

HOUSE BILL 799

N2

11r2078
CF SB 696

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

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 1, 2011

CHAPTER _____

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**

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.



1 14–113.

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

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

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

8 (3) Rights arising out of property originally conveyed by a husband
9 and wife to a trustee;

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

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

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

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

25 (1) The husband and wife remain married;

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

28 (3) Both the husband and the wife are beneficiaries of the trust OR
29 TRUSTS; AND

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) The person to whom the financial statement is delivered by
36 the trustee;

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

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

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

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

11 (h) This section may not be construed to affect existing State law with
12 respect to tenancies by the entirety.

13 **(i) THIS SECTION APPLIES ONLY TO TENANCY BY THE ENTIRETY**
14 **PROPERTY CONVEYED TO A TRUSTEE OR TRUSTEES ON OR AFTER OCTOBER 1,**
15 **2010.**

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.