NEWSLETTER
Trusts and Estates

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Message from the Chair

Jennifer L. Schooley, Chair

On behalf of the Board of Governors of the Virginia State Bar Trust and Estates Section, I am pleased to introduce the Spring/Summer 2020 edition of our Trusts and Estates Newsletter. Since our last publication in the Fall of 2019, much has changed. Most of us have adjusted our practice in response to the COVID-19 crisis and have pivoted to a work environment that is remote and reliant upon technology to connect us with our clients and colleagues. We have risen to challenge of creating home offices out of dining rooms, checking for updates on court closures and re-openings, having will signings in parking lots or on employee-break picnic tables, and politely asking clients to provide their own pens. Likewise, the public and some of our individual clients have faced illness or reductions in pay, many business clients have clamored and clawed for PPP loans or struggled to understand executive orders, and our non-profit clients have suffered closures and reduced revenues.

In our first article, "When May Non-Profit Organizations Draw from Endowments to Meet Needs In Times of Crisis," Harold Johnson and Christine Nguyen Piersall provide an overview of Virginia law governing restrictions on charitable funds and outline the legal obligations of and options for organizations seeking to use assets to assist communities in the wake of COVID-19. In our second article, "A Brave New (Electronic) Will," Mark V. Pascucci provides a comprehensive review of the Uniform Electronic Wills Act and analyzes whether its passage will pave the way for electronic wills in Virginia and other states. Our third and fourth articles address core issues in estate planning and administration. Kathi L. Ayers' article, "Review of Recent Legislation to Reduce Inconsistencies in Treatment of Wills and Revocable Trusts," summarizes the legislative response to inconsistencies between wills and trusts and provides guidance for drafting attorneys. In "Overlapping Practice Areas," Peter Holstead Davies, Jonathan E. Davies, and David B. Bice review the intersection between family law and estate planning and administration and note areas in which practitioners should be cognizant of both.

I extend my gratitude to Vanessa Stillman, our Newsletter Editor, and Kevin Stemple, our Assistant Newsletter Editor, for their work in sourcing authors, editing, and producing this Spring/Summer edition of our section newsletter. We encourage anyone desiring to contribute to the Fall 2020 newsletter to contact Kevin Stemple who will serve as Newsletter Editor for the 2020-2021 year. *(continued on page 5)*

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When May Non-Profit Organizations Draw from Endowments to Meet Needs in Times of Crisis?

By Harold Johnson and Christine Nguyen Piersall

Given the economic uncertainty caused by COVID-19, charitable organizations may see a significant decrease in donations in the coming months and years. Such reductions in giving will make it difficult for charitable entities to fund their operations. At the same time, the pandemic is causing increased demand for charitable programs and services in communities throughout the Commonwealth. This increased demand may push charitable organizations to devote more of their resources to meet the current needs of the communities they serve, whether by spending down the principal of endowments or by directing such funds to a new purpose in order to meet an acute need in the community.

Though laudable, the desire to address acute needs in the community must be balanced with thoughtful deliberation by the custodians of charitable assets. Before seeking to spend down the principal of an endowment or to alter the charitable purpose of donated funds, organizations must carefully review the restrictions placed on specific endowment funds and be mindful of applicable law regarding the maintenance and deployment of charitable endowments. This article provides an overview of Virginia law governing the restrictions on charitable funds with the goal of helping organizations better understand their legal obligations and their options for using assets to assist communities in crisis as a result of COVID-19.

What statutes control the management of charitable funds in Virginia?

In general, the assets of a charitable institution are held in trust for the public to be used for the purposes established by the governing documents of the charitable institution, the gift made to such charitable institution, or other applicable law. VA. Code §2.2-507.1. Given this element of "public trust," the Attorney General of Virginia has both the authority and the responsibility to make sure that a charitable institution maintains and expends restricted gifts and funds in accordance with the intent for which such gifts were made. *Id*.

The Attorney General's authority over the assets of a charitable corporation is further defined by Virginia's version of the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"). VA. Code §64.2-1100, *et seq*. UPMIFA establishes guidelines for a charitable institution's management and expenditure of endowment funds, and it sets forth the mechanisms by which restrictions on endowment funds can be released.

What is an "endowment fund"?

Under UPMIFA, an "institutional fund" is broadly defined to include any fund held by an organization "exclusively for charitable purposes."[1] *Id*. UPMIFA defines "endowment fund" as a fund that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis.[2] *Id*. In other words, an endowment fund is any fund that is established for a particular use and cannot be spent on an institution's general operations.

Notably, the rules for releasing restrictions on an endowment fund under UPMIFA apply only where a donor gives funds to the institution with certain restrictions or for a specific purpose. Where an institution itself designates unrestricted funds for a specific purpose (such as "Board-restricted funds" or "quasi-endowment funds"), those funds are not subject to the rules and limitations of UPMIFA, and the institution can unilaterally redirect the use of those "Board-restricted funds."

How can restrictions on an endowment fund be released or modified?

UPMIFA provides specific guidance regarding a charitable institution's ability to re-purpose restricted gifts. VA. CODE § 64.2-1104.

First, the restrictions on any endowment fund may be released if the institution obtains written consent from the original donor(s) of such funds. Of course, it is not unusual for multiple donors to support a single endowment fund. While no Virginia cases have considered or decided what rules apply in such circumstances, caution dictates that all of the donors to a single fund must provide written consent in order to redirect that fund to another purpose. Even where such consent is obtained, the new purpose to which such funds are directed must be within the general charitable purpose of the institution. (Thus, for example, a fund established to provide support to victims of domestic violence cannot be redirected to provide support for the arts or to open a shelter for lost animals.)

