

HOUSE BILL 799

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11r2078
CF SB 696

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

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

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:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) Property acquired by the trustee upon the sale, lease, license,
2 exchange, or other disposition of property originally conveyed by a husband and wife
3 to a trustee or trustees;

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;

8 (4) Claims arising out of the loss, nonconformity, or interference with
9 the use of, defects or infringement of rights in, or damage to, property originally
10 conveyed by a husband and wife to a trustee;

11 (5) Insurance payable by reason of the loss or nonconformity of,
12 defects or infringement of rights in, or damage to, property originally conveyed by a
13 husband and wife to a trustee; or

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

28 (4) THE TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF
29 CONVEYANCE PROVIDES THAT THIS SECTION SHALL APPLY TO THE PROPERTY
30 OR ITS PROCEEDS.

31 (c) (1) After the death of the first of the husband and wife to die, all
32 property held in trust that was immune from the claims of their separate creditors
33 under subsection (b) of this section immediately prior to the individual's death shall
34 continue to have the same immunity from the claims of the decedent's separate
35 creditors as would have existed if the husband and wife had continued to hold the
36 property conveyed in trust, or its proceeds, as tenants by the entirety.

1 (2) To the extent that the surviving spouse remains a beneficiary of
2 the trust, the property that [is] WAS immune from the claims of the separate creditors
3 of the decedent under paragraph (1) of this subsection shall be subject to the claims of
4 the separate creditors of the surviving spouse.

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.

12 (e) (1) Except as provided in paragraph (2) of this subsection, immunity
13 from the claims of separate creditors under subsections (b) and (c) of this section shall
14 be waived if a trustee executes and delivers a financial statement for the trust that
15 fails to disclose the requested identity of property held in trust that is immune from
16 the claims of separate creditors.

17 (2) Immunity is not waived under this subsection if the identity of the
18 property that is immune from the claims of separate creditors is otherwise reasonably
19 disclosed by:

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

22 (ii) A written memorandum by the husband and wife, or by a
23 trustee, that is recorded among the land records or other public records in the county
24 or other jurisdiction where the records of the trust are regularly maintained; or

25 (iii) The terms of the trust instrument, including any schedule or
26 exhibit attached to the trust instrument, if a copy of the trust instrument is provided
27 with the financial statement.

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.

1 (f) In any dispute relating to the immunity of trust property from the claims
2 of a separate creditor of a husband or wife, the trustee has the burden of proving the
3 immunity of the trust property from the creditor's claims.

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.

7 (h) This section may not be construed to affect existing State law with
8 respect to tenancies by 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.