

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 23.1-200 and 23.1-3002 of the Code of Virginia, relating to higher  
2 education; governing boards; appointment.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 23.1-200 and 23.1-3002 of the Code of Virginia are amended and reenacted as follows:**

5 **§ 23.1-200. State Council of Higher Education for Virginia established; purpose;**  
6 **membership; terms; officers.**

7 A. The State Council of Higher Education for Virginia is established to advocate for and promote  
8 the development and operation of an educationally and economically sound, vigorous, progressive, and  
9 coordinated system of higher education in the Commonwealth and lead state-level strategic planning and  
10 policy development and implementation based on research and analysis and in accordance with § 23.1-  
11 301 and subsection A of § 23.1-1002. The Council shall seek to facilitate collaboration among institutions  
12 of higher education that will enhance quality and create operational efficiencies and work with institutions  
13 of higher education and their governing boards on board development.

14 B. The Council shall be composed of individuals selected from the Commonwealth at large without  
15 regard to political affiliation but with due consideration of geographical representation. Nonlegislative  
16 citizen members shall have demonstrated experience, knowledge, and understanding of higher education  
17 and workforce needs. Nonlegislative citizen members shall be selected for their ability and all  
18 appointments shall be of such nature as to aid the work of the Council and inspire the highest degree of  
19 cooperation and confidence. No officer, employee, trustee, or member of the governing board of any  
20 institution of higher education, employee of the Commonwealth, member of the General Assembly, or  
21 member of the Board of Education is eligible for appointment to the Council except as specified in this  
22 section. All members of the Council are members at large who shall serve the best interests of the whole  
23 Commonwealth. No member shall act as the representative of any particular region or of any particular  
24 institution of higher education.

25 C. The Council shall consist of 13 members: 12 nonlegislative citizen members appointed by the  
26 Governor and one ex officio member. At least one nonlegislative citizen member shall have served as a  
27 chief executive officer of a public institution of higher education. At least one nonlegislative citizen  
28 member shall be a division superintendent or the Superintendent of Public Instruction. The President of  
29 the Virginia Economic Development Partnership Authority shall serve ex officio with voting privileges.

30 D. All terms shall begin July 1.

31 E. Nonlegislative citizen members shall serve for terms of four years. Vacancies occurring other  
32 than by expiration of a term shall be filled for the unexpired term. No nonlegislative citizen member shall  
33 serve for more than two consecutive terms; however, a nonlegislative citizen member appointed to serve  
34 an unexpired term is eligible to serve two consecutive four-year terms. No nonlegislative citizen member  
35 who has served two consecutive four-year terms is eligible to serve on the Council until at least two years  
36 have passed since the end of his second consecutive four-year term. All appointments are subject to  
37 confirmation by the General Assembly. Nonlegislative citizen members shall continue to hold office until  
38 their successors have been appointed and ~~confirmed~~ qualified. Ex officio members shall serve terms  
39 coincident with their terms of office.

40 F. The Council shall elect a chairman and a vice-chairman from its membership. The Council shall  
41 appoint a secretary and such other officers as it deems necessary and prescribe their duties and terms of  
42 office.

43 G. At each meeting, the Council shall involve the chief executive officer of each public institution  
44 of higher education in its agenda. The chief executive officers shall present information and comment on  
45 issues of common interest and choose presenters to the Council from among themselves who reflect the  
46 diversity of the institutions.

47 H. At each meeting, the Council may involve other groups, including the presidents of private  
48 institutions of higher education, in its agenda.

49 **§ 23.1-3002. Board; membership; officers; meetings; committees.**

50 A. The Medical School shall be governed by a board of visitors composed of 17 members as  
51 follows: two nonlegislative citizen members appointed by the Governor; two nonlegislative citizen

52 members appointed by the Senate Committee on Rules; three nonlegislative citizen members appointed  
53 by the Speaker of the House of Delegates; six nonlegislative citizen members appointed by the Eastern  
54 Virginia Medical School Foundation; and four nonlegislative citizen members appointed by their  
55 respective city councils as follows: two members for the City of Norfolk, one member for the City of  
56 Virginia Beach, and one member appointed by the following city councils in a rotating manner: the City  
57 of Chesapeake, the City of Hampton, the City of Portsmouth, the City of Suffolk, and the City of Newport  
58 News.

59 B. Members shall serve for terms of three years, commencing on July 1 of the appointment year.  
60 Vacancies occurring other than by expiration of a term shall be filled by the original appointing authority  
61 for the unexpired term. No member shall serve for more than two consecutive three-year terms; however,  
62 (i) a member appointed to serve an unexpired term is eligible to serve two consecutive three-year terms  
63 immediately succeeding such unexpired term and (ii) an officer is eligible to serve up to three additional  
64 one-year terms. Except as otherwise provided in this subsection, no member who has served two  
65 consecutive three-year terms is eligible to serve on the board until at least one year has passed since the  
66 end of his second consecutive three-year term. Members shall continue to hold office until their successors  
67 have been appointed and ~~confirmed~~ qualified.

68 C. Members shall receive no salaries but are entitled to reimbursement for necessary traveling and  
69 other expenses incurred while engaged in the performance of their duties.

70 D. Each appointing authority has the right to remove any member it appointed for malfeasance,  
71 misfeasance, incompetence, or gross neglect of duty.

72 E. The board shall annually elect a rector, vice-rector, treasurer, and secretary from among its  
73 membership and may elect assistant secretaries and treasurers who are not required to be members of the  
74 board. The same member may serve as both secretary and treasurer.

75 F. The board shall meet at least four times each year and may hold such special meetings as it  
76 deems necessary. The rector or any three members may call special meetings of the board.

77 G. The board may appoint an executive committee composed of at least three but no more than  
78 five members for the transaction of business in the recess of the board.

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## The Executive Committee of the Virginia Code Commission

### Introduction

Every law enacted by a regular or special session of the General Assembly is published in its entirety in the Acts of Assembly. The Acts of Assembly, collected in volumes by year, form the official law of the Commonwealth. Each act appears as a numbered chapter, assigned in consecutive ascending order based on the date of signing. This process is accomplished by the Office of the Clerk of the House of Delegates.

The Code of Virginia (the Code) is an ongoing compilation of laws drawn from the Acts of Assembly and organized by subject-area title. While not the official law of the Commonwealth, the Code is useful and usable. An unannotated version of the Code is presented and regularly updated online by the Division of Legislative Automated Systems at the Virginia Law Portal.

The Virginia Code Commission (§ 30-145 et seq. of the Code of Virginia) is tasked with arranging "for the codification and incorporation into the Code of Virginia of all general and permanent statutes enacted" (§ 30-148). The Commission, working through its Executive Committee, fulfills this mandate by (i) publishing and maintaining the Code and (ii) undertaking the work of editing that pulls the correct elements of each year's acts into the existing Code.

Not all new acts are codified, since some of them are of limited duration or effect, require action by a future Session of the General Assembly, or are resolutions.

### Editorial-Level Changes to Enacted Code Sections

Section numbers. Most acts assign section numbers to the new Code sections they create, according to the next available number in the Code's organizational scheme. When two or more bills logically assign the same next-available number to different proposed sections, and both or all become law, the Executive Committee must create appropriate discrete section numbers for each new section. The same renumbering or relettering is needed when two acts add different subsections, both designated as subsection D, for example, to an existing Code section.

During a year in which a title revision becomes effective, the Executive Committee oversees the update of all of the affected cross-references throughout the Code. In addition, if any act in the same session amends a section that is affected by the title revision, that amendment is altered so that it corresponds appropriately to the title revision upon its effective date.

Contingent effect. If an act amends the Code but contains a sunset clause, a delayed effective date, or a relevant type of contingency, such as a provision repealing the law if a particular federal law is repealed in the future, the affected section will be set out twice in the Code—once as it stands today and once as it will stand at some future date, whether or not the date is known.

Amendment of a section by two or more acts. It is common for two or more acts to amend the same Code section in different ways. The Executive Committee includes all changes made by all acts, blending the amendments in such a way as to effect the will of the General Assembly.

In some cases, two acts will make amendments that are in direct conflict with each other; both amendments cannot be given effect. For example, if two enactments amended a Code section that established a governing board, one by adding 10 new board members and another, enacted later, by adding seven new members, both enactments could not go into effect. In that case, only the later act would become effective by adding seven new members to the board. The precedence

given to later-in-time enactments is based on a common-law rule:

It is a well established rule of construction that full force and effect must be given to each provision of statutory law. It must clearly appear that the statute is in conflict with a former statute and that the two are so inconsistent that both cannot prevail before the prior statute may be held to be repealed or inoperative. Apparent inconsistencies must be reconciled if reasonably possible. Repeal of a statute by implication is not favored. *Nexsen v. Board of Supervisors*, 142 Va. 313, 320, 128 S.E. 570; *Bray v. County Board*, 195 Va. 31, 77 S.E.2d 479; *County of Fairfax v. Alexandria*, 193 Va. 82, 68 S.E.2d 101. The same rule applies to statutes enacted at the same session of the legislature.

*Richmond v. Bd. of Supervisors*, 199 Va. 679, 685, 101 S.E.2d 641, 646 (1958).

### **Codification of Provisions That Otherwise Would Not Be Codified**

Section 1 bills. While acts giving names to bridges, directing relief payments to individuals, or establishing the state budget are not often proper subjects for codification, some so-called Section 1 bills are assigned places in the Code. For example, HB 2046 of the 2017 Session, enacted as Chapter 114 of the Acts of Assembly of 2017, reads in part:

**1. § 1. That the Board of Pharmacy shall develop guidelines for the provision of counseling and information[.]**

The Executive Committee determined that this statute, because it is of a general nature and permanent in effect, should be codified at an appropriate place in the Code, and it made the following changes:

~~§ 1. That the~~ 54.1-3411.2:1. Guidelines for disposal of unused drugs. The Board of Pharmacy shall develop guidelines for the provision of counseling and information[.]

Enactment clauses. The first enactment of SB 1343 of the 2017 Session (enacted as Chapter 676 of the Acts of Assembly of 2017) amended an existing Code section by adding a new subsection, which begins as follows:

*C. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest [...]*

The phrase "other party with a legitimate interest" was not defined in the Code. The second enactment of Chapter 676 reads:

**2. That for the purposes of this act, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.**

Because that second enactment is of a general nature and permanent in effect, the Executive Committee determined that the following alterations were appropriate:

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest [...]

~~2. That for~~ For the purposes of this act subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.



# COMMONWEALTH of VIRGINIA

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August 11, 2017

The Honorable John S. Edwards  
Member, Senate of Virginia  
Post Office Box 1179  
Roanoke, Virginia 24006-1179

Dear Senator Edwards:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

You have asked in your capacity as Chairman of the Virginia Code Commission (the "Commission") whether §§ 20-45.2 and 20-45.3 of the *Code of Virginia* "are obsolete within the compass of § 30-151." You also ask "whether Section 15-A of Article I of the Constitution of Virginia runs afoul of the United States Constitution in light of . . . *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)."

## Background

Under § 30-151 of the *Code of Virginia*, the Commission has an "[o]ngoing responsibility" to identify "obsolete statutes and Acts of Assembly" and to recommend appropriate legislative changes to the General Assembly:<sup>1</sup>

The Commission shall review the Code of Virginia and uncodified provisions in the Virginia Acts of Assembly to identify obsolete chapters, articles, sections, or enactments. The Commission shall from time to time, but not less than every four years, make such recommendation to the General Assembly through legislation amending or repealing such statutes or acts as the Commission deems appropriate.<sup>[2]</sup>

I understand from your request that among the statutes that the Commission is considering identifying as "obsolete" are §§ 20-45.2 and 20-45.3 of the *Code of Virginia*, which limit marriage in

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<sup>1</sup> VA. CODE ANN. § 30-151 (2015).

<sup>2</sup> *Id.*

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Virginia to one man and one woman. Section 20-45.2 provides that “[a] marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.”<sup>3</sup> Section 20-45.3 similarly prohibits any “civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage.”<sup>4</sup> Those statutes have a corresponding provision in the Constitution of Virginia. Article I, § 15-A provides, in part, that “only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.”<sup>5</sup>

Three years ago, those provisions were struck down as unconstitutional by a federal trial court sitting in Virginia and the federal appeals court with jurisdiction over Virginia. On February 13, 2014, in *Bostic v. Rainey*, the U.S. District Court for the Eastern District of Virginia

[found] Va. Const. Art. I, § 15–A, Va. Code §§ 20–45.2, 20–45.3, and any other Virginia law that bars same-sex marriage or prohibits Virginia’s recognition of lawful same-sex marriages from other jurisdictions unconstitutional. These laws deny Plaintiffs their rights to due process and equal protection guaranteed under the Fourteenth Amendment of the United States Constitution.<sup>[6]</sup>

Accordingly, the court permanently enjoined enforcement of the laws.<sup>7</sup> On July 28, 2014, the U.S. Court of Appeals for the Fourth Circuit agreed, likewise concluding that the laws “violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the extent that they prevent same-sex couples from marrying and prohibit Virginia from recognizing same-sex couples’ lawful out-of-state marriages.”<sup>8</sup> The Fourth Circuit “therefore affirm[ed] the district court’s grant of the Plaintiffs’ motion for summary judgment and its decision to enjoin enforcement of the Virginia Marriage Laws.”<sup>9</sup> On October 6, 2014, the U.S. Supreme Court declined to review the case, leaving in place the Fourth Circuit’s judgment that Virginia’s various prohibitions on same-sex marriage are unconstitutional.<sup>10</sup> The permanent injunction took effect that day.

Other States’ similar prohibitions were also struck down by other federal courts of appeals, and

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<sup>3</sup> VA. CODE ANN. § 20-45.2 (2016).

<sup>4</sup> VA. CODE ANN. § 20-45.3 (2016); *see also id.* (providing that “[a]ny such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable”).

<sup>5</sup> VA. CONST. art. I, § 15-A.

<sup>6</sup> *Bostic v. Rainey*, 970 F. Supp. 2d 456, 484 (E.D. Va.), *aff’d sub nom. Bostic v. Schaefer*, 760 F.3d 352 (4th Cir.), *cert. denied*, 135 S. Ct. 286, 308, 314 (2014).

<sup>7</sup> *Id.*

<sup>8</sup> *Bostic v. Schaefer*, 760 F.3d 352, 384 (4th Cir. 2014).

<sup>9</sup> *Id.* It defined “Virginia’s Marriage Laws” to include “Virginia Code sections 20–45.2 and 20–45.3, the Marshall/Newman Amendment [Va. Const. art. I, § 15-A], and any other Virginia law that bars same-sex marriage or prohibits the State’s recognition of otherwise-lawful same-sex marriages from other jurisdictions.” *Id.* at 368 (internal quotation marks omitted).

<sup>10</sup> 135 S. Ct. 286, 308, 314 (2014).



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the Supreme Court again declined to disturb the results.<sup>11</sup> Not until the U.S. Court of Appeals for the Sixth Circuit upheld same-sex-marriage prohibitions in Michigan, Kentucky, Ohio, and Tennessee did the U.S. Supreme Court take up the issue in *Obergefell v. Hodges*, ultimately holding that laws limiting marriage to one man and one woman are unconstitutional:

[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry.<sup>[12]</sup>

Since the Supreme Court issued its decision on June 26, 2015, prohibitions on same-sex marriage have been unconstitutional and unenforceable nationwide.

### Applicable Law and Discussion

I respond to your two questions in corresponding sections below.

A. Whether Code §§ 20-45.2 and 20-45.3 are obsolete within the meaning of Code § 30-151.

The essence of your first question is whether §§ 20-45.2 and 20-45.3 are obsolete, given that they have been held unconstitutional by federal courts. The term “obsolete” is not defined in the *Code of Virginia*, and I am not aware of case law from Virginia courts, opinions of the Attorney General, or other authorities addressing the term’s meaning in § 30-151 specifically. Nevertheless, for the reasons set forth below, it is my opinion that those statutes “are obsolete within the compass of § 30-151.”

First, an unconstitutional statute fits comfortably within the plain and natural meaning of “obsolete” because it lacks any legal force.<sup>13</sup> Black’s Law Dictionary defines “obsolete” to mean “[n]o longer in general use; out-of-date.”<sup>14</sup> Consistent with that definition, the Supreme Court of Virginia has explained that when an act is “unconstitutional, ‘it is not a law . . . ; it is, in legal contemplation, as inoperative as though it had never been passed.’”<sup>15</sup> And the Court has held, and previous Attorneys General have opined, that judicial precedents and statutes are “obsolete” when they no longer have any legal effect.<sup>16</sup> In my opinion, a statute is no less obsolete when it has been rendered inoperative by a final judicial decision, rather than by a subsequent legislative enactment. Because §§ 20-45.2 and 20-45.3

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<sup>11</sup> See, e.g., *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2931 (2015); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir.), *cert. denied*, 135 S. Ct. 316 (2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir.), *cert. denied*, 135 S. Ct. 265 (2014).

<sup>12</sup> 135 S. Ct. 2584, 2604-05 (2015).

<sup>13</sup> See, e.g., *McKeon v. Commonwealth*, 211 Va. 24, 27 (1970) (When a word “is not defined in the statute, [it] must . . . be given its ordinary meaning in determining the legislative intent in the use of the word . . .”).

<sup>14</sup> BLACK’S LAW DICTIONARY 1246 (Bryan A. Garner et al. eds., 10th ed. 2014).

<sup>15</sup> *City of Richmond v. Eubank*, 179 Va. 70, 84 (1942) (quoting *Campbell v. Bryant*, 104 Va. 509, 516 (1905) (citing *Norton v. Shelby Cty.*, 118 U.S. 425, 442 (1886))).

<sup>16</sup> See, e.g., *Swisher v. Swisher*, 223 Va. 499, 504 n.\* (1982) (noting that a “precedent became obsolete when [a new statutory provision] was added to the Code”); 1941-1942 Op. Va. Att’y Gen. 36, 36 (opining that subsequent legislative enactment rendered a previous enactment obsolete); 1937-1938 Op. Va. Att’y Gen. 173, 173 (subsequent legislation “rendered obsolete” and “inoperative” another statutory provision).

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have been declared unconstitutional and are no longer enforceable, they fall squarely within the plain meaning of “obsolete.”

Second, the General Assembly has used the term “obsolete” before to describe a provision of the Virginia Constitution that was previously declared unconstitutional. In 2002, in *Falwell v. Miller*,<sup>17</sup> the U.S. District Court for the Western District of Virginia concluded that Article IV, § 14(20) of the Virginia Constitution—prohibiting the incorporation of churches and religious denominations—violated the First Amendment to the United States Constitution.<sup>18</sup> Several years later, the General Assembly acted to eliminate the provision, adopting a joint resolution to place a repeal measure on the ballot in the November 2006 general election.<sup>19</sup> The adopted ballot language demonstrates the General Assembly’s assumption that provisions ruled unconstitutional have been rendered “obsolete”:

The ballot shall contain the following question: “Question: Shall Section 14 of Article IV of the Constitution of Virginia be amended by deleting the provision that prohibits the incorporation of churches, a provision that was ruled to be unconstitutional *and therefore now is obsolete?*”<sup>[20]</sup>

That same understanding was shared by the Commission on Constitutional Revision (the “CCR”), which fifty years ago was tasked with suggesting amendments to the Constitution of Virginia that the General Assembly then debated whether to propose to the people of Virginia.<sup>21</sup> Among other recommendations in its final report, the CCR “propose[d] the deletion of a number of obsolete sections of the present Constitution.”<sup>22</sup> In the course of discussing those “obsolete sections,” the CCR made clear that it had included provisions held unconstitutional by federal courts:<sup>23</sup>

Some of these sections are obsolete because the conditions which gave rise to them no longer obtain. This is the case, for example, with those sections concerned with dueling. Other sections are obsolete because of federal law, such as federal court decisions regarding the poll tax or those regarding segregation in public schools.<sup>[24]</sup>

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<sup>17</sup> 203 F. Supp. 2d 624 (W.D. Va. 2002).

<sup>18</sup> *Id.* at 632-33. The Court noted that the defendant, the Chairman of the State Corporation Commission, represented by the Attorney General, “has chosen not to defend the constitutional merits of Article IV, § 14(20)” and “does not contest the merits of Plaintiffs’ legal argument that § 14(20) violates the U.S. Constitution.” *Id.* at 627, 632.

<sup>19</sup> 2006 Va. Acts ch. 68.

<sup>20</sup> *Id.* (emphasis added). The ballot question passed with 65% of voters approving. See Va. Dep’t of Elections, Elections Database, 2006 – Statewide – Question 2, [http://historical.elections.virginia.gov/ballot\\_questions/view/2366/](http://historical.elections.virginia.gov/ballot_questions/view/2366/) (last visited Aug. 10, 2017).

<sup>21</sup> See REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISION (The Michie Co. 1969).

<sup>22</sup> *Id.* at 13.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* The poll-tax and segregation cases referred to are *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (provisions in Constitution of Virginia making payment of poll taxes a qualification for eligibility to vote violate the Equal Protection Clause), and *Davis v. County School Board*, 347 U.S. 483 (1954) (Virginia constitutional provisions and laws requiring segregation of black and white students in public schools violate the Fourteenth Amendment). See also REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISION at 16 (“Obsolete or unnecessary parts of the present Franchise article, for example, those relating to the poll tax, are deleted.”); *id.* at

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Thus, both the General Assembly and the CCR have understood that statutes are obsolete if, like Virginia's prohibitions on same-sex marriage, they have been found unconstitutional by a federal court.

For those reasons, I answer your question in the affirmative and conclude that §§ 20-45.2 and 20-45.3 "are obsolete within the compass of § 30-151."

Finally, although it does not affect my opinion, I note that the General Assembly has granted the Commission substantial discretion in performing its duties. Section 30-151 empowers the Commission to "identify obsolete chapters, articles, sections, or enactments" and make "recommendation[s] to the General Assembly" regarding "such [obsolete] statutes or acts *as the Commission deems appropriate*."<sup>25</sup> That discretion is permissible because the General Assembly is not bound to accept the Commission's recommendations; the General Assembly exercises its independent judgment whether to act on those recommendations and whether to adopt or reject them in whole or in part. Given the discretion committed to the Commission, and in light of the reasons discussed above, the Commission certainly would be within its authority to conclude that §§ 20-45.2 and 20-45.3 are obsolete within the meaning of § 30-151.

How the Commission should exercise its discretion, however, is not a proper subject for me to opine on, and instead is a matter for the Commission to decide. But I do note one practical consideration that the Commission may wish to take into account: if these unconstitutional provisions remain in the *Code of Virginia*, there is a possibility that citizens of the Commonwealth could be misled into believing that they remain valid law, which, of course, they do not.

B. Whether Article I, § 15-A of the Constitution of Virginia violates the U.S. Constitution.

Both *Bostic* and *Obergefell* confirm that Article I, § 15-A of the Constitution of Virginia violates the U.S. Constitution. Article I, § 15-A provides, in part, "[t]hat only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions."<sup>26</sup> As stated above, in *Bostic*, the Fourth Circuit held unconstitutional Virginia's marriage laws—including Article I, § 15-A—"to the extent that they prevent same-sex couples from marrying and prohibit Virginia from recognizing same-sex couples' lawful out-of-state marriages," and the Supreme Court let that decision stand.<sup>27</sup> Along with its statutory prohibitions on same-sex marriage, Virginia's constitutional prohibition has not been in force since October 6, 2014.

What the Fourth Circuit held in *Bostic* with respect to Virginia's laws in particular became settled law nationwide a year later, when the U.S. Supreme Court confirmed in *Obergefell* that the Constitution "does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex."<sup>28</sup> Thus, Article I, § 15-A is invalid under *Obergefell* "to the extent [it]

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233 ("The restrictions on the size of county magisterial districts are obsolete after the recent one-man, one-vote decisions of the United States Supreme Court.").

<sup>25</sup> VA. CODE ANN. § 30-151 (emphasis added).

<sup>26</sup> VA. CONST. art. I, § 15-A.

<sup>27</sup> *Bostic*, 760 F.3d at 384, cert. denied, 135 S. Ct. 286, 308, 314.

<sup>28</sup> *Obergefell*, 135 S. Ct. at 2607.

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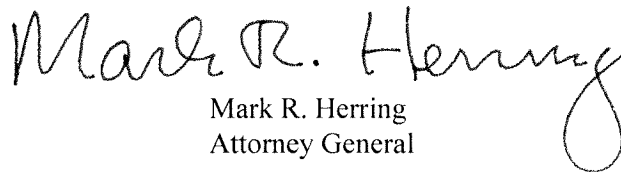
exclude[s] same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.”<sup>29</sup>

### Conclusion

It is my opinion that §§ 20-45.2 and 20-45.3 of the *Code of Virginia* are obsolete within the meaning of § 30-151 because they have been held unconstitutional and therefore lack any legal force. It is also my opinion that the similar prohibition on same-sex marriage in Article I, § 15-A of the Constitution of Virginia violates the U.S. Constitution, under the holdings of both the Fourth Circuit in *Bostic* and the Supreme Court in *Obergefell*.

