# Proposed MD Legislation Could Enhance Asset Protection

By former Associate Allison Lee

In many cases, the complexities and considerations of asset protection suggest that ownership of certain assets by different entities is the preferred technique. In fact, separating or isolating assets is often regarded as a fundamental part of a well-conceived asset protection plan.

It is unfortunate, therefore, that Maryland's recordation and transfer taxes - imposed on the recording of deeds under Sections 12-308 and 13-207 of the Tax-Property Article of the Annotated Code of Maryland - besides being among the highest in the region, create a serious challenge to implementing an asset protection plan when Maryland real estate is involved.

We should keep the faith, however, since a solution to this obstacle may be at hand.

In March of 2012, the Maryland legislature (House Bill 959 and Senate Bill 845) will consider legislation that would exempt the transfer of real property between related entities from both recordation and state transfer taxes. For example, the transfer of real property between a parent partnership or limited liability company and its subsidiary, or between subsidiaries wholly owned by the same parent partnership, would be exempt under specified circumstances. If enacted, these provisions could be combined with the existing real estate enterprise exemption from these taxes to permit a number of planning opportunities that heretofore have not been allowed under Maryland law.

Maryland is not the only jurisdiction in the region considering legislation that would provide greater flexibility for local business and estate plans through a reduction and/or elimination of certain costs associated with transferring legal title to real estate. The District of Columbia recently enacted a law designed to create a better business climate which would have a similar effect as the proposed Maryland legislation. The Revised Uniform Limited Liability Company Act as enacted by the new Title 29 has a "series" provision that permits the formation of series limited liability companies. A Series LLC offers the ability to transfer property without transferring legal title, thus reducing the costs generally associated with transferring title (i.e., a reduction of transfer/recordation taxes). Only a handful of jurisdictions have adopted statutes permitting the formation of a Series LLC; there is no indication that Maryland is considering enacting such a law.

While there is no guarantee that the proposed Maryland legislation will become law, we will continue to monitor the legislation and urge our clients to do the same using both our firm's web site and the Maryland General Assembly Web site (http://mlis.state.md.us/), both of which are updated regularly. If the proposed legislation does pass, it is likely to open up estate and business planning opportunities which may have proved to be cost-prohibitive under the current statutory regime. Feel free to contact us with any general questions about the proposed legislation or specific inquiries as to how it could be applicable to existing or future asset protection plans.

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