEASE;**

24 ~~(g)~~ **(7)** **AN OPTION OF A TENANT TO PURCHASE ALL OR PART OF THE**
25 **PREMISES LEASED BY THE TENANT;**

26 ~~(h)~~ **(8)** ~~(1) IN THIS SUBSECTION, "USUFRUCTUARY" MEANS A PERSON~~
27 ~~HAVING A USUFRUCT OR RIGHT TO ENJOY A THING IN WHICH THE PERSON HAS~~
28 ~~NO PROPERTY INTEREST.~~

29 ~~(2)~~ **AN OPTION OF A USUFRUCTUARY TO EXTEND THE SCOPE OF**
30 **AN EASEMENT OR PROFIT;**

31 ~~(i)~~ **(9)** **THE RIGHT OF A COUNTY, A MUNICIPALITY, A PERSON FROM**
32 **WHOM LAND IS ACQUIRED, OR THE SUCCESSOR-IN-INTEREST OF A PERSON**

1 FROM WHOM LAND IS ACQUIRED, TO ACQUIRE LAND FROM THE STATE IN
2 ACCORDANCE WITH § 8-309 OF THE TRANSPORTATION ARTICLE; ~~OR~~

3 (10) A RIGHT OR PRIVILEGE, INCLUDING AN OPTION, WARRANT,
4 PRE-EMPTIVE RIGHT, RIGHT OF FIRST REFUSAL, RIGHT OF FIRST OPTION, RIGHT
5 OF FIRST NEGOTIATION, CALL RIGHT, EXCHANGE RIGHT, OR CONVERSION
6 RIGHT, TO ACQUIRE AN INTEREST IN A DOMESTIC OR FOREIGN JOINT VENTURE,
7 PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED PARTNERSHIP,
8 LIMITED LIABILITY LIMITED PARTNERSHIP, CORPORATION, COOPERATIVE,
9 LIMITED LIABILITY COMPANY, BUSINESS TRUST, OR SIMILAR ENTERPRISE,
10 WHETHER THE INTEREST IS CHARACTERIZED AS A JOINT VENTURE INTEREST,
11 PARTNERSHIP INTEREST, LIMITED PARTNERSHIP INTEREST, MEMBERSHIP
12 INTEREST, SECURITY, STOCK, OR OTHERWISE; OR

13 ~~(J)~~ ~~(10)~~ (11) A NONDONATIVE PROPERTY INTEREST AS DESCRIBED
14 IN § 11-102.1 OF THIS ~~ARTICLE~~ SUBTITLE.

15 11-102.1.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
17 MEANINGS INDICATED.

18 (2) "LIVES IN BEING" MEANS THE LIVES OF PARTICULAR
19 INDIVIDUALS IN EXISTENCE AT THE TIME OF THE CREATION OF A NONDONATIVE
20 PROPERTY INTEREST.

21 (3) "NONDONATIVE" MEANS GIVEN FOR CONSIDERATION OTHER
22 THAN NOMINAL CONSIDERATION.

23 (4) (I) "PROPERTY INTEREST" MEANS A CONTRACT, LEASE,
24 OPTION, RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL, RIGHT OF FIRST
25 NEGOTIATION, OR SIMILAR PREEMPTIVE RIGHT RELATING TO A RIGHT TO THE
26 USE, POSSESSION, TRANSFER, OR OWNERSHIP OF REAL OR PERSONAL
27 PROPERTY OR AN INTEREST IN OR APPURTENANT TO REAL OR PERSONAL
28 PROPERTY.

29 (II) "PROPERTY INTEREST" INCLUDES A RIGHT OF THE
30 TYPE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH EVEN IF THE
31 RIGHT IS NOT APPLICABLE UNTIL AFTER ANOTHER PARTY HAS FAILED TO
32 EXERCISE OR CONSUMMATE A PRIOR RIGHT OF THE SAME TYPE.

1 (III) "PROPERTY INTEREST" DOES NOT INCLUDE A
2 PROPERTY INTEREST, POWER OF APPOINTMENT, OR CONTRACT TO EXERCISE A
3 RELEASE OF A POWER OF APPOINTMENT ARISING OUT OF:

- 4 1. A PREMARITAL OR POSTMARITAL AGREEMENT;
- 5 2. A SEPARATION OR DIVORCE SETTLEMENT;
- 6 3. AN ELECTION BY A SPOUSE;
- 7 4. AN ARRANGEMENT ARISING OUT OF A
8 PROSPECTIVE, EXISTING, OR PRIOR MARITAL RELATIONSHIP BETWEEN THE
9 PARTIES TO THE RELATIONSHIP;
- 10 5. A CONTRACT TO MAKE OR NOT TO REVOKE A WILL
11 OR TRUST;
- 12 6. A CONTRACT TO EXERCISE OR NOT TO EXERCISE A
13 POWER OF APPOINTMENT;
- 14 7. A TRANSFER IN SATISFACTION OF A DUTY OF
15 SUPPORT; OR
- 16 8. A RECIPROCAL TRANSFER.