With kindest regards, I am

Very truly yours,

  
Mark R. Herring  
Attorney General

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<sup>29</sup> *Id.* at 2605.

**2017 SESSION****SB 782 Same-sex marriages; civil unions.**Introduced by: **Adam P. Ebbin** | [all patrons](#) ... [notes](#) | [add to my profiles](#)**SUMMARY AS INTRODUCED:**

**Same-sex marriages; civil unions.** Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions are no longer valid due to the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (June 26, 2015).

**FULL TEXT****07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100125D** [pdf](#)**HISTORY****07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100125D****07/18/16 Senate: Referred to Committee for Courts of Justice****01/16/17 Senate: Passed by indefinitely in Courts of Justice with letter (10-Y 2-N)**

2017 SESSION

INTRODUCED

17100125D

SENATE BILL NO. 782

Offered January 11, 2017

Prefiled July 18, 2016

A BILL to repeal §§ 20-45.2 and 20-45.3 of the Code of Virginia, relating to same-sex marriages; civil unions.

Patrons—Ebbin, Edwards and Lewis; Delegates: Kory, Levine and Sickles

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-45.2 and 20-45.3 of the Code of Virginia are repealed.

INTRODUCED

SB782

1/16/17 6:52

TEXT OF SECTIONS

§ 20-45.2. Marriage between persons of same sex.

A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.

1975, c. 644; 1997, cc. 354, 365.

§ 20-45.3. Civil unions between persons of same sex.

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

2004, c. 983.

## 2017 SESSION

**SJ 216 Constitutional amendment marriage; marriage (first reference).**

Introduced by: Adam P. Ebbin | all patrons ... notes | add to my profiles

edit: summary | title | catch | history

**SUMMARY AS INTRODUCED:**

**Constitutional amendment (first resolution); marriage.** Proposes the repeal of the constitutional amendment dealing with marriage that was approved by referendum at the November 2006 election. That amendment to the Bill of Rights (i) defines marriage as "only a union between one man and one woman"; (ii) prohibits the Commonwealth and its political subdivisions from creating or recognizing "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage"; and (iii) prohibits the Commonwealth or its political subdivisions from creating or recognizing "another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage." The provisions of this section of the Constitution of Virginia are no longer valid as a result of the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_ (June 26, 2015).

**FULL TEXT**

07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100124D pdf

01/31/17 Senate: Committee substitute printed 17104944D-S1 pdf

**HISTORY**

07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100124D

07/18/16 Senate: Referred to Committee on Privileges and Elections

01/20/17 Senate: Assigned to P&amp;E sub: Constitutional Amendments

01/31/17 Senate: Committee substitute printed 17104944D-S1

01/31/17 Senate: Incorporates SJ216 (Locke)

01/31/17 Senate: Passed by indefinitely in Privileges and Elections with letter (8-Y 6-N)

2017 SESSION

SENATE SUBSTITUTE

17104944D

SENATE JOINT RESOLUTION NO. 216  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Privileges and Elections  
on January 31, 2017)

(Patrons Prior to Substitute—Senators Ebbin and Locke [SJ 220])

*Proposing the repeal of Section 15-A of Article I of the Constitution of Virginia, relating to marriage.*

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Repeal Section 15-A of Article I of the Constitution of Virginia as follows:

ARTICLE I  
BILL OF RIGHTS

~~Section 15-A. Marriage.~~

~~That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.~~

~~This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.~~

SENATE SUBSTITUTE

SJ216S1



**CATEGORY ONE**

<b>§ 24.2-113 Special assistant registrars.</b>	
<b>Last Amended</b>	1993
<b>Cross References</b>	None
<b>Recommendation</b>	Repeal
<b>Reasoning and Notes</b>	Superseded by § 24.2-112, which was amended in 2001 to allow for assistant registrars in a locality of which he is not a qualified voter
<b>Stakeholders</b>	General registrars

<b>§ 24.2-614 Preparation and form of presidential election ballots.</b>	
<b>Last Amended</b>	2016
<b>Cross References</b>	§ 24.2-613 - amendment not needed
<b>Recommendation</b>	Repeal last sentence of the second paragraph which reads: <i>A printed square shall precede the name of each political party or designation.</i>
<b>Reasoning and Notes</b>	Superseded by § 24.2-629 (B)(4), which requires electronic voting systems approved by the State Board for use in the Commonwealth to require votes for presidential and vice presidential electors to be cast for the electors of one party by one operation. This printed square requirement is to serve the same purpose.
<b>Stakeholders</b>	

<b>§ 24.2-644 Voting by paper ballot; voting for presidential electors; write-in votes.</b>	
<b>Last Amended</b>	2013
<b>Cross References</b>	§§ 24.2-648, 24.2-653, and 24.2-707 - amendments not needed
<b>Recommendation</b>	B. The qualified voter at a presidential election shall mark <del>the square preceding the names and party designation</del> <u>the ballot in accordance with the instructions for the type of ballot,</u> for his choice of candidates for President and Vice President. His ballot so marked shall be counted as if he had marked squares preceding the names of the individual electors affiliated with his choice for President and Vice President. The qualified voter at a presidential election may cast a write-in vote for President and Vice President as provided in subsections C and D.
<b>Reasoning and Notes</b>	Superseded by § 24.2-629 (B)(4), which requires electronic voting systems approved by the State Board for use in the Commonwealth to require votes for presidential and vice presidential electors to be cast for the electors of one party by one operation. This printed square requirement is to serve the same purpose.
<b>Stakeholders</b>	

## CATEGORY TWO

<b>§ 24.2-613 Form of ballot</b>	
<b>Last Amended</b>	2017
<b>Cross References</b>	None
<b>Recommendation</b>	<p>D. In preparing the printed ballots for general, special, and primary elections, the State Board and <del>electoral boards</del> <u>general registrars</u> shall cause to be printed in not less than 10-point type, immediately below the title of any office, a statement of the number of candidates for whom votes may be cast for that office.</p> <p>[...]</p> <p>E.</p> <p>[...]</p> <p><del>In every county and city using voting systems requiring printed ballots, the electoral board shall furnish a sufficient number of ballots printed on plain white paper, of such form and size as will fit in the ballot frames.</del></p>
<b>Reasoning and Notes</b>	<p>Ballot frames refer to a type of voting equipment no longer in use in the Commonwealth. Additionally, § 24.2-612 contains the requirement that a sufficient number of ballots be furnished.</p> <p>A technical amendment is also recommended for this section. General registrars are now responsible for the printing of ballots, pursuant to § 24.2-612.</p>
<b>Stakeholders</b>	Electoral boards, general registrars, State Board of Elections

<b>§ 24.2-615 Separate ballots for proposed constitutional amendments, etc.; uniform ballots.</b>	
<b>Last Amended</b>	1993
<b>Cross References</b>	None
<b>Recommendation</b>	<p>Repeal first paragraph which reads:</p> <p><i>A separate ballot shall be printed for each of the following: proposed amendments to the Constitution submitted to the qualified voters at one election; proposals submitted to the qualified voters after a constitutional convention pursuant to Article XII, Section 2 of the Constitution; candidates for President, Vice President, and presidential electors; and candidates for the Congress of the United States.</i></p>
<b>Reasoning and Notes</b>	<p>This requirement was added in 1952 when votes were cast on paper ballots and deposited into ballot boxes. With current voting systems in use in the Commonwealth, a requirement that separate ballots be printed for particular questions and elections is onerous and impractical.</p>
<b>Stakeholders</b>	

<b>§ 24.2-641 Sample ballot.</b>	
<b>Last Amended</b>	2016
<b>Cross References</b>	None
<b>Recommendation</b>	The electoral board or general registrar shall provide for each precinct in which any voting or counting machines are used two sample ballots, <del>which shall be arranged as a diagram of the front of the voting or counting machine as it will appear with the official ballot for voting on election day for each ballot style in use at that precinct.</del> Such sample ballots shall be posted for public inspection at each polling place during the day of election.
<b>Reasoning and Notes</b>	The language recommended to be removed refers to a practice for providing information to voters for a type of voting equipment that is no longer in use. Displaying sample ballots is still an important source of information for the public and the recommended amendment updates the practice to reflect the voting equipment now in use.
<b>Stakeholders</b>	Electoral boards, general registrars

<b>§ 24.2-644 Voting by paper ballot; voting for presidential electors; write-in votes.</b>	
<b>Last Amended</b>	2013
<b>Cross References</b>	§§ 24.2-648, 24.2-653, and 24.2-707 - amendments not needed
<b>Recommendation</b>	A. The qualified voter shall take the official paper ballot and enter the voting booth. After entering the voting booth, the qualified voter shall mark <del>immediately preceding the name of the ballot in accordance with the instructions for the type of ballot for each candidate for whom he wishes to vote a check (✓) or a cross (X or +) or a line (—) in the square provided for such purpose, leaving unmarked the square preceding the name of each candidate for whom he does not wish to vote.</del> Any ballot marked so that the intent of the voter is clear shall be counted.
<b>Reasoning and Notes</b>	Updates language that was added in 1936. The form of ballots in use today do not require checks or crosses or lines. The suggested amendment eliminates the specificity while still retaining a standard that will be workable as ballots and voting technology evolves.
<b>Stakeholders</b>	

<b>§ 24.2-706 Duty of general registrar on receipt of application; statement of voter.</b>	
<b>Last Amended</b>	2016
<b>Cross References</b>	§§ 24.2-407, 24.2-418, 24.2-460, 24.2-612, 24.2-704, and 24.2-707 - no amendments needed
<b>Recommendation</b>	<p>On receipt of an application for an absentee ballot, the general registrar shall <del>enroll the name and address of each registered applicant on an absentee voter applicant list that shall be maintained in the office of the general registrar with a file of the applications of the listed applicants</del> <u>enter the information from the application into the statewide voter registration system.</u> <del>The list</del> <u>Lists of absentee voter applicants</u> shall be available for inspection and copying and the applications shall be available for inspection only by any registered voter during regular office hours. Upon request and for a reasonable fee, the Department of Elections shall provide an electronic copy of the absentee voter applicant list to any political party or candidate. Such list shall be used only for campaign and political purposes. Any list made available for inspection and copying under this section shall contain the post office box address in lieu of the residence street address for any individual who has furnished at the time of registration or subsequently, in addition to his street address, a post office box address pursuant to subsection B of § 24.2-418.</p>
<b>Reasoning and Notes</b>	Absentee voter applicant information is now entered into the statewide voter registration system. Paper lists are no longer maintained.
<b>Stakeholders</b>	General registrars

<b>§ 24.2-710 Further duties of electoral board and general registrar; absentee voter applicant lists.</b>	
<b>Last Amended</b>	2017
<b>Cross References</b>	§§ 24.2-407, 24.2-418, 24.2-705, and 24.2-712 - amendments not needed
<b>Recommendation</b>	<p>On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt in the <del>appropriate column opposite the name and address of the voter on the absentee voter applicant list maintained in the general registrar's office</del> <u>statewide voter registration system</u>. A board member or registrar shall deposit the return envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in which they shall remain until the day of the election, unless the registrar opts to open sealed ballot envelopes in order to expedite the counting of absentee ballots in accordance with § 24.2-709.1.</p> <p>On the day before the election, the general registrar shall (i) <del>make out in triplicate on a form prescribed by the State Board</del> <u>produce</u> the absentee voter applicant list containing the names of all persons who applied for an absentee ballot through the third day before the election and (ii) by noon on the day before the election, deliver two copies of the list to the electoral board. The general registrar shall make out a supplementary list containing the names of all persons voting absentee in person pursuant to §§ 24.2-705.1 and 24.2-705.2, or applying to vote absentee pursuant to § 24.2-705, for delivery by 5:00 p.m. on the day before the election. The supplementary list shall be deemed part of the absentee voter applicant list and shall be prepared and delivered in accordance with the instructions of the State Board. The general registrar shall maintain one copy of the list in his office for two years as a public record open for inspection upon request during regular office hours.</p>
<b>Reasoning and Notes</b>	Information related to absentee voting, including receipt of ballots, is now entered into the statewide voter registration system. Paper lists are no longer maintained.
<b>Stakeholders</b>	General registrars, electoral boards



**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 24.2-613, 24.2-614, 24.2-615, 24.2-641, 24.2-644, 24.2-706, and 24.2-  
2 710 of the Code of Virginia and to repeal § 24.2-113 of the Code of Virginia, relating to obsolete  
3 statutes and provisions in Title 24.2.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 24.2-613, 24.2-614, 24.2-615, 24.2-641, 24.2-644, 24.2-706, and 24.2-710 of the Code of**  
6 **Virginia are amended and reenacted as follows:**

7 **§ 24.2-613. Form of ballot.**

8 A. The ballots shall comply with the requirements of this title and the standards prescribed by the  
9 State Board.

10 B. For elections for federal, statewide, and General Assembly offices only, each candidate who  
11 has been nominated by a political party or in a primary election shall be identified by the name of his  
12 political party. Independent candidates shall be identified by the term "Independent." For the purpose of  
13 this section, any Independent candidate may, by producing sufficient and appropriate evidence of  
14 nomination by a "recognized political party" to the State Board, have the term "Independent" on the ballot  
15 converted to that of a "recognized political party" on the ballot and be treated on the ballot in a manner  
16 consistent with the candidates nominated by political parties. For the purpose of this section, a "recognized  
17 political party" is defined as an organization that, for at least six months preceding the filing of its nominee  
18 for the office, has had in continual existence a state central committee composed of registered voters  
19 residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected  
20 state chairman and secretary. A letter from the state chairman of a recognized political party certifying  
21 that a candidate is the nominee of that party and also signed by such candidate accepting that nomination  
22 shall constitute sufficient and appropriate evidence of nomination by a recognized political party. The  
23 name of the political party, the name of the "recognized political party," or term "Independent" may be  
24 shown by an initial or abbreviation to meet ballot requirements.

25 C. Except as provided for primary elections, the State Board shall determine by lot the order of the  
26 political parties, and the names of all candidates for a particular office shall appear together in the order  
27 determined for their parties. In an election district in which more than one person is nominated by one  
28 political party for the same office, the candidates' names shall appear alphabetically in their party groups  
29 under the name of the office, with sufficient space between party groups to indicate them as such. For the  
30 purpose of this section, except as provided for presidential elections in § 24.2-614, "recognized political  
31 parties" shall be treated as a class; the order of the recognized political parties within the class shall be  
32 determined by lot by the State Board; and the class shall follow the political parties as defined by § 24.2-  
33 101 and precede the independent class. Independent candidates shall be treated as a class under  
34 "Independent", and their names shall be placed on the ballot after the political parties and recognized  
35 political parties. Where there is more than one independent candidate for an office, their names shall  
36 appear on the ballot in an order determined by the priority of time of filing all required paperwork for the  
37 office. In the event two or more candidates file simultaneously, the order of filing shall then be determined  
38 by lot by the electoral board as in the case of a tie vote for the office.

39 No individual's name shall appear on the ballot more than once for the same office.

40 D. In preparing the printed ballots for general, special, and primary elections, the State Board and  
41 ~~electoral boards-general registrars~~ shall cause to be printed in not less than 10-point type, immediately  
42 below the title of any office, a statement of the number of candidates for whom votes may be cast for that  
43 office. For any office to which only one candidate can be elected, the following language shall be used:  
44 "Vote for only one." For any office to which more than one candidate can be elected, the following  
45 language shall be used: "Vote for not more than."

46 E. Any locality that uses machine-readable ballots at one or more precincts, including any central  
47 absentee precinct, may, with the approval of the State Board, use a printed reproduction of the machine-  
48 readable ballot in lieu of the official machine-readable ballot. Such reproductions shall be printed and  
49 otherwise handled in accordance with all laws and procedures that apply to official paper ballots.

~~In every county and city using voting systems requiring printed ballots, the electoral board shall furnish a sufficient number of ballots printed on plain white paper, of such form and size as will fit in the ballot frames.~~

**§ 24.2-614. Preparation and form of presidential election ballots.**

As soon as practicable after the seventy-fourth day before the presidential election, the State Board shall certify to the general registrar of each county and city the form of official ballot for the presidential election which shall be uniform throughout the Commonwealth. Each general registrar shall have the official ballot printed at least 45 days preceding the election.

The ballot shall contain the name of each political party and the party group name, if any, specified by the persons naming electors by petition pursuant to § 24.2-543. Below the party name in parentheses, the ballot shall contain the words "Electors for \_\_\_\_\_, President and \_\_\_\_\_, Vice President" with the blanks filled in with the names of the candidates for President and Vice President for whom the candidates for electors are expected to vote in the Electoral College. ~~A printed square shall precede the name of each political party or party designation.~~

Groups of petitioners qualifying for a party name under § 24.2-543 shall be treated as a class; the order of the groups shall be determined by lot by the State Board; and the groups shall immediately precede the independent class on the ballot. The names of the candidates within the independent class shall be listed alphabetically.

**§ 24.2-615. Uniform ballots.**

~~A separate ballot shall be printed for each of the following: proposed amendments to the Constitution submitted to the qualified voters at one election; proposals submitted to the qualified voters after a constitutional convention pursuant to Article XII, Section 2 of the Constitution; candidates for President, Vice President, and presidential electors; and candidates for the Congress of the United States.~~

The form of the ballot shall be the same throughout the election district in which the same candidates are running to fill the same offices and throughout the district in which a question is submitted to the voters.

**§ 24.2-641. Sample ballot.**

77 The electoral board or general registrar shall provide for each precinct in which any voting or  
78 counting machines are used two sample ballots, ~~which shall be arranged as a diagram of the front of the~~  
79 ~~voting or counting machine as it will appear with the official ballot for voting on election day for each~~  
80 ~~ballot style in use at that precinct~~. Such sample ballots shall be posted for public inspection at each polling  
81 place during the day of election.

82 **§ 24.2-644. Voting by paper ballot; voting for presidential electors; write-in votes.**

83 A. The qualified voter shall take the official paper ballot and enter the voting booth. After entering  
84 the voting booth, the qualified voter shall mark ~~immediately preceding the name of the ballot in~~  
85 ~~accordance with the instructions for the type of ballot, for~~ each candidate for whom he wishes to vote ~~a~~  
86 ~~check (✓) or a cross (✓ or +) or a line (-) in the square provided for such purpose, leaving unmarked the~~  
87 ~~square preceding the name of each candidate for whom he does not wish to vote~~. Any ballot marked so  
88 that the intent of the voter is clear shall be counted.

89 B. The qualified voter at a presidential election shall mark ~~the square preceding the names and~~  
90 ~~party designation the ballot in accordance with the instructions for the type of ballot,~~ for his choice of  
91 candidates for President and Vice President. His ballot so marked shall be counted as if he had marked  
92 ~~squares the ballot in accordance with the instructions for the type of ballot~~ preceding the names of the  
93 individual electors affiliated with his choice for President and Vice President. The qualified voter at a  
94 presidential election may cast a write-in vote for President and Vice President as provided in subsections  
95 C and D.

96 C. At all elections except primary elections it ~~shall be~~ is lawful for any voter to vote for any person  
97 other than the listed candidates for the office by writing or hand printing the person's name on the official  
98 ballot. No check or other mark shall be required to cast a valid write-in vote. Write-in votes for President  
99 and Vice President shall be counted only for candidates who have filed a joint declaration of intent to be  
100 write-in candidates for the offices with the Commissioner of Elections not less than 10 days before the  
101 date of the presidential election. The declaration of intent shall be on a form prescribed by the State Board  
102 and shall include a list of presidential electors pledged to those candidates which equals the whole number  
103 of senators and representatives to which the Commonwealth at that time is entitled in the Congress of the

104 United States. A write-in vote cast for candidates for President and Vice President, or for a candidate for  
105 President only, shall be counted for the individual electors listed on the declaration of intent as pledged to  
106 those candidates.

107 D. No write-in vote shall be counted unless the name is entered on the ballot in conformance with  
108 this section. No write-in vote shall be counted when it is apparent to the officers of election that a voter  
109 has voted for the same person for the same office more than one time. No write-in vote shall be counted  
110 for an office for any person whose name appears on the ballot as a candidate for that office. If two or more  
111 persons are to be elected to the same office, a voter may vote for one or more persons whose names do  
112 appear on the ballot and one or more persons whose names do not appear on the ballot, provided that the  
113 total number of votes cast by him for that office does not exceed the number of persons to be elected to  
114 that office.

115 **§ 24.2-706. Duty of general registrar on receipt of application; statement of voter.**

116 On receipt of an application for an absentee ballot, the general registrar shall ~~enroll the name and~~  
117 ~~address of each registered applicant on an absentee voter applicant list that shall be maintained in the~~  
118 ~~office of the general registrar with a file of the applications of the listed applicants~~ enter the information  
119 from the application into the statewide voter registration system. ~~The list~~ Lists of absentee voter applicants  
120 shall be available for inspection and copying and the applications shall be available for inspection only by  
121 any registered voter during regular office hours. Upon request and for a reasonable fee, the Department of  
122 Elections shall provide an electronic copy of the absentee voter applicant list to any political party or  
123 candidate. Such list shall be used only for campaign and political purposes. Any list made available for  
124 inspection and copying under this section shall contain the post office box address in lieu of the residence  
125 street address for any individual who has furnished at the time of registration or subsequently, in addition  
126 to his street address, a post office box address pursuant to subsection B of § 24.2-418.

127 No list or application containing an individual's social security number, or any part thereof, or the  
128 individual's day and month of birth, shall be made available for inspection or copying by anyone. The  
129 Department of Elections shall prescribe procedures for general registrars to make the information in the

130 lists and applications available in a manner that does not reveal social security numbers or parts thereof,  
131 or an individual's day and month of birth.

132 The completion and timely delivery of an application for an absentee ballot shall be construed to  
133 be an offer by the applicant to vote in the election.

134 The general registrar shall note on each application received whether the applicant is or is not a  
135 registered voter. In reviewing the application for an absentee ballot, the general registrar shall not reject  
136 the application of any individual because of an error or omission on any record or paper relating to the  
137 application, if such error or omission is not material in determining whether such individual is qualified  
138 to vote absentee.

139 If the application has been properly completed and signed and the applicant is a registered voter  
140 of the precinct in which he offers to vote, the general registrar shall, at the time when the printed ballots  
141 for the election are available, send by the deadline set out in § 24.2-612, obtaining a certificate or other  
142 evidence of either first-class or expedited mailing or delivery from the United States Postal Service or  
143 other commercial delivery provider, or deliver to him in person in the office of the registrar, the following  
144 items and nothing else:

145 1. An envelope containing the folded ballot, sealed and marked "Ballot within. Do not open except  
146 in presence of a witness."

147 2. An envelope, with printing only on the flap side, for resealing the marked ballot, on which  
148 envelope is printed the following:

149 "Statement of Voter."

150 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016,  
151 that my FULL NAME is \_\_\_\_\_ (last, first, middle); that I am now or have been at some time  
152 since last November's general election a legal resident of \_\_\_\_\_ (STATE YOUR LEGAL  
153 RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip  
154 code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that I  
155 opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness, without  
156 assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am returning

157 the form required to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I  
158 have not voted and will not vote in this election at any other time or place.

159 Signature of Voter \_\_\_\_\_

160 Date \_\_\_\_\_

161 Signature of witness \_\_\_\_\_"

162 For elections held after January 1, 2004, instead of the envelope containing the above oath, an  
163 envelope containing the standard oath prescribed by the presidential designee under § 101(b)(7) of the  
164 Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) shall be sent to voters  
165 who are qualified to vote absentee under that Act.

166 3. A properly addressed envelope for the return of the ballot to the general registrar by mail or by  
167 the applicant in person.

168 4. Printed instructions for completing the ballot and statement on the envelope and returning the  
169 ballot.

170 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b)  
171 of 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter  
172 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his  
173 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank  
174 statement, government check, paycheck or other government document that shows the name and address  
175 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of  
176 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as a  
177 provisional ballot under the provisions of § 24.2-653. The Department of Elections shall provide  
178 instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to  
179 subsection B of § 24.2-653 and this section.

180 5. For any voter entitled to vote absentee under the Uniformed and Overseas Citizens Absentee  
181 Voting Act (52 U.S.C. § 20301 et seq.), information provided by the Department of Elections specific to  
182 the voting rights and responsibilities for such citizens, or information provided by the registrar specific to  
183 the status of the voter registration and absentee ballot application of such voter, may be included.

