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HOUSE BILL NO. 1489

Offered January 11, 2017

Prefiled December 14, 2016

A BILL to amend and reenact § 58.1-811, as it is currently effective and as it may become effective, of the Code of Virginia, relating to recordation tax exemption; limited liability companies and partnerships.

Patron—Miyares

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-811, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 58.1-811. (Contingent expiration date) Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, to a subsidiary limited liability company or limited liability partnership from its parent limited liability company or limited liability partnership, or from a subsidiary limited liability company or limited liability partnership to a parent limited liability company or limited liability partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more

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59 beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust  
60 instrument;

61 14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal  
62 Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect  
63 or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise  
64 would be unable to afford to buy a home through conventional means;

65 15. When it is a deed of partition, or any combination of deeds simultaneously executed and having  
66 the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; ~~or~~

67 16. When it is a deed transferring property pursuant to a decree of divorce or of separate  
68 maintenance or pursuant to a written instrument incident to such divorce or separation; *or*

69 *17. To a limited liability company or limited or general partnership from a commonly owned limited*  
70 *liability company or limited or general partnership, if the transaction qualifies for nonrecognition of*  
71 *gain or loss under the Internal Revenue Code, as amended.*

72 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

73 1. Given by an incorporated college or other incorporated institution of learning not conducted for  
74 profit;

75 2. Given by the trustee or trustees of a church or religious body or given by an incorporated church  
76 or religious body, or given by a corporation mentioned in § 57-16.1;

77 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or  
78 operating a hospital or hospitals not for pecuniary profit;

79 4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a  
80 debt payable to any other local governmental entity or political subdivision;

81 5. Securing a loan made by an organization described in subdivision A 14; or

82 6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower  
83 whose household income does not exceed 80 percent of the area median household income established  
84 by the U.S. Department of Housing and Urban Development, for the purpose of erecting or  
85 rehabilitating a home for such borrower, including the purchase of land for such home.

86 C. The tax imposed by § 58.1-802 and the fee imposed by § 58.1-802.2 shall not apply to any:

87 1. Transaction described in subdivisions A 6 through 13, 15, and 16;

88 2. Instrument or writing given to secure a debt;

89 3. Deed conveying real estate from an incorporated college or other incorporated institution of  
90 learning not conducted for profit;

91 4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town,  
92 district, or other political subdivision thereof;

93 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other  
94 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable  
95 pursuant to § 58.1-802 or subject to the fee under § 58.1-802.2; or

96 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an  
97 incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

98 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or  
99 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed  
100 shall state therein that it is a deed of gift.

101 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the  
102 Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

103 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and  
104 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The  
105 Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy,  
106 where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of  
107 preserving wilderness, natural, or open space areas.

108 G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees  
109 mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

110 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual  
111 right, if the release is contained within a single deed that performs more than one function, and at least  
112 one of the other functions performed by the deed is subject to the recordation tax.

113 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,  
114 release, or other document recorded in connection with a concession pursuant to the Public-Private  
115 Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

116 J. No recordation tax shall be required for the recordation of any transfer on death deed or any  
117 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act  
118 (§ 64.2-621 et seq.) when no consideration has passed between the parties.

119 **§ 58.1-811. (Contingent effective date) Exemptions.**

120 A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate

121 or lease of real estate:

122 1. To an incorporated college or other incorporated institution of learning not conducted for profit,  
123 where such real estate is intended to be used for educational purposes and not as a source of revenue or  
124 profit;

125 2. To an incorporated church or religious body or to the trustee or trustees of any church or religious  
126 body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively  
127 for religious purposes, or for the residence of the minister of any such church or religious body;

128 3. To the United States, the Commonwealth, or to any county, city, town, district, or other political  
129 subdivision of the Commonwealth;

130 4. To the Virginia Division of the United Daughters of the Confederacy;

131 5. To any nonstock corporation organized exclusively for the purpose of owning or operating a  
132 hospital or hospitals not for pecuniary profit;

133 6. To a corporation upon its organization by persons in control of the corporation in a transaction  
134 which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it  
135 exists at the time of the conveyance;

