

# HOUSE BILL 799

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1lr2078  
CF SB 696

By: **Delegates Carter, Conaway, McComas, Simmons, and Washington**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Tenancy by the Entirety Property – Transfer to Trustee**  
3 **or Trustees**

4 FOR the purpose of expanding the application of a certain immunity from claims of  
5 creditors, relating to former tenancy by the entirety property and proceeds of  
6 that property, to include conveyances to multiple trustees or multiple trusts;  
7 limiting the application of a certain immunity from claims of creditors to an  
8 instrument of conveyance that contains a certain provision; providing that a  
9 certain immunity may be waived as to certain creditors or certain property;  
10 providing that certain provisions of law apply only to tenancy by the entirety  
11 property conveyed to a trustee or trustees on or after a certain date; clarifying  
12 language; providing for the application of this Act; and generally relating to a  
13 certain immunity from claims of creditors for certain former tenancy by the  
14 entirety property and proceeds of that property under certain circumstances.

15 BY repealing and reenacting, with amendments,

16 Article – Estates and Trusts

17 Section 14–113

18 Annotated Code of Maryland

19 (2001 Replacement Volume and 2010 Supplement)

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

22 **Article – Estates and Trusts**

23 14–113.

24 (a) In this section, “proceeds” means:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



4 (2) Property collected by the trustee on, or distributed on account of,  
5 property originally conveyed by a husband and wife to a trustee or trustees;

6 (3) Rights arising out of property originally conveyed by a husband  
7 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;

14 (6) Property held by the trustee that is otherwise traceable to property  
15 originally conveyed by a husband and wife to a trustee or the property proceeds  
16 described in items (1) through (5) of this subsection.

17 (b) Any property of a husband and wife that [is] WAS held by them as  
18 tenants by the entirety and subsequently conveyed to [a] THE trustee OR TRUSTEES  
19 OF ONE OR MORE TRUSTS, and the proceeds of that property, shall have the same  
20 immunity from the claims of their separate creditors as would exist if the husband and  
21 wife had continued to hold the property or its proceeds as tenants by the entirety, as  
22 long as:

23 (1) The husband and wife remain married;

24 (2) The property or its proceeds continues to be held in trust by the  
25 trustee or trustees or their successors in trust; [and]

26 (3) Both the husband and the wife are beneficiaries of the trust OR  
27 **TRUSTS; AND**

5 (d) The immunity from the claims of separate creditors under subsections (b)  
6 and (c) of this section may be waived as to any specific creditor or any specifically  
7 described trust property, **INCLUDING ALL SEPARATE CREDITORS OF A HUSBAND**  
8 **AND WIFE OR ALL FORMER TENANCY BY THE ENTIRETY PROPERTY CONVEYED**  
9 **TO THE TRUSTEE OR TRUSTEES**, by:

10 (1) The express provisions of a trust instrument; or

11 (2) The written consent of both the husband and the wife.

20 (i) A publicly recorded deed or other instrument of conveyance  
21 by the husband and wife to the trustee;

28 (3) A waiver under this subsection shall be effective only as to:

29 (i) The person to whom the financial statement is delivered by  
30 the trustee;

31 (ii) The particular trust property held in trust for which the  
32 immunity from the claims of separate creditors is insufficiently disclosed on the  
33 financial statement; and

34 (iii) The transaction for which the disclosure was sought.

4 (g) After a conveyance to a trustee described in subsection (b) of this section,  
5 the property transferred shall no longer be held by the husband and wife as tenants by  
6 the entirety.

9                   **(I) THIS SECTION APPLIES ONLY TO TENANCY BY THE ENTIRETY**  
10                   PROPERTY CONVEYED TO A TRUSTEE OR TRUSTEES ON OR AFTER OCTOBER 1,  
11                   2010.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2011.