184 The envelopes and instructions shall be in the form prescribed by the Department of Elections.

185 If the applicant makes his application to vote in person under § 24.2-701 at a time when the printed  
186 ballots for the election are available, the general registrar, on the determination of the qualifications of the  
187 applicant to vote, shall provide to the applicant the items set forth in subdivisions 1 through 4, and no item  
188 shall be removed by the applicant from the office of the general registrar. On the request of the applicant,  
189 made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote,  
190 the general registrar may send the items set forth in subdivisions 1 through 4 to the applicant by mail,  
191 obtaining a certificate or other evidence of mailing.

192 If the applicant states as the reason for his absence on election day any of the reasons set forth in  
193 subdivision 2 of § 24.2-700, the general registrar, at the time when the printed ballots for the election are  
194 available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in the  
195 office of the general registrar the items as set forth in subdivisions 1 through 4 and, if necessary, an  
196 application for registration. A certificate or other evidence of mailing shall not be required. If the applicant  
197 requests that such items be sent by electronic transmission, the general registrar, at the time when the  
198 printed ballots for the election are available but not later than the deadline set forth in § 24.2-612, shall  
199 send by electronic transmission the blank ballot, the form for the envelope for returning the marked ballot,  
200 and instructions to the voter. Such materials shall be sent using the official email address or fax number  
201 of the office of the general registrar published on the Department of Elections website. The State Board  
202 of Elections may prescribe by regulation the format of the email address used for transmitting ballots to  
203 eligible voters. A general registrar may also use electronic transmission facilities provided by the Federal  
204 Voting Assistance Program. The voted ballot shall be returned to the general registrar as otherwise  
205 required by this chapter.

206 When the statement prescribed in subdivision 2 has been properly completed and signed by the  
207 registered voter and witnessed, his ballot shall not be subject to challenge pursuant to § 24.2-651.

208 The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this  
209 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole  
210 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur, or



211 (iii) the campaign committee or the appropriate district political party chairman of such candidate. Any  
212 person who fails to discharge his duty as provided in this section through willful neglect of duty and with  
213 malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of § 24.2-1001.

214 **§ 24.2-710. Further duties of electoral board and general registrar; absentee voter applicant**  
215 **lists.**

216 On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of  
217 receipt in the ~~appropriate column opposite the name and address of the voter on the absentee voter~~  
218 ~~applicant list maintained in the general registrar's office~~ statewide voter registration system. A board  
219 member or registrar shall deposit the return envelope and the unopened ballot envelope in an appropriate  
220 container provided for the purpose, in which they shall remain until the day of the election, unless the  
221 registrar opts to open sealed ballot envelopes in order to expedite the counting of absentee ballots in  
222 accordance with § 24.2-709.1.

223 On the day before the election, the general registrar shall (i) ~~make out in triplicate on a form~~  
224 ~~prescribed by the State Board~~ produce the absentee voter applicant list containing the names of all persons  
225 who applied for an absentee ballot through the third day before the election and (ii) by noon on the day  
226 before the election, deliver two copies of the list to the electoral board. The general registrar shall make  
227 out a supplementary list containing the names of all persons voting absentee in person pursuant to §§ 24.2-  
228 705.1 and 24.2-705.2, or applying to vote absentee pursuant to § 24.2-705, for delivery by 5:00 p.m. on  
229 the day before the election. The supplementary list shall be deemed part of the absentee voter applicant  
230 list and shall be prepared and delivered in accordance with the instructions of the State Board. The general  
231 registrar shall maintain one copy of the list in his office for two years as a public record open for inspection  
232 upon request during regular office hours.

233 On the day before the election, the electoral board shall deliver one copy of the list provided to it  
234 by the general registrar to the chief officer of election for each precinct. The list shall be attested by the  
235 secretary of the electoral board who shall be responsible for the delivery of the attested lists to the chief  
236 officer of election for each precinct.

237 Absentee ballots shall be accepted only from voters whose names appear on the attested list.

238 Before the polls close on the day of the election, the electoral board shall deliver the absentee ballot  
239 containers to, and obtain a receipt from, the officers of election at each appropriate precinct. Any ballot  
240 returned to the electoral board or general registrar prior to the closing of the polls, but after the ballot  
241 container has been delivered, shall be delivered in an appropriate container to the officers of election at  
242 each appropriate precinct. The containers shall be sealed prior to delivery to the officers and shall contain  
243 the sealed absentee ballots, the accompanying return envelopes, and a copy of the absentee voter applicant  
244 list for each precinct.

245 If the county or city uses a central absentee voter precinct pursuant to § 24.2-712, the lists and  
246 containers shall be delivered, as provided in this section, to the officers of election for the absentee  
247 precinct.

248 Before noon on the day following the election, the general registrar shall deliver all applications  
249 for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city,  
250 except that the general registrar may retain all applications for absentee ballots until the electoral board  
251 has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and  
252 counted all provisional ballots pursuant to § 24.2-653, at which point all applications shall then be  
253 delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain the sealed  
254 applications with the counted ballots.

255 The secretary of the electoral board shall deliver all absentee ballots received after the election to  
256 the clerk of the circuit court.

257 Upon request, the State Board shall provide an electronic copy of the absentee voter applicant list  
258 to any political party or candidate. Such lists shall be used only for campaign and political purposes. In  
259 no event shall any list furnished under this section contain (i) any voter's social security number or any  
260 part thereof, (ii) any voter's day and month of birth, or (iii) the residence address of any voter who has  
261 provided a post office box address to be used on public lists pursuant to § 24.2-418.

262 **2. That § 24.2-113 of the Code of Virginia is repealed.**

263 #

**Title 55 Recodification Work Group  
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Van Thompson (State Corporation Commission, Bureau of Insurance)

1 **Proposed Sections to Relocate Out of Title 55 (from Subtitle I)**

2

3 **Relocation to Title 45.1:**

4

~~TITLE 55~~

5

~~PROPERTY AND CONVEYANCES~~

6

TITLE 45.1.

7

MINES AND MINING.

8

~~CHAPTER 8~~ 14.7:3.

9

~~CLOUDS ON TITLE~~ MINERAL RIGHTS.

10 **Drafting note: Three sections from existing Chapter 8 of Title 55 related to mineral**  
 11 **rights are logically relocated as proposed Chapter 14.7:3 of Title 45.1.**

12 § ~~55-154~~ 45.1-161.311:9. Presumption that no minerals, coals, oils, or ores exist in certain  
 13 lands.

14 In any case when a claim to minerals, coals, oils, ores, or subsurface substances, in, on, or  
 15 under lands in the Commonwealth, except lands lying west of the Blue Ridge Mountains ~~other~~  
 16 ~~than in the counties of Amherst, Augusta, Bland, Giles, Rockingham, Nelson, Botetourt, Roanoke,~~  
 17 ~~Craig, Page, Shenandoah or counties having a population of more than 16,500 but less than~~  
 18 ~~16,900, of more than 32,000 but less than 32,940, of more than 30,000 but less than 31,000, of~~  
 19 ~~more than 15,700 but less than 16,000, of more than 60,000 but less than 70,000, of more than~~  
 20 ~~5,000 but less than 5,350, and of more than 26,670 but less than 26,800, of more than 26,300 but~~  
 21 ~~less than 27,525, of more than 6,200 but less than 6,750, of 17,500 but less than 18,200, of 56,000~~  
 22 ~~but less than 57,500, of 53,000 but less than 54,500, or in any county having population of more~~  
 23 ~~than 21,950 but less than 22,000, or in the case of manganese ores only in counties having a~~  
 24 ~~population of more than 21,300 and less than 21,900 or in any county having a population of more~~  
 25 ~~than 43,000 but less than 50,000, or the right to enter such land for the purpose of exploring,~~  
 26 mining, boring, and sinking shafts for such minerals, coals, oils, ores, or subsurface substances is  
 27 derived or reserved by any writing made 35 years or more prior to the institution of the suit

28 hereinafter mentioned, and ~~(a) Such~~ (i) such right to explore or mine has not for a like period been  
29 exercised and for a like period the person having such claim or right has never been charged with  
30 taxes thereon but all the taxes on the land have been charged to and paid by the person holding  
31 the land subject thereto, and for a like period no deed of bargain and sale of such claim or  
32 reservation in such mineral rights in the lands embraced in such claim has been recorded in the  
33 clerk's office of the county wherein the lands are located; or ~~(b) When~~ (ii) when the right to  
34 explore and mine has been exercised and the minerals, coals, oils, ores, and subsurface substances  
35 in or on the land have been exhausted and the right of mining or boring has been abandoned for a  
36 like period, then it shall be prima facie presumed that no minerals, coals, oils, ores, or subsurface  
37 substances exist in, on, or under such land.

38 **Drafting note: The portions of this section that use population brackets and identify**  
39 **counties by name to create exceptions to the general provision that the presumption**  
40 **concerning the extinguishing mineral rights does not apply west of the Blue Ridge**  
41 **Mountains are stricken pursuant to the decision of the Supreme Court of Virginia in**  
42 **Riddleburger v. Chesapeake Western Railway, 327 S.E.2d 663 (1985), which determined**  
43 **that the provisions violate Article IV, Section 14(3) of the Constitution of Virginia. Technical**  
44 **changes are made.**

45 ~~§ 55-154.1. Repealed.~~

46 **Drafting note: Repealed by Acts 1990, c. 601.**

47 ~~§ 55-154.2~~ 45.1-161.311:10. Presumption regarding estate of owner of mineral rights.

48 A. Except as otherwise provided in the deed by which the owner of minerals derives title,  
49 the owner of minerals shall be presumed to be the owner of the shell, container chamber, passage,  
50 and space opened underground for the removal of the minerals, with full right to haul and transport  
51 minerals from other lands and to pass men, materials, equipment, water, and air through such  
52 space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage, or  
53 space opened underground by the owner of minerals for the purposes herein described. The

54 provisions of this subsection shall not affect contractual obligations and agreements entered into  
55 prior to July 1, 1981.

56 B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate,  
57 unless expressly excepted by the instrument creating the mineral ownership or lease interest, the  
58 owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or  
59 affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as  
60 well as the right to use the shell, container chamber, passage, space, or void opened underground  
61 that was created by the removal of the coal.

62 1. Any such shell, container chamber, passage, space, or void opened underground that is  
63 within the boundaries of a mine permit issued under ~~Title 45.1~~ [this title](#) may be used consistent  
64 with state and federal regulations for any activity related to removal of coal from any lands for  
65 which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

66 2. Any such shell, container chamber, passage, space, or void opened underground that is  
67 located in a sealed mine for which a mining permit no longer exists may be used consistent with  
68 state and federal regulations for any activity related to removal of coal from any lands for which  
69 a permit to mine coal has been approved only with the consent of the owner of such shell,  
70 container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if  
71 the owner has been offered reasonable compensation for such use. In determining whether an  
72 offer of compensation is reasonable, a court shall be guided by the compensation set forth in other  
73 leases for the use of mine voids as is customary in the area.

74 C. The provisions of subdivisions B 1 and ~~B~~ 2 (i) shall not affect any provision contained  
75 in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container  
76 chamber, passage, space, or void opened underground that was created by the removal of the coal;  
77 (ii) shall not alter any contract entered into prior to July 1, 2012, that provides for the payment of  
78 compensation from the lessee to the lessor expressly for the use of any shell, container chamber,  
79 passage, space, or void opened underground that was created by the removal of the coal; and (iii)

80 shall have no bearing on or application to any determination of ownership rights in natural gas or  
81 coalbed methane.

82 **Drafting note: Technical changes.**

83 § ~~55-155~~ 45.1-161.311:11. Suits to extinguish certain claims.

84 The owner or owners of the land subject to ~~such a~~ claim or right subject to the provisions  
85 of § 45.1-161.311:9 separately or jointly may bring a suit in equity praying for the extinguishment  
86 of such claim or right, to which suit shall be made party defendant the person by whom such claim  
87 by such writing was derived or reserved, or his successors in title, by name so far as known, and  
88 as defendants unknown, so far as such successors in title are unknown. The venue for such a suit  
89 shall be as specified in subdivision 3 of § 8.01-261. The court shall allow a period of not less than  
90 six months from the time the cause is docketed and set for hearing to elapse within which time  
91 the defendant may explore and discover commercial minerals, coals, oils, ores<sub>2</sub> or subsurface  
92 substances, if any, and in the absence of satisfactory evidence to the contrary, it shall be presumed  
93 that there are no commercial minerals, coals, oils, ores<sub>2</sub> or subsurface substances in or on the land,  
94 and the court shall enter a decree declaring the claim or right to be a cloud on the title and releasing  
95 the land therefrom and extinguishing the same<sub>2</sub>; but if the defendant or defendants shall thereupon  
96 prove that there are commercial minerals, coals, oils, ores<sub>2</sub> or subsurface substances in or on the  
97 land, the court shall require such minerals, coals, oils, ores<sub>2</sub> or subsurface substances to be charged  
98 with taxes according to law.

99 **Drafting note: Technical changes.**

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107           § ~~55-19.5~~ 64.2-801.2. Provision in certain trust void.

108           A. Except as provided in subsection B, a provision in any inter vivos trust created for the  
109 benefit of the grantor ~~which~~ that provides directly or indirectly for the suspension, termination, or  
110 diversion of the principal, income, or other beneficial interest of the grantor in the event that he  
111 should apply for medical assistance or require medical, hospital, or nursing care or long-term  
112 custodial, nursing, or medical care shall be against public policy and ineffective as against the  
113 Commonwealth. The assets of the trust, both principal and interest, shall be distributed as though  
114 no such application had been made. The provisions of this subsection shall apply without regard  
115 to the irrevocability of the trust or the purpose for which the trust was created.

116           B. Subsection A shall not apply to any trust with a corpus of \$25,000 or less. If the corpus  
117 of any such trust exceeds \$25,000, \$25,000 of the trust shall be exempt from the provisions of  
118 subsection A. However, if the grantor has created more than one trust as described in subsection  
119 A, the \$25,000 exemption shall be prorated among the trusts. Further, if the grantor made  
120 uncompensated transfers, as defined in § 20-88.02, within ~~thirty~~ 30 months of applying for  
121 Medicaid benefits and no payments were ordered pursuant to subsection D of § 20-88.02, the  
122 \$25,000 exemption under this subsection shall not apply.

123           C. The exemption provided by subsection B shall not apply to any trust created on or after  
124 August 11, 1993.

125           D. To the extent any trust created between August 11, 1993, and July 1, 1994 would but  
126 for subsection C be entitled to the exemption provided by subsection B, the grantor may revoke  
127 such trust notwithstanding any irrevocability in the terms of such trust. Nothing contained in this  
128 subsection shall be construed to authorize the grantor to effect the vested rights of any beneficiary  
129 of such trust without the express written consent of such beneficiary.

130           E. The provisions of subsection A shall not apply to an irrevocable inter vivos trust to the  
131 extent it is created for the purpose of paying the grantor's funeral and burial expenses and is funded  
132 in an amount and manner allowable as a resource in determining eligibility for medical assistance  
133 benefits. In the event any amount remains in the trust upon payment of the funeral or burial



134 arrangements provided to or on behalf of such individual, the Commonwealth shall receive all  
135 amounts remaining in such trust up to an amount equal to the total medical assistance paid on  
136 behalf of the individual.

137 F. For purposes of this section, medical assistance and medical assistance benefits shall  
138 mean benefits payable under the State Plan for Medical Assistance.

139 **Drafting note: Existing § 55-19.5, related to certain types of trusts and Medicaid**  
140 **planning, is proposed for relocation to Article 2 of Chapter 1 of Title 64.2.**

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#

SUBTITLE I.  
REAL ESTATE CONVEYANCES

**Chapter 1: CREATION AND LIMITATION OF ESTATES.**

**General Notes: inserted four new Articles into this Chapter; taken from existing Chapter 1, one section from existing Chapter 8 (Clouds on Title), and existing Chapter 20 (Virginia Solar Easements Act)**

- additional note: the remaining sections (§§ 55-154, 55-154.1, 55-154.2, and 55-155) from existing Chapter 8 of Title 55 related to mineral rights are logically relocated to proposed Chapter 14.7:3 of Title 45.1.
- additional note: existing § 55-19.5 is proposed to be relocated to Article 2 of Chapter 1 of Title 64.2.

Article 1: Creation and Transfer of Estates

§ 55-1. Aliens may acquire, hold, and transmit real estate; when reciprocity required.

§ 55-2. When deed or will necessary to convey estate; no parol partition or gift valid.

§ 55-3. When gift of personal property invalid.

§ 55-4. Suicide or attainder of felony.

§ 55-5. Estates to lie in grant as well as in livery.

§ 55-6. Same estates may be created by deed as by will.

§ 55-7. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.

§ 55-8. Default or surrender of tenant for life not to prejudice remainderman.

§ 55-9. Conveyance of estate or interest in property by grantor to himself and another.

§ 55-10. Deed valid for grantor's right; operation of warranty.

§ 55-11. Conveyance, devise or grant without words of limitation.

§ 55-12. Fee tail converted into fee simple.

§ 55-14. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's Case abolished.

§ 55-14.1. Doctrine of worthier title abolished.

§ 55-15. When contingent remainder not to fail.

§ 55-16. When remainders not defeated.

§ 55-17. In what conveyances possession transferred to the use.

§ 55-17.1. Land trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

§ 55-18. Deed of release effectual.

§ 55-22. When person not a party, etc., may take or sue under instrument.

§ 55-23. Informalities in deeds made by attorneys-in-fact.

§ 55-24. Time for objections to irregularities in advertising sales made by trustees.

§ 55-25. Recovery at death of life tenant of taxes paid on life estate.

§ 55-153. Removal of a cloud on title; nature of plaintiff's title.

*note: relocated from existing Chapter 8 because majority of Chapter 8 is proposed to be relocated to Title 45.1.*

#### Article 2: Rule Against Perpetuities.

§ 55-12.1. Uniform Statutory Rule Against Perpetuities.

§ 55-12.2. When nonvested property interest or power of appointment created.

§ 55-12.3. Reformation.

§ 55-12.4. Exclusions from statutory rule against perpetuities.

§ 55-12.5. Prospective application.

§ 55-12.6. Uniformity of application and construction.

§ 55-13. Certain limitations construed.

§ 55-13.1 Employee trusts.

§ 55-13.2. Determination of "lives in being" for purpose of rule against perpetuities.

§ 55-13.3. Application of the rule against perpetuities to nondonative transfers.

#### Article 3. Joint Ownership of Real or Personal Property.

§ 55-20 and § 55-21. Survivorship between joint tenants abolished.

*note: These sections have been combined.*

§ 55-20.1. Joint ownership in real and personal property.

§ 55-20.2. Tenants by the entirety in real and personal property; certain trusts.

#### Article 4. Virginia Solar Easements Act.

*note: Proposed Article 4 contains sections from existing Chapter 20, the Virginia Solar Easements Act.*

§ 55-353. Creation of solar easements.

§ 55-354. Contents of solar easement agreements.

### **Chapter 2: PROPERTY RIGHTS OF MARRIED WOMEN**

#### **General notes: Taken from existing Chapter 3.**

§ 55-35. How married women may acquire and dispose of property.

- § 55-36. Contract of, and suits by and against, married women.
- § 55-37. Spouse not responsible for other spouse's contracts, etc.; mutual liability for necessities; responsibility of personal representative.
- § 55-38. Wife's right of entry into land not barred by certain judgments; when she may defend her right in lands which are her inheritance.
- § 55-39. Rights of wife, etc., not affected by husband's acts only.
- § 55-41. Conveyance from husband and wife; effect on right of wife or husband.
- § 55-42.1. How infant spouse may release interests in spouse's property.
- § 55-43. Appointment of attorney in fact by married women; effect of writing executed by such attorney.
- § 55-46. How estate of a married woman to pass at death.
- § 55-47.01. Equitable separate estates abolished.
- § 55-47.1. Tangible personal property.

### **Chapter 3: FORM AND EFFECT OF DEEDS AND LEASES**

**General notes: Taken from existing Chapter 4. Existing Article 4, the Residential Ground Rent Act, consisting of existing §§ 55-79.01 through 55-79.06, is relocated to proposed Chapter XX of Subtitle III, Rental Conveyances.**

Article 1: Form and Effect of Deeds; Easements.

- § 55-48. Form of a deed.
- § 55-49. How construed.
  - § 55-49.1. Construction of generic terms.
- § 55-50. Appurtenances, etc., included in deed of land.
  - § 55.1-xxx [new]. Relocation of easement.
    - § 55-50.1. Enjoyment of easement.
    - § 55-50.2. Utility easements.
    - § 55-50.4. Private roads; public use; maintenance and improvements.
- § 55-52. Conveyance of property not owned but subsequently acquired.
- § 55-53. Vendor's equitable lien abolished.
- § 55-54. Certain deeds to county real estate validated.
- § 55-55. Validation of sales, etc., by county courts prior to 1860.
- § 55-56. Deeds and writings executed for persons in military service, etc., under defective powers.
  - § 55-57.2. Effect of option; recording.

Article 2: Form and Effect of Deeds of Trust; Sales Thereunder; Assignments; Releases.

§ 55-58. Form of deed of trust to secure debts, etc.

§ 55-58.1. Requirements for trustees.

§ 55-58.2. Credit line deed of trust defined; relative priority of credit line deed of trust and other instruments of judgment.

§ 55-58.3. Priority of residential refinance mortgage over subordinate mortgage.

§ 55-59. How deed of trust construed; duties, rights, etc., of parties.

§ 55-59.1. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

§ 55-59.2. Advertisement required before sale by trustee.

§ 55-59.3. Contents of advertisements of sale.

§ 55-59.4. Powers and duties of trustee in event of sale under or satisfaction of deed of trust.

§ 55-60. Meaning of phrases that may be included in deed of trust.

§ 55-60.1. Evidences of indebtedness placed on equal footing. [Recommended for repeal as obsolete]

§ 55-61. Sales under deeds of trust that contain no maturity date or provision authorizing sale.

§ 55-61.1. Validation of conveyances of real property under trust instrument not authorizing sale.

§ 55-62. Permissible form for notice of sale under deed of trust.

§ 55-63. Construction of deeds requiring notice by advertisement in newspaper.

§ 55-64. Disposition of surplus from trustee's sale after death of grantor.

§ 55-64.1. Title to real estate sold not affected by nonlisting of secured notes for taxation.

§ 55-65. Validation of certain sales made under deeds of trust.

§ 55-65.1. Validation of certain sales made under deeds of trust prior to October 1, 1977.

§ 55-66. Validation of other sales under deeds of trust.

§ 55-66.01. Protection of assignees or transferees of debts secured by real estate; form of certificate or transfer.

§ 55-66.1:1. Required notice of foreclosure or repossession of manufactured home.

§ 55-66.2. Release to person dead inures to successors.

§ 55-66.3. Release of deed of trust or other lien.

§ 55-66.3:1. Release by financial institution upon payment of debt placed with it for collection.

§ 55-66.4. Partial satisfaction.

§ 55-66.4:1. Permissible form for certificate of satisfaction or certificate of partial satisfaction.

§ 55-66.4:2. Where certificates of satisfaction are to be indexed.

§ 55-66.5. Releases made by court; costs and attorney fees.

§ 55-66.6. Recordation of certificate of satisfaction, etc., required when release of lien recorded.

#### Article 3: Satisfaction of Security Interest in Real Property.

§ 55-66.8. Applicability.

§ 55-66.9. Definitions.

§ 55-66.10. Document of rescission; effect; liability for wrongful recording.

§ 55-66.11. Secured creditor to submit satisfaction for recording; liability for failure.

§ 55-66.12. Form and effect of satisfaction.

§ 55-66.13. Relation to Electronic Signatures in Global and National Commerce Act.

§ 55-66.14. Uniform standards.

#### Article 4: Effect of Certain Expressions in Deeds.

§ 55-67. Effect of word "covenants."

§ 55-68. Effect of covenant of general warranty.

§ 55-69. Covenant of special warranty.

§ 55-70. Words "with general warranty," "with special warranty," and "with English covenants of title" construed.

§ 55-70.1. Implied warranties on new homes.

§ 55-70.2. Effect of certain transfer fee covenants.

§ 55-71. Covenant of "right to convey."

§ 55-72. Covenant for "quiet possession" and "free from all encumbrances."

§ 55-73. Covenant for "further assurances."

§ 55-74. Covenant of "no act to encumber."

§ 55-75. Effect of certain words of release in a deed.

### **Chapter 4: FRADULENT AND VOLUNTARY CONVEYANCES; WRITING NECESSARY TO BE RECORDED.**

#### **General notes: Taken from existing Chapter 5.**

§ 55-80. Void fraudulent acts; bona fide purchasers not affected.

§ 55-81. Voluntary gifts, etc., void as to prior creditors.

§ 55-82. Creditor's suits to avoid such gifts, etc.

§ 55-82.1. Creditor's suits; attorney fees.