Where the institution is unable to obtain donor consent (because one or more donors are deceased or will not provide consent), an institution may seek to release or modify a restriction upon an endowment in one of three ways. The appropriate mechanism for seeking such release or modification generally depends upon the size and age of the fund in question. Notably, the release or modification of a restricted fund is not simply a matter of the institution determining, in the exercise of its discretion, that the money could be better spent in another manner. Rather, each of the mechanisms for release or modification of a restricted endowment requires the institution to demonstrate that the purpose or restriction on the endowment fund has become unlawful, impracticable, impossible or wasteful.

a. **"Small and Old Funds" - Notice to the Attorney General.** For funds established more than 20 years ago, and with an aggregate current market value of less than $50,000, the institution can simply notify the Office of the Attorney General of its intent to release or modify the particular purpose of or restriction on the fund. Such notification should be provided in writing, and it should inform the Attorney General of the fund's history, its purpose and the nature of the proposed expenditures or modifications. If the Attorney General does not object to such modification within 60 days, then the institution can implement the modification and put the funds to another use, so long as that use is consistent with the charitable purposes expressed in the gift instrument.

b. **Funds under $250,000 - Consent of the Attorney General.** For funds with an aggregate current market value of $50,000 or more but less than $250,000, an institution may request the Attorney General to consent to the modification of the particular purpose or restriction on the use of the fund. Again, the funds must be redirected in a manner consistent with the charitable purposes expressed in the gift instrument.

c. **Any and All Funds – Court Order.** An institution's final option, which is required for endowment funds of $250,000 or more, is to petition the local circuit court to modify the restrictions on such funds and authorize the funds to be put to another purpose consistent with the charitable purposes expressed in the gift instrument. The institution must notify the Attorney General of its filing of the petition for modification, and the Attorney General must have an opportunity to be heard by the court before the court renders its decision. Thus, while not required for such funds, it makes sense to seek the Attorney General's consent to a proposed modification before filing a petition in circuit court.

What are the practical steps that charitable institutions should undertake when seeking release or modification of endowment funds?

Again, under any of the above mechanisms for release or modification of a restricted endowment fund, the institution must demonstrate that the restric-

tion on the endowment fund has become unlawful, impracticable, impossible or wasteful. These terms are not defined in UPMIFA, and they are generally left to the discretion of the Attorney General or court. For practical purposes in the context of the COVID-19 pandemic, this requirement likely means that a charitable institution will have to convince either the Attorney General or a court that a community's specific need is so great that the continued preservation of the restrictions on an endowment fund would be wasteful. Alternatively, if decreased donations put the charitable organization's existence at risk, the organization may persuade the appropriate authority that the continued restrictions on the use of an endowment fund would be impracticable or impossible. For example, a charity will not be able to meet the purpose of an endowment fund if the charity itself becomes insolvent and cannot pay its bills.

It is also worth noting the requirement in UPMIFA that, where restrictions are released or modified, the funds should be directed to a use "consistent with the charitable purposes expressed in the gift instrument." This means that any request to the Attorney General or court for a release or modification of funds should include a discussion of the charitable institution's planned use of such funds. The Attorney General and/or court will be far more likely to authorize the release or modification of a restriction if it can determine that the alternate use of such funds is appropriate and within the general mission of the institution. Thus, the charitable institution should be prepared to provide some level of detail regarding how any restricted endowment funds could be put to better use in the present pandemic when approaching the Attorney General or court with such requests. Rather than simply asking to have restricted endowment funds released to be treated as unrestricted, the requests to the Attorney General and/or court should provide some examples of how those funds would be spent once modified.

Under normal circumstances, a charitable institution should contact the Attorney General (through his deputy staff) and arrange a meeting to explain why the release or modification of restrictions on an endowment fund is warranted. Such a meeting can be invaluable in laying the groundwork for the formal paperwork and consents to follow. However, given the confines of social distancing, remote working and the demands on personnel both at charitable organizations and within the Office of the Attorney General, arranging such meetings may be difficult. Therefore, written communications with the Office of the Attorney General should be thorough and should include copies of pertinent paperwork related to the endowment in question, such as donative instruments or other documents governing the management and expenditure of the fund.

If an entity has multiple endowments that it wishes to modify and/or spend down, it is easiest to place those selected endowment funds into categories or "buckets" based on the different mechanisms for releasing restrictions under UPMIFA. Namely, the endowment funds should be classified as:

1. Funds with living donors who consent to modification of the fund; and
2. Funds without living or consenting donors:
    a. Small and Old funds;
    b. Funds of $50,000 or more and less than $250,000; and
    c. Funds of $250,000 or more.

For the "living donor" funds, the charitable institution should seek to obtain written consents signed by those donors. The written consents should identify the need for a release of the restrictions on a given fund. If possible, and to avoid confusion or subsequent objections from living donors, the written consents should include a statement of the purposes to which the funds will be put upon the release of any restrictions.

For the "Small and Old" funds where donor consent is not feasible, the charitable institution should prepare individual letters to the Attorney General's office regarding each such fund. The letters should identify the need for a release of the restrictions on such funds and include a statement of the purposes to which the funds will be put upon the release of any restrictions. Rather than waiting 60 days for the expiration of the Attorney General's opportunity to object to such releases, the charitable institution may want to be proactive and ask the Attorney General

to consent to the release or modification prior to the 60-day deadline.

For funds containing less than $250,000 where donor consent is not feasible, the charitable institution should prepare individual letters to the Attorney General's office along the same lines as the letters regarding "Small and Old" funds above. However, such letters must seek the Attorney General's consent, as there is no automatic release of restrictions after 60 days.

For funds valued at $250,000 or more, the charitable institution must prepare a petition to the court seeking release of the restrictions on each such fund. Prior to filing such petition with the court, the charitable institution should send a copy of the petition to the Attorney General and solicit the Attorney General's consent to the requested modifications. The court-approval process will be much smoother if the Attorney General is on board with the release or modification of restrictions prior to the petition being filed.

The COVID-19 pandemic has created acute needs and crises of various types in almost every community in Virginia. The economic uncertainty caused by economic shutdowns brings great risk for charitable institutions. A thoughtful and deliberate approach that takes into account the mandates of Virginia law may allow charitable organizations to continue serving their missions in these trying times. ⚜

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(Endnotes)

1. This does not include "program related assets" such as buildings or other physical property used to accomplish the organization's charitable purpose. *Id*.