136 7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a  
137 transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal  
138 Revenue Code as it exists at the time of liquidation;

139 8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited  
140 liability company upon a merger or consolidation to which two or more such entities are parties, or in a  
141 reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

142 9. To a subsidiary corporation from its parent corporation, ~~or~~ from a subsidiary corporation to a  
143 parent corporation, *to a subsidiary limited liability company from its parent limited liability company, or*  
144 *from a subsidiary limited liability company to a parent limited liability company,* if the transaction  
145 qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

146 10. To a partnership or limited liability company, when the grantors are entitled to receive not less  
147 than 50 percent of the profits and surplus of such partnership or limited liability company, provided that  
148 the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the  
149 company to avoid recordation taxes;

150 11. From a partnership or limited liability company, when the grantees are entitled to receive not less  
151 than 50 percent of the profits and surplus of such partnership or limited liability company, provided that  
152 the transfer from a limited liability company is not subsequent to a transfer of control of the assets of  
153 the company to avoid recordation taxes;

154 12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of  
155 the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust  
156 instrument, when no consideration has passed between the grantor and the beneficiaries; and to the  
157 original beneficiaries of a trust from the trustees holding title under a deed in trust;

158 13. When the grantor is the personal representative of a decedent's estate or trustee under a will or  
159 inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to  
160 secure the payment of money or the performance of an obligation, and the sole purpose of such transfer  
161 is to comply with a devise or bequest in the decedent's will or to transfer title to one or more  
162 beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust  
163 instrument;

164 14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal  
165 Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect  
166 or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise  
167 would be unable to afford to buy a home through conventional means;

168 15. Pursuant to any deed of partition, or any combination of deeds simultaneously executed and  
169 having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; ~~or~~

170 16. Pursuant to any deed transferring property pursuant to a decree of divorce or of separate  
171 maintenance or pursuant to a written instrument incident to such divorce or separation; *or*

172 17. *To a limited liability company or partnership from a commonly owned limited liability company*  
173 *or partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue*  
174 *Code, as amended.*

175 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

176 1. Given by an incorporated college or other incorporated institution of learning not conducted for  
177 profit;

178 2. Given by the trustee or trustees of a church or religious body or given by an incorporated church  
179 or religious body, or given by a corporation mentioned in § 57-16.1;

180 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or  
181 operating a hospital or hospitals not for pecuniary profit;

- 182 4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a  
183 debt payable to any other local governmental entity or political subdivision;
- 184 5. Securing a loan made by an organization described in subdivision A 14; or
- 185 6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower  
186 whose household income does not exceed 80 percent of the area median household income established  
187 by the U.S. Department of Housing and Urban Development, for the purpose of erecting or  
188 rehabilitating a home for such borrower, including the purchase of land for such home.
- 189 C. The tax imposed by § 58.1-802 shall not apply to any:
- 190 1. Transaction described in subdivisions A 6 through 13, 15, and 16;
- 191 2. Instrument or writing given to secure a debt;
- 192 3. Deed conveying real estate from an incorporated college or other incorporated institution of  
193 learning not conducted for profit;
- 194 4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town,  
195 district, or other political subdivision thereof;
- 196 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other  
197 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable  
198 pursuant to § 58.1-802; or
- 199 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an  
200 incorporated church or religious body, or from a corporation mentioned in § 57-16.1.
- 201 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or  
202 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed  
203 shall state therein that it is a deed of gift.
- 204 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the  
205 Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.
- 206 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808, and 58.1-814 shall not  
207 apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or  
208 (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of  
209 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,  
210 natural, or open space areas.
- 211 G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees  
212 mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.
- 213 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual  
214 right, if the release is contained within a single deed that performs more than one function, and at least  
215 one of the other functions performed by the deed is subject to the recordation tax.
- 216 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,  
217 release, or other document recorded in connection with a concession pursuant to the Public-Private  
218 Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.
- 219 J. No recordation tax shall be required for the recordation of any transfer on death deed or any  
220 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act  
221 (§ 64.2-621 et seq.) when no consideration has passed between the parties.