- § 55-82.2. Authority of court to set aside.
- § 55-87. Loans and reservations of a use or property to be recorded.
- § 55-95. Certain recorded contracts as valid as deeds.
- § 55-96. Contracts, etc., void as to creditors and purchasers until recorded; priority of credit line deed of trust.
- § 55-97. Where to be recorded.
- § 55-100. Recordation of instruments affecting civil aircraft of United States.
- § 55-101. Priority of writings when admitted to record same day.
- § 55-102. When writing to be recorded in county, and when in corporation.  
[Recommended for repeal as obsolete]
- § 55-103. Words "creditors" and "purchasers," how construed.
- § 55-104. Lien of subsequent purchaser for purchase money paid before notice.
- § 55-105. When purchaser not affected by record of deed or contract.

#### **CHAPTER 4: COMMUTATION AND VALUATION OF CERTAIN ESTATES.**

##### **General notes: taken from existing Chapter 15**

- § 55-269.1 Annuity Table.
- § 55-270 and § 55-271. Rule of Calculation under § 55.1-xxx [55-269.1].  
*note: these sections have been combined*
- § 55-272.1. Table of uniform seniority.
- § 55-273. Rule of calculation under § 55.1-xxx [55-272.1].
- § 55-274. Makehamized mortality table.
- § 55-276. Commutation in case of persons under disability.
- § 55-277. Commutation of certain life estates.

**Subtitle I: List of Technical Changes**

- Striking out the words/phrases: "thereof," "the same," "therein," "herein," "wherein," "thereto," "whereby," "thereafter," "therefrom," "hereof," "hereunder," "thereunder" and replacing such words with clearer, more explanatory language.
- Striking plural words used after identical singular words on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural.
- Replacing the phrase "county, city, or town" with the word "locality" on the basis of § 1-221, which states that throughout the Code, "'locality' means a county, city, or town."
- Replacing the word "must" with the word "shall" as necessary.
- Replacing the phrase "shall be" with the word "is" or "does" as necessary.
- Replacement of the phrase "shall have the authority to" with the word "may."
- Spelling out the numbers one through nine.
- Using numerals for the numbers 10 or more, except when the numbers begins a sentence or subdivision.
- Replacing the word "which" with the word "that" as necessary.
- Replacing the phrase "goods or chattels" with the modern term "personal property."
- Replacing the phrase "deed or will" with the term "written instrument" to account for all types of written instruments that are used to convey gifts of personal property. (Chapter 1)
- Use of the phrase "tenants by the entirety" instead of "tenancy by the entireties" for consistency
- Language is updated to reflect the merger of law and equity in Virginia (replacing "bill in equity" with "petition," replacing "bill of complaint" with "complaint," replacing "suit" with "action," removal of the phrase "of equity" after "circuit court," replacing "decree" and "personal decree" with "order," strike reference to "corporation court"
- Replacement of the phrase "husband and wife" with "spouse" or "spouses" for consistency.
- Replacing the phrase "admitted to record" with the word "recorded."
- Replacing the word "attorney's" with the word "attorney" when referring to "attorney fees."
- Replacing the word "Virginia" with the phrase "the Commonwealth," and striking the words "of Virginia" after the word "Commonwealth."



1 SUBTITLE I.

2 REAL ESTATE CONVEYANCES.

3 **Drafting note: Proposed Subtitle I is created to logically reorganize all provisions**  
4 **relating to real estate conveyances. Proposed Subtitle I contains five chapters: Chapter XX**  
5 **[1] Creation and Limitation of Estates; Chapter XX [2] Property Rights of Married Women;**  
6 **Chapter XX [3] Form and Effect of Deeds and Covenants; Liens; Chapter XX [4] Fraudulent**  
7 **and Voluntary Conveyances; Writings Necessary to Be Recorded; and Chapter XX [5]**  
8 **Commutation and Valuation of Certain Estates and Interests.**

9 ~~CHAPTER 1~~ XX [1].

10 ~~CREATION AND LIMITATION OF ESTATES; THEIR QUALITIES.~~

11 **Drafting note: Proposed Chapter XX [1], Creation and Limitation of Estates, contains**  
12 **sections from existing Chapter 1, Creation and Limitation of Estates; Their Qualities, and**  
13 **Chapter 20, Virginia Solar Easements Act. It is reorganized into four articles: Article 1,**  
14 **Creation and Transfer of Estates; Article 2, Rule Against Perpetuities; Article 3, Joint**  
15 **Ownership of Real or Personal Property; and Article 4, Virginia Solar Easements Act.**  
16 **Existing § 55-153, related to removal of a cloud on title, is relocated to proposed Article 1;**  
17 **the remaining sections in existing Chapter 8, Clouds on Title, concerning mineral rights, are**  
18 **logically relocated to Title 45.1, Mines and Mining. Existing § 55-19.5, related to certain types**  
19 **of trusts and Medicaid planning, is relocated to Article 2 (§ 64.1-102 et seq.) of Chapter 1 of**  
20 **Title 64.2.**

21 Article 1.

22 Creation and Transfer of Estates.

23 **Drafting note: Proposed Article 1, Creation and Limitation of Estates, contains**  
24 **sections from existing Chapter 1, Creation and Limitation of Estates; Their Qualities.**  
25 **Additionally, existing § 55-153, relating to removal of a cloud on title, is relocated to this**  
26 **proposed article.**

27           § ~~55-1~~ 55.1-xxx. Aliens may acquire, hold, and transmit real estate; when reciprocity  
28 required.

29           Any alien, not an enemy, may acquire by purchase or descent and hold real estate in ~~this~~  
30 the Commonwealth, and ~~the same such real estate~~ shall be transmitted in the same manner as real  
31 estate held by citizens. However, ~~whenever it appears to~~ if, at the time of the transfer, a court of  
32 ~~this the~~ Commonwealth determines that the laws of a foreign country or sovereignty effectively  
33 deny a Virginia resident, legatee, or distributee ~~of~~ the benefit, use, or control of money or other  
34 property held in ~~that jurisdiction~~ such foreign country or sovereignty, a judgment, order, or decree  
35 issued in the Commonwealth concerning the rights of a resident of that foreign country or  
36 sovereignty to the benefit, use, or control of money or property held in the Commonwealth, may  
37 direct that the money or property be paid into the court for the benefit of the alien. The money or  
38 property paid into court shall be paid out only upon order of the court or pursuant to the order or  
39 judgment of a court of competent jurisdiction. Any of the money or property remaining with the  
40 court upon expiration of three years from the decedent's death shall be paid out by the court as if  
41 the alien had predeceased the decedent.

42           **Drafting note: Language is updated for modern usage. The phrase "at the time of**  
43 **transfer" is added to clarify at what point the court may make its determination. Technical**  
44 **changes are made.**

45           § ~~55-2~~ 55.1-xxx. When deed or will necessary to convey estate; no parol partition or gift  
46 valid.

47           No estate of inheritance or freehold or for a term of more than five years in lands shall be  
48 conveyed unless by deed or will, ~~nor shall any and no~~ voluntary partition of lands by coparceners,  
49 having such an estate ~~therein in such land,~~ shall be made, except by deed, ~~nor shall any.~~ In addition,  
50 no right to a conveyance of any such estate or term in land shall accrue to the donee of the land or  
51 those claiming under him, under a gift or promise of gift of ~~the same such estate or term in land~~  
52 not in writing, ~~although even if~~ such gift or promise ~~be is~~ followed by possession ~~thereunder~~ and  
53 improvement of the land by the donee or those claiming under him.

54 **Drafting note: Language is updated for modern usage. Technical changes are made.**

55 § ~~55-3~~ 55.1-xxx. When gift of ~~goods or chattels~~ personal property invalid.

56 No gift of any ~~goods or chattels shall be~~ personal property is valid (i) unless conveyed by  
57 ~~deed or will~~ written instrument, ~~or~~ (ii) unless the donee or a person claiming under the donee has  
58 and remains in actual possession ~~shall have come to and remained with the donee or some person~~  
59 ~~claiming under him~~ of such personal property, or (iii) unless otherwise provided under the Uniform  
60 Commercial Code. If the donor and donee reside together at the time of the gift, possession at the  
61 place of their residence ~~shall not be~~ is not a sufficient possession within the meaning of this section.  
62 This section shall not apply to personal paraphernalia used exclusively by the donee.

63 **Drafting note: The phrase "goods or chattels" is replaced with the modern term**  
64 **"personal property" throughout the chapter. The phrase "deed or will" is replaced with the**  
65 **term "written instrument" to account for all types of written instruments that are used to**  
66 **convey gifts of personal property. Clause (iii) is added because when this section was initially**  
67 **adopted, the Uniform Commercial Code (UCC) was not yet in existence; at present, the**  
68 **majority of transfers of personal property are governed by the UCC. Technical changes are**  
69 **made.**

70 § ~~55-4~~ 55.1-xxx. Suicide or attainder of felony.

71 ~~No~~ Neither suicide, nor attainder of felony, shall ~~work~~ cause a corruption of blood or  
72 forfeiture of estate.

73 **Drafting note: Language is clarified and technical changes are made.**

74 § ~~55-5~~ 55.1-xxx. Estates to lie in grant as well as in livery.

75 All real estate shall, as regards the conveyance of the immediate freehold thereof, be  
76 deemed to lie in grant as well as in livery.

77 **Drafting note: No change.**

78 § ~~55-6~~ 55.1-xxx. Same estates may be created by deed as by will.

79 Any interest in or claim to real estate, including easements in gross, may be ~~disposed of~~  
80 transferred by deed or will. Any estate may be made to commence ~~in future~~ at a future date, by

81 deed, in like manner as by will; and any estate ~~which that~~ would be ~~good~~ valid as an executory  
82 devise or bequest ~~shall be good~~ is valid if created by deed.

83 **Drafting note: Language is updated for modern usage. Technical changes are made.**

84 § ~~55-7~~ 55.1-xxx. Power of disposal in life tenant not to defeat remainder unless exercised;  
85 power of disposal held by fiduciary.

86 If any interest in or claim to real estate or personal property ~~be is~~ disposed of by deed or  
87 will for life, with a limitation in remainder over, and ~~in~~ the same instrument ~~there be conferred~~  
88 confers expressly or by implication a power upon the life tenant in his lifetime or by will to dispose  
89 absolutely of such property, the limitation in remainder over shall not fail, or be defeated, except  
90 to the extent that the life tenant ~~shall have~~ lawfully exercised such power of disposal. A deed of  
91 trust or mortgage executed by the life tenant shall not be construed to be an absolute disposition  
92 of the estate ~~thereby conveyed~~, unless ~~there be a sale thereunder~~ such estate is sold under the deed  
93 of trust or mortgage. A power of disposal held by any person in a fiduciary capacity under an  
94 express trust in writing shall not be deemed to be held by such fiduciary in a beneficial capacity  
95 and shall not be construed in any manner to enlarge the beneficial interest otherwise given to him  
96 under such trust.

97 **Drafting note: Technical changes.**

98 ~~§§ 55-7.1, 55-7.2.~~

99 **Drafting note: Repealed by Acts 2005, c. 935, cl. 3., effective July 1, 2006.**

100 § ~~55-8~~ 55.1-xxx. Default or surrender of tenant for life not to prejudice remainderman, ~~ete~~.

101 If any tenant for life of land make default, or surrender, the heirs, or those entitled to the  
102 remainder, may, before judgment, be admitted to defend their right, or, after judgment, may assert  
103 their right without prejudice from such default or surrender.

104 **Drafting note: Technical changes.**

105 § ~~55-9~~ 55.1-xxx. Conveyance of estate or interest in property by grantor to himself and  
106 another.

107 Any person having an estate or interest in real or personal property may convey ~~the same~~  
108 such estate or interest to himself or to himself and another or others, including to himself and his  
109 spouse as tenants by the ~~entireties~~ entirety or otherwise, and the fact that one or more persons are  
110 both grantor or grantee or grantors and grantees in the same conveyance shall be no objection to  
111 the conveyance. The grantee or grantees in any such conveyance shall take title in like manner,  
112 and the estate vested in them shall be the same as if the conveyance had been made by one or more  
113 persons who are not also grantee or grantees ~~therein~~.

114 All such conveyances made prior to July 1, 1986, are validated notwithstanding defects in  
115 the form thereof ~~which that~~ do not affect vested rights.

116 **Drafting note: The phrase "tenants by the entirety" is used throughout the title for**  
117 **consistency. Technical changes are made.**

118 § ~~55-10~~ 55.1-xxx. Deed ~~good~~ valid for grantor's right; operation of warranty.

119 A writing ~~which that~~ purports to pass or assure a greater right or interest in real estate than  
120 the person making it may lawfully pass or assure shall operate as an alienation of such right or  
121 interest in such real estate as such person might lawfully convey or assure; and when the deed of  
122 the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything  
123 descends from him, his heirs shall be barred for the value of what is so descended or liable for such  
124 value.

125 **Drafting note: Technical changes.**

126 § ~~55-11~~ 55.1-xxx. ~~Grant, etc.,~~ Conveyance, devise, or grant without words of limitation.

127 When any real estate is conveyed, devised, or granted to any person without any words of  
128 limitation, such conveyance, devise, ~~conveyance~~ or grant shall be construed to pass the fee simple  
129 or other whole estate or interest ~~which that~~ the testator or grantor has power to dispose of in such  
130 real estate, unless a contrary intention ~~shall appear by~~ is apparent in the will, conveyance, or grant.

131 **Drafting note: Language is reorganized for consistency. Technical changes are made.**

132 § ~~55-12~~ 55.1-xxx. Fee tail converted into fee simple.

133 Every estate in lands so limited that, as the law was on October 7, 1776, such estate would  
134 have been an estate tail shall be deemed an estate in fee simple; and every limitation upon such  
135 an estate shall be held valid, if the same would be valid when limited upon an estate in fee simple  
136 created by technical language.

137 **Drafting note: Technical changes.**

138 § ~~55-14~~ 55.1-xxx. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's  
139 Case abolished.

140 Wherever any person by deed, will, or other writing takes an estate of freehold in land, or  
141 takes such an ~~estate interest~~ in personal property as would be an estate of freehold if it were an  
142 estate in land, and in the same deed, will, or writing an estate is afterwards limited by way of  
143 remainder, ~~either mediately or immediately~~, to his heirs, or the heirs of his body, or his issue, the  
144 words "heirs," "heirs of his body," and "issue," or other words of like import used in the deed, will,  
145 or writing in the limitation therein by way of remainder shall not be construed as words of  
146 limitation carrying to such person the inheritance as to the land, or the absolute estate as to the  
147 personal property, but they shall be construed as words of purchase, creating a remainder in the  
148 heirs, heirs of the body, or issue.

149 **Drafting note: Language is updated for modern usage. Technical changes are made.**

150 § ~~55-14.1~~ 55.1-xxx. Doctrine of worthier title abolished.

151 The doctrine of worthier title is abolished in ~~this~~ the Commonwealth as a rule of law and  
152 as a rule of construction.

153 **Drafting note: Technical change.**

154 § ~~55-15~~ 55.1-xxx. When contingent remainder not to fail.

155 A contingent remainder shall ~~in no case~~ not fail for want of a particular estate to support it.

156 **Drafting note: Technical change.**

157 § ~~55-16~~ 55.1-xxx. When remainders not defeated.

158           The alienation of a particular estate on which a remainder depends, or the union of such  
159 estate with the inheritance by purchase or descent, shall not operate, by merger or otherwise, to  
160 defeat, impair, or otherwise affect such remainder.

161           **Drafting note: Technical change.**

162           § ~~55-17.1~~ 55.1-xxx. In what conveyances possession transferred to the use.

163           By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized  
164 to the use, or deed operating by way of covenant to stand seized to the use, the possession of the  
165 ~~bargainor, releasor or covenantor~~ grantor shall be deemed transferred to the ~~bargainee, releasee~~  
166 grantee or other person entitled to the use, for the estate or interest ~~which~~ that such person has in  
167 the use, as perfectly as if the ~~bargainee, releasee~~ grantee or other person entitled to the use had  
168 been enfeoffed with livery of seisin of the land intended to be conveyed by such deed or covenant.

169           **Drafting note: Language is updated for modern usage. Technical changes are made.**

170           § ~~55-17.1~~ 55.1-xxx. Land trusts not to fail because no beneficiaries are specified by name  
171 and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

172           No trust relating to real estate shall fail nor shall any use relating to real estate be defeated  
173 because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee  
174 or because no duties are imposed upon the trustee. The power conferred by any such instrument  
175 on a trustee to sell, lease, encumber, or otherwise dispose of property ~~therein~~ described in such  
176 instrument shall be effective, and no person dealing with such a trustee shall be required to make  
177 further inquiry as to the right of such trustee to act, nor shall he be required to inquire as to the  
178 disposition of any proceeds.

179           In any case under this section, where there is a recorded deed of conveyance to a trustee,  
180 the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments  
181 against a beneficiary and consensual liens against real property of a beneficiary do not attach to  
182 real property that is the subject of such a deed of conveyance unless the judgment is docketed or  
183 the lien recorded in the county or city ~~or county~~ where the property is located (i) before recordation  
184 of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

185 In any case under this section where there is a recorded deed of conveyance to a trustee  
186 and the trustee named in the deed declines to serve, resigns, is disqualified or removed, or is  
187 adjudicated incapacitated and there is (a) no successor trustee named in the deed, (b) no successor  
188 trustee designated by the terms of the trust instrument, or (c) no procedure set forth in the deed or  
189 trust instrument to designate a successor trustee, the beneficiaries of the trust, by majority decision,  
190 shall name a successor trustee. However, if the identities of the beneficiaries of the trust cannot be  
191 identified from the recorded deed of conveyance or a majority of the beneficiaries are unable to  
192 agree upon a successor trustee, the circuit court of the county or city in which the deed was  
193 recorded, upon the motion of any party interested in the administration of the trust, shall appoint a  
194 successor trustee whenever the court considers the appointment necessary for the administration  
195 of the trust. The name and address of any successor trustee so named or appointed shall be recorded  
196 with the clerk of the circuit court of the county or city in which the deed was recorded, and such  
197 successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all  
198 the duties, liabilities, and responsibilities imposed upon the original trustee unless the deed of  
199 conveyance expressly provides to the contrary.

200 Nothing in this section shall be construed to (1) affect any right that a creditor may  
201 otherwise have against a trustee or beneficiary except as provided [above in this section](#), (2) enlarge  
202 upon the power of a corporation to act as trustee under § 6.2-1001, or (3) affect the rule against  
203 perpetuities.

204 **Drafting note: Technical changes.**

205 [§ 55-18.55.1-xxx](#). Deed of release effectual.

206 Every deed of release of any estate or interest capable of passing by ~~deeds~~ [deed](#) of lease or  
207 release shall be as effectual for the purposes ~~therein~~ expressed [in such deed of release](#), without the  
208 execution of a lease, as if the same had been executed.

209 **Drafting note: Technical changes.**

210 [§ 55-19](#).

211 **Drafting note: Repealed by Acts 2005, c. 935, cl. 3., effective July 1, 2006.**



212 ~~§ 55-19.1.~~

213 **Drafting note: Repealed by Acts 1990, c. 927.**

214 ~~§ 55-19.2.~~

215 **Drafting note: Repealed by Acts 1991, c. 415.**

216 ~~§§ 55-19.3, 55-19.4.~~

217 **Drafting note: Repealed by Acts 2005, c. 935, cl. 3, effective July 1, 2006.**

218 ~~§ 55-22 55.1-xxx.~~ When person not a party, etc., may take or sue under instrument.

219 An immediate estate or interest in or the benefit of a condition respecting any estate may  
220 be taken by a person under an instrument, although he ~~be is~~ not a party ~~thereto to such instrument~~;  
221 and if a covenant or promise ~~be is~~ made for the benefit, in whole or in part, of a person with whom  
222 it is not made, or with whom it is made jointly with others, such person, whether named in the  
223 instrument or not, may maintain in his own name any action thereon ~~which that~~ he might maintain  
224 ~~in case as though~~ it had been made with him only and the consideration had moved from him to  
225 the party making such covenant or promise. In such action, the covenantor or promisor shall be  
226 permitted to make all defenses he may have, not only against the covenantee or promisee, but ~~also~~  
227 against such beneficiary ~~as well~~.

228 **Drafting note: Language is updated for modern usage. Technical changes are made.**

229 ~~§ 55-23 55.1-xxx.~~ Informalities in deeds made by attorneys-in-fact.

230 If, in a deed made by one as attorney-in-fact for another, the words of conveyance or the  
231 signature ~~be is~~ in the name of the attorney, it ~~shall be is~~ as much the principal's deed as if the words  
232 of conveyance or the signature were in the name of the principal by the attorney, if it ~~be is~~ manifest  
233 on the face of the deed that it should be construed to be that of the principal to give effect to its  
234 intent.

235 **Drafting note: Technical changes.**

236 ~~§ 55-24 55.1-xxx.~~ Time for objections to irregularities in advertising sales made by  
237 trustees.

238 All deeds made and executed prior to January 1, 1940, by trustees conveying property sold  
239 under deeds of trust in which default was made in the debt secured and as to which irregularities  
240 in advertising such sales have occurred shall be held and the same are hereby declared valid in all  
241 respects, if otherwise valid according to law then in force, after the expiration of ~~fifteen~~ 15 years  
242 from the date on which such sale was made by such trustees.

243 **Drafting note: Technical change.**

244 § ~~55-25~~ 55.1-xxx. Recovery at death of life tenant of taxes paid on life estate.

245 When any person dies possessed of a life estate in real estate ~~which~~ that was assessed with  
246 taxes in the name of such life tenant for the year in which such life tenant dies and such taxes are  
247 paid for that year by any person other than the remainderman entitled to such real estate, such  
248 person or his estate so paying such taxes shall be entitled to recover from such remainderman such  
249 proportionate part of the sum so paid as that part of the year following the death of the life tenant  
250 bears to the entire year; 2 provided, however, that if upon the death of the life tenant the real estate  
251 shall come into the possession of another life tenant, such recovery shall be had from the  
252 subsequent life tenant and not from the remainderman.

253 **Drafting note: Technical changes.**

254 § ~~55-25.1~~.

255 **Drafting note: Repealed by Acts 2016, ch. 266, cl. 2.**

256 § ~~55-153~~ 55.1-xxx. Removal of a cloud on title; nature of plaintiff's title.

257 When a ~~bill in equity~~ petition is filed to remove a cloud on the title to real estate, 2 relief  
258 shall not be denied the complainant because he has only an equitable title ~~thereto~~ to such real estate  
259 and is out of possession, but the court shall grant to the complainant such relief as he would be  
260 entitled to if he held the legal title and was in possession. If an issue of fact ~~be is~~ raised which but  
261 for this section would entitle either party to a trial by jury, the court shall, upon the request of the  
262 party so entitled, order such issue to be tried by a jury ~~at its bar and the verdict of the jury shall~~  
263 ~~have the like effect as if it had been rendered in an action at law.~~



290           2. The power is irrevocably exercised or otherwise terminates within ~~ninety~~ 90 years after  
291 its creation.

292           D. In determining whether a nonvested property interest or a power of appointment is valid  
293 under subdivision A 1, B 1, or C 1, the possibility that a child will be born to an individual after  
294 the individual's death is disregarded.

295           E. If, in measuring a period from the creation of a trust or other property arrangement,  
296 language in a governing instrument (i) seeks to disallow the vesting or termination of any interest  
297 or trust beyond  $\frac{1}{2}$ ; (ii) seeks to postpone the vesting or termination of any interest or trust until  $\frac{1}{2}$ ; or  
298 (iii) seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period  
299 of time not exceeding ~~twenty-one~~ 21 years after the death of the survivor of specified lives in being  
300 at the creation of the trust or other property arrangement or (b) the expiration of a period of time  
301 that exceeds or might exceed ~~twenty-one~~ 21 years after the death of the survivor of lives in being  
302 at the creation of the trust or other property arrangement, that language is inoperative to the extent  
303 it produces a period of time that exceeds ~~twenty-one~~ 21 years after the death of the survivor of the  
304 specified lives.

305           **Drafting note: Technical changes.**

306           § ~~55-12.2~~ 55.1-xxx. When nonvested property interest or power of appointment created.

307           A. Except as provided in subsections B and C and in § ~~55-12.5~~ 55.1-xxx, the time of  
308 creation of a nonvested property interest or a power of appointment is determined under general  
309 principles of property law.

310           B. For the purposes of §§ ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx, if there is a person  
311 who alone can exercise a power created by a governing instrument to become the unqualified  
312 beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power  
313 of appointment described in subsection B or C in § ~~55-12.1~~ 55.1-xxx, the nonvested property  
314 interest or power of appointment is created when the power to become the unqualified beneficial  
315 owner terminates.