2. UPMIFA provides that, under certain circumstances, a portion of the income earned on an endowment fund will not be subject to the endowment's restrictions and may be directed toward an institution's general operations. Further analysis of that issue is beyond the scope of this article. ⚜

(Chair Message Continued from page 1)

Before closing this introduction to the newsletter and completing my year as Chair of our section, I must express my utmost gratitude to the lawyers who assisted with our section's major initiative of the year: to provide an additional topical resource to the public on managing the probate process. Many of you may be aware that our section maintains "Wills in Virginia" on the VSB website. We are now on the cusp of adding "Overview of Probate in Virginia" to provide general information to members of the public on the probate process. Countless hours were spent creating this publication by Ellis Pretlow and Brooke Tansill, who responded to my call to volunteer, along with Scott Golightly and Mark Pascucci, members of the Board of Governors of our section, and Vanessa Stillman and Kevin Stemple, our section's editors. My heartfelt thanks is given to each of them for taking interest in and playing an integral role in producing the content, and to Scott Golightly for editing and coalescing the various authors' contributions. The publication may be found at vsb.org/site/publications/publications-home.

Jennifer L. Schooley
Section Chair ⚜

A Brave New (Electronic) Will

By Mark V. Pascucci

Will the passage of the Uniform Electronic Wills Act pave the way for electronic wills in Virginia and other states?

Covid-19 update: Since this article was written, the pandemic has caused Virginia practitioners to review and wrestle with Virginia's requirements for executing estate planning documents. The issues include: paper & ink execution vs. electronic execution, physical witness presence vs. electronic witness presence, and in-person notarization vs. remote notarization. Further muddying the water – Virginia has an electronic notary statute but no electronic Wills statute.

The legislative committee of the VBA (Wills, Trusts & Estates section) is aware of this and an "e-wills" statute is on its agenda for review.

Courts Approving Various Electronic Writings as Wills

For better or worse, we are living in an age of technology. At our fingertips we have computers, smartphones, tablets and other devices. An estimated 8 billion devices are now connected to the Internet, and Netflix binging has reached 250 million hours *per day*.[1] (In case you're curious, the most-watched show in Netflix history is currently *6 Underground*, at 83 million views.)[2]

The ease and convenience of these devices have given rise to the creation of electronic records purporting to be wills. Below are a few examples where courts have considered such records.

In a 2003 Tennessee case, the testator used a word processing program (e.g., Microsoft Word) to type his will. He then typed his signature in cursive font, in the presence of two witnesses. He then printed the will (which contained his typed signature) and the two witnesses signed the hard copy. The will was deemed valid.[3]

In a 2013 Ohio case, a will was typed on a Samsung Galaxy tablet and electronically signed by the testator and two witnesses using the tablet's stylus. The will (as saved on the tablet) was deemed valid and met the statutory requirement to be "in writing."[4]

In a 2018 Michigan case, the testator committed suicide – and left a handwritten note directing the recipient to an electronic note on his phone titled "Last Note." The note included directions for disposing of his property, and was deemed a valid will under Michigan's harmless error statute.[5]

States Passing E-wills Legislation

States have been active in recent years in passing e-wills legislation. Nevada, far ahead of the curve, was the first state to modernize the world's second oldest profession, passing an e-wills statute in 2001 (which it revised in 2017).[6] Recently, Florida, Indiana and Arizona have also passed e-wills legislation. (Indiana's statute also references electronic powers of attorney and trusts).[7] A number of other states have also considered e-wills legislation, including Virginia, New Hampshire, Texas and the District of Columbia.

The Uniform Electronic Wills Act

This trend toward e-wills caused the Uniform Law Commission (the "ULC") to begin drafting the Uniform Electronic Wills Act (the "Act"). The Act, approved at the ULC's annual meeting in July 2019,

is relatively short – 12 sections totaling 19 pages, including comments.[8]

> The ULC's webpage describes the Act's purpose:
> The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect . . . Since 2000, the Uniform Electronic Transactions Act (UETA) [which Virginia has enacted at Va. Code Ann. § 59.1-479 et seq.] and a similar federal law, E-SIGN, have provided that a transaction is not invalid solely because the terms of the contract are in electronic format. But UETA and E-SIGN both contain an express exception for wills . . . Under the new Electronic Wills Act, the testator's electronic signature must be witnessed contemporaneously . . . States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.[9]

Key Provisions of the Uniform Electronic Wills Act

Execution and Self-Proving of Electronic Wills

Sections 5 and 8 of the Act set forth requirements for the execution and self-proving of e-wills; these echo the formalities of traditional wills.

Per the Act, an e-will must:

- Be readable as text (no audio wills, no "home video" wills);
- Be signed by the testator, or on behalf of the testator by someone in the testator's physical presence; and
- Be signed by two witnesses, in either the physical or electronic presence of the testator, or by a notary.

In addition, to be self-proving, the e-will and self-proving affidavit must be executed simultaneously.

Notably, the Act diverges from traditional will law in the timing of the self-proving affidavit; Virginia (and many other states) allow a traditional will to be self-proved "at any subsequent date,"[10] but the ULC's comment to Section 8 of the Act provides that the Act "does not permit the execution of a self-proving affidavit for an electronic will other than at the time of execution of the electronic will." This is intended to help mitigate the risk of a fraudulent e-will signature. The Act also states that extrinsic evidence may be used to establish the testator's intent in signing the e-will, e.g., a picture or audio-visual recording of the testator signing his e-will.

What is an electronic signature?

What constitutes a "signature" in an electronic document? Let's review the two relevant bodies of law: the Act (remember, Virginia has not yet adopted it) and Virginia's UETA. The Act's definition of "sign" broadly provides "to execute or adopt a tangible symbol . . ."[11] The comments to Section 5 of the Act state that a "typed signature in a cursive font, or a pasted electronic copy of a signature" would both suffice, and "as e-signing develops, other types of symbols or processes may be used . . ."

Virginia's UETA defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."[12]

Electronic vs. Physical Presence of Witnesses

The ULC's drafting committee weighed this issue and decided in favor of ensuring convenience and flexibility with remote attestation. In a draft of the Act dated January 22, 2019, the committee noted a few reasons why the physical presence of witnesses may not be critical: 1) will substitutes don't typically require witnesses (e.g., beneficiary designations); 2) law firm employees witness numerous wills and may be unable to recollect an individual testator's capacity; and 3) the harmless error doctrine allows a court to give effect to a will not properly witnessed.[13] (Virginia has adopted the harmless error doctrine at Va. Code Ann. § 64.2-404).

Choice of Law

Section 4 of the Act "reflects the policy that a will valid where the testator was physically located should be given effect using the law of the state where executed. The Act does not require a state to give effect to a will executed by a testator using the law of another state unless the testator resides, is domiciled, or is physically present in the other state when the testator executes the will."