17 (B) THE COMMON-LAW RULE AGAINST PERPETUITIES AS NOW
18 RECOGNIZED IN THE STATE DOES NOT APPLY TO A NONDONATIVE PROPERTY
19 INTEREST THAT BECOMES EFFECTIVE ON OR AFTER OCTOBER 1, 2007.

20 (C) (1) FOR THE PURPOSES OF THIS SECTION, A NONDONATIVE
21 PROPERTY INTEREST BECOMES EFFECTIVE AS OF THE DATE OF DELIVERY OF
22 THE PROPERTY INTEREST.

23 (2) THE DATE OF DELIVERY IS PRESUMED TO BE THE LATER OF:

24 (I) THE DATE OF THE LAST ACKNOWLEDGMENT OF THE
25 NONDONATIVE PROPERTY INTEREST, IF ANY; OR

1 (II) ~~ON~~ THE DATE STATED IN THE DOCUMENT CREATING
2 THE NONDONATIVE PROPERTY INTEREST.

3 (D) (1) A NONDONATIVE PROPERTY INTEREST THAT BECOMES
4 EFFECTIVE ON OR AFTER OCTOBER 1, 2007, SHALL BE VOID UNLESS THE
5 NONDONATIVE PROPERTY INTEREST:

6 (I) IS NOT SUBJECT TO THE RULE AGAINST PERPETUITIES
7 UNDER § 11-102 OF THIS SUBTITLE; OR

8 (II) IS EXERCISED OR VESTED WITHIN THE APPLICABLE
9 PERIOD OF TIME SET FORTH IN PARAGRAPH (2), (3), OR (4) OF THIS
10 SUBSECTION.

11 (2) A DOCUMENT CREATING A NONDONATIVE PROPERTY
12 INTEREST THAT DOES NOT STATE A DATE OR MAKE REFERENCE TO LIVES IN
13 BEING BY WHICH THE PROPERTY INTEREST MUST BE EXERCISED OR VESTED
14 SHALL BE VOID UNLESS EXERCISED OR VESTED WITHIN 7 YEARS OF THE
15 EFFECTIVE DATE OF THE PROPERTY INTEREST.

16 (3) A DOCUMENT CREATING A NONDONATIVE PROPERTY
17 INTEREST THAT EITHER EXPRESSLY STATES A DATE BY WHICH THE PROPERTY
18 INTEREST SHALL BE EXERCISED OR VESTED OR ONE FROM WHICH THE DATE
19 MAY BE DETERMINED SHALL BE VOID ON THE EARLIER OF THE EXPRESSED OR
20 DETERMINED DATE OR 60 YEARS AFTER THE EFFECTIVE DATE OF THE
21 PROPERTY INTEREST.

22 (4) A DOCUMENT CREATING A NONDONATIVE PROPERTY
23 INTEREST THAT REFERS TO ONE OR MORE LIVES IN BEING FOR DETERMINING
24 THE DATE BY WHICH THE PROPERTY INTEREST SHALL BE EXERCISED OR
25 VESTED SHALL BE VOID:

26 (I) IF THE REFERENCE IS TO THE DURATION OF NOT MORE
27 THAN 10 IDENTIFIED LIVES IN BEING AND NOT MORE THAN 21 YEARS, AT THE
28 EXPIRATION OF THE PERIOD OF TIME REFERENCED; OR

29 (II) IF THE REFERENCE IS TO THE DURATION OF MORE
30 THAN 10 IDENTIFIED LIVES IN BEING OR TO IDENTIFIED LIVES IN BEING AND
31 MORE THAN 21 YEARS, AT THE EXPIRATION OF 60 YEARS.

Article – Real Property

2-116.

(d) Notwithstanding the repeal of the British Statute of Uses, executory interests and powers of appointment are valid in the State, subject to the rule against perpetuities **AS MODIFIED BY §§ 11-102 AND 11-102.1 OF THE ESTATES AND TRUSTS ARTICLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.