

# SENATE BILL 556

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2lr1409

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By: **Senator Getty**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 27, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Real Property – Restrictions on Use of Property – Separate Parcels**

3 FOR the purpose of establishing that the grant by a deed of a certain restriction  
4 governing two or more separate parcels of land owned by the same grantor  
5 under separate deeds does not consolidate the parcels for any other purpose  
6 under certain circumstances, unless the deed granting the restriction expressly  
7 provides otherwise; establishing that, unless the deed granting the restriction  
8 expressly provides otherwise, a certain parcel of land subject to a certain  
9 restriction may be conveyed separately without the approval of the grantor but  
10 shall remain subject to the restriction; establishing that, notwithstanding any  
11 other provision of law, a certain conveyance of a separate parcel is not a  
12 subdivision or off-conveyance; requiring the owner of a separate parcel subject  
13 to a certain restriction to notify the grantee of the restriction at least a certain  
14 time before conveying the parcel; establishing that, notwithstanding any other  
15 provision of law, a certain parcel of land shall be deemed a separate parcel  
16 under certain circumstances; and generally relating to restrictions on the use of  
17 property for certain purposes.

18 BY repealing and reenacting, with amendments,  
19 Article – Real Property  
20 Section 2–118  
21 Annotated Code of Maryland  
22 (2010 Replacement Volume and 2011 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Real Property**

4 2–118.

5 (a) Any restriction prohibiting or limiting the use of water or land areas, or  
6 any improvement or appurtenance thereto, for any of the purposes listed in subsection  
7 (b) of this section whether drafted in the form of an easement, covenant, restriction, or  
8 condition, creates an incorporeal property interest in the water or land areas, or the  
9 improvement or appurtenance thereto, so restricted, which is enforceable in both law  
10 and equity in the same manner as an easement or servitude with respect to the water  
11 or land areas, or the improvement or appurtenance thereto, if the restriction is  
12 executed in compliance with the requirements of this article for the execution of deeds  
13 or the Estates and Trusts Article for the execution of wills.

14 (b) A restriction as provided in subsection (a) of this section may be for any of  
15 the following purposes:

16 (1) Construction, placement, preservation, maintenance in a  
17 particular condition, alteration, removal, or decoration of buildings, roads, signs,  
18 billboards or other advertising, utilities, or other structures on or above the ground;

19 (2) Dumping or placing of soil or other substance or material as  
20 landfill, or dumping or placing of trash, waste, or other materials;

21 (3) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or  
22 other material substance in a manner as to affect the surface or otherwise alter the  
23 topography of the area;

24 (4) Removal or destruction of trees, shrubs, or other vegetation;

25 (5) Surface use except for purposes of preserving the water or land  
26 areas, or the improvement or appurtenance thereto;

27 (6) Activities affecting drainage, flood control, water conservation,  
28 erosion control, soil conservation, or fish or wildlife habitat preservation;

29 (7) Preservation of exposure of solar energy devices; or

30 (8) Other acts or uses having any relation to the preservation of water  
31 or land areas or the improvement or appurtenance thereto.

32 (c) If the restriction is not granted for the benefit of any dominant tract of  
33 land, it is enforceable with respect to the servient land, both at law and in equity, as  
34 an easement in gross, and as such it is inheritable and assignable.

1           (D) (1) UNLESS THE DEED GRANTING THE RESTRICTION EXPRESSLY  
2 PROVIDES OTHERWISE, THE GRANT OF A RESTRICTION DESCRIBED IN  
3 SUBSECTION (A) OF THIS SECTION GOVERNING TWO OR MORE SEPARATE  
4 PARCELS OF LAND OWNED BY THE SAME GRANTOR UNDER SEPARATE DEEDS  
5 DOES NOT CONSOLIDATE THE PARCELS FOR ANY OTHER PURPOSE IF THE  
6 PARCELS ARE DESCRIBED SEPARATELY IN THE DEED GRANTING THE  
7 RESTRICTION.

8           (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUBJECT  
9 TO PARAGRAPH (4) OF THIS SUBSECTION, UNLESS THE DEED GRANTING THE  
10 RESTRICTION EXPRESSLY PROVIDES OTHERWISE, A PARCEL OF LAND  
11 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

12                   (I) MAY BE CONVEYED SEPARATELY WITHOUT THE  
13 APPROVAL OF THE GRANTEE OF THE RESTRICTION; BUT

14                   (II) SHALL REMAIN SUBJECT TO THE RESTRICTION.

15           (3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A  
16 CONVEYANCE OF A SEPARATE PARCEL UNDER THIS SUBSECTION IS NOT A  
17 SUBDIVISION OR OFF-CONVEYANCE.

18           (4) THE OWNER OF A SEPARATE PARCEL OF LAND SUBJECT TO A  
19 RESTRICTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION SHALL NOTIFY  
20 THE GRANTEE OF THE RESTRICTION AT LEAST 60 DAYS BEFORE CONVEYING  
21 THE PARCEL.

22           (5) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A  
23 PARCEL OF LAND THAT IS LESS THAN 50 ACRES SHALL BE DEEMED A SEPARATE  
24 PARCEL FOR PURPOSES OF THIS SECTION IF IT ADJOINS ANOTHER PARCEL  
25 THAT IS SUBJECT TO A RESTRICTION DESCRIBED IN SUBSECTION (A) OF THIS  
26 SECTION THAT IS THE SAME OR MORE STRINGENT THAN THE RESTRICTION  
27 GOVERNING THE PARCEL.

28           [(d)] (E) A restriction provided for by this section may be extinguished or  
29 released, in whole or in part, in the same manner as other easements.

30           [(e)] (F) If any grant, reservation, dedication, devise, or gift of any nature  
31 which clearly indicates the maker's intention to subject any interest or estate in  
32 property to public use for the preservation of agricultural, historic, or environmental  
33 qualities fails to specify a grantee, donee, legatee, or beneficiary to receive the same or  
34 specifies a grantee, donee, legatee, or beneficiary who is not legally capable of taking  
35 the interest or estate, it passes to the Maryland Agricultural Land Preservation

1 Foundation, the Maryland Historical Trust, or the Maryland Environmental Trust in  
2 any proceedings under §§ 14–301 and 14–302 of the Estates and Trusts Article.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2012.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.