Example – Choice of Law

Harry lives in Massachusetts, a state which has not enacted an e-wills statute. Harry, while in Massachusetts, remotely executes an e-will under Nevada law. That e-will will be valid in Nevada (which allows a remote testator), but not in Massachusetts. However, if Massachusetts enacts e-will legislation, Harry's e-will should then be valid in Massachusetts. Alternatively, if Harry had traveled to Nevada and executed an e-will while physically present in Nevada, his e-will should also be valid in Massachusetts, because it was valid in the state in which he physically signed the will.

What if Harry had been a Nevada resident, executed a valid e-will and then moved to Massachusetts? Massachusetts should give effect to his e-will, because it was validly executed when Harry was in Nevada.

Revocation

Like traditional wills, e-wills may be revoked by a subsequent will or by a "physical act" of revocation upon the e-will. The preponderance standard applies as to intent to revoke. The Act discusses, but does not define, a "physical act," and it provides a few examples in its comments: deleting a file with the "click of a mouse," "smashing a flash drive with a hammer," requesting a third party custodian of the e-will to delete the e-will, and printing a paper copy of the e-will and writing "revoked" on it.

Revocation of One Applies to All

The Act follows traditional wills law and provides that revocation of one e-will original is effective to revoke all identical e-wills, just as revocation of an original traditional will revokes all duplicate originals.

Certification of Paper Copy

Section 9 of the Act allows an individual to reduce an electronic will to paper if the individual certifies the paper copy is complete, true and accurate. This is intended to facilitate the admission of the will to probate.

Electronic Signatures for Revocable Trusts

The Act intentionally does not address revocable trusts, despite their widespread use as will substitutes. In fact, the ULC drafting committee noted in a draft of the Act that the "UETA does not exclude inter vivos trusts, so this Act is limited to wills and does not cover inter vivos trusts or other estate planning documents."[14]

Can revocable trusts indeed be signed electronically? The ULC drafting committee appears to think so. However, and with due deference to those experts, let's review the scope of Virginia's UETA. It provides, "Except as otherwise provided in subsection (b), [which excludes wills, codicils and testamentary trusts] this chapter applies to electronic records and electronic signatures relating to a transaction."[15] The UETA then defines a "transaction" as "an action or set of actions occurring between two or more persons [including trusts] relating to the conduct of business, commercial, or governmental affairs."[16]

So, Virginia's UETA validates electronic signatures relating to the conduct of business, commercial or governmental affairs. The UETA's definition of "persons" does include trusts. But, is the creation of revocable trusts a "business" or "commercial" affair? Those terms are not defined in the UETA. Perhaps a future Virginia e-wills bill should clarify that electronic signatures are also valid for revocable trusts.

Virginia's Efforts to Pass E-Wills Legislation

Two e-will bills have been introduced in Virginia thus far. Both predate the Uniform Electronic Wills Act. HB 1643 was introduced by G. Manoli Loupassi in 2017; and in 2018, HB 1403 was introduced by Jeffrey L. Campbell. Neither bill made it out of committee. Incidentally, both bill sponsors are attorneys, although neither specializes in estate planning.

The bills were similar; below are distinguishing

features of the latter bill, HB 1403, as compared to the Act.

HB 1403

HB 1403 defined an electronic will as being "created and maintained in an electronic document." The e-will must be e-signed by the testator and two witnesses or a notary, in the presence of the testator.[17]

Like the Act, HB 1403 defined "presence" to include participation by audio-visual communication, and it expressly included execution of powers of attorney and advance medical directives.

HB 1403 added a concept not present in the Act; the e-will, to be self-proving, must be stored until probate with a "qualified custodian" who must be named in the e-will. The qualified custodian must also possess a visual record of the e-will's execution, and such visual record must also prove the identity of all of the signers of the will and be incorporated as part of the electronic record of the will.

What is a "qualified custodian?" HB 1403's definition appears to commercialize this position; it bars an heir or beneficiary from serving, and it requires the custodian to "consistently employ, and store electronic documents of electronic wills in, a system that protects electronic documents from destruction, alteration or unauthorized access and detects any changes to an electronic document."[18]

Much of HB 1403 related to the qualified custodian: who can serve, ceasing to serve, naming successors, providing access to e-wills, destroying e-wills in custody, turning over to probate, etc.

HB 1403 allows a choice for where to probate a will: (1) in the deceased's city or county of residence or (2) the domicile or registered office of the qualified custodian, if in the Commonwealth.

Concluding Thoughts and Preparing Your Practice for E-Wills

If e-wills haven't frightened you into retiring or shifting to personal injury, then consider:

How would e-wills change your estate planning and probate practice? Be prepared for remote witnessing, execution and notarization. What about probate of an e-will? Where can/should an e-will be probated? Could this expand your probate practice?

Could e-wills increase the commoditization of estate planning? Florida's e-wills statute passed in part due to efforts of a company called 'Willing' (a do-it-yourself online wills company). Its website (willing.com) states one can prepare a "complete estate planning package" and can "start for free, pay only when you print and sign."

Qualified custodians – business opportunity? This doesn't appear to be a ready industry. A Google search for "qualified custodian of a will" resulted in no relevant hits. This expertise will need to be developed if e-wills legislation proliferates. Will attorneys fill this role? Some of us already store physical wills; will we want to enter the realm of electronic document storage? Call your insurance carrier . . .

Encourage your staff to obtain their electronic notary commission, as per Va. Code Ann. § 47.1-6.1. Traditional notaries in Virginia may apply for this.[19] The Virginia Electronic Notarization Assurance Standard, published in 2013, provides guidance on electronic notarization, including notarization by webcam. It allows a notary to notarize without being in the physical presence of the signer.[20] ⚜

Mark Pascucci's *practice concentrates on estate planning and administration, family business succession, corporate transactions and elder law. His representation of individuals ranges from complex tax planning for high net worth clients to advice on elder law and public benefits for elderly and disabled clients. He has written and lectured on these subjects for continuing education for lawyers, accountants and other professionals. Mark also represents individuals and entities in controversies with the IRS. Prior to earning his law degree at William & Mary, Mark practiced as a Certified Public Accountant in Boston. Mark's goal is to consistently provide high quality service to his clients.*

(Endnotes)

1. *See Technology Facts and Stats* by Orleans Marketing, https://orleansmarketing.com/35-technology-facts-stats/ (last visited February 21, 2020).

