

## Chapter 449

(Senate Bill 328)

AN ACT concerning

### **Estates and Trusts – Transfers – Recordation and Transfer Taxes**

FOR the purpose of altering a certain provision prohibiting the imposition of certain taxes on certain transfers of property by a personal representative or the recordation of certain instruments; prohibiting the imposition of certain taxes on certain transfers of real property or the recordation of certain instruments relating to certain transfers to or from certain trusts; providing certain exemptions under the recordation tax and State transfer tax for instruments of writing relating to certain transfers from an estate and certain transfers to or from certain trusts; defining certain terms; and generally relating to the taxation of certain transfers from an estate and certain transfers to or from certain trusts.

BY repealing and reenacting, with amendments,

Article – Estates and Trusts

Section 9–105

Annotated Code of Maryland

(2001 Replacement Volume and 2010 Supplement)

BY adding to

Article – Estates and Trusts

Section 14–114

Annotated Code of Maryland

(2001 Replacement Volume and 2010 Supplement)

BY adding to

Article – Tax – Property

Section 12–108(dd) and (ee) and 13–207(a)(22) and (23)

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – Property

Section 13–207(a)(20) and (21)

Annotated Code of Maryland

(2007 Replacement Volume and 2010 Supplement)

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

**Article – Estates and Trusts**

9–105.

(a) When distribution in kind is made, the personal representative shall execute and deliver an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the title of the distributee to the property.

(b) Costs payable as a condition of the recordation of a deed shall be paid by the estate.

(c) **(1) IN THIS SUBSECTION, “CONSIDERATION” DOES NOT INCLUDE THE AMOUNT OF ANY OBLIGATION UNDER A MORTGAGE OR DEED OF TRUST ENCUMBERING THE TRANSFERRED PROPERTY.**

**(2) A [state] RECORDATION TAX, TRANSFER TAX, OR ANY OTHER STATE or local excise tax may not be imposed [upon] ON the transfer BY A PERSONAL REPRESENTATIVE of property or AN INTEREST IN PROPERTY WITHOUT CONSIDERATION OR ON the recordation of an instrument executed [without consideration] by a personal representative THAT TRANSFERS PROPERTY OR AN INTEREST IN PROPERTY WITHOUT CONSIDERATION.**

(d) In addition to other indexing, any such deed recorded among the land records shall be indexed in the grantor index under the name of the decedent.

14–114.

**(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(2) “CONSIDERATION” DOES NOT INCLUDE THE AMOUNT OF ANY OBLIGATION UNDER A MORTGAGE OR DEED OF TRUST ENCUMBERING THE TRANSFERRED PROPERTY.**

**(3) “TRUST” DOES NOT INCLUDE:**

**(I) A REAL ESTATE INVESTMENT TRUST AS DEFINED IN § 8–101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR**

**(II) A ~~BUSINESS~~ STATUTORY TRUST AS DEFINED IN § ~~12–101(c)~~ 12–101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.**

**(B) A RECORDATION TAX, TRANSFER TAX, OR ANY OTHER STATE OR LOCAL EXCISE TAX MAY NOT BE IMPOSED ON THE TRANSFER OF REAL PROPERTY OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION OR ON THE RECORDATION OF AN INSTRUMENT THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY WITHOUT CONSIDERATION IF:**

**(1) THE TRANSFER IS TO A TRUST; OR**

**(2) THE TRANSFER IS FROM A TRUST TO ONE OR MORE BENEFICIARIES AND:**

**(I) THE TRANSFER IS MADE TO A PERSON WHO WOULD BE EXEMPT FROM TAX UNDER TITLE 12 OR TITLE 13 OF THE TAX – PROPERTY ARTICLE IF THE TRANSFER HAD BEEN MADE TO THAT PERSON DIRECTLY BY THE GRANTOR; OR**

**(II) THE TRANSFER IS MADE DURING THE LIFE OF THE GRANTOR OF THE TRUST AND THE TRUSTEE OF THE TRUST ORIGINALLY ACQUIRED THE REAL PROPERTY FOR ADEQUATE CONSIDERATION.**

**Article – Tax – Property**

12–108.

**(DD) AN INSTRUMENT OF WRITING THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY FROM AN ESTATE IS NOT SUBJECT TO RECORDATION TAX AS PROVIDED IN § 9–105(C) OF THE ESTATES AND TRUSTS ARTICLE.**

**(EE) AN INSTRUMENT OF WRITING THAT TRANSFERS REAL PROPERTY OR AN INTEREST IN REAL PROPERTY TO A TRUST OR FROM A TRUST TO ONE OR MORE BENEFICIARIES UNDER THE CIRCUMSTANCES SPECIFIED IN § 14–114 OF THE ESTATES AND TRUSTS ARTICLE IS NOT SUBJECT TO RECORDATION TAX.**

13–207.

(a) An instrument of writing is not subject to transfer tax to the same extent that it is not subject to recordation tax under:

(20) § 12–108(aa) of this article (Transfers involving certain Maryland Stadium Authority affiliates); [or]

(21) § 12–108(cc) of this article (Certain transfers to land trusts);

**(22) § 12-108(DD) OF THIS ARTICLE (TRANSFER FROM AN ESTATE); OR**

**(23) § 12-108(EE) OF THIS ARTICLE (TRANSFER TO A TRUST AND TRANSFER FROM A TRUST UNDER SPECIFIED CIRCUMSTANCES).**

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

**Approved by the Governor, May 19, 2011.**