316 C. For the purposes of §§ ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx, a nonvested property  
 317 interest or a power of appointment arising from a transfer of property to a previously funded trust  
 318 or other existing property arrangement is created when the nonvested property interest or power  
 319 of appointment in the original contribution was created.

320 **Drafting note: Technical changes.**

321 § ~~55-12.3~~ 55.1-xxx. Reformation.

322 Upon the petition of an interested person, a circuit court ~~of equity~~ in the county or city  
 323 wherein in which the affected property or the greater part ~~thereof of such property~~ is located shall  
 324 reform a disposition in the manner that most closely approximates the transferor's manifested plan  
 325 of distribution and is within the ~~ninety~~ 90 years allowed by subdivision A 2, B 2, or C 2 of § ~~55-~~  
 326 ~~12.1~~ 55.1-xxx if:

327 1. A nonvested property interest or a power of appointment becomes invalid under § ~~55-~~  
 328 ~~12.1~~ 55.1-xxx;

329 2. A class gift is not but might become invalid under § ~~55-12.1~~ 55.1-xxx and the time has  
 330 arrived when the share of any class member is to take effect in possession or enjoyment; or

331 3. A nonvested property interest that is not validated by subdivision A 1 of § ~~55-12.1~~ 55.1-  
 332 xxx can vest but not within 90 years after its creation.

333 **Drafting note: Technical changes.**

334 § ~~55-12.4~~ 55.1-xxx. Exclusions from statutory rule against perpetuities.

335 A. Section ~~55-12.1~~ 55.1-xxx does not apply to:

336 1. A nonvested property interest or a power of appointment arising out of a nondonative  
 337 transfer, except a nonvested property interest or a power of appointment arising out of (i) a  
 338 premarital or postmarital agreement; (ii) a separation or divorce settlement; (iii) a spouse's election;  
 339 (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship  
 340 between the parties; (v) a contract to make or not to revoke a will or trust; (vi) a contract to exercise  
 341 or not to exercise a power of appointment; (vii) a transfer in satisfaction of a duty of support; or  
 342 (viii) a reciprocal transfer;

343           2. A fiduciary's power relating to the administration or management of assets, including  
344 the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to  
345 determine principal and income;

346           3. A power to appoint a fiduciary;

347           4. A discretionary power of trustee to distribute principal before termination of a trust to a  
348 beneficiary having an indefensibly vested interest in the income and principal;

349           5. A nonvested property interest held by a charity, government, or governmental agency or  
350 subdivision, if the nonvested property interest is preceded by an interest held by another charity,  
351 government, or governmental agency or subdivision;

352           6. A nonvested property interest in or a power of appointment with respect to a trust or  
353 other property arrangement forming part of a pension, profit-sharing, stock bonus, health,  
354 disability, death benefit, income deferral, or other current or deferred benefit plan for one or more  
355 employees, independent contractors, or their beneficiaries or spouses, to which contributions are  
356 made for the purpose of distributing to or for the benefit of the participants or their beneficiaries  
357 or spouses the property, income, or principal in the trust or other property arrangement, except a  
358 nonvested property interest or a power of appointment that is created by an election of a participant  
359 or a beneficiary or spouse;

360           7. A property interest, power of appointment, or arrangement that was not subject to the  
361 common-law rule against perpetuities or is excluded by another statute of the Commonwealth; or

362           8. A nonvested interest in or power of appointment over personal property held in trust, or  
363 a power of appointment over personal property granted under a trust, if the trust instrument, by its  
364 terms, provides that § ~~55-12.1~~ 55.1-xxx shall not apply.

365           B. The exception to the Uniform Statutory Rule Against Perpetuities under subdivision A  
366 8 shall not extend to real property held in trust. For purposes of this subsection, real property ~~shall~~  
367 does not include an interest in a corporation, limited liability company, partnership, business trust,  
368 or other entity, even if such entity owns an interest in real property.

369           **Drafting note: Technical changes.**

370 § ~~55-12.5~~ 55.1-xxx. Prospective application.

371 Sections ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx apply to a nonvested property interest  
372 or a power of appointment that is created on or after July 1, 2000. For purposes of this section, a  
373 nonvested property interest or a power of appointment created by the exercise of a power of  
374 appointment is created when the power is irrevocably exercised or when a revocable exercise  
375 becomes irrevocable.

376 **Drafting note: Technical changes.**

377 § ~~55-12.6~~ 55.1-xxx. Uniformity of application and construction.

378 Sections ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx shall be applied and construed to  
379 effectuate their general purpose to make the law uniform with respect to the rule against  
380 perpetuities among states enacting it.

381 **Drafting note: Technical changes.**

382 § ~~55-13~~ 55.1-xxx. Certain limitations construed.

383 Every limitation in any deed or will contingent upon the dying of any person without heirs,  
384 heirs of the body, issue, issue of the body, children, offspring ~~or descendant~~ or descendants, or  
385 other ~~relative, relatives~~ shall be construed a limitation to take effect when such person ~~shall die~~  
386 dies not having such heir, issue, child, offspring, descendant, or other relative, as the case may be,  
387 living at the time of his death, or born to him within ~~ten~~ 10 months ~~thereafter~~ after his death, unless  
388 the intention of such limitation be otherwise plainly declared on the face of the deed or will creating  
389 it.

390 **Drafting note: Technical changes.**

391 § ~~55-13.1~~ 55.1-xxx. Employee trusts.

392 Pension, profit sharing, stock bonus, annuity, or other employee trusts ~~heretofore or~~  
393 hereafter established by employers for the purpose of distributing the income and principal ~~thereof~~  
394 of such trust to some or all of their employees, or the beneficiaries of such employees, shall not be  
395 invalid as violating any laws or rules against perpetuities or restraints on the power of alienation

396 of title to property; but such trusts may continue for such period of time as may be required by ~~the~~  
397 ~~their~~ provisions ~~thereof~~ to accomplish the purposes for which they are established.

398 **Drafting note: Technical changes.**

399 § ~~55-13.2~~ 55.1-xxx. Determination of "lives in being" for purpose of rule against  
400 perpetuities.

401 A. For the purpose of determining whether the terms of an "inter vivos" trust provide for a  
402 duration in excess of that allowed under the rule against perpetuities, the determination of "lives  
403 in being" shall be made as of the death of the settlor, if the settlor has at his death the unrestricted  
404 right, acting alone, to revoke the trust or to have transferred to himself the entire legal and  
405 beneficial interest in all property, both principal and income, held in the trust. In the event that the  
406 settlor surrenders both such rights at any time prior to his death, the determination of "lives in  
407 being" shall be made as of the time that the settlor, upon establishment of the trust or otherwise,  
408 surrenders the unrestricted right acting alone to revoke the trust and the unrestricted right acting  
409 alone to have transferred to himself the entire legal and beneficial interest in all property, both  
410 principal and income, held in the trust.

411 B. This section shall ~~only~~ apply only to a nonvested property interest in an "inter vivos"  
412 trust created before July 1, 2000.

413 **Drafting note: Technical changes.**

414 § ~~55-13.3~~ 55.1-xxx. Application of the rule against perpetuities to nondonative transfers.

415 A. Except for the transactions set forth in § ~~55-12.4~~ 55.1-xxx, which are governed by the  
416 provisions of §§ ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx, a nondonative transfer of an interest  
417 in property fails, if the interest does not vest, if it ever vests, within the period of the common-law  
418 rule against perpetuities.

419 B. The provisions of this section (i) in force on June 30, 2000, shall apply to all donative  
420 interests created on or after July 1, 1982, and before July 1, 2000, and (ii) in force on July 1, 2000,  
421 shall apply to all nondonative interests created on or after July 1, 1982.

422 **Drafting note: Technical changes.**



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Article 3.

Joint Ownership of Real or Personal Property.

**Drafting note: Proposed Article 3 contains sections related to joint tenancies, including tenancies by the entirety.**

~~§ 55-20~~ § 55.1-xxx. Survivorship between joint tenants abolished.

A. When any joint tenant dies, before or after the vesting of the estate, whether the estate is real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, ~~or~~ pass by devise, or go to his personal representative, subject to debts or distribution, as if he had been a tenant in common. ~~And if hereafter any estate, real or personal, is conveyed or devised to a husband and his wife, they shall take and hold the same by moieties in like manner as if a distinct moiety had been given to each by a separate conveyance.~~

~~§ 55-21. Exceptions to § 55-20.~~

~~Section 55-20-B.~~ This section shall not apply to any estate ~~which~~ that joint tenants have as fiduciaries, ~~nor or~~ to any real or personal property transferred to persons in their own right when it manifestly appears from the tenor of the instrument transferring such property or memorializing the existence of a chose in action, that it was intended the part of the one dying should then belong to the others. ~~Neither shall it~~ This section does not affect the mode of proceeding on any joint judgment or decree in favor of or on any contract with two or more one of whom dies.

**Drafting note: Existing §§ 55-20, Survivorship between joint tenants abolished, and 55-21, Exemptions to § 55-20, are combined. The last sentence in existing § 55-20 is relocated to proposed § 55.1-xxx [§ 55-20.1] because it is more logically located with other provisions regarding joint ownership. Technical changes are made.**

~~§ 55-20.1~~ § 55.1-xxx. Joint ownership in real and personal property.

Any persons may own real or personal property as joint tenants with or without a right of survivorship. When any person causes any real or personal property, or any written memorial of a chose in action, to be titled, registered, or endorsed in the name of two or more persons "jointly," as "joint tenants," in a "joint tenancy," or other similar language, such persons shall own the

450 property in a joint tenancy without survivorship as provided in § ~~55-20~~ 55.1-xxx. If, in addition,  
451 the expression "with survivorship," or any equivalent language, is employed in such titling,  
452 registering, or endorsing, it shall be presumed that such persons are intended to own the property  
453 as joint tenants with the right of survivorship as at common law. This section is not applicable to  
454 multiple party accounts under Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2, or to any other  
455 matter specifically governed by another provision of ~~this code~~ the Code.

456 If any real or personal property is conveyed or devised to spouses, they shall take and hold  
457 such property by moieties in the same manner as if a distinct moiety had been given to each spouse  
458 by a separate conveyance, unless language as provided in this section or in § 55.1-xxx [55-20.2]  
459 is used that designates the tenancy as a joint tenancy or a tenancy by the entirety and all  
460 requirements for holding property by such tenancy are met.

461 **Drafting note: The last sentence is relocated from proposed § 55.1-xxx [§ 55-20]**  
462 **because it is more logically located with other provisions regarding joint ownership. The**  
463 **term "a husband and his wife" are replaced with "spouses" to reflect changes in the law.**  
464 **Technical changes are made.**

465 § ~~55-20.2~~ 55.1-xxx. Tenants by the ~~entireties~~ entirety in real and personal property; certain  
466 trusts.

467 A. ~~Any husband and wife~~ Spouses may own real or personal property as tenants by the  
468 ~~entireties~~ entirety for as long as they are married. Personal property may be owned as tenants by  
469 the ~~entireties~~ entirety whether or not the personal property represents the proceeds of the sale of  
470 real property. An intent that the part of the one dying should belong to the other shall be manifest  
471 from a designation of ~~a husband and wife~~ the spouses as "tenants by the entireties" or "tenants by  
472 the entirety."

473 B. Except as otherwise provided by statute, no interest in real property held as tenants by  
474 the ~~entireties~~ entirety shall be severed by written instrument unless the instrument is a deed signed  
475 by both spouses as grantors.

476 C. Notwithstanding any contrary provision of § 64.2-747, any property of ~~a husband and~~  
477 ~~wife spouses~~ that is held by them as tenants by the ~~entireties~~ entirety and conveyed to their joint  
478 revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, and any  
479 proceeds of the sale or disposition of such property, shall have the same immunity from the claims  
480 of their separate creditors as it would if it had remained a tenancy by the entirety, so long as (i)  
481 they remain ~~husband and wife~~ married to each other, (ii) it continues to be held in the trust or trusts,  
482 and (iii) it continues to be their property, including where both spouses are current beneficiaries of  
483 one trust that holds the entire property or each spouse is a current beneficiary of a separate trust  
484 and the two separate trusts together hold the entire property, whether or not other persons are also  
485 current or future beneficiaries of the trust or trusts. The immunity from the claims of separate  
486 creditors under this subsection may be waived as to any specific creditor, including any separate  
487 creditor of either spouse, or any specifically described property, including any former tenancy by  
488 the ~~entireties~~ entirety property conveyed into trust, by the trustee acting under the express provision  
489 of a trust instrument or with the written consent of both ~~the husband and the wife~~ spouses.

490 **Drafting note: The term "entireties" is replaced with "entirety" for consistency**  
491 **throughout the title. "Husband and wife" is replaced with "spouse" or "spouses" for**  
492 **consistency throughout the section.**

493 ~~CHAPTER 20.~~

494 ~~VIRGINIA SOLAR EASEMENTS ACT.~~

495 ~~Article 4.~~

496 ~~Virginia Solar Easements Act.~~

497 **Drafting note: Proposed Article 4 contains sections from existing Chapter 20, the**  
498 **Virginia Solar Easements Act.**

499 ~~§ 55-352. Short title.~~

500 ~~This chapter may be cited as the "Virginia Solar Easements Act."~~



1 CHAPTER ~~4~~ X [3].

2 FORM AND EFFECT OF DEEDS AND COVENANTS; LIENS.

3 **Drafting note: Existing Chapter 4, Form and Effect of Deeds and Covenants;**  
4 **Liens, is retained as proposed Chapter XX [3]. This proposed chapter is divided into**  
5 **four articles: Article 1, Form ad Effect of Deeds: Easements; Article 2, Form and Effect**  
6 **of Deeds of Trust; Sales Thereunder; Assignments; Releases; Article 3, Mortgage**  
7 **Satisfaction; Article 4, Effect of Certain Expressions in Deeds. Existing Article 4, the**  
8 **Residential Ground Rent Act, consisting of existing §§ 55-79.01 through 55-79.06, is**  
9 **relocated to proposed Chapter XX of Subtitle III, Rental Conveyances.**

10 Article 1.

11 Form and Effect of Deeds ~~and Leases;~~ Easements.

12 **Drafting note: Existing Article 1, relating to the form and effect of deeds, is**  
13 **retained. Existing §§ 55-57 and 55-57.1, dealing with deeds of lease, are logically**  
14 **relocated to proposed Chapter XX of Subtitle III. The proposed article is retitled to**  
15 **reflect the sections related to easements.**

16 § ~~55-48~~ 55.1-xxx. Form of a deed.

17 Every deed and corrected or amended deed may be made in the following form, or to  
18 the same effect: "This deed, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,  
19 between (here insert names of parties as grantors or grantees), witnesseth: that in consideration  
20 of (here state the consideration, nominal or actual), the said \_\_\_\_\_ does (or  
21 do) grant (or grant and convey) unto the said \_\_\_\_\_, all (here describe the  
22 property or interest therein to be conveyed, including the name of the city or county in which  
23 the property is located, and insert covenants or any other provisions). Witness the following  
24 signature (or signatures)."

25 **Drafting note: No change.**

26 § ~~55-49~~ 55.1-xxx. How construed.

27 ~~Every such~~ Unless the deed provides otherwise, any deed conveying ~~lands~~ land shall,  
 28 ~~unless an exception be made therein,~~ be construed to include all the estate, right, title, and  
 29 interest ~~whatever,~~ both at law and in equity, of the grantor in or to such ~~lands~~ land.

30 **Drafting note: Language is updated for modern usage.**

31 § ~~55-49.1~~ 55.1-xxx. Construction of generic terms.

32 In the interpretation of deeds, adopted persons and persons born out of wedlock are  
 33 included in class gift terminology or terms of relationship in accordance with rules for  
 34 determining relationships for purposes of intestate succession unless a contrary intent appears  
 35 on the face of the deed. In determining the intent of a grantor, adopted persons are  
 36 presumptively included in such terms as "children," "issue," "kindred," "heirs," "relatives,"  
 37 "~~deseendents~~" "descendants," or similar words of classification and are presumptively  
 38 excluded by such terms as "natural children," "issue of the body," "blood kindred," "heirs of  
 39 the body," "blood relatives," "~~deseendents~~" "descendants of the body," or similar words of  
 40 classification.

41 **Drafting note: Technical changes.**

42 § ~~55-50~~ 55.1-xxx. Appurtenances, etc., included in deed of land; ~~relocation of~~  
 43 easement.

44 Every deed conveying land shall be construed to include all buildings, privileges, and  
 45 appurtenances of every kind belonging to ~~the lands therein embraced~~ such land unless an  
 46 exception ~~therefor~~ is made in the deed.

47 § 55.1-xxx. Relocation of easement.

48 The owner of land ~~which that~~ is subject to an easement for the purpose of ingress and  
 49 egress may relocate the easement, on the servient estate, by recording in the office of the clerk  
 50 of the circuit court of the county or city ~~wherein in which~~ the easement or any part thereof of  
 51 such easement is located, a written agreement evidencing the consent of all affected persons  
 52 and setting forth the new location of the easement. In the absence of such written agreement,

53 the owner of the land ~~which~~ that is subject to such easement may seek relocation of the  
54 easement on the servient estate upon petition to the circuit court and notice to all parties in  
55 interest. The petition shall be granted if, after a hearing held, the court finds that (i) the  
56 relocation will not result in economic damage to the parties in interest, (ii) there will be no  
57 undue hardship created by the relocation, and (iii) the easement has been in existence for not  
58 less than ~~ten~~ 10 years.

59 **Drafting note: Existing § 55-50 is divided into two proposed sections because it**  
60 **contains two distinct topics: appurtenances and relocation of an easement. Technical**  
61 **changes are made.**

62 § ~~55-50.1~~ 55.1-xxx. Enjoyment of easement.

63 Unless otherwise provided for in the terms of an easement, the owner of a dominant  
64 estate shall not use an easement in a way that is not reasonably consistent with the uses  
65 contemplated by the grant of the easement, and the owner of the servient estate shall not  
66 engage in an activity or cause to be present any objects either upon the burdened land or  
67 immediately adjacent ~~thereto~~ which to such land that unreasonably interferes with the  
68 enjoyment of the easement by the owner of the dominant estate. ~~The term~~ For the purposes of  
69 this section, "object" ~~as contained in this section shall~~ does not include any fence, electric  
70 fence, cattle guard, gate, or division fence adjacent to such easement as those terms are defined  
71 in §§ ~~55-298.1~~ 55.1-xxx through ~~55-322~~ 55.1-xxx. Any violation of this section may be  
72 deemed a private nuisance, provided, however, that the remedy for a violation of this section  
73 shall not in any manner impair the right to any other relief that may be applicable at law or in  
74 equity.

75 **Drafting note: Technical changes are made.**

76 § ~~55-50.2~~ 55.1-xxx. Utility easements.

77 A. For the purposes of this section, "utility services" means any products, services, and  
78 equipment related to energy, telecommunications, water, and sewerage.

79            B. Where an easement, whether appurtenant or gross, is expressly granted by an  
80 instrument recorded on or after July 1, 2006, that imposes on a servient tract of land a covenant  
81 (i) to provide an easement in the future for the benefit of utility services; (ii) to relocate,  
82 construct, or maintain facilities owned by ~~a~~ an entity that provides utility services; or (iii) to  
83 pay the cost of such relocation, construction, or maintenance, such covenant shall be deemed  
84 for all purposes to touch and concern the servient tract, to run with the servient tract, its  
85 successors, and assigns for the benefit of the entity providing utility services, its successors,  
86 and assigns.

87            ~~"Utility services" for the purposes of this section, means any products, services and~~  
88 ~~equipment related to energy, telecommunications, water and sewerage.~~

89            **Drafting note: Technical changes.**

90            § ~~55-50.3~~ 55.1-xxx. Public road easements; maintenance and improvements.

91            Whenever a public road that has never been abandoned but is no longer publicly  
92 maintained serves as access for more than one property owner and operates as the primary  
93 source of ingress and egress for that property, any one of the property owners may maintain,  
94 repair, or improve the road at his own expense without the express permission of the other  
95 property owners but only after administrative review by the local government. All other  
96 property owners shall be notified by mail of any pending maintenance, repair, or  
97 improvements prior to commencement of the work. Nothing in this section, ~~however~~, shall be  
98 construed as allowing the property owner who is doing the maintenance, repairs, or  
99 improvements to the road to interfere with the other property owners' use of the road for  
100 ingress and egress.

101            **Drafting note: Technical change.**

102            § ~~55-50.4~~ 55.1-xxx. Private roads; public use; maintenance and improvements.

103            Notwithstanding any provision of a recorded deed or plat to the contrary, a private  
104 road serving a subdivision of 50 or fewer lots may be dedicated for public use and may be



105 taken into the secondary state highway system, subject to the provisions and requirements set  
106 forth in §§ 33.2-335 and 33.2-336, if the owner of the fee interest in such private road obtains  
107 the written consent of every lot owner in the subdivision whose lot is served by the private  
108 road and the holder of any restrictive covenant or easement rights over and concerning the  
109 private road prior to making such dedication and before requirements for acceptance of the  
110 road into the secondary state highway system are met. Such consent shall be recorded in the  
111 land records of the clerk's office of the circuit court of the county ~~wherein in which~~ the private  
112 road is located.

113 **Drafting note: Technical change.**

114 § ~~55-52~~ 55.1-xxx. Conveyance of property not owned but subsequently acquired.

115 When a deed purports to convey property, real or personal, describing it with  
116 reasonable certainty, ~~which that~~ the grantor does not own at the time of the execution of the  
117 deed, but subsequently acquires, such deed shall, as between the parties ~~thereto~~, have the same  
118 effect as if the title ~~which that~~ the grantor subsequently acquires were vested in him at the  
119 time of the execution of such deed and thereby conveyed.

120 **Drafting note: Technical changes.**

121 § ~~55-53~~ 55.1-xxx. Vendor's equitable lien abolished.

122 If any person ~~hereafter convey~~ conveys any real estate and the purchase money or any  
123 part thereof ~~remain~~ remains unpaid at the time of the conveyance, he shall not thereby have a  
124 lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the  
125 conveyance.

126 **Drafting note: Technical changes.**

127 § ~~55-54~~ 55.1-xxx. Certain deeds to county real estate validated.

128 All deeds executed prior to January 1, 1920, by a county commissioner, ~~or county~~  
129 commissioners, or a board of supervisors, ~~conveying that convey~~ any part of the real estate  
130 previously acquired by such county for county purposes, are hereby validated, and declared

131 to have effectually passed the title to the part so conveyed even though the conveyance thereof  
132 reduced the real estate of the county to an area less than the county was required by law to  
133 own at the time of such conveyance.

134 **Drafting note: Technical changes.**

135 § ~~55-55~~ 55.1-xxx. Validation of sales, etc., by county courts prior to 1860.

136 All sales or leases made prior to the year 1860; by the county court, or court of monthly  
137 session, of any county; of any land or building then owned by such county and situated within  
138 the limits of land previously acquired by such county as a site for its courthouse and other  
139 public buildings, when the consideration therefor has been fully paid and the purchaser, or  
140 lessee as the case may be, and those claiming through or under him, shall have held continuous  
141 possession of such land or building from January 1, 1860, until January 1, 1934, are hereby  
142 validated and declared to be forever binding upon such county.

143 **Drafting note: Technical changes.**

144 § ~~55-56~~ 55.1-xxx. Deeds and writings executed for persons in military service, etc.,  
145 under defective powers.

146 All deeds or other writings executed by an agent or ~~attorney-in-fact~~ attorney-in-fact for  
147 a person in the armed forces or military service of the United States, or for a person who after  
148 executing a power of attorney or agency agreement entered the armed forces or military  
149 service of the United States, or for a person who departed from the United States by permission  
150 or direction of any department or official of the United States in connection with work relating  
151 to the prosecution of the war, when the power of attorney or agency agreement under which  
152 the deed or other instrument was signed was not executed in such a manner as to be valid as  
153 a sealed instrument, shall be held, and the same are hereby declared, valid and effective in all  
154 respects if otherwise valid according to the law then in force.

155 The provisions of this section shall not operate to affect adversely intervening vested  
156 rights.

157 **Drafting note: Technical change.**

158 § ~~55-57.2~~ 55.1-xxx. Effect of option; recording.

159 A. Any option to purchase real estate, and any memorandum, renewal, or extension  
160 ~~thereof of such option~~, shall be void as to (i) all purchasers for valuable consideration without  
161 notice ~~who are~~ not parties ~~thereto to such instrument~~ and (ii) lien creditors, until such  
162 instrument is recorded in the county or city ~~where in which~~ the property embraced in the  
163 option, memorandum, renewal, or extension is located.