2. *See Every Viewing Statistic Netflix Has Released So Far (February 2020)*, What's on Netflix, https://www.whats-on-netflix.com/news/every-viewing-statistic-netflix-has-released-so-far-february-2020/ (last visited February 21, 2020).

3. *Taylor v. Holt*, 134 S.W.3d 830 (Tenn. 2003).

4. *In Re: Estate of Javier Castro, Deceased*, No. 2013ES00140 (Ohio Ct. Com. Pl. June 19, 2013).

5. *In re Estate of Horton*, 925 N.W.2d 207 (Mich. 2018).

6. Nev. Rev. Stat. § 133.085 (2017).

7. Ind. Code § 29-1-22-1 (2019).

8. The Uniform Electronic Wills Act as promulgated by the National Conference of Commissioners on Uniform State Laws on November 20, 2019 is available online at https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8529b916-8ede-67e4-68eb-e0f7b1cb6528&forceDialog=0 (last visited February 21, 2020).

9. https://www.uniformlaws.org/committees/community-home?communitykey=a0a16f19-97a8-4f86-afc1-b1c0e051fc71&tab=groupdetails (last visited February 21, 2020).

10. Va. Code Ann. §§ 64.2-452 and 64.2-453.

11. Unif. Electronic Wills Act § 2.

12. Va. Code Ann. § 59.1-480.

13. Unif. Electronic Wills Act (Draft, January 22, 2019).

14. *Id*.

15. Va. Code Ann. § 59.1-481(a).

16. Va. Code Ann. § 59.1-480.

17. HB 1403: Electronic Wills, V.A. Legis. (2018).

18. *Id*.

19. *See A Handbook for Virginia Notaries Public*, published by the Office of the Secretary of the Commonwealth, available online at https://www.commonwealth.virginia.gov/media/governorvirginiagov/secretary-of-the-commonwealth/pdf/2017-December-15-revised-Handbook-.pdf (last visited February 21, 2020).

20. *See The Virginia Electronic Notarization Assurance Standard*, published by the Secretary of the Commonwealth, available online at https://www.sos.state.co.us/pubs/newsRoom/remoteNotarization/2017/VirginiaElectronicNotarizationAssuranceStandard.pdf (last visited February 21, 2020). ⚜

Review of Recent Legislation to Reduce Inconsistencies in Treatment of Wills and Revocable Trusts

By Kathi L. Ayers

The treatment of wills and revocable trusts varies by state and it is crucial that estate planning attorneys be familiar with the differences in the jurisdictions in which they practice. Like other states, Virginia's statutes concerning wills and those concerning revocable trusts were established separately and have evolved separately over time. The statutes pertaining to wills in Virginia came from English law[1] and those pertaining to revocable trusts were adopted much later, as trusts rose in popularity in the second half of the twentieth century. As a result of the separate formation of these laws, certain inconsistencies developed in the interpretation of wills and revocable trusts. For example, prior to the enactment of the legislation described in this article, the result of a bequest of assets to a predeceased beneficiary may have been different depending on whether the bequest occurred in a will or in a revocable trust. Similarly, a divorce would have different legal consequences if the legal instrument involved was a will as opposed to a revocable trust. Virginia's legislature responded to some of the inconsistencies between wills and trusts with legislation that became effective July 1, 2018. This article summarizes the legislative response and provides drafting tips for attorneys.

What are the Changes?

Reformation

The 2018 legislation primarily focused on extending existing will provisions to revocable trusts. However, on the topic of reformation, the reverse is true. Virginia HB 746 (2018 Acts, ch. 44) added a new section 64.2-404.1 to allow reformation of wills to correct mistakes or to achieve the decedent's tax objectives.[2] This matches the existing provisions of 64.2-733 (reformation of trusts to correct mistakes) and 64.2-734 (modification of trusts to achieve settlor's tax objectives). These provisions apply to wills regardless of their date of execution and to all judicial proceedings (but for proceedings started prior to July 1, 2018, only if the court finds that the application would not substantially interfere with the case or prejudice parties' rights).[3]

The 2018 legislation is generally considered to be part of the legislative response to the *Thorsen* case.[4] In *Thorsen*, the attorney made a mistake in the drafting of a will, resulting in the intended beneficiary receiving far less than the testator desired. If a similar drafting mistake had instead been made in a revocable trust at that time, it could have been corrected through reformation. Following the addition of Virginia Code Section 64.2-404.1, such mistakes in a will can now be corrected by the court if there is clear and convincing evidence that the decedent's intent and terms of the will were affected by a mistake of fact or law.[5]

This change is more procedural in nature—it shouldn't affect the way attorneys draft documents. However, it is comforting to know that if a mistake is made in a will, the will can be reformed to correct the mistake or to match the decedent's intent.

Effect of Divorce

The 2018 legislation clarifies that the effect of divorce on revocable trusts is now the same as on wills. Prior law provided that a divorce or annulment would revoke any disposition or appointment of property made by the will to the former spouse.[6] It also provided that a divorce or annulment would cause the revocation of any powers of appointment granted

to the former spouse as well as the revocation of the appointment of the former spouse as executor, trustee (named in a will), conservator or guardian.[7]

The changes to 64.2-412 now apply these concepts to revocable trusts (to the extent the event causing the revocation occurred on or after July 1, 2018).[8] The 2018 statute provides that if a settlor is divorced (or the marriage was annulled) and the trust was revocable immediately before the divorce or annulment, then any beneficial interest that the former spouse was given in the settlor's trust is revoked and the former spouse is treated as if he or she failed to survive the divorce or annulment.[9] In addition, a divorce, annulment *or filing of a separation* will cause a revocation of any powers of appointment granted to the former spouse and a revocation of any appointment of the former spouse as a fiduciary.[10] These changes do not affect the ability of a settlor to override these default rules in the trust agreement.[11] It is also important to remember that 64.2-412 applies only to *revocable* trusts, so a divorce or annulment does not change the beneficial interest given to a former spouse in an *irrevocable* trust unless the document says otherwise.

As estate planning practitioners, this unification of the law regarding the effect of divorce is extremely helpful because it creates consistency and provides the result that most settlors would anticipate. Certainly, we all hope that clients update their estate planning documents in response to a separation or divorce, but the reality is that estate planning is not always a priority for clients in this situation, and the 2018 legislation provides at least some relief in cases when revocable trusts are not updated after a divorce.

