

Chapter 523

(House Bill 799)

AN ACT concerning

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

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

BY repealing and reenacting, with amendments,
Article – Estates and Trusts
Section 14–113
Annotated Code of Maryland
(2001 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

14–113.

(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] WAS** held by them as tenants by the entirety and subsequently conveyed to **[a] THE trustee OR TRUSTEES OF ONE OR MORE TRUSTS**, 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 **OR TRUSTS; AND**

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

(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] WAS** 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, **INCLUDING ALL SEPARATE CREDITORS OF A HUSBAND AND WIFE OR ALL FORMER TENANCY BY THE ENTIRETY PROPERTY CONVEYED TO THE TRUSTEE OR TRUSTEES**, 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.

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

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

Approved by the Governor, May 19, 2011.