164 B. Notwithstanding any rule of law or equity denominated "fettering," "clogging the  
165 equity of redemption" or "claiming a collateral advantage" or any similar rule:

166 1. A party secured by a mortgage or deed of trust, without adversely affecting his  
167 security interest, may acquire from a borrower any direct or indirect present or future  
168 ownership interest in the collateral encumbered thereby, including rights to any income,  
169 proceeds, or increase in value derived from such collateral; and

170 2. An option to acquire an interest in real estate granted to a party secured by a  
171 mortgage or deed of trust, other than an option granted to such party in connection with a  
172 mortgage loan as defined in § 6.2-1600, is effective according to its terms and takes priority  
173 as provided in subsection A ~~of this section~~ if the right to exercise the option is not dependent  
174 upon the occurrence of a default under the mortgage or deed of trust.

175 **Drafting note: Technical changes.**

176 Article 2.

177 Form and Effect of Deeds of Trust; Sales Thereunder; Assignments; Releases.

178 **Drafting note: Existing Article 2 is retained and contains provisions pertaining to**  
179 **the effect of deeds of trust, sales thereunder, assignments, and releases.**

180 § ~~55-58~~ 55.1-xxx. Form of deed of trust to secure debts, etc.

181 A deed of trust to secure debts or indemnify sureties may be in the following form, or  
182 to the same effect: "This deed, made the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_,

183 between \_\_\_\_\_ (the grantor) and \_\_\_\_\_ (the  
184 trustee), witnesseth: that the said \_\_\_\_\_ (the grantor) does (or do) grant  
185 (or grant and convey) unto the said \_\_\_\_\_ (the trustee), the following  
186 property (here describe it): In trust to secure (here describe the debts to be secured or the  
187 sureties to be indemnified and insert covenants or any other provisions the parties may agree  
188 upon). Witness the following signature (or signatures)."

189 **Drafting note: No change.**

190 § ~~55-58.1~~ 55.1-xxx. Requirements for trustees.

191 A. No person may be named or act, in person or by agent or attorney, as the trustee of  
192 a deed of trust conveying property to secure the payment of money or the performance of an  
193 obligation, either individually or as one of several trustees, unless such person is a resident of  
194 the Commonwealth. No corporation, limited liability company, partnership, or other entity  
195 may be named or act as the trustee or as one of the trustees of a deed of trust conveying  
196 property to secure the payment of money or the performance of an obligation, unless it is  
197 organized under the laws of the Commonwealth or of the United States ~~of America~~. However,  
198 the foregoing requirements shall not apply to any deed of trust conveying property lying partly  
199 in the Commonwealth and partly outside the Commonwealth or to a deed of trust conveying  
200 property in the Commonwealth to secure bonds or obligations that are also secured by one or  
201 more deeds of trust or mortgages conveying property outside of the Commonwealth.

202 B. A deed of trust conveying property to secure the payment of money or the  
203 performance of an obligation shall state the full residence or business address of the trustee ~~or~~  
204 ~~trustees~~ named therein in such deed of trust, including street address and zip code, ~~which and~~  
205 such address shall be valid for purposes of all notices under the deed of trust to the trustee.  
206 Such address of the trustee ~~or trustees~~ may be changed by amendment of the deed of trust or  
207 by a separate instrument executed by the trustee ~~or trustees~~, or by the beneficiary of such deed

208 of trust, stating the changed address and otherwise in recordable form, and recorded in the  
209 office of the clerk of the circuit court where the deed of trust was recorded.

210 C. Notwithstanding any other provisions of this section, if any deed of trust is ~~admitted~~  
211 ~~recorded~~ by a clerk ~~for recordation~~, it shall be conclusively presumed that such deed of trust  
212 complies with all the requirements of this section, and it shall be deemed to be validly  
213 recorded.

214 D. All deeds of trusts, mortgages, bonds, or other instruments recorded by ~~the a~~ clerk  
215 prior to January 1, 1999, without the residence or business address of the trustee ~~or trustees~~  
216 named ~~therein in such deed of trust~~ shall be valid for all purposes as if such address had been  
217 named ~~therein~~, if such recordation ~~be is~~ otherwise valid according to the law then in force,  
218 provided that this section shall not affect any right or remedy of any third party that accrued  
219 after the recordation of ~~said such~~ instrument or before July 1, 1960.

220 **Drafting note: In subsections B and D, "or trustees" is deleted on the basis of §**  
221 **1-227, which states that throughout the Code any word used in the singular includes the**  
222 **plural. Technical changes.**

223 § ~~55-58.2~~ 55.1-xxx. Credit line deed of trust defined; relative priority of credit line  
224 deed of trust and other instruments of judgment.

225 A. For the purpose of this section:

226 "Beneficiary" means the noteholder, lender, or other party or parties identified in the  
227 credit line deed of trust as secured thereby. In the case of a credit line deed of trust that  
228 identifies a party acting as agent for all of the lenders or parties secured by a credit line deed  
229 of trust, such agent shall be the beneficiary for purposes ~~hereof of this section~~.

230 "Credit line deed of trust" means any deed of trust, mortgage, bond, or other  
231 instrument, entered into after July 1, 1982, in which title to real property located in the  
232 Commonwealth is conveyed, transferred, encumbered, or pledged to secure payment of  
233 money, including advances, or other extensions of credit, to be made in the future.

234 B. A credit line deed of trust shall set forth on the front page ~~thereof~~, either in capital  
235 letters or in language underscored, the words "THIS IS A CREDIT LINE DEED OF TRUST."  
236 Such phrase shall convey notice to all parties that advances or other extensions of credit are  
237 to be made or are contemplated to be made from time to time against the security described  
238 in the credit line deed of trust. Such credit line deed of trust shall specify ~~therein~~ the maximum  
239 aggregate amount of principal to be secured at any one time.

240 C. From the date and actual time of the recording of a credit line deed of trust, the lien  
241 ~~thereof~~ shall have priority (i) as to all other deeds, conveyances, or other instruments, or  
242 contracts in writing, ~~which that~~ are unrecorded as of such date and time of recording and of  
243 which the beneficiary has no knowledge or notice and (ii) as to judgment liens subsequently  
244 docketed, except as provided in subsection D. Such priority shall extend to any advances or  
245 other extensions of credit made following the recordation of the credit line deed of trust.  
246 Amounts outstanding, together with interest ~~thereon~~, and other items provided by § ~~55-59~~  
247 55.1-xxx, shall continue to have priority until paid or curtailed. Mechanics' liens created under  
248 Title 43 shall continue to enjoy the same priority as created by that title. Purchase money  
249 security interests in goods and fixtures shall have the same priority as provided in Subpart 3  
250 (§ 8.9A-317 et seq.) of Part 3 of Title 8.9A.

251 D. Notwithstanding the provisions of subsections A, B, and C, if a judgment creditor  
252 gives written notice to the beneficiary of record at the address indicated in the credit line deed  
253 of trust, such credit line deed of trust shall have no priority as to such judgment for any  
254 advances or extensions of credit made under such credit line deed of trust from the day  
255 following receipt of that notice except those ~~which that~~ have been unconditionally and  
256 irrevocably committed prior to such date.

257 E. In addition to the language specified in subsection B, the credit line deed of trust  
258 shall set forth the name of the beneficiary and the address at which communications may be  
259 mailed or delivered to the beneficiary. Such name or address may be changed or modified by

260 duly recorded instrument executed by the beneficiary only. If the note or indebtedness secured  
261 by the credit line deed of trust is assigned or transferred, the name and address of the new  
262 beneficiary may be set forth in the certificate of transfer provided by § ~~55-66.04~~ [55.1-xxx](#).  
263 Such original name or address, or if changed, such changed name or address, shall be the  
264 address for delivery of notices contemplated by this section. Receipt of notice at such address  
265 shall be deemed receipt by the beneficiary.

266 F. The grantor may require, at any time, a modification under the credit line deed of  
267 trust, whereby any priority over subsequently recorded deeds of trust is surrendered as to  
268 future advances or other extensions of credit, which advances or extensions of credit are in  
269 the discretion of the party secured by the credit line deed of trust.

270 G. Notwithstanding the provisions of subsections A, B, and C, if a deed of trust under  
271 this section is a subordinate mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#), upon  
272 the recording of a refinance mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#), the  
273 credit line deed of trust shall retain the same subordinate position with respect to the refinance  
274 mortgage as it had with the prior mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#),  
275 provided that the refinance mortgage complies with the requirements of § ~~55-58.3~~ [55.1-xxx](#).

276 **Drafting note: Technical changes.**

277 § ~~55-58.3~~ [55.1-xxx](#). Priority of residential refinance mortgage over subordinate  
278 mortgage.

279 A. As used in this section:

280 "Prior mortgage" means a mortgage, deed of trust, or other instrument encumbering  
281 or conveying an interest in residential real estate containing not more than one dwelling unit  
282 to secure a financing.

283 "Refinance mortgage" means a mortgage, deed of trust, or other instrument  
284 encumbering or conveying an interest in residential real estate containing not more than one  
285 dwelling unit to secure a refinancing.

286 "Refinancing" means the replacement of a loan secured by a prior mortgage with a  
287 new loan secured by a refinance mortgage and the payment in full of the debt owed under the  
288 original loan secured by the prior mortgage.

289 "Subordinate mortgage" means a mortgage or deed of trust securing an original  
290 principal amount not exceeding \$150,000, encumbering or conveying an interest in residential  
291 real estate containing not more than one dwelling unit that is subordinate in priority (i) under  
292 subdivision A 1 of § ~~55-96~~ [55.1-xxx](#) or (ii) as a result of a previous refinancing.

293 B. Upon the refinancing of a prior mortgage, a subordinate mortgage shall retain the  
294 same subordinate position with respect to a refinance mortgage as the subordinate mortgage  
295 had with the prior mortgage, provided that:

296 1. Such refinance mortgage states on the first page thereof in bold or capitalized letters:  
297 "THIS IS A REFINANCE OF A (DEED OF TRUST, MORTGAGE OR OTHER SECURITY  
298 INTEREST) RECORDED IN THE CLERK'S OFFICE, CIRCUIT COURT OF (NAME OF  
299 COUNTY OR CITY), VIRGINIA, IN DEED BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN  
300 THE ORIGINAL PRINCIPAL AMOUNT OF \_\_\_\_\_, AND WITH THE  
301 OUTSTANDING PRINCIPAL BALANCE WHICH IS \_\_\_\_\_.";

302 2. The principal amount secured by such refinance mortgage does not exceed the  
303 outstanding principal balance secured by the prior mortgage plus \$5,000; and

304 3. The interest rate is stated in the refinance mortgage at the time it is recorded and  
305 does not exceed the interest rate set forth in the prior mortgage.

306 C. The priorities among two or more subordinate mortgages shall be governed by  
307 subdivision A 1 of § ~~55-96~~ [55.1-xxx](#).

308 D. The provisions of subsection B shall not apply to a subordinate mortgage securing  
309 a promissory note payable to any ~~county, city or town~~ [locality](#) or any agency, authority, or  
310 political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant  
311 to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 or 15.2-2305, or



312 pursuant to any program authorized by federal or state law or local ordinance or resolution,  
313 for (i) ~~low-~~ low-income and moderate-income persons or households or (ii) improvements to  
314 residential potable water supplies and sanitary sewage disposal systems made to address an  
315 existing or potential public health hazard, and which mortgage, if recorded on or after July 1,  
316 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST,  
317 MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE  
318 CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON  
319 THE REFINANCING OF ANY PRIOR MORTGAGE."

320 **Drafting note: The phrase "county, city, or town" is replaced with "locality" on**  
321 **the basis of § 1-221, which states that throughout the Code "'locality' means a county,**  
322 **city, or town." Technical changes are made.**

323 § ~~55-59~~ 55.1-xxx. How deed of trust construed; duties, rights, etc., of parties.

324 Every deed of trust to secure debts or indemnify sureties is in the nature of a contract  
325 and shall be construed according to its terms to the extent not in conflict with the requirements  
326 of law. Unless the deed of trust provides otherwise ~~provided therein~~, it shall be construed to  
327 impose and confer upon the parties ~~thereto~~, and ~~the~~ beneficiaries ~~thereunder~~, the following  
328 duties, rights, and obligations in like manner as if the same were expressly provided for by  
329 such deed of trust:

330 1. The deed shall be construed as given to secure the performance of each of the  
331 covenants entered into by the grantor as well as the payment of the primary obligation.

332 2. The grantor shall be deemed to covenant that he will pay all taxes, levies,  
333 assessments, and charges upon the property, including the fees and charges of such agents or  
334 attorneys as the trustee may deem advisable to employ at any time for the purpose of the trust,  
335 so long as any obligation upon the grantor under the deed of trust remains undischarged.

336           3. The grantor shall be deemed to covenant that he will keep the improvements on the  
337 property in tenantable condition, whether such improvements were on the property when the  
338 deed of trust was given or were ~~thereafter placed thereon~~ placed there at a later time.

339           4. The grantor shall be deemed to covenant that no waste shall be committed or  
340 suffered upon the property.

341           5. The grantor shall be deemed to covenant that in the event of his failure to meet any  
342 obligations imposed upon him, then the trustee or any beneficiary may, at his option, satisfy  
343 ~~the same~~ such obligations. The money so advanced, with interest ~~thereon~~ as provided in the  
344 deed of trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be  
345 paid next after the expenses of executing the trust, and shall be otherwise recoverable from  
346 the grantor as a debt. In addition, to the extent not otherwise covered, the grantor shall be  
347 deemed to covenant that amount advanced or incurred by the trustee or any beneficiary under  
348 a deed of trust (i) with respect to an obligation secured by a lien or encumbrance prior to the  
349 lien of the deed of trust or (ii) for the protection of the lien secured by the deed of trust, together  
350 with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of  
351 trust, to be paid next after expenses of executing the trust.

352           6. A covenant to pay interest shall be deemed a covenant to pay interest on the principal  
353 balance as such rate may vary or be modified from time to time by the parties under the  
354 original instruments or agreements or a written agreement of modification, whether or not  
355 recorded, and all the interest on the principal secured by the deed of trust shall be on an equal  
356 priority with the principal debt secured by the deed of trust, in the event of sale to be paid next  
357 after the expenses of executing the trust.

358           Any covenant, otherwise authorized by law, that the lender shall be entitled to share  
359 in the gross income or the net income, or the gross rent or revenues, or net rents or revenues  
360 of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or  
361 similar event, shall be on an equal priority with the principal debt secured by the deed of trust,

362 in the event of sale to be paid next after the expenses of executing the trust, and shall be  
363 specified in the recorded deed of trust or other recorded document in order to be notice of  
364 record as against subsequent parties.

365 7. In the event of default in the payment of the debt secured, or any part thereof, at  
366 maturity, or in the payment of interest when due, or of the breach of any of the covenants  
367 entered into or imposed upon the grantor, then at the request of any beneficiary the trustee  
368 shall forthwith declare all the debts and obligations secured by the deed of trust at once due  
369 and payable and may take possession of the property and proceed to sell the same at auction  
370 at the premises or in the front of the circuit court building or at such other place in the county  
371 or city~~or county~~ in which the property or the greater part thereof lies, or in the corporate limits  
372 of any city surrounded by or contiguous to such county, or in the case of annexed land, in the  
373 county of which the land was formerly a part, as the trustee may select upon such terms and  
374 conditions as the trustee may deem best.

375 8. If the sale is upon credit terms, the deferred purchase money shall bear interest from  
376 the day of sale and shall be secured by a deed of trust upon the property contemporaneous  
377 with the trustee's deed to the purchaser.

378 9. The party secured by the deed of trust, or the holders of greater than fifty 50 percent  
379 of the monetary obligations secured thereby, shall have the right and power to appoint a one  
380 or more substitute ~~trustee or~~ trustees for any reason and, regardless of whether such right and  
381 power is expressly granted in such deed of trust, by executing and acknowledging an  
382 instrument designating and appointing a substitute. When the instrument of appointment has  
383 been executed, the substitute trustee ~~or trustees~~ named therein shall be vested with all the  
384 powers, rights, authority, and duties vested in the trustee ~~or trustees~~ in the original deed of  
385 trust. The instrument of appointment shall be recorded in the office of the clerk ~~wherein in~~  
386 which the original deed of trust is recorded prior to or at the time of recordation of any

387 instrument in which a power, right, authority, or duty conferred by the original deed of trust  
388 is exercised.

389 **Drafting note: In subdivision 9, "or trustees" is deleted on the basis of § 1-227,**  
390 **which states that throughout the Code any word used in the singular includes the plural.**  
391 **Technical changes.**

392 § ~~55-59.1~~ 55.1-xxx. Notices required before sale by trustee to owners, lienors, etc.; if  
393 note lost.

394 A. In addition to the advertisement required by § ~~55-59.2~~ 55.1-xxx, the trustee or the  
395 party secured shall give written notice of the time, date, and place of any proposed sale in  
396 execution of a deed of trust, ~~which and such~~ notice shall include either (i) the instrument  
397 number or deed book and page numbers of the instrument of appointment filed pursuant to §  
398 ~~55-59, 55.1-xxx~~ or (ii) ~~said notice shall include~~ a copy of the executed and notarized  
399 appointment of substitute trustee by personal delivery or by mail to ~~(i)~~ (a) the present owner  
400 of the property to be sold at his last known address as such owner and address appear in the  
401 records of the party secured, ~~(ii); (b)~~ any subordinate lienholder who holds a note against the  
402 property secured by a deed of trust recorded at least 30 days prior to the proposed sale and  
403 whose address is recorded with the deed of trust, ~~(iii); (c)~~ any assignee of such a note secured  
404 by a deed of trust, provided that the assignment and address of assignee are likewise recorded  
405 at least 30 days prior to the proposed sale, ~~(iv); (d)~~ any condominium unit owners' association  
406 ~~which that~~ has filed a lien pursuant to § ~~55-79.84, (v)~~ 55.1-xxx; (e) any property owners'  
407 association ~~which that~~ has filed a lien pursuant to § ~~55-516, 55.1-xxx~~; and ~~(vi)~~ (f) any  
408 proprietary lessees' association ~~which that~~ has filed a lien pursuant to § ~~55-472~~ 55.1-xxx.  
409 Written notice shall be given pursuant to clauses ~~(iv), (v) and (vi); (d), (e), and (f)~~ (d), (e), and (f) only if the  
410 lien is recorded at least 30 days prior to the proposed sale. Mailing of a copy of the  
411 advertisement or a notice containing the same information to the owner by certified or  
412 registered mail no less than 14 days prior to such sale and to lienholders, the property owners'

413 association or proprietary lessees' association, their assigns, and the condominium unit  
414 owners' association, at the address noted in the memorandum of lien, by ordinary mail no less  
415 than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.  
416 The written notice of proposed sale when given as provided ~~herein~~ in this subsection shall be  
417 deemed an effective exercise of any right of acceleration contained in such deed of trust or  
418 otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent  
419 failure to give notice as required by this subsection shall not impose liability on either the  
420 trustee or the secured party.

421 B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for  
422 any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that  
423 effect, the trustee may nonetheless proceed to sale, provided that the beneficiary has given  
424 written notice to the person required to pay the instrument that the instrument is unavailable  
425 and a request for sale will be made of the trustee upon expiration of 14 days from the date of  
426 mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to  
427 the last known address of the person required to pay the instrument as reflected in the records  
428 of the beneficiary and shall include the name and mailing address of the trustee. The notice  
429 shall further advise the person required to pay the instrument that if he believes he may be  
430 subject to a claim by a person other than the beneficiary to enforce the instrument, he may  
431 petition the circuit court of the county or city where the property or some part thereof lies for  
432 an order requiring the beneficiary to provide adequate protection against any such claim. If  
433 deemed appropriate by the court, the court may condition the sale on a finding that the person  
434 required to pay the instrument is adequately protected against loss that might occur by reason  
435 of a claim by another person to enforce the instrument. Adequate protection may be provided  
436 by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or  
437 cannot be produced shall not affect the authority of the trustee to sell or the validity of the  
438 sale.

439 C. When the written notice of proposed sale is given as provided ~~herein in this section,~~  
440 there ~~shall be~~ is a rebuttable presumption that the lienholder has complied with any  
441 requirement to provide notice of default contained in a deed of trust. Failure to comply with  
442 the requirements of notice contained in this section shall not affect the validity of the sale, and  
443 a purchaser for value at such sale shall be under no duty to ascertain whether such notice was  
444 validly given.

445 D. In the event of postponement of sale, which may be done in the discretion of the  
446 trustee, no new or additional notice ~~need is required to~~ be given pursuant to this section.

447 **Drafting note: Technical changes.**

448 ~~§ 55-59.1:1. Expired.~~

449 **Drafting note: Expired pursuant to Acts 2008, c. 878, on July 1, 2010.**

450 ~~§ 55-59.2~~ 55.1-xxx. Advertisement required before sale by trustee.

451 A. Advertisement of sale by a trustee or trustees in execution of a deed of trust shall  
452 be in a newspaper having a general circulation in the county or city ~~or county wherein in which~~  
453 the property to be sold, or any portion ~~thereof of such property,~~ lies pursuant to the following  
454 provisions:

455 1. If the deed of trust itself provides for the number of publications of such newspaper  
456 advertisement, which may be done by using the words "advertisement required" or similar  
457 words ~~of like purport~~ followed by the number agreed upon, then no other or different  
458 advertisement shall be necessary, provided that, if such advertisement be inserted on a weekly  
459 basis, it shall be published not less than once a week for two weeks, and if such advertisement  
460 be inserted on a daily basis, it shall be published not less than once a day for three days, which  
461 may be consecutive days, and in either case shall be subject to the provisions of ~~§ 55-63~~ 55.1-  
462 xxx in the same manner as if the method were set forth in the deed of trust. Should the deed  
463 of trust provide for advertising on other than a weekly or daily basis, either of the foregoing  
464 provisions shall be complied with in addition to those provided in such deed of trust.

465 Notwithstanding the provisions of the deed of trust, the sale shall be held on any day following  
466 the day of the last advertisement ~~which that~~ is no earlier than eight days following the first  
467 advertisement ~~nor or~~ more than ~~thirty~~ 30 days following the last advertisement.

468 2. If the deed of trust does not provide for the number of publications of such  
469 newspaper advertisement, the trustee shall advertise once a week for four successive weeks;  
470 provided, however, that if the property or some portion ~~thereof of such property~~ is located in  
471 a city or in a county immediately contiguous to a city, publication of the advertisement five  
472 different days, which may be consecutive days, shall be deemed adequate. The sale shall be  
473 held on any day following the day of the last advertisement ~~which that~~ is no earlier than eight  
474 days following the first advertisement nor more than ~~thirty~~ 30 days following the last  
475 advertisement.

476 B. Such advertisement shall be placed in that section of the newspaper where legal  
477 notices appear or where the type of property being sold is generally advertised for sale.

478 C. In addition to the advertisement required by subsection A ~~above~~, the trustee shall  
479 give such other further and different advertisement as the deed of trust may require and in  
480 addition may give such additional advertisement as he may deem appropriate.

481 D. In the event of postponement of sale, which postponement shall be at the discretion  
482 of the trustee, advertisement of such postponed sale shall be in the same manner as the original  
483 advertisement of sale.

484 E. Failure to comply with the requirements for advertisement contained in this section  
485 shall, upon petition, render a sale of the property voidable by the court.

486 **Drafting note: Technical changes.**

487 § ~~55-59.3~~ 55.1-xxx. Contents of advertisements of sale.

488 A. The advertisement of sale under any deed of trust, in addition to such other matters  
489 as may be required by such deed of trust or by the trustee, in his discretion, shall set forth a  
490 description of the property to be sold, ~~which~~ Such description need not be as extensive as that

491 contained in the deed of trust, ~~and but it~~ shall identify the property by street address, if any,  
492 or, if none, shall give the general location of the property with reference to streets, routes, or  
493 known landmarks. Where available, tax map identification may be used but is not required.  
494 The advertisement shall also include the time, place, and terms of sale and shall give the name  
495 or names of the trustee or trustees. It shall set forth the name, address, and telephone number  
496 of ~~such a~~ person ~~(, either a trustee or the party secured or his agent or attorney)~~ ~~as~~ who may  
497 be able to respond to inquiries concerning the sale.

498 B. 1. If the property being sold is a time-share estate ~~or estates~~, the advertisement of  
499 sale required under subsection A of § ~~55-59.2~~ 55.1-xxx shall set forth, in addition to such  
500 other matters as the trustee finds appropriate, (i) a description of the specific time-share estate  
501 or estates to be sold, ~~which and such~~ description shall also ~~shall~~ include (a) the name of the  
502 time-share project and (b) the street address of the time-share project; ~~or,~~ if no street address,  
503 the general location of the time-share project with reference to streets, routes, or known  
504 landmarks; (ii) the date, time, place, and terms of sale; (iii) the name of the trustee; and (iv)  
505 the name, address, and telephone number of the representative, agent, or attorney who is  
506 authorized to respond to inquiries concerning the sale and shall give additional information  
507 concerning the time-share estate or estates to be sold.

