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SENATE BILL NO. 1610

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 23, 2019)

(Patron Prior to Substitute—Senator McDougle)

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 for property transferred by deed of distribution.

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 dates) 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;

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;

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60 15. 14. When it is a deed of partition, or any combination of deeds simultaneously executed and
61 having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

62 16. 15. When it is a deed transferring property pursuant to a decree of divorce or of separate
63 maintenance or pursuant to a written instrument incident to such divorce or separation.

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

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

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

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

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

73 5. Securing a loan made by an organization described in subdivision A 14 13;

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

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

79 C. The tax imposed by § 58.1-802 and the fee imposed by § 58.1-802.3 shall not apply to any:

80 1. Transaction described in subdivisions A 6 through 13, 15 12, 14, and 16 15;

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

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

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

86 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other
87 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
88 pursuant to § 58.1-802 or subject to the fee under § 58.1-802.3; or

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

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

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

96 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.3, 58.1-807, 58.1-808, and
97 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The
98 Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy,
99 where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of
100 preserving wilderness, natural, or open space areas.

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

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

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

109 J. No recordation tax shall be required for the recordation of any transfer on death deed or any
110 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
111 (§ 64.2-621 et seq.) when no consideration has passed between the parties.

112 K. *No recordation tax levied pursuant to this chapter shall be required for the recordation of any*
113 *deed of distribution when no consideration has passed between the parties. Such deed shall state therein*
114 *that it is a deed of distribution. As used in this subsection, "deed of distribution" means a deed*
115 *conveying property from an estate or trust (i) to the original beneficiaries of a trust from the trustees*
116 *holding title under a deed in trust; (ii) the purpose of which is to comply with a devise or bequest in*
117 *accordance with a dispositive provision in the trust instrument; (iii) that carries out the exercise of a*
118 *power of appointment; or (iv) is pursuant to the exercise of the power under the Uniform Trust*
119 *Decanting Act (§ 64.2-779.1 et seq.).*

120 **§ 58.1-811. (Contingent effective dates) Exemptions.**
121

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 ~~15.~~ Pursuant to any deed transferring property pursuant to a decree of divorce or of separate
172 maintenance or pursuant to a written instrument incident to such divorce or separation.

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

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

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

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

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

182 5. Securing a loan made by an organization described in subdivision A 14 13;

183 6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower
184 whose household income does not exceed 80 percent of the area median household income established
185 by the U.S. Department of Housing and Urban Development, for the purpose of erecting or
186 rehabilitating a home for such borrower, including the purchase of land for such home; or
187 7. Given by any entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56.
188 C. The tax imposed by § 58.1-802 shall not apply to any:
189 1. Transaction described in subdivisions A 6 through ~~13~~, ~~15~~ 12, 14, and ~~16~~ 15;
190 2. Instrument or writing given to secure a debt;
191 3. Deed conveying real estate from an incorporated college or other incorporated institution of
192 learning not conducted for profit;
193 4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town,
194 district, or other political subdivision thereof;
195 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other
196 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
197 pursuant to § 58.1-802; or
198 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an
199 incorporated church or religious body, or from a corporation mentioned in § 57-16.1.
200 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or
201 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
202 shall state therein that it is a deed of gift.
203 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
204 Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.
205 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
206 apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or
207 (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of
208 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,
209 natural, or open space areas.
210 G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees
211 mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.
212 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual
213 right, if the release is contained within a single deed that performs more than one function, and at least
214 one of the other functions performed by the deed is subject to the recordation tax.
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216 release, or other document recorded in connection with a concession pursuant to the Public-Private
217 Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.
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219 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
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222 *deed of distribution when no consideration has passed between the parties. Such deed shall state therein*
223 *that it is a deed of distribution. As used in this subsection, "deed of distribution" means a deed*
224 *conveying property from an estate or trust (i) to the original beneficiaries of a trust from the trustees*
225 *holding title under a deed in trust; (ii) the purpose of which is to comply with a devise or bequest in*
226 *the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in*
227 *accordance with a dispositive provision in the trust instrument; (iii) that carries out the exercise of a*
228 *power of appointment; or (iv) is pursuant to the exercise of the power under the Uniform Trust*
229 *Decanting Act (§ 64.2-779.1 et seq.).*