Ademption

Virginia Code Section 64.2-415 was updated by the 2018 legislation to apply ademption (or non-ademption) rules to revocable trust distributions in the same way that they have previously applied to bequests in wills. Ademption by extinction is the common law concept that a bequest of a property no longer in the testator's estate will fail. Virginia law carves out some exceptions to the common law rule. The following is a summary of the ademption statute which now applies to bequests in wills and revocable trusts:

Unless a will or trust says otherwise:

- If a will or revocable trust includes a bequest of specific securities, the beneficiary is entitled to as much of those securities as is part of the testator's/settlor's estate at death, as well as additional securities of the same entity owned by the testator/settlor at death acquired by virtue of actions taken by the entity (excluding the entity's exercise of purchase options) and securities of another entity acquired with respect to the specific securities by merger, consolidation, reorganization, etc.[12]
- A bequest of specific property includes the amount of any condemnation awards for the taking of property that remains unpaid at the testator's/settlor's death or the amount of fire and casualty insurance proceeds that remains unpaid at the testator's/settlor's death.[13]
- A bequest or devise of specific property would not adeem if, while the testator/settlor was under a disability, the property was sold by a conservator, guardian, committee, an agent under the testator's/settlor's durable general power of attorney (unless the power of attorney says otherwise) or trustee. Instead, the beneficiary would be entitled to a pecuniary amount equal to the net sales proceeds from the sale of such property, or an amount equal to the insurance proceeds paid to such guardian, conservator, committee, agent under a durable general power of attorney or trustee.[14] These provisions would not apply if the testator/settlor was no longer under a disability and lived one year beyond this determination, or if the property was sold by the agent in a durable general power of attorney for an incapacitated principal, or sold by a trustee, and the principal later ratifies such sale.[15]

It is important to acknowledge the new default rules for revocable trusts and to draft around them if the result is not the settlor's intent. For example, imagine a client who makes a specific devise of real

property in his or her revocable trust and who later needs to move to an assisted living facility. If the trustee of the trust sells the real property to pay for such care and the trust doesn't specify otherwise, the value of the real property becomes a pecuniary bequest. The specific language required to override this result could be as simple as the following: "My Trustee shall distribute my real property, located at [address], to [beneficiary], if he/she survives me. If [beneficiary] does not survive me, or if I or the trust do not own such real property upon my death, this devise shall lapse."

Bequests that Fail

The changes to section 64.2-416 standardize the way that failed bequests in a will and failed distributions in a revocable trust are treated. Under prior law, in a will that does not state otherwise, a non-residuary bequest that fails lapses and becomes part of the residue.[16] Additionally, if the residuary is distributed to two or more people in a will and a share fails, that share passes to the other residuary beneficiaries in proportion to their interests in the residue.[17] In the 2018 statute, in a revocable trust that does not state otherwise, a non-residuary trust distribution that fails lapses and becomes part of the residue.[18] In addition, if the residuary in a trust is to be distributed to two or more individuals and a share fails, that share passes to the other beneficiaries in proportion to their interests in the residue.[19]

Most commonly a distribution will fail or become inoperative due to a beneficiary predeceasing a testator or settlor. However, a distribution can fail for other reasons, such as a condition not being satisfied. For example, a share might be distributed to a child, if he or she is then living, but if not, to his or her spouse, if the spouse is living and was married to the child upon the child's death. In this case, the son-in-law or daughter-in-law only receives that share if he or she was married to the child when the child died. In another example, a charitable bequest can fail if the charity is not then in existence (although the *cy pres* doctrine could theoretically be applied by the court to prevent a charitable trust from failing).[20] It is important that the testator or settlor's wishes are clear in the will or revocable trust to ensure that they will be carried out.

It is good practice to address so-called "inoperative shares" in both trusts and wills. This not only avoids the default rules but provides clarity to both fiduciaries and beneficiaries in how the assets should be distributed if a beneficiary predeceases the testator or settlor or if the bequest otherwise fails.

Anti-Lapse

Finally, section 64.2-418 applies the same anti-lapse default rules to revocable trusts that were previously only applicable to wills.[21] The rules are as follows:

Unless a contrary statement appears in the will or revocable trust, if a beneficiary of a revocable trust or will (who is the settlor or testator's grandparent or a descendant of the grandparent) is deceased upon the execution of the trust agreement or will, or upon the death of the settlor or testator, the descendants of the deceased beneficiary who survive the settlor or testator take in place of the deceased beneficiary. The share for the deceased beneficiary would be divided into as many equal shares as there are surviving descendants (in the closest degree of kinship to the deceased beneficiary) and deceased descendants in the same degree of kinship to the deceased beneficiary who left living descendants. One share would be distributed to each surviving descendant and one share would be distributed on a *per stirpes* basis to the descendants of the deceased descendants. This provision applies to wills and to trusts that are revocable immediately before the settlor's death on or after July 1, 2018, and the beneficiary would have taken as a result of the settlor's death if the beneficiary survived the settlor.[22]

These default rules only apply to beneficiaries who are related to the settlor or testator (i.e., a grandparent or descendant of the grandparent). However, it is best to be clear in the documents for all beneficiaries about what should happen in the situation of a deceased beneficiary. It is important to discuss these provisions with your client when drafting documents and determine whether or not the client would like the share of a deceased beneficiary to pass to his or

her descendants.

Conclusion

The modern estate planning attorney deals with both wills and revocable trusts on a daily basis, so it is crucial to understand the differences in the default rules that are applied to each. This legislation is a good step forward in helping to reduce the discrepancies in how the law is applied to the different ways of passing one's property after death. ⚜

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(Endnotes)

1. English Statute of Frauds, 1677, 29 Car. II, ch.3, §5 (Eng.) and English Wills Act of 1837, 7 Will. 4 & 1 Vict., ch. 26, §9 (Eng.).
2. Va. Code Ann. §64.2-404.1.
3. Va. Code Ann. §64.2-404.1(E).
4. *Thorsen v. Richmond Society For The Prevention Of Cruelty to Animals*, 786 S.E.2d 453 (Va. 2016).
5. Va. Code Ann. §64.2-401.1(A).
6. Va. Code Ann. §64.2-412(B).
7. *Id.*
8. Va. Code Ann. §64.2-412(G).
9. Va. Code Ann. §64.2-412(D)(1).
10. Va. Code Ann. §64.2-412(D)(2).
11. Va. Code Ann. §64.2-412(D).
12. Va. Code Ann. §64.2-415 (B)(1).
13. Va. Code Ann. §64.2-415(B)(2).
14. Va. Code Ann. §64.2-415.
15. Va. Code Ann. §64.2-415(B)(3).
16. Va. Code Ann. §64.2-416(B)(1).
17. Va. Code Ann. §64.2-416(B)(2).
18. Va. Code Ann. §64.2-416(B)(1).
19. Va. Code Ann. §64.2-416(B)(2).
20. Va. Code Ann. §64.2-731.
21. Va. Code Ann. §64.2-418.
22. Va. Code Ann. §64.2-418(C). ⚜

Overlapping Practice Areas

By Peter Holstead Davies, Jonathan E. Davies, & David B. Bice

This article illustrates how family law and estate planning and administration can overlap such that practitioners of either field should have some understanding and awareness of the other. While this is not a comprehensive summary, it will offer a few matters for consideration.

Powers of Attorney

In preparing an estate plan for a client, it is standard to include a power of attorney. The document allows the client to appoint agents to act on the client's behalf in the event of the client's unavailability. The unavailability can be due to a serious illness, such as a coma, or simply a situation where the client is traveling abroad and needs the agent to handle a business matter back home. A properly worded power of attorney can go a long way in preventing a conservatorship action in the event the client becomes incapacitated. The conservatorship action may not be needed if an agent is already in place.

For married clients, the spouse is usually appointed as the primary agent. So what happens if the couple experiences marital difficulties and a divorce action is filed? An agent's authority terminates under a list of circumstances, including, "Unless the power of attorney otherwise provides, an action is filed (i) for the divorce or annulment of the agent's marriage to the principal or their legal separation, (ii) by either the agent or the principal for separate maintenance from the other, or (iii) by either the agent or the principal for custody or visitation of a child in common with the other."[1]

Each divorce action has its own set of facts, but it would be worth asking the client whether the client has a power of attorney naming the spouse as an agent. Putting the spouse on notice that the spouse is no longer allowed to act as agent will likely help support a request for attorney's fees if that spouse nevertheless abuses the power of attorney for the spouse's own gain. An agent who violates the Uniform Power of Attorney Act[2] is liable to the principal for the amount to restore the value of the principal's property had the violation not occurred, and is liable for reimbursing the principal for attorney's fees and costs.[3]

Advance Medical Directives

Likewise, an estate plan usually includes an advance medical directive. The advance medical directive allows the client to appoint agents to act on the client's behalf for medical matters, including end of life decisions. The Virginia Health Care Decisions Act[4] does not provide for the automatic termination of a spouse's ability to act under an advance directive in the event of a filing for divorce, separate maintenance, or for custody of a child in common.

In the absence of an advance medical directive, there is a statutory hierarchy of decision-makers.[5] The second on the list, following a guardian, is the patient's spouse, "except where a divorce action has been filed and the divorce is not final." If a divorce action has been filed, the healthcare provider should move down the hierarchy to the next available decision-maker. However, if the patient has an advance medical directive, a divorce has been filed, but the patient still lists the estranged spouse as agent, a problem may arise. While a successor agent may win that argument, it would be wise to avoid the argument altogether.

As with a power of attorney possibly preventing a conservatorship action, so too could an advance

medical directive prevent a guardianship action. A petition for a conservatorship or guardianship is required to state whether the respondent has a power of attorney or advance directive.[6]

Impact of Divorce on Wills and Trusts

If a client has a will in which the client's spouse is a beneficiary and subsequently gets divorced, the will is interpreted such that spouse is treated as having predeceased the client. Likewise, provisions nominating the spouse as executor are treated as though the spouse predeceased the client.[7]

For trusts, the result is similar. If the client has a revocable trust, the trust is interpreted as though the spouse predeceased the client when the divorce is granted. In some instances, a spouse may be serving as a co-trustee with the client. Upon the filing of a divorce (as opposed to an entry of a divorce decree) the spouse is treated as having predeceased the client for the purposes of serving as a fiduciary.[8]

If the client and former spouse remarry, the prior will or trust provisions relating to the spouse can go back into effect, provided certain requirements are met.[9]

Testamentary Guardianships

In addition to handling divorces, many family law attorneys also deal with custody, visitation, and support matters. In Virginia, testators are able to nominate guardians for their minor children in their last will and testament. However, "[a] guardian of the person of a minor other than a parent is not entitled to custody of the person of the minor so long as either of the minor's parents is living and such parent is a fit and proper person to have custody of the minor."[10] The appointment of a testamentary guardian becomes void if the guardian "(i) renounces the guardianship or (ii) fails to appear in the court in which the will is admitted to probate within six months after the probate to accept the guardianship […]."[11] The appointment of a testamentary guardian would not prohibit someone else from filing for custody of the minor. In such instance, the court would apply the best interests of the child standard in making a determination.[12]

Testamentary guardianships are unavailable for people who have guardianship or conservatorship over an adult. In that instance, the guardian or conservator may wish to appoint a standby guardian or conservator as allowed by § 64.2-2013, prior to the then-serving guardian or conservator's death.

Premarital and Postmarital Agreements

Premarital and postmarital agreements are useful tools in a family law setting. In some circumstances, the agreements allow the parties to get a divorce in six months from the date of separation rather than having to wait a year.[13] Marital agreements drafted by family law attorneys are often prepared with the possibility of divorce in mind. But the marital agreement, whether drafted before or after the marriage, should also address the inevitability of death. The drafting attorney should, for example, consider having the spouses waive their rights to the allowances described below. A marital agreement does not preclude a spouse from providing for the other in his or her estate plan.

The formalities and enforcement provisions concerning marital agreements are found in the Premarital Agreement Act.[14] The Act applies to marital agreements executed on or after July 1, 1986.[15] While the Act references "premarital" agreements, its scope includes postmarital agreements, too.[16] Generally, the agreement must be in writing and signed by both parties.[17] An exception exists for postmarital agreements: "If the terms of such agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record, personally, the agreement is not required to be in writing and is considered to be executed."[18] A marital agreement does not require consideration to be enforceable.[19] The content of the agreement may include any matter whatsoever, so long as it is not in violation of public policy or a statute imposing a criminal penalty.[20] The statute regarding enforcement, § 20-151, is nuanced enough that the careful practitioner should study it as it contains issues such as burden of proof, voluntariness, unconscionability, and disclosures of assets and liabilities.

Allowances

A spouse and minor children of a decedent may be entitled to claim certain allowances, regardless of whether the decedent died testate or intestate. After costs and expenses of administration, these allowances take priority over all other debts or expenses.[21] As a family law attorney will occasionally encounter the situation where one of the parties dies during the divorce action, these can be useful claims.

The procedures and timing for claiming allowances are set forth in § 64.2 313. The allowances are not available, however, where there has been willful desertion or abandonment, with the desertion or abandonment continuing to the decedent's death.[22] (An excellent resource for researching willful desertion and abandonment, among other family law topics, is the family law volume of the Virginia Practice Series.[23]) "Willful desertion or abandonment, which entitles a husband or wife to a bed and board divorce, consists of two elements: (1) the actual breaking off of the matrimonial cohabitation and (2) an intent to desert in the mind of the offender. Both must combine to make the desertion complete."[24]

Additional Topics for Consideration

Beneficiary designations, bank accounts. Family law attorneys are familiar with § 20 111.1, which requires a death benefits notice in divorce decrees in conspicuous, bold print. But be sure to revisit beneficiary designations on life insurance policies, IRAs, and other accounts — doing so may prevent litigation. Generally, a former spouse who is left on a client's beneficiary designation form following the entry of a divorce from the bond of matrimony is treated as having predeceased the client.[25] To the extent that federal law preempts § 20-111.1(A), subsection D provides, "If this section is preempted by federal law with respect to payment of any death benefit, a former spouse who, not for value, receives the payment of any death benefit that the former spouse is not entitled to under this section is personally liable for the amount of the payment to the person who would have been entitled to it were this section not preempted."[26] (One questions whether this attempt to preempt preemption would be successful.)

In the banking context, divorce extinguishes the right of survivorship in multiple party accounts (such as a joint checking account) and converts it into a tenancy in common.[27]

The elective share of a decedent spouse's estate. In 2016, the General Assembly restructured the manner in which the election of the decedent's augmented estate is calculated. This is a topic deserving of its own article. (Indeed, John T. Midgett, Esq., wrote an excellent article in Vol. 22, No. 13, of this newsletter regarding the statutory development of the augmented estate.[28]) If a family law attorney encounters a scenario where a spouse has attempted to disinherit the other — whether in a will, by non-probate transfers of wealth at death, or some other form — the attorney representing the surviving spouse should consider collaborating with an estate attorney to examine whether claiming the elective share of the decedent's estate is appropriate. Likewise, for estate attorneys, if it has been several years since you have addressed an augmented estate matter, review the statutes as there has been a significant overhaul to the augmented estate approach and calculation for decedents dying on or after January 1, 2017.[29]

Real estate law. Family law attorneys and estate planning attorneys both encounter real estate matters, and attorneys in both fields should be familiar with real estate concepts that relate to married persons. For example, Virginia is a state that allows real or personal property to be owned as tenants by the entirety by spouses for as long as they are married.[30] With some exceptions, property so held is not subject to creditors of one spouse, alone, during the tenancy.[31]

For real estate, prior to the 2015 Supreme Court of Virginia case of *Evans v. Evans*, both spouses would be required to execute a deed as grantors when they owned the property as tenants by the entirety for the conveyance to be effective.[32] In *Evans*, the court ruled that one spouse, by that spouse's sole act, could convey ownership held as tenants by the entirety when the conveyance was to the other spouse. This was addressed legislatively in 2017 when the General Assembly clarified that, "[e]xcept as otherwise provided by statute, no interest in real property held as

tenants by the entireties shall be severed by written instrument unless the instrument is signed by both spouses as grantors."[33]

Too often, an attorney drafting a deed pursuant to the parties' martial agreement, prior to the entry of a final divorce decree, will have only one spouse as the grantor, not both, although the parties own real estate as tenants by the entirety. To sever a tenancy by the entirety prior to divorce, or to transfer property so owned, both spouses need to sign the deed as grantors. Failure to do so does not convey good title. A tenancy by the entirety is also severed by the entry of a decree of divorce from the bond of matrimony, converting the ownership into a tenancy in common.[34]

Conclusion

A client going through a divorce would be well-advised to revisit his or her estate plan. If the client is reluctant to spend the additional resources to address the estate plan in conjunction with the divorce, explaining to the client what the default rules are can be a significant catalyst in having the client make an informed decision regarding the estate plan.

Due to the numerous areas of overlapping law, family law attorneys and estate planning attorneys should collaborate where appropriate in order to achieve the best result for their clients. ⚜

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(Endnotes)

1. § 64.2 1608(B)(3)
2. § 64.2 1600 et seq.
3. § 64.2 1615
4. § 54.1 2981 et seq.
5. § 54.1 2986
6. § 64.2 2002(B)(5)
7. § 64.2-412(B)
8. § 64.2-412 (D)
9. § 64.2-(E)
10. § 64.2 1701
11. § 64.2-1701(B)
12. § 20-124.3
13. § 20-91(9)(a)
14. § 20-147 et seq.
15. § 20-147
16. § 20-155
17. § 20-149
18. § 20-155
19. § 20-149
20. § 20-150(8)
21. § 64.2 528
22. § 64.2 308
23. Cecka, Diehl, and Cottrell (Thomson Reuters)
24. Id. at § 7:3(b)
25. § 20-111.1(A)
26. § 20-111.1(D)
27. § 6.2-607
28. https://www.vsb.org/site/sections/trustsandestates/fall2015a
29. § 64.2-308.1 et seq.; see also § 64.2-300 et seq. for statutory structure for decedents dying before January 1, 2017
30. § 55.1-136
31. Exceptions, by way of example, could include federal tax liens. *See United States v. Craft*, 535 U.S. 274 (2002)
32. *Evans v. Evan*s, 290 Va. 176 (2015)
33. § 55.2-20.2(B) (now 55.1-136(B))
34. § 20-111 ⚜

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