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HOUSE BILL NO. 288

Offered January 10, 2018

Prefiled January 3, 2018

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, *and if the transfer to or from a limited liability company or limited liability partnership is not a precursor or subsequent to a transfer of control of the assets of the company to avoid recordation taxes;*

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

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59 secure the payment of money or the performance of an obligation, and the sole purpose of such transfer
60 is to comply with a devise or bequest in the decedent's will or to transfer title to one or more
61 beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust
62 instrument;

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

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

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

71 *17. To a limited liability company or limited or general partnership from a commonly owned limited*
72 *liability company or limited or general partnership, if the transaction qualifies for nonrecognition of*
73 *gain or loss under the Internal Revenue Code, as amended, and if the transfer is not a precursor or*
74 *subsequent to a transfer of control of the assets of the company to avoid recordation taxes.*

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

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

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

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

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

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

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

89 7. Given by any entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.

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

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

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

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

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

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

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

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

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

107 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and
108 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The
109 Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy,
110 where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of
111 preserving wilderness, natural, or open space areas.

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

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

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

120 J. No recordation tax shall be required for the recordation of any transfer on death deed or any

121 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
 122 (§ 64.2-621 et seq.) when no consideration has passed between the parties.

123 **§ 58.1-811. (Contingent effective date) Exemptions.**

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

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

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

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

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

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

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

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

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

146 9. To a subsidiary corporation from its parent corporation, ~~or~~ from a subsidiary corporation to a
 147 parent corporation, *to a subsidiary limited liability company or limited liability partnership from its*
 148 *parent limited liability company or limited liability partnership, or from a subsidiary limited liability*
 149 *company or limited liability partnership to a parent limited liability company or limited liability*
 150 *partnership, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue*
 151 *Code, as amended, and if the transfer to or from a limited liability company or limited liability*
 152 *partnership is not a precursor or subsequent to a transfer of control of the assets of the company to*
 153 *avoid recordation taxes;*

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

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

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

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

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

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

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

180 17. *To a limited liability company or limited or general partnership from a commonly owned limited*
 181 *liability company or limited or general partnership, if the transaction qualifies for nonrecognition of*

182 *gain or loss under the Internal Revenue Code, as amended, and if the transfer is not a precursor or*
183 *subsequent to a transfer of control of the assets of the company to avoid recordation taxes.*

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

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

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

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

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

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

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

198 7. Given by any entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.

199 C. The tax imposed by § 58.1-802 shall not apply to any:

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

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

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

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

206 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other
207 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
208 pursuant to § 58.1-802; or

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

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

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

216 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
217 apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or
218 (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of
219 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,
220 natural, or open space areas.

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

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

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

229 J. No recordation tax shall be required for the recordation of any transfer on death deed or any
230 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
231 (§ 64.2-621 et seq.) when no consideration has passed between the parties.