

Chapter 202

(Senate Bill 25)

AN ACT concerning

Estates and Trusts – Property Held as Tenants by the Entireties – Transfer to Trust

FOR the purpose of ~~codifying certain common law rules relating to property held by a husband and wife as tenants by the entireties or joint tenants with rights of survivorship~~; establishing that certain property of a husband and wife that is held as tenants by the entirety and conveyed to a trustee or trustees, and the proceeds of that property, shall retain its immunity from the claims of certain creditors under certain circumstances; providing that certain property continues to have certain immunity from the claims of certain creditors after the death of a certain individual; providing that a certain immunity may be waived in a certain manner; providing that a certain immunity shall be waived under certain circumstances; providing a certain exception; providing that the trustee or trustees of a certain trust have a certain burden of proof in a certain dispute; providing that certain property shall no longer be held as tenants by the entirety after a certain conveyance; providing that certain items are exempt from execution on a judgment; providing for the construction of certain provisions of this Act; defining a certain term; and generally relating to property held as tenants by the entirety.

BY adding to

Article – Estates and Trusts

Section 14-113

Annotated Code of Maryland

(2001 Replacement Volume and 2009 Supplement)

BY adding to

Article – Courts and Judicial Proceedings

Section 11-504(b)(8) and (9)

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

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

Article – Estates and Trusts

14-113.

~~(A) (1) A HUSBAND AND WIFE MAY OWN REAL OR PERSONAL PROPERTY AS TENANTS BY THE ENTIRETIES.~~

~~(2) PERSONAL PROPERTY MAY BE OWNED AS TENANTS BY THE ENTIRETIES WHETHER OR NOT THE PERSONAL PROPERTY REPRESENTS THE PROCEEDS OF THE SALE OF REAL PROPERTY.~~

~~(3) ANY PERSONAL PROPERTY THAT IS OWNED BY A HUSBAND AND WIFE AND ACQUIRED DURING THEIR MARRIAGE SHALL BE PRESUMED TO BE HELD AS TENANTS BY THE ENTIRETIES.~~

~~(4) AN INTENT THAT THE INTEREST OF A DECEASED SPOUSE IN PROPERTY SHOULD BELONG TO THE OTHER SPOUSE SHALL BE MANIFEST FROM A DESIGNATION OF A HUSBAND AND WIFE AS "TENANTS BY THE ENTIRETIES", "TENANTS BY THE ENTIRETY", OR "JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP".~~

~~(B) ANY PROPERTY OF A HUSBAND AND WIFE THAT IS HELD BY THEM AS TENANTS BY THE ENTIRETIES AND CONVEYED TO THEIR JOINT REVOCABLE OR IRREVOCABLE TRUST, OR TO THEIR SEPARATE REVOCABLE OR IRREVOCABLE TRUSTS, SHALL HAVE THE SAME IMMUNITY FROM THE CLAIMS OF THEIR SEPARATE CREDITORS AS IT WOULD IF THE PROPERTY HAD REMAINED A TENANCY BY THE ENTIRETY, AS LONG AS:~~

~~(1) THE SPOUSES REMAIN MARRIED;~~

~~(2) THE PROPERTY CONTINUES TO BE HELD IN THE TRUST OR TRUSTS; AND~~

~~(3) THE PROPERTY CONTINUES TO BE THE PROPERTY OF THE SPOUSES.~~

(A) IN THIS SECTION, "PROCEEDS" MEANS:

(1) PROPERTY ACQUIRED BY THE TRUSTEE UPON THE SALE, LEASE, LICENSE, EXCHANGE, OR OTHER DISPOSITION OF PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE OR TRUSTEES;

(2) PROPERTY COLLECTED BY THE TRUSTEE ON, OR DISTRIBUTED ON ACCOUNT OF, PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE OR TRUSTEES;

(3) RIGHTS ARISING OUT OF PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE;

(4) CLAIMS ARISING OUT OF THE LOSS, NONCONFORMITY, OR INTERFERENCE WITH THE USE OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO, PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE;

(5) INSURANCE PAYABLE BY REASON OF THE LOSS OR NONCONFORMITY OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO, PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE;
OR

(6) PROPERTY HELD BY THE TRUSTEE THAT IS OTHERWISE TRACEABLE TO PROPERTY ORIGINALLY CONVEYED BY A HUSBAND AND WIFE TO A TRUSTEE OR THE PROPERTY PROCEEDS DESCRIBED IN ITEMS (1) THROUGH (5) OF THIS SUBSECTION.

(B) ANY PROPERTY OF A HUSBAND AND WIFE THAT IS HELD BY THEM AS TENANTS BY THE ENTIRETY AND SUBSEQUENTLY CONVEYED TO A TRUSTEE, AND THE PROCEEDS OF THAT PROPERTY, SHALL HAVE THE SAME IMMUNITY FROM THE CLAIMS OF THEIR SEPARATE CREDITORS AS WOULD EXIST IF THE HUSBAND AND WIFE HAD CONTINUED TO HOLD THE PROPERTY OR ITS PROCEEDS AS TENANTS BY THE ENTIRETY, AS LONG AS:

(1) THE HUSBAND AND WIFE REMAIN MARRIED;

(2) THE PROPERTY OR ITS PROCEEDS CONTINUES TO BE HELD IN TRUST BY THE TRUSTEE OR TRUSTEES OR THEIR SUCCESSORS IN TRUST; AND

(3) BOTH THE HUSBAND AND THE WIFE ARE BENEFICIARIES OF THE TRUST.

(C) (1) AFTER THE DEATH OF THE FIRST OF THE HUSBAND AND WIFE TO DIE, ALL PROPERTY HELD IN TRUST THAT WAS IMMUNE FROM THE CLAIMS OF THEIR SEPARATE CREDITORS UNDER SUBSECTION (B) OF THIS SECTION IMMEDIATELY PRIOR TO THE INDIVIDUAL'S DEATH SHALL CONTINUE TO HAVE THE SAME IMMUNITY FROM THE CLAIMS OF THE DECEDENT'S SEPARATE CREDITORS AS WOULD HAVE EXISTED IF THE HUSBAND AND WIFE HAD CONTINUED TO HOLD THE PROPERTY CONVEYED IN TRUST, OR ITS PROCEEDS, AS TENANTS BY THE ENTIRETY.

(2) TO THE EXTENT THAT THE SURVIVING SPOUSE REMAINS A BENEFICIARY OF THE TRUST, THE PROPERTY THAT IS IMMUNE FROM THE

CLAIMS OF THE SEPARATE CREDITORS OF THE DECEDENT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SUBJECT TO THE CLAIMS OF THE SEPARATE CREDITORS OF THE SURVIVING SPOUSE.

(D) THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION MAY BE WAIVED AS TO ANY SPECIFIC CREDITOR OR ANY SPECIFICALLY DESCRIBED TRUST PROPERTY BY:

(1) THE EXPRESS PROVISIONS OF A TRUST INSTRUMENT; OR

(2) THE WRITTEN CONSENT OF BOTH THE HUSBAND AND THE WIFE.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION SHALL BE WAIVED IF A TRUSTEE EXECUTES AND DELIVERS A FINANCIAL STATEMENT FOR THE TRUST THAT FAILS TO DISCLOSE THE REQUESTED IDENTITY OF PROPERTY HELD IN TRUST THAT IS IMMUNE FROM THE CLAIMS OF SEPARATE CREDITORS.

(2) IMMUNITY IS NOT WAIVED UNDER THIS SUBSECTION IF THE IDENTITY OF THE PROPERTY THAT IS IMMUNE FROM THE CLAIMS OF SEPARATE CREDITORS IS OTHERWISE REASONABLY DISCLOSED BY:

(I) A PUBLICLY RECORDED DEED OR OTHER INSTRUMENT OF CONVEYANCE BY THE HUSBAND AND WIFE TO THE TRUSTEE;

(II) A WRITTEN MEMORANDUM BY THE HUSBAND AND WIFE, OR BY A TRUSTEE, THAT IS RECORDED AMONG THE LAND RECORDS OR OTHER PUBLIC RECORDS IN THE COUNTY OR OTHER JURISDICTION WHERE THE RECORDS OF THE TRUST ARE REGULARLY MAINTAINED; OR

(III) THE TERMS OF THE TRUST INSTRUMENT, INCLUDING ANY SCHEDULE OR EXHIBIT ATTACHED TO THE TRUST INSTRUMENT, IF A COPY OF THE TRUST INSTRUMENT IS PROVIDED WITH THE FINANCIAL STATEMENT.

(3) A WAIVER UNDER THIS SUBSECTION SHALL BE EFFECTIVE ONLY AS TO:

(I) THE PERSON TO WHOM THE FINANCIAL STATEMENT IS DELIVERED BY THE TRUSTEE;

(II) THE PARTICULAR TRUST PROPERTY HELD IN TRUST FOR WHICH THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS IS INSUFFICIENTLY DISCLOSED ON THE FINANCIAL STATEMENT; AND

(III) THE TRANSACTION FOR WHICH THE DISCLOSURE WAS SOUGHT.

(F) IN ANY DISPUTE RELATING TO THE IMMUNITY OF TRUST PROPERTY FROM THE CLAIMS OF A SEPARATE CREDITOR OF A HUSBAND OR WIFE, THE TRUSTEE HAS THE BURDEN OF PROVING THE IMMUNITY OF THE TRUST PROPERTY FROM THE CREDITOR'S CLAIMS.

(G) AFTER A CONVEYANCE TO A TRUSTEE DESCRIBED IN SUBSECTION (B) OF THIS SECTION, THE PROPERTY TRANSFERRED SHALL NO LONGER BE HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE ENTIRETY.

(H) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT EXISTING STATE LAW WITH RESPECT TO TENANCIES BY THE ENTIRETY.

Article – Courts and Judicial Proceedings

11-504.

(b) The following items are exempt from execution on a judgment:

(8) THE DEBTOR'S BENEFICIAL INTEREST IN ANY TRUST PROPERTY THAT IS IMMUNE FROM THE CLAIMS OF THE DEBTOR'S CREDITORS UNDER § 14-113 OF THE ESTATES AND TRUSTS ARTICLE.

(9) WITH RESPECT TO CLAIMS BY A SEPARATE CREDITOR OF A HUSBAND OR WIFE, TRUST PROPERTY THAT IS IMMUNE FROM THE CLAIMS OF THE SEPARATE CREDITORS OF THE HUSBAND OR WIFE UNDER § 14-113 OF THE ESTATES AND TRUSTS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 4, 2010.