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HOUSE BILL NO. 339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on March 1, 2016)

(Patron Prior to Substitute—Delegate Pogge)

A *BILL to amend and reenact §§ 58.1-802 and 58.1-811, as it is currently effective and as it may become effective, of the Code of Virginia, relating to recordation tax; exemption.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-802 and 58.1-811, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-802. Additional tax paid by grantor; collection.

A. In addition to any other tax imposed under the provisions of this chapter, a tax is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person, by such purchaser's direction. The rate of the tax, when the consideration or value of the interest, whichever is greater, exceeds \$100, shall be 50 cents for each \$500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. No increase in the city or county recordation tax authorized by § 58.1-814 shall be deemed authorized by this section.

The tax imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the tax imposed by this section. *No tax shall be imposed pursuant to this section if the grantor is a locality at a judicial sale of tax-delinquent property conducted pursuant to Article 4 (§ 58.1-3965 et seq.) of Chapter 39.*

No such deed, instrument, or other writing shall be admitted to record unless (i) the amount of the consideration is stated on the first page of the document to be admitted to record and (ii) certification of the clerk of the court wherein first recorded has been affixed thereto that the tax imposed by this section has been paid. The clerk shall include within the certificate the amount of such tax collected thereon.

B. Taxes imposed by this section shall be collected as provided in § 58.1-812 and the clerk shall return taxes collected hereunder one-half into the state treasury and one-half into the treasury of the locality.

The local portion of the tax imposed by this section on property ~~which~~ *that* is located in more than one jurisdiction shall be collected by the clerk in proportion to the value of the property located in each such locality when recorded therein.

Every clerk of court collecting taxes under this section for the county or city ~~which~~ *that* he serves shall be entitled to compensation for such service at five percent of the amount so collected and paid.

§ 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

60 parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal
61 Revenue Code as amended;

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

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

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

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

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

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

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

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

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

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

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

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

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

99 1. Transaction described in subdivisions A 6 through 13;

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

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

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

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

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

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

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

115 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and
116 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The
117 Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy,
118 where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of
119 preserving wilderness, natural, or open space areas.

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

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

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

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

§ 58.1-811. (Contingent effective 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, 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 beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

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

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

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

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church

183 or religious body, or given by a corporation mentioned in § 57-16.1;

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

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

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

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

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

194 1. Transaction described in subdivisions A 6 through 13;

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

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

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

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

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

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

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

210 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
211 apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or
212 (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of
213 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,
214 natural, or open space areas.

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

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

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

223 J. No recordation tax shall be required for the recordation of any transfer on death deed or any
224 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
225 (§ 64.2-621 et seq.) when no consideration has passed between the parties.