

SENATE BILL 999

Q6

8lr3280

By: **Senators Peters and DeGrange**

Introduced and read first time: February 5, 2018

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

CHAPTER _____

1 AN ACT concerning

2 **Recordation Tax – Exemptions**

3 FOR the purpose of altering an exemption from recordation tax to include certain
4 transactions of an original mortgagor; altering the ~~definition~~ definitions of “business
5 entity” ~~to include a partnership and business trust to exempt~~, “owner”, and
6 “ownership interest” for purposes of provisions of law exempting from the
7 recordation tax transfers between certain related business entities; altering an
8 exemption from recordation tax for certain transfers of a controlling interest; and
9 generally relating to the recordation tax.

10 BY repealing and reenacting, with amendments,
11 Article – Tax – Property
12 Section 12–108(g) and (p) and 12–117(c)
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2017 Supplement)

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

17 **Article – Tax – Property**

18 12–108.

19 (g) (1) In this subsection, “original mortgagor” includes:

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 (i) a person that assumed a debt secured by real property that the
2 person purchased and paid the recordation tax on the consideration paid for the property;
3 [and]

4 (II) A PERSON THAT RECEIVED THE PROPERTY FROM THE
5 ORIGINAL MORTGAGOR UNDER A DEED THAT ~~IS~~ WAS EXEMPT FROM RECORDATION
6 TAX UNDER SUBSECTION (P) OR (Y) OF THIS SECTION; AND

7 [(ii)] (III) the trustee of an inter vivos trust if the trustee or the
8 settlor of the trust originally assumed or incurred the debt secured by the mortgage or deed
9 of trust.

10 (2) A mortgage or deed of trust is not subject to recordation tax to the
11 extent that it secures the refinancing of an amount not greater than the unpaid principal
12 amount secured by an existing mortgage, indemnity mortgage, or deed of trust at the time
13 of refinancing if the mortgage or deed of trust secures the refinancing of real property that
14 is:

15 (i) being refinanced by the original mortgagor or by the original
16 mortgagor and, if applicable, the spouse of the original mortgagor; or

17 (ii) being refinanced by the settlor of an inter vivos trust if the
18 mortgage or deed of trust is given by a trustee of the trust.

19 (3) To qualify for an exemption under paragraph (2) of this subsection an
20 original mortgagor or agent of the original mortgagor shall include a statement in the
21 recitals or in the acknowledgment of the mortgage or deed of trust, or submit with the
22 mortgage or deed of trust, an affidavit under oath, signed by the original mortgagor or agent
23 of the original mortgagor, stating:

24 (i) that the person is the original mortgagor or agent of the original
25 mortgagor; and

26 (ii) the amount of unpaid outstanding principal of the original
27 mortgage, indemnity mortgage, or deed of trust that is being refinanced.

28 (4) A statement under paragraph (3) of this subsection by an agent of the
29 original mortgagor shall state that the statement:

30 (i) is based on a diligent inquiry made by the agent with respect to
31 the facts set forth in the statement; and

32 (ii) is true to the best of the knowledge, information, and belief of the
33 agent.

34 (p) (1) (i) In this subsection the following words have the meanings
35 indicated.

1 (ii) "Business entity" means a limited liability company [or],
2 corporation, LIMITED PARTNERSHIP, OR BUSINESS STATUTORY TRUST.

3 (iii) "Owner" means a member ~~or~~, stockholder, LIMITED PARTNER,
4 OR BENEFICIAL OWNER of a business entity.

5 (iv) "Ownership interest" means a membership interest ~~or~~, stock,
6 LIMITED PARTNERSHIP INTEREST, OR BENEFICIAL INTEREST.

7 (2) An instrument of writing is not subject to recordation tax if the
8 instrument of writing is:

9 (i) a transfer of title to real property between a parent business
10 entity and its wholly owned subsidiary business entity or between 2 or more subsidiary
11 business entities wholly owned by the same parent business entity, if the parent business
12 entity is an original owner of the subsidiary business entity, or became an owner through
13 gift or bequest from an original owner of the subsidiary business entity, for:

14 1. no consideration;

15 2. nominal consideration; or

16 3. consideration that comprises only the issuance,
17 cancellation, or surrender of the ownership interests of a subsidiary business entity;

18 (ii) an instrument of writing made pursuant to the reorganization of
19 a business entity as described in § 368(a) of the Internal Revenue Code; or

20 (iii) a transfer of title to real property from a subsidiary business
21 entity to its parent business entity for no consideration, nominal consideration or
22 consideration that comprises only the issuance, cancellation, or surrender of a subsidiary's
23 ownership interest, where the parent business entity:

24 1. previously owned the real property;

25 2. currently owns the ownership interest of the subsidiary
26 and has owned that ownership interest for a period greater than 18 months; or

27 3. acquires the ownership interest of a subsidiary business
28 entity which has been in existence and has owned the real property for a period of 2 years.

29 12-117.

30 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, the
31 transfer of a controlling interest in a real property entity is not subject to recordation tax if

1 the transfer of the real property owned by the real property entity between the same
2 transferor and transferee of the controlling interest and under the same circumstances
3 would have been exempt under § 12–108 of this title.

4 (ii) Subparagraph (i) of this paragraph does not apply to transactions
5 under § 12–108(y)(2)(i)3 of this subtitle.

6 (2) The recordation tax is not imposed on the transfer of a controlling
7 interest in a real property entity effected in more than one transaction if:

8 (i) the transfer is completed over a period of more than 12 months;
9 or

10 (ii) the transfer is not made in accordance with a plan of transfer.

11 (3) The recordation tax is not imposed on the transfer of a controlling
12 interest in a real property entity ~~to another entity~~ if the ownership interests in the
13 ~~transferee~~ **REAL PROPERTY** entity are owned, directly or indirectly, by the same persons
14 and in the same proportions ~~as those persons own, directly or indirectly, the transferor~~
15 ~~entity [or the real property entity the controlling interest of which was transferred]~~ **AFTER**
16 **THE TRANSFER.**

17 (4) The recordation tax is not imposed on the transfer of a controlling
18 interest in a real property entity if the transferee of the controlling interest in the real
19 property entity is:

20 (i) a nonstock corporation organized under Title 5, Subtitle 2 of the
21 Corporations and Associations Article; and

22 (ii) registered with the Department of Aging as a continuing care
23 retirement community under § 10–408 of the Human Services Article.

24 (5) The real property entity has the burden of establishing to the
25 satisfaction of the Department the applicability of any exemption referred to in paragraphs
26 (1) through (4) of this subsection.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
28 1, 2018.