508 2. In lieu of the requirements of subdivision 1, the advertisement shall set forth (i) the  
509 name of the time-share project in which the time-share estate or estates to be sold are  
510 contained; (ii) the street address of the time-share project in which the time-share estate or  
511 estates to be sold are contained; ~~or,~~ if no street address, the general location of the time-share  
512 project with reference to streets, routes, or known landmarks; (iii) the date, time, place, and  
513 terms of sale; (iv) the name of the trustee; and (v) the name, address, and telephone number  
514 of the representative, agent, or attorney who is authorized to respond to inquiries concerning  
515 the sale and shall give additional information concerning the time-share estate or estates to be  
516 sold, including providing, upon request, in either hard copy or electronic form, a schedule of



517 the time-share estate or estates to be sold. In addition, the advertisement shall contain a website  
518 address where a description of the specific time-share estate or estates to be sold is displayed.

519 **Drafting note: In subdivision B 1, "or estates" is deleted on the basis of § 1-227,**  
520 **which states that throughout the Code any word used in the singular includes the plural.**

521 **Technical changes.**

522 § ~~55-59.4~~ 55.1-xxx. Powers and duties of trustee in event of sale under or satisfaction  
523 of deed of trust.

524 A. In the event of sale under a deed of trust, the trustee shall have the following powers  
525 and duties in addition to all others:

526 1. Written one-price bids may be made and shall be received by the trustee from the  
527 beneficiary or any other person for entry by announcement of the trustee at the sale. Any  
528 person other than the trustee may bid at the foreclosure sale, including a person who has  
529 submitted a written one-price bid. Upon request to the trustee ~~or trustees~~, any other bidder in  
530 attendance at a foreclosure sale shall be permitted to inspect written bids. Whenever the  
531 written bid of the beneficiary is the highest bid submitted at the sale, such document shall be  
532 filed by the trustee with his account of sale required under § 64.2-1309. The written bid  
533 submitted pursuant to this subsection may be prepared by the beneficiary, its agent, or its  
534 attorney.

535 2. The trustee may require of any bidder at any sale a cash deposit of as much as ~~ten~~  
536 per centum 10 percent of the sale price ~~(, unless the deed of trust specifies a higher or lower~~  
537 maximum, which may be done by the words "bidder's deposit of not more than \_\_\_\_\_  
538 dollars may be required;" or similar words ~~of like purport~~), before his bid is received, which  
539 shall be refunded to the bidder unless the property is sold to him, otherwise to be applied to  
540 his credit in settlement or, should he fail to complete his purchase promptly, to be applied to  
541 pay the costs and expense of sale and the balance, if any, to be retained by the trustee as his  
542 compensation in connection with that sale.

543           3. The trustee shall receive and receipt for the proceeds of sale, account for the same  
544 to the commissioner of accounts pursuant to § 64.2-1309 and apply the same, first, to  
545 discharge the expenses of executing the trust, including a reasonable commission to the  
546 trustee; secondly, to discharge all taxes, levies, and assessments, with costs and interest if they  
547 have priority over the lien of the deed of trust, including the due pro rata thereof for the current  
548 year; thirdly, to discharge in the order of their priority, if any, the remaining debts and  
549 obligations secured by the deed, and any liens of record inferior to the deed of trust under  
550 which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be  
551 paid to the grantor or his assigns; provided, however, that the trustee as to such residue shall  
552 not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the  
553 grantor's equity, without actual notice thereof prior to distribution; and provided further that  
554 such order of priorities shall not be changed or varied by the deed of trust. The trustee's deed  
555 shall show the trustee's mailing address.

556           B. Upon discharge ~~(, other than by sale by the trustee),~~ of all debts, duties, and  
557 obligations imposed by the deed upon the grantor, including any expenses incurred  
558 preparatory to sale, then upon the grantor's request the trustee shall execute and deliver a good  
559 and sufficient deed of release at the grantor's own proper costs and charges.

560           **Drafting note: In subdivision A 1, the phrase "or trustees" is deleted after**  
561 **"trustee" on the basis of § 1-227, which states that throughout the Code any word used**  
562 **in the singular includes the plural and vice versa. Technical changes are made.**

563           § ~~55-60~~ 55.1-xxx. Meaning of phrases that may be included in ~~such trust~~ deed of trust.

564           The following provisions may be incorporated in any ~~such~~ deed of trust to secure debts  
565 or indemnify sureties in the respective short forms indicated, namely:

566           ~~(1)~~ 1. The words "identified by trustee's signature;" or similar words ~~of like purport,~~  
567 shall be construed as if the deed set forth: "All of which said notes (or other obligations) bear

568 the marginal signature of the trustee for the purpose of identification but for no other purpose  
569 whatever."

570 ~~(2)~~2. The words "deferred purchase money," "purchase money," or similar words ~~of~~  
571 ~~like purport,~~ shall be construed as if the deed set forth: "This deed of trust is a  
572 contemporaneous purchase money deed of trust and secures the payment of deferred purchase  
573 money due by the grantor upon the property hereby conveyed." Any deed of trust securing a  
574 loan, proceeds of which are used by the borrower to acquire the secured real property, shall  
575 be deemed to be a purchase money deed of trust.

576 ~~(3)~~3. The words "exemptions waived," or similar words ~~of like purport,~~ shall be  
577 construed as if the deed set forth: "The grantor hereby waives the benefit of his exemptions as  
578 to the debt hereby secured and as to all other obligations ~~which that~~ may be imposed upon  
579 him by the provisions of this deed of trust."

580 ~~(4)~~4. The words "subject to call upon default," or similar words ~~of like purport,~~ shall  
581 be construed as if the deed set forth: "Should default be made in the payment of any part of  
582 the debt hereby secured, principal or interest, at the maturity of such part, or in the event of  
583 the breach of any of the covenants entered into or imposed upon the grantor, then the entire  
584 obligation of this deed of trust and the whole debt hereby secured shall, at the option of the  
585 beneficiaries, become forthwith due and payable."

586 ~~(5)~~5. The words "renewal or extension permitted," or similar words ~~of like purport,~~  
587 shall be construed as if the deed set forth: "The grantor hereby consents and agrees that the  
588 debt hereby secured, or any part thereof, may be renewed or extended beyond maturity as  
589 often as may be desired by agreement between the creditor and any subsequent owner of the  
590 property, and no such renewal or extension shall in any way affect the grantor's responsibility,  
591 whether as surety or otherwise."

592 ~~(5a)~~6. The words "reinstatement permitted" or similar words ~~of like purport~~ shall be  
593 construed as if the deed set forth: "The grantor and any other party assuming liability

594 hereunder hereby consent and agree that if the property conveyed hereby or a substantial  
595 portion thereof is transferred to any subsequent owner, and the creditor exercises the right to  
596 accelerate the debts secured hereby, the creditor may accept any delinquent payments or other  
597 cure of default giving rise to such acceleration from the then owner of the property or any  
598 other person and reinstate the indebtedness in accordance with the schedule of maturity as of  
599 the time of acceleration or upon such new schedule as may be agreed if renewal or extension  
600 are otherwise permitted and no such reinstatement shall in any way affect the liability of such  
601 prior parties, whether as surety or otherwise."

602 The words "renewal, extension, or reinstatement permitted;" or similar words ~~of like~~  
603 ~~purpose~~, shall have the meaning ascribed to the individual words or phrases in this ~~subsection~~  
604 ~~(5a)~~ subdivision and in ~~subsection (5)~~ subdivision 5.

605 ~~(6)~~ 7. The words "right of anticipation reserved;" or similar words ~~of like purpose~~, shall  
606 be construed as if the deed set forth: "The grantor reserves the right to anticipate the payment  
607 of the debt hereby secured, or any part thereof which is represented by a separate note (or  
608 other obligation) at any interest period by the payment of principal and interest to the date of  
609 such anticipated payment only."

610 ~~(7)~~ 8. The words "priority in direct order of maturity;" or similar words ~~of like purpose~~  
611 shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured  
612 have priority amongst themselves in the direct order of their maturities, each having priority  
613 over all others falling due after its maturity." And the words, "priority in inverse order of  
614 maturity;" or similar words ~~of like purpose~~, shall be construed as if the deed set forth: "The  
615 notes (or other obligations) hereby secured have priority amongst themselves in the inverse  
616 order of their maturities, each having priority over all others falling due before its maturity."

617 ~~(8)~~ 9. The words "insurance required \_\_\_\_\_ dollars;" or similar words ~~of similar~~  
618 ~~purpose~~, shall be construed as if the deed set forth: "The grantor covenants that he will keep  
619 the improvements on the property insured against fire in some solvent insurance company

620 approved by the trustee for the benefit of the beneficiaries hereunder in the sum of at least  
621 \_\_\_\_\_ dollars, and will deposit with the trustee or beneficiary the policies, with standard  
622 loss payable clauses with full contribution in favor of the trustee as his interest may appear;  
623 and the grantor further covenants that in the event of his failure to keep the property so insured  
624 and the policies so deposited, then the trustee or any beneficiary may, at his option, effect such  
625 insurance and pay the premium thereon, and the money so paid, with interest thereon, shall  
626 become a part of the debt hereby secured, in the event of sale to be paid next after the expenses  
627 of executing this trust, and shall be otherwise recoverable from the grantor as a debt, but there  
628 shall be no obligation upon the trustee or beneficiary to effect such insurance."

629 ~~(9)~~10. The words "substitution of trustee permitted," or similar words ~~of like purport,~~  
630 shall be construed as if the deed set forth: "Grantor grants unto the beneficiary or beneficiaries  
631 or to a majority in amount of the holders of the obligations secured hereunder and to their  
632 assigns the right and power, under the provisions of § ~~55-59~~ 55.1-xxx, to appoint a substitute  
633 trustee or trustees."

634 ~~(10)~~11. The words "any trustee may act," or similar words ~~of similar purport,~~ shall be  
635 construed as if the deed set forth: "The grantors, and all interested in the obligations hereby  
636 secured, by accepting the benefits hereof, agree that all authority, power, and discretion  
637 hereinabove granted to the trustees may be exercised by any of them, without any other, with  
638 the same effect as if exercised jointly by all of them."

639 ~~(11)~~12. The words "this is a credit line deed of trust," or similar words ~~of like purport,~~  
640 if in capital letters or underscored and on the first page of the deed of trust and containing the  
641 name and address of the noteholder, shall have the meaning set forth in § ~~55-58.2~~ 55.1-xxx.

642 **Drafting note: In the first sentence, the phrase "to secure debts or indemnify**  
643 **sureties" is added to modify "deed of trust;" the language is taken from existing § 55-**  
644 **59, which, at its original enactment, immediately proceeded existing § 55-60. Technical**  
645 **changes.**

646           ~~§ 55-60.1. Evidences of indebtedness placed on equal footing.~~

647           ~~When bonds, notes or other evidences of indebtedness are secured by a deed of trust,~~  
 648 ~~mortgage, vendor's lien or other lien, such bonds, notes, or other evidences of indebtedness~~  
 649 ~~shall, in the event the lien is executed or foreclosed, be secured on an equal footing and shall~~  
 650 ~~be paid ratably out of the proceeds of any sale of property subjected to the lien and shall have~~  
 651 ~~no priority, the one over the other, whether by priority of assignment or otherwise, unless the~~  
 652 ~~instrument creating the lien expressly provides otherwise.~~

653           **Drafting note: Existing § 55-60.1 is recommended for repeal because it is obsolete.**

654           ~~§ 55-61. 55.1-xxx.~~ Sales under deeds of trust ~~which~~ that contain no maturity date or  
 655 provision authorizing sale.

656           When any property, real or personal, is conveyed by deed of trust, ~~whether heretofore~~  
 657 ~~or hereafter made,~~ to a trustee, to secure the payment of a debt, money, notes, bonds, stocks,  
 658 or other evidences of debt and there is no date fixed for the maturity thereof and such deed of  
 659 trust contains no provision authorizing the trustee to make sale of such property, or any part  
 660 thereof, and the reinvestment of the proceeds of sale in other property subject to the terms of  
 661 such deed of trust, the circuit ~~and corporation courts~~ court, or such court having jurisdiction  
 662 of the subject matter, upon a ~~bill~~ complaint filed by any one or more of the lien debtors, in  
 663 which ~~bill~~ complaint all persons interested in such lien and all holders of the evidences of debt  
 664 secured by the deed of trust thereon, and all other necessary or proper parties, except the  
 665 plaintiffs, shall be made defendants, may ~~decree~~ order a sale of such property, or any part  
 666 thereof, and may invest the proceeds of sale under ~~decree~~ order of court subject to the terms  
 667 of the deed of trust; ~~provided,~~ that (i) the ~~bill of~~ complaint ~~shall set~~ sets forth facts ~~which~~ that  
 668 will justify the sale of the property, to be verified by the affidavit of at least one of the  
 669 plaintiffs; ~~provided, further, that,~~ (ii) no ~~decree~~ order shall be made authorizing such sale  
 670 unless it ~~shall be~~ is shown to the satisfaction of the court that the interests of the lien debtor  
 671 or debtors will be promoted and the interests of no person ~~or persons~~ holding the evidences of

672 debt secured by the deed of trust will be violated thereby; ~~provided, further, that, and (iii)~~ the  
673 plaintiff or the party for whose benefit the ~~suit~~ action is brought shall bear the cost.

674 **Drafting note: Language used in the old equitable pleading practice, including**  
675 **"bill," "decree," and "suit," is replaced with modern terminology. "Or persons" is**  
676 **deleted on the basis of § 1-227, which states that throughout the Code any word used in**  
677 **the singular includes the plural. Technical changes are made.**

678 § ~~55-61.1~~ 55.1-xxx. Validation of conveyances of real property under trust instrument  
679 not authorizing sale.

680 When any real property is conveyed by deed of trust; or other trust instrument; ~~whether~~  
681 ~~heretofore or hereafter made~~, to a trustee and there is no provision authorizing the trustee to  
682 convey the property that is the subject of the deed of trust, or any part ~~thereof, which is the~~  
683 ~~subject of such deed of trust of such property~~, and the trustee conveys ~~said~~ such property or  
684 any part ~~thereof of such property~~, such conveyance shall be valid after a period of ~~thirty~~ 30  
685 years from the date of such conveyance, provided that (i) there have been no adverse claims  
686 against the property so conveyed in the interim, and ~~provided that (ii)~~ such conveyances to  
687 and from ~~said~~ such trustee were properly recorded and indexed at the time of the conveyance,  
688 in the appropriate clerk's office ~~wherein in which~~ deeds are recorded in the county or city  
689 ~~wherein in which~~ the property lies.

690 **Drafting note: Technical changes.**

691 § ~~55-62~~ 55.1-xxx. Permissible form for notice of sale under deed of trust.

692 Notice of sale under any deed of trust ~~whether the same be in conformity with § 55-~~  
693 ~~59 or not regardless of whether it conforms with § 55.1-xxx~~, in the absence of provision  
694 ~~therein in such deed of trust~~ requiring other or additional matter, may be substantially in the  
695 following form ~~following~~:

696 Trustee's Sale of

697 \_\_\_\_\_ (brief description or  
698 identification of property)

699 In execution of a deed of trust; (name or names of grantor or grantors unless grantor  
700 or grantors request in writing that the same be omitted;), dated \_\_\_\_\_, recorded  
701 in the Clerk's Office of the \_\_\_\_\_ court of \_\_\_\_\_ in Deed Book  
702 \_\_\_\_\_, page \_\_\_\_\_, \_\_\_\_\_, the undersigned trustee will offer for  
703 sale at public auction (a brief description of the property to include street number or, if none,  
704 the general location of property and place of sale) on the \_\_\_\_\_ day of  
705 \_\_\_\_\_, 20\_\_\_\_\_ at \_\_\_\_\_ (ante meridian) (noon) (post meridian), the property  
706 described in such deed.

707 Terms: (Cash) (\_\_\_\_\_)

708 \_\_\_\_\_

709 Trustee(s)

710 FOR INFORMATION CONTACT:

711 \_\_\_\_\_

712 (A trustee or the secured party or his agent)

713 \_\_\_\_\_

714 Address

715 \_\_\_\_\_

716 Telephone number

717 **Drafting note: Technical changes.**

718 §~~55-63~~ 55.1-xxx. Construction of deeds requiring notice by advertisement in  
719 newspaper.

720 ~~(a)~~ A. Whenever any deed of trust to secure debts or indemnify sureties contains a  
721 provision requiring the giving of notice of sale thereunder for a specified number of days by  
722 advertisement in one or more newspapers and such advertisement ~~be~~ is published in a



723 newspaper published daily or in a newspaper published daily except Sunday, it shall be  
724 deemed a sufficient compliance with such provision if such notice ~~be is~~ published in  
725 consecutive issues of such newspaper for the number of days specified, counting both the day  
726 of the first publication and the day of the last publication and intervening Sundays, whether  
727 or not such newspaper ~~be is~~ published on Sunday. Both the first publication and the last  
728 publication may be on Sunday. The publication shall in all other respects comply with the  
729 provisions of §§ ~~55-59.2~~ 55.1-xxx and ~~55-59.3~~ 55.1-xxx.

730 ~~(b)~~ B. Whenever such deed of trust requires advertisement once a week for a specified  
731 number of weeks, sale may be had on the day after the last advertisement appears or any day  
732 thereafter, and all sales made in conformity ~~herewith~~ with this section prior to January 1, 1972,  
733 and otherwise valid, are hereby validated.

734 **Drafting note: Technical changes.**

735 § ~~55-64~~ 55.1-xxx. Disposition of surplus from trustee's sale after death of grantor.

736 Whenever the grantor, or his successor in title, in any deed of trust by which any real  
737 property is conveyed in trust to secure debts or indemnify sureties dies prior to a trustee's sale  
738 held pursuant to the deed of trust and the deed of trust contains no definite provision for the  
739 distribution of any surplus in the event of the death of the grantor or his successors in title  
740 prior to the trustee's sale held pursuant to the deed of trust, or contains a provision that such  
741 surplus shall be paid to the grantor or his heirs or assigns or personal representative, then any  
742 surplus of the proceeds of the sale remaining ~~in the hands~~ possession of the trustee, after  
743 discharging the expenses of executing the trust, all tax liens upon the property sold, and all  
744 debts and obligations secured by the deed of trust, shall be paid by the trustee to the personal  
745 representative of the decedent.

746 Any such funds ~~so coming into the hands of~~ possessed by the personal representative  
747 shall constitute assets for the payment by him, first, of all existing liens against the property  
748 foreclosed ~~which that~~ are subsequent to the deed of trust under which the trustee sells in the

749 order of their priority; and, secondly, of any debts and demands against the decedent's estate  
750 remaining unsatisfied after the personal estate has been exhausted. Any surplus of the funds  
751 so paid to the personal representative and remaining in his ~~hands~~ possession after the  
752 satisfaction of all debts and demands against the estate shall be paid over by him, if the  
753 decedent died intestate as to the real property embraced in the deed of trust, to the heirs at law  
754 of the decedent, or their successors in title, and if the decedent died testate as to the real  
755 property embraced in the deed of trust, then such surplus shall be paid to the persons entitled  
756 to the real property under the terms of the decedent's will, or to their successors in title.

757 **Drafting note: Language is updated for modern usage. Technical changes are**  
758 **made.**

759 § ~~55-64.1~~ 55.1-xxx. Title to real estate sold not affected by nonlisting of secured notes  
760 for taxation.

761 The title to real estate ~~heretofore or hereafter~~ sold under a deed of trust shall not be  
762 drawn in question upon the ground that the holder of the notes secured by such deed of trust  
763 did not list the same for taxation.

764 **Drafting note: Technical change.**

765 § ~~55-65~~ 55.1-xxx. Validation of certain sales made under deeds of trust.

766 All sales ~~which that~~ have been made prior to January 1, 1972, under deeds of trust to  
767 secure debts and indemnify sureties containing a provision requiring the giving of notice of  
768 sale thereunder for a specified number of days by advertisement in one or more newspapers  
769 and ~~which that~~ were made after publishing the advertisement of sale in a newspaper published  
770 daily or in a newspaper published daily except Sunday for the number of days specified in the  
771 deed of trust, counting both the day of the first publication and the day of the last publication  
772 and intervening Sundays, whether or not such paper was published on Sunday and whether or  
773 not such sales were held on the day of the last publication ~~(,~~ provided that, in cases when the  
774 sale was held on the day of the last publication, the publication was in a newspaper the

775 principal daily edition of which was delivered or publicly sold before the time fixed for the  
776 sale), and whether or not the first publication or the last publication, or both, appeared on  
777 Sunday, shall be held, and the same are hereby declared, to be valid and effective in all  
778 respects, if otherwise valid and effective according to the law then in force; provided,  
779 however, that nothing ~~herein~~ contained in this section shall be construed as affecting any final  
780 order ~~or decree heretofore~~ entered prior to March 24, 1934 by any court of competent  
781 jurisdiction or as affecting any ~~suit or~~ action now pending in any court of competent  
782 jurisdiction; and provided further, that nothing in this section shall be so construed as to affect  
783 intervening vested rights.

784 **Drafting note: Language used in the old equitable pleading practice, including**  
785 **"decree" and "suit," is replaced with modern terminology. The phrase "prior to March**  
786 **24, 1934" is added because it is the date the statute was originally enacted. Technical**  
787 **changes are made.**

788 § ~~55-65.1~~ 55.1-xxx. Validation of certain sales made under deeds of trust prior to  
789 October 1, 1977.

790 All sales ~~which that~~ were made prior to October 1, 1977, under deeds of trust to secure  
791 debts and indemnify sureties when the notice, advertisement, and conduct of the sale were in  
792 accordance with the law of ~~this the~~ Commonwealth as it existed on June 30, 1977, are declared  
793 to be valid and effective in all respects; provided that nothing ~~herein contained~~ in this section  
794 shall be construed as affecting any final order ~~heretofore~~ entered prior to March 23, 1978 by  
795 any court of competent jurisdiction, or any ~~suit or~~ action now pending in a court of competent  
796 jurisdiction, ~~nor or~~ as affecting intervening vested rights; and provided further, that no ~~suit or~~  
797 action to vacate or set aside any such sale may be brought after March 23, 1978.

798 **Drafting note: Language used in the old equitable pleading practice, including**  
799 **"suit," is replaced with modern terminology. The phrase "prior to March 23, 1978" is**

800 added because it is the date the statute was originally enacted. Technical changes are  
801 made.

802 § ~~55-66.55.1-xxx~~. Validation of other sales under deeds of trust.

803 All sales ~~which~~ that were made prior to January 1, 1972, under deeds of trust to secure  
804 debts and indemnify sureties when the notice was not published once a week for four  
805 successive weeks or a specified number of successive weeks are declared to be valid and  
806 effective in all respects, if other reasonable advertisement of such sale was given and such  
807 sale was otherwise valid and effective; ~~;~~ provided that nothing herein contained shall be  
808 construed as affecting any final order ~~heretofore~~ entered prior to March 1, 1944 by any court  
809 of competent jurisdiction, or any ~~suit or~~ action now pending in a court of competent  
810 jurisdiction, ~~nor or~~ as affecting intervening vested rights; ~~;~~ and provided further that no ~~suit or~~  
811 action may be brought after January 1, 1972, to vacate or set aside any such sale.

812 **Drafting note: Language used in the old equitable pleading practice, including**  
813 **"suit," is replaced with modern terminology. The phrase "prior to March 1, 1944" is**  
814 **added because it is the date the statute was originally enacted. Technical changes are**  
815 **made.**

816 § ~~55-66.01~~ 55.1-xxx. Protection of assignees or transferees of debts secured by real  
817 estate; form of certificate of transfer.

818 Whenever a debt or other obligation secured by a deed of trust, mortgage, or vendor's  
819 lien on real estate has been assigned, the assignor or the assignee, at its option, may cause the  
820 instrument of assignment to be recorded in the clerk's office of the circuit court where such  
821 deed of trust, mortgage, or vendor's lien is recorded, provided that such instrument is  
822 otherwise in recordable form, or may cause a certificate of transfer signed by the assignor to  
823 be recorded in such clerk's office, and such instrument of assignment or certificate of transfer,  
824 upon recordation, shall operate as a notice of such assignment. The instrument of assignment  
825 or certificate of transfer shall be indexed in the name of the assignor and in the names of the

826 obligor or maker, and the trustees, as applicable, all of whose names shall be set forth in such  
827 instrument or certificate. The certificate of transfer shall conform substantially to the  
828 following:

829 CERTIFICATE OF TRANSFER

830 Place of Record:

831 Clerk's Office of the Circuit Court of the \_\_\_\_\_ of \_\_\_\_\_,

832 Virginia

833 Date of [Deed of Trust/Mortgage/Vendor's Lien]: \_\_\_\_\_,

834 Deed Book \_\_\_\_\_, Page \_\_\_\_\_

835 Name of Obligor or Maker:

836 \_\_\_\_\_

837 Names(s) of Trustee(s) [if a Deed of Trust]:

838 \_\_\_\_\_

839 \_\_\_\_\_

840 Name of Original Payee or Obligee:

841 \_\_\_\_\_

842 Original Amount Secured [if applicable]: \$\_\_\_\_\_

843 The undersigned, the original payee or obligee [or the subsequent assignee] of the  
844 obligation secured by the above-mentioned [Deed of Trust/Mortgage/Vendor's Lien], hereby  
845 certifies that the obligations secured thereby have been assigned to \_\_\_\_\_

846 \_\_\_\_\_

847 [If a credit line deed of trust, the name and address to which notice may be mailed or  
848 delivered to the Noteholder as provided by § ~~55-58.2~~ [55.1-xxx](#) is as follows:

849 \_\_\_\_\_

850 \_\_\_\_\_]

851 Given under ~~[my/our]~~ (my/our) hand(s) as of the \_\_\_\_\_ day of  
 852 \_\_\_\_\_, \_\_\_\_\_.

853 \_\_\_\_\_

854 (Assignor)

855 \_\_\_\_\_ of \_\_\_\_\_

856 County/City of \_\_\_\_\_, to wit:

857 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_ this

858 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

859 My Commission Expires: \_\_\_\_\_

860 \_\_\_\_\_

861 Notary Public

862 Notary Registration Number: \_\_\_\_\_

863 For purposes of this ~~statute section~~, the word "assigned" ~~shall include~~ includes  
 864 endorsed, pledged, hypothecated, or otherwise transferred. Nothing in this ~~statute section~~ shall  
 865 be deemed to invalidate any other form or notice of assignment that may have been ~~heretofore~~  
 866 recorded prior to July 1, 1994. Nothing in this ~~statute section~~ shall imply that recordation of  
 867 the instrument of assignment or a certificate of transfer is necessary in order to transfer to an  
 868 assignee the benefit of the security provided by the deed of trust, mortgage, or vendor's lien.

869 **Drafting note: "Notary Registration Number" is added to the signature line of**  
 870 **the certificate because it is a requirement of notarization. The phrase "prior to July 1,**  
 871 **1994" is added because it is the date the statute was originally enacted. Technical**  
 872 **changes are made.**

873 ~~§ 55-66.1.~~

874 **Drafting note: Repealed by Acts 1992, c. 532.**

875 ~~§ 55-66.1:01.~~

876 **Drafting note: Repealed by Acts 1995, c. 807.**

877 § ~~55-66.1:1~~ 55.1-xxx. Required notice of foreclosure or repossession of manufactured  
878 home.

879 Whenever any assignee of an installment note secured by a security interest on a  
880 manufactured home determines that legal action is desirable to enforce the debt resulting in a  
881 potential foreclosure or repossession, he shall give prior notice by mail of any action to  
882 foreclose or repossess the collateral to any assignor who is liable under a recourse  
883 endorsement or by virtue of a reserve account at least ~~ten~~ 10 business days prior to the  
884 enforcement of the security interest or eviction. Assignment by way of pledge of the security  
885 interest granted by the assignor shall not be an assignment within the meaning of this section.  
886 The failure to so notify the assignor shall not affect any rights of the assignee as against the  
887 principal debtor or any party other than the assignor with recourse or a person with rights in a  
888 reserve account. Provisions of this section may not be waived by such assignor at the time of  
889 the original sale of the installment paper; but only after the expiration of at least ~~thirty~~ 30 days  
890 from such initial transfer. The assignee shall send such notice to the last known address of the  
891 assignor as it appears in the records of the assignee.

892 **Drafting note: Technical changes.**

893 § ~~55-66.2~~ 55.1-xxx. Release to person dead inures to successors.

894 A release of a deed of trust or a conveyance of the property embraced ~~therein in such~~  
895 deed of trust may in all cases be made to the original grantor, whether living or dead, and any  
896 release or reconveyance ~~heretofore or hereafter~~ so made shall inure both in law and in equity  
897 to the successors in title of such grantor.

898 **Drafting note: Technical changes.**

899 § ~~55-66.3~~ 55.1-xxx. Release of deed of trust or other lien.

900 A. As used in this section:

901 "Deed of trust" means any mortgage, deed of trust, or vendor's lien.

902 "Lien creditor" and "creditor" shall be construed as synonymous and mean the holder,  
903 payee, or obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor  
904 or his successor in interest as evidenced by proper endorsement or assignment, general or  
905 restrictive, upon the note, bond, or other evidence of debt.

906 "Payoff letter" means a written communication from the lien creditor or servicer  
907 stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.

908 "RESA" means Chapter XX (§ 55.1-xxx et seq.) [Chapter 27.3 (§ 55-525.16 et seq.)],  
909 Real Estate Settlement Agents.

910 "Satisfactory evidence of the payment of the obligation secured by the deed of trust"  
911 means (i) any one of the following: (a) the original canceled check or a copy of the canceled  
912 check, showing all endorsements, payable to the lien creditor or servicer, as applicable, (b)  
913 confirmation in written or electronic form of a wire transfer to the bank account of the lien  
914 creditor or servicer, as applicable, or (c) a bank statement in written or electronic form  
915 reflecting completion of the wire transfer or negotiation of the check, as applicable, and (ii) a  
916 payoff letter or other reasonable documentary evidence that the payment was to effect  
917 satisfaction of the obligation secured or evidenced by the deed of trust.

918 "Satisfied by payment" includes obtaining written confirmation from the lien creditor  
919 that the underlying obligation has a zero balance.

920 "Servicer" means a person or entity that collects loan payments on behalf of a lien  
921 creditor.

922 "Settlement agent" has the same meaning ascribed to it in § 55.1-xxx [§ 55-525.16],  
923 provided that a person shall not be a settlement agent unless he is registered pursuant to §  
924 55.1-xxx [§ 55-525.30] and otherwise fully in compliance with the applicable provisions of  
925 RESA.

926 "Title insurance company" has the same meaning ascribed to it in § 38.2-4601,  
927 provided that the title insurance company seeking to release a lien by the process described in



928 subsection E issued a policy of title insurance, through a title insurance agency or agent as  
929 defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was  
930 satisfied by payment made by the title insurance agency or agent also acting as the settlement  
931 agent.

932 B. 1. Except as provided in Article ~~2.1 of this chapter~~ 3 (§ 55.1-xxx et seq.), after full  
933 or partial payment or satisfaction has been made of a debt secured by a deed of trust, vendor's  
934 lien, or other lien, or any one or more obligations representing at least 25 percent of the total  
935 amount secured by such lien, but less than the total number of the obligations so secured, or  
936 the debt secured is evidenced by two or more separate written obligations sufficiently  
937 described in the instrument creating the lien, has been fully paid, the lien creditor shall issue  
938 a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for  
939 recordation reflecting such payment and release of lien. This requirement shall apply to a  
940 credit line deed of trust prepared pursuant to § ~~55-58.2~~ 55.1-xxx only when the obligor or the  
941 settlement agent has paid the debt in full and requested that the instrument be released.

942 If the lien creditor receives notice from a settlement agent at the address identified in  
943 its payoff statement requesting that the certificate be sent to such settlement agent, the lien  
944 creditor shall provide the certificate, within 90 days after receipt of such notice, to the  
945 settlement agent at the address specified in the notice received from the settlement agent.

946 If the notice is not received from a settlement agent, the lien creditor shall deliver,  
947 within 90 days after such payment, the certificate to the appropriate clerk's office with the  
948 necessary fee for recording by certified mail, return receipt requested, or when there is written  
949 proof of receipt from the clerk's office, by hand delivery ~~or by courier hand delivery~~, electronic  
950 delivery via the clerk's electronic filing system, or delivery by a commercial overnight  
951 delivery service or the United States Postal Service, and a receipt obtained.

952 If the lien creditor has already delivered the certificate to the clerk's office by the time  
953 it receives notice from the settlement agent, the lien creditor shall deliver a copy of the

954 certificate to the settlement agent within 90 days of the receipt of the notice at the address for  
955 notification set forth in the payoff statement.

956 If the lien creditor has not, within 90 days after payment, either provided the certificate  
957 of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary  
958 fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or  
959 attorney may take an assignment of the right to the \$500 penalty or facilitate such an  
960 assignment to any third party designated by the settlement agent or attorney. Following the  
961 90-day period, if the amount forfeited is not paid within 10 business days after written demand  
962 for payment is sent to the lien creditor by certified mail at the address for notification set forth  
963 in the payoff statement, the lien creditor shall pay any court costs and reasonable ~~attorney's~~  
964 attorney fees incurred by the obligor in collecting the forfeiture.

965 2. If the note, bond, or other evidence of debt secured by such deed of trust, vendor's  
966 lien, or other lien referred to in subdivision 1 or any interest therein, has been assigned or  
967 transferred to a party other than the original lien creditor, the subsequent holder shall be  
968 subject to the same requirements as a lien creditor for failure to comply with this subsection,  
969 as set forth in subdivision 1.

970 ~~B. C.~~ The certificate of satisfaction shall be signed by the creditor or his duly  
971 authorized agent, attorney, or attorney-in-fact, or any person to whom the instrument  
972 evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such  
973 release. An affidavit shall be filed or recorded with the certificate of satisfaction, by the  
974 creditor, or his duly authorized agent, attorney, or attorney-in-fact, with such clerk, stating  
975 that the debt therein secured and intended to be released or discharged has been paid to such  
976 creditor, or his agent, attorney, or attorney-in-fact, who was, ~~when the debt was satisfied,~~  
977 entitled and authorized to receive ~~the same such debt when the debt was satisfied.~~

978 ~~C. D. And when so~~ When the certificate of satisfaction has been signed and the  
979 affidavit ~~hereinbefore~~ required by subsection C has been duly filed or recorded with the

980 certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a  
981 release of the encumbrance as to which such payment or satisfaction is entered and, if the  
982 encumbrance ~~be is~~ by deed of trust, as a reconveyance of the legal title as fully and effectually  
983 as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

984 ~~D. As used in this section:~~

985 ~~"CRESPA" means Chapter 27.3 (§ 55-525.16 et seq.) of Title 55.~~

986 ~~"Deed of trust" means any mortgage, deed of trust or vendor's lien.~~

987 ~~"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder,~~  
988 ~~payee or obligee of a note, bond or other evidence of debt and shall embrace the lien creditor~~  
989 ~~or his successor in interest as evidenced by proper endorsement or assignment, general or~~  
990 ~~restrictive, upon the note, bond or other evidence of debt.~~

991 ~~"Payoff letter" means a written communication from the lien creditor or servicer~~  
992 ~~stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.~~

993 ~~"Satisfactory evidence of the payment of the obligation secured by the deed of trust"~~  
994 ~~means (i) any one of (a) the original canceled check or a copy of the canceled check, showing~~  
995 ~~all endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in~~  
996 ~~written or electronic form of a wire transfer to the bank account of the lien creditor or servicer,~~  
997 ~~as applicable, or (c) a bank statement in written or electronic form reflecting completion of~~  
998 ~~the wire transfer or negotiation of the check, as applicable; and (ii) a payoff letter or other~~  
999 ~~reasonable documentary evidence that the payment was to effect satisfaction of the obligation~~  
1000 ~~secured or evidenced by the deed of trust.~~

1001 ~~"Satisfied by payment" includes obtaining written confirmation from the lien creditor~~  
1002 ~~that the underlying obligation has a zero balance.~~

1003 ~~"Servicer" means a person or entity that collects loan payments on behalf of a lien~~  
1004 ~~creditor.~~

1005 ~~"Settlement agent" has the same meaning ascribed thereto in § 55-525.16, provided~~  
1006 ~~that a person shall not be a settlement agent unless he is registered pursuant to § 55-525.30~~  
1007 ~~and otherwise fully in compliance with the applicable provisions of Chapter 27.3 (§ 55-525.16~~  
1008 ~~et seq.) of Title 55.~~

1009 ~~"Title insurance company" has the same meaning ascribed thereto in § 38.2-4601,~~  
1010 ~~provided that the title insurance company seeking to release a lien by the process described in~~  
1011 ~~subsection E issued a policy of title insurance, through a title insurance agency or agent as~~  
1012 ~~defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was~~  
1013 ~~satisfied by payment made by the title insurance agency or agent also acting as the settlement~~  
1014 ~~agent.~~

1015 E. Release of lien by settlement agent or title insurance company.

1016 A settlement agent or title insurance company may release a deed of trust in  
1017 accordance with the provisions of this subsection (i) if the obligation secured by the deed of  
1018 trust has been satisfied by payment made by the settlement agent and (ii) whether or not the  
1019 settlement agent or title insurance company is named as a trustee under the deed of trust or  
1020 otherwise has received the authority to release the lien.

1021 1. Notice to lienholder.

1022 a. After or accompanying payment in full of the obligation secured by a deed of trust,  
1023 a settlement agent or title insurance company intending to release a deed of trust pursuant to  
1024 this subsection shall deliver to the lien creditor by certified mail or ~~guaranteed commercial~~  
1025 ~~overnight delivery service~~ or the United States Postal Service, and a receipt obtained, a notice  
1026 of intent to release the deed of trust with a copy of the payoff letter and a copy of the release  
1027 to be recorded as provided in this subsection.

1028 b. The notice of intent to release shall contain (i) the name of the lien creditor, the  
1029 name of the servicer if loan payments on the deed of trust are collected by a servicer, or both  
1030 names;<sub>2</sub> (ii) the name of the settlement agent;<sub>2</sub> (iii) the name of the title insurance company if

1031 the title insurance company intends to release the lien; and (iv) the date of the notice. The  
1032 notice of intent to release shall conform substantially to the following form:

1033 NOTICE OF INTENT TO RELEASE

1034 Notice is hereby given to you concerning the deed of trust described on the certificate  
1035 of satisfaction, a copy of which is attached to this notice, as follows:

1036 1. The settlement agent identified below has paid the obligation secured by the deed  
1037 of trust described herein or obtained written confirmation from you that such obligation has a  
1038 zero balance.

1039 2. The undersigned will release the deed of trust described in this notice unless, within  
1040 90 days from the date this notice is mailed by certified mail or ~~guaranteed commercial~~  
1041 overnight delivery service or the United States Postal Service, and a receipt obtained, the  
1042 undersigned has received by certified mail or ~~guaranteed commercial~~ overnight delivery  
1043 service or the United States Postal Service, and a receipt obtained, a notice stating that a  
1044 release of the deed of trust has been recorded in the clerk's office or that the obligation secured  
1045 by the deed of trust described herein has not been paid, or the lien creditor or servicer  
1046 otherwise objects to the release of the deed of trust. Notice shall be sent to the address stated  
1047 on this form.

1048 (Name of settlement agent)

1049 (Signature of settlement agent or title insurance company)

1050 (Address of settlement agent or title insurance company)

1051 (Telephone number of settlement agent or title insurance company)

1052 (Virginia ~~CRESPA~~ RESA registration number of settlement agent at the time the  
1053 obligation was paid or confirmed to have a zero balance)

1054 2. Certificate of satisfaction and affidavit of settlement agent or title insurance  
1055 company.

1056 a. If, within 90 days following the day on which the settlement agent or title insurance  
1057 company mailed or delivered the notice of intent to release in accordance with this subsection,  
1058 the lien creditor or servicer does not send by certified mail or ~~guaranteed commercial~~  
1059 overnight delivery service or the United States Postal Service, and a receipt obtained, to the  
1060 settlement agent or title insurance company a notice stating that a release of the deed of trust  
1061 has been recorded in the clerk's office or that the obligation secured by the deed of trust has  
1062 not been paid in full or that the lien creditor or servicer otherwise objects to the release of the  
1063 deed of trust, the settlement agent or title insurance company may execute, acknowledge, and  
1064 file with the clerk of court of the jurisdiction ~~wherein~~ in which the deed of trust is recorded a  
1065 certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b ~~of~~  
1066 ~~this subsection~~ and (ii) a copy of the notice of intent to release that was sent to the lender, the  
1067 servicer, or both. The certificate of satisfaction shall include the settlement agent's ~~CRESPA~~  
1068 RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation  
1069 Commission, that was in effect at the time the settlement agent paid the obligation secured by  
1070 the deed of trust or obtained written confirmation from the lien creditor that such obligation  
1071 has a zero balance. The certificate of satisfaction shall note that the individual executing the  
1072 certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After  
1073 filing or recording the certificate of satisfaction, the settlement agent or title insurance  
1074 company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The  
1075 validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection  
1076 shall not be affected by the inaccuracy of the ~~CRESPA~~ RESA registration number placed  
1077 thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien  
1078 creditor or servicer and shall nevertheless release the deed of trust described therein as  
1079 provided in this subsection.

1080 b. The certificate of satisfaction used by the settlement agent or title insurance  
1081 company shall include an affidavit certifying (i) that the settlement agent has satisfied the

1082 obligation secured by the deed of trust described in the certificate; (ii) that the settlement  
1083 agent or title insurance company possesses satisfactory evidence of payment of the obligation  
1084 secured by the deed of trust described in the certificate or written confirmation from the lien  
1085 creditor that such obligation has a zero balance; (iii) that the lien of the deed of trust may be  
1086 released; (iv) that the person executing the certificate is the settlement agent, or the title  
1087 insurance company, or is duly authorized to act on behalf of the settlement agent or title  
1088 insurance company; and (v) that the notice of intent to release was delivered to the lien  
1089 creditor or servicer and the settlement agent or title insurance company received evidence of  
1090 receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in  
1091 the following form:

1092 AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

1093 The undersigned hereby certifies that, in accordance with the provisions § ~~55-66.3~~  
1094 55.1-xxx of the Code of Virginia of 1950, as amended and in force on the date hereof (the  
1095 Code), (a) the undersigned is a settlement agent or title insurance company as defined in  
1096 subsection ~~D A~~ of § ~~55-66.3~~ 55.1-xxx of the Code or a duly authorized officer, director,  
1097 member, partner, or employee of such settlement agent or title insurance company; (b) the  
1098 settlement agent has satisfied the obligation secured by the deed of trust; (c) the settlement  
1099 agent or title insurance company possesses satisfactory evidence of the payment of the  
1100 obligation secured by the deed of trust described in the certificate recorded herewith or written  
1101 confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement  
1102 agent or title insurance company has delivered to the lien creditor or servicer in the manner  
1103 specified in subdivision E 1 of § ~~55-66.3~~ 55.1-xxx of the Code the notice of intent to release  
1104 and possesses evidence of receipt of such notice by the lien creditor or servicer; and (e) the  
1105 lien of the deed of trust is hereby released.

1106

---

1107 (Authorized signer)

**1108** 3. Effect of filing.

**1109** When filed or recorded with the clerk's office, a certificate of satisfaction that is  
**1110** executed and notarized as provided in this subsection, and accompanied by (i) the affidavit  
**1111** described in subdivision 2 ~~b-of this subsection~~, and (ii) a copy of the notice of intent to release  
**1112** that was sent to the lender, lien creditor, or servicer shall operate as a release of the  
**1113** encumbrance described therein and, if the encumbrance is by deed of trust, as a reconveyance  
**1114** of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed  
**1115** of release duly executed and recorded.

**1116** 4. Effect of wrongful or erroneous certificate; damages.

**1117** a. The execution and filing or recording of a wrongful or erroneous certificate of  
**1118** satisfaction by a settlement agent or title insurance agent does not relieve the party obligated  
**1119** to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party  
**1120** as to the debt, from any liability for the debt or other obligations secured by the deed of trust  
**1121** that is the subject of the wrongful or erroneous certificate of satisfaction.

**1122** b. A settlement agent or title insurance agent that wrongfully or erroneously executes  
**1123** and files or records a certificate of satisfaction is liable to the lien creditor for actual damages  
**1124** sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

**1125** c. The procedure authorized by this subsection for the release of a deed of trust shall  
**1126** constitute an optional method of accomplishing a release of a deed of trust secured by property  
**1127** in the Commonwealth. The nonuse of the procedure authorized by this subsection for the  
**1128** release of a deed of trust shall not give rise to any liability or any cause of action whatsoever  
**1129** against a settlement agent or any title insurance company by any obligated party or anyone  
**1130** succeeding to or assuming the interest of the obligated party.

**1131** 5. Applicability.



1132 a. The procedure authorized by this subsection for the release of a deed of trust may  
1133 be used to effect the release of a deed of trust after July 1, 2002, regardless of when the deed  
1134 of trust was created, assigned, or satisfied by payment made by the settlement agent.

1135 b. This subsection applies only to transactions involving the purchase of or lending on  
1136 the security of real estate located in the Commonwealth that is either (i) unimproved real estate  
1137 with a lien to be released of \$1 million or less or (ii) real estate containing at least one but not  
1138 more than four residential dwelling units.

1139 c. The procedure authorized by this subsection applies only to the full and complete  
1140 release of a deed of trust. Nothing in this subsection shall be construed to authorize the partial  
1141 release of property from a deed of trust or otherwise permit the execution or recordation of a  
1142 certificate of partial satisfaction.

1143 **Drafting note: The definitions are relocated to subsection A. The methods of**  
1144 **delivery are updated throughout the proposed sections to conform with other delivery**  
1145 **methods used throughout the title. Technical changes are made.**

1146 § ~~55-66.3-1~~ 55.1-xxx. Release by financial institution upon payment of debt placed  
1147 with it for collection.

1148 In any case where a note, bond, or other evidence of indebtedness placed by a creditor  
1149 for collection with a bank, trust company, savings institution, small loan company, or credit  
1150 union is fully paid at such financial institution, the financial institution, through its authorized  
1151 agents, may execute all certificates, releases, and affidavits required of a creditor by this  
1152 chapter to effectuate a release. The financial institution may execute and deliver to the clerk  
1153 an affidavit to the effect that the financial institution had been acting as collecting agent for  
1154 the creditor on the debt and that the debt has been paid in full at such institution.

1155 **Drafting note: Technical changes.**

1156 § ~~55-66.4~~ 55.1-xxx. Partial satisfaction ~~or release~~.

1157           It ~~shall be~~ is lawful for any ~~such lienor~~ lien creditor to ~~make a marginal release or~~  
1158 record a certificate of partial satisfaction of any one or more of the separate pieces or parcels  
1159 of property covered by such lien. It shall also be lawful for any such ~~lienor~~ creditor to ~~make a~~  
1160 ~~marginal release or~~ record a certificate of partial satisfaction of any part of the real estate  
1161 covered by such lien if a plat of such part or a deed of such part is recorded in the clerk's office  
1162 and a ~~cross reference~~ cross-reference is made in the ~~marginal release or~~ certificate of partial  
1163 satisfaction to the book and page where the plat or deed of such part is recorded. Such ~~marginal~~  
1164 ~~partial release or satisfaction or~~ certificate of partial satisfaction may be accomplished in  
1165 manner and form ~~hereinbefore~~ prescribed in this chapter ~~provided~~ for making ~~marginal~~  
1166 ~~releases or~~ certificates of satisfaction, except that the creditor, or his duly authorized agent,  
1167 shall make an affidavit to the clerk or in such certificate that such creditor is at the time of  
1168 making such ~~release~~ satisfaction the legal holder of the obligation, note, bond, or other  
1169 evidence of debt, secured by such lien, and when made in conformity ~~therewith and as~~  
1170 ~~provided herein~~ with the provisions of this chapter such partial satisfaction ~~or release~~ shall be  
1171 as valid and binding as a proper release deed duly executed for the same purpose.

1172           Any and all partial marginal releases made prior to July 1, 1966, in any county or city  
1173 of ~~this~~ the Commonwealth, in conformity with the provisions of this chapter, either of one or  
1174 more separate pieces or parcels of real estate or any part of the real estate covered by such  
1175 lien, or as to one or more of the obligations secured by any such lien, or as to all of the real  
1176 estate covered by such lien instrument, are hereby validated and declared to be binding upon  
1177 all parties in interest, but this provision shall not be construed as intended to disturb or impair  
1178 any vested right.

1179           **Drafting note: The term "lienor" is replaced with the term "lien creditor" for**  
1180 **conformity with the terminology used in § 55.1-xxx [§ 55-66.3]. References to "marginal**  
1181 **release" are stricken as obsolete (see 2014 Acts of Assembly, Chapter 330). Technical**  
1182 **changes are made.**

1183 § ~~55-66.4:1~~ 55.1-xxx. Permissible form for certificate of satisfaction or certificate of  
 1184 partial satisfaction.

1185 Any release by a certificate of satisfaction or certificate of partial satisfaction shall be  
 1186 in conformity with §§ ~~55-66.3, 55-66.3:1, and 55-66.4~~ 55.1-xxx, 55.1-xxx, and 55.1-xxx and  
 1187 shall conform substantially with the following Certificate of Satisfaction or Certificate of  
 1188 Partial Satisfaction forms