

CHAPTER 381

(House Bill 188)

AN ACT concerning

Estates, Trusts, and Real Property – Rule Against Perpetuities

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

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

~~(J)~~ ~~(10)~~ **(11) 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.

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

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

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

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

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

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

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

8. A RECIPROCAL TRANSFER.

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

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

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

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

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

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

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

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

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

(3) A DOCUMENT CREATING A NONDONATIVE PROPERTY INTEREST THAT EITHER EXPRESSLY STATES A DATE BY WHICH THE PROPERTY

INTEREST SHALL BE EXERCISED OR VESTED OR ONE FROM WHICH THE DATE MAY BE DETERMINED SHALL BE VOID ON THE EARLIER OF THE EXPRESSED OR DETERMINED DATE OR 60 YEARS AFTER THE EFFECTIVE DATE OF THE PROPERTY INTEREST.

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

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

(II) IF THE REFERENCE IS TO THE DURATION OF MORE THAN 10 IDENTIFIED LIVES IN BEING OR TO IDENTIFIED LIVES IN BEING AND 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 by the Governor, May 8, 2007.