

HOUSE BILL 188

N1, N2

7lr1292

By: **Delegate Rosenberg**

Introduced and read first time: January 26, 2007

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2007

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, or nondonative property interests; establishing the effective date of certain
6 nondonative property interests; establishing that certain nondonative property
7 interests shall be void unless the interests have become effective, been
8 exercised, or become vested within certain periods of time under certain
9 circumstances; providing that certain executory interests and powers of
10 appointment are subject to the common-law rule against perpetuities as
11 modified by this Act; defining certain terms; making stylistic changes; and
12 generally relating to the common-law rule against perpetuities.

13 BY repealing and reenacting, with amendments,
14 Article – Estates and Trusts
15 Section 11–102
16 Annotated Code of Maryland
17 (2001 Replacement Volume and 2006 Supplement)

18 BY adding to
19 Article – Estates and Trusts

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.



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

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

~~(c)~~ **(3)** A trust created by an employer as part of a pension, stock bonus,
disability, death benefit, profit-sharing, retirement, welfare, or other plan for the
exclusive benefit of some or all of the employees of the employer or their beneficiaries,
to which contributions are made by the employer or employees, or both the employer
and employees, for the purpose of making distributions to or for the benefit of

employees or their beneficiaries out of the income or principal or both the income and principal of the trust, or for any other purposes set out in the plan;

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

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

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

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

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

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

~~(i)~~ **(9)** THE RIGHT OF A COUNTY, A MUNICIPALITY, A PERSON FROM WHOM LAND IS ACQUIRED, OR THE SUCCESSOR-IN-INTEREST OF A PERSON FROM WHOM LAND IS ACQUIRED, TO ACQUIRE LAND FROM THE STATE IN ACCORDANCE WITH § 8-309 OF THE TRANSPORTATION ARTICLE; OR

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

11-102.1.

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

1 (2) **“LIVES IN BEING” MEANS THE LIVES OF PARTICULAR**
2 **INDIVIDUALS IN EXISTENCE AT THE TIME OF THE CREATION OF A NONDONATIVE**
3 **PROPERTY INTEREST.**

4 (3) **“NONDONATIVE” MEANS GIVEN FOR CONSIDERATION OTHER**
5 **THAN NOMINAL CONSIDERATION.**

6 (4) (I) **“PROPERTY INTEREST” MEANS A CONTRACT, LEASE,**
7 **OPTION, RIGHT OF FIRST OFFER, RIGHT OF FIRST REFUSAL, RIGHT OF FIRST**
8 **NEGOTIATION, OR SIMILAR PREEMPTIVE RIGHT RELATING TO A RIGHT TO THE**
9 **USE, POSSESSION, TRANSFER, OR OWNERSHIP OF REAL OR PERSONAL**
10 **PROPERTY OR AN INTEREST IN OR APPURTENANT TO REAL OR PERSONAL**
11 **PROPERTY.**

12 (II) **“PROPERTY INTEREST” INCLUDES A RIGHT OF THE**
13 **TYPE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH EVEN IF THE**
14 **RIGHT IS NOT APPLICABLE UNTIL AFTER ANOTHER PARTY HAS FAILED TO**
15 **EXERCISE OR CONSUMMATE A PRIOR RIGHT OF THE SAME TYPE.**

16 (III) **“PROPERTY INTEREST” DOES NOT INCLUDE A**
17 **PROPERTY INTEREST, POWER OF APPOINTMENT, OR CONTRACT TO EXERCISE A**
18 **RELEASE OF A POWER OF APPOINTMENT ARISING OUT OF:**

- 19 1. **A PREMARITAL OR POSTMARITAL AGREEMENT;**
- 20 2. **A SEPARATION OR DIVORCE SETTLEMENT;**
- 21 3. **AN ELECTION BY A SPOUSE;**
- 22 4. **AN ARRANGEMENT ARISING OUT OF A**
23 **PROSPECTIVE, EXISTING, OR PRIOR MARITAL RELATIONSHIP BETWEEN THE**
24 **PARTIES TO THE RELATIONSHIP;**
- 25 5. **A CONTRACT TO MAKE OR NOT TO REVOKE A WILL**
26 **OR TRUST;**
- 27 6. **A CONTRACT TO EXERCISE OR NOT TO EXERCISE A**
28 **POWER OF APPOINTMENT;**

1 7. A TRANSFER IN SATISFACTION OF A DUTY OF
2 SUPPORT; OR

3 8. A RECIPROCAL TRANSFER.

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

7 (C) (1) FOR THE PURPOSES OF THIS SECTION, A NONDONATIVE
8 PROPERTY INTEREST BECOMES EFFECTIVE AS OF THE DATE OF DELIVERY OF
9 THE PROPERTY INTEREST.

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

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

13 (II) THE DATE STATED ~~ON~~ IN THE DOCUMENT CREATING
14 THE NONDONATIVE PROPERTY INTEREST.

15 (D) (1) A NONDONATIVE PROPERTY INTEREST THAT BECOMES
16 EFFECTIVE ON OR AFTER OCTOBER 1, 2007, SHALL BE VOID UNLESS EXERCISED
17 OR VESTED WITHIN THE APPLICABLE PERIOD OF TIME SET FORTH IN
18 PARAGRAPH (2), (3), OR (4) OF THIS SUBSECTION.

19 (2) A DOCUMENT CREATING A NONDONATIVE PROPERTY
20 INTEREST THAT DOES NOT STATE A DATE OR MAKE REFERENCE TO LIVES IN
21 BEING BY WHICH THE PROPERTY INTEREST MUST BE EXERCISED OR VESTED
22 SHALL BE VOID UNLESS EXERCISED OR VESTED WITHIN 7 YEARS OF THE
23 EFFECTIVE DATE OF THE PROPERTY INTEREST.

24 (3) A DOCUMENT CREATING A NONDONATIVE PROPERTY
25 INTEREST THAT EITHER EXPRESSLY STATES A DATE BY WHICH THE PROPERTY
26 INTEREST SHALL BE EXERCISED OR VESTED OR ONE FROM WHICH THE DATE
27 MAY BE DETERMINED SHALL BE VOID ON THE EARLIER OF THE EXPRESSED OR
28 DETERMINED DATE OR 60 YEARS AFTER THE EFFECTIVE DATE OF THE
29 PROPERTY INTEREST.

1 (4) A DOCUMENT CREATING A NONDONATIVE PROPERTY
2 **INTEREST THAT REFERS TO ONE OR MORE LIVES IN BEING FOR DETERMINING**
3 **THE DATE BY WHICH THE PROPERTY INTEREST SHALL BE EXERCISED OR**
4 **VESTED SHALL BE VOID:**

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

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

11 **Article – Real Property**

12 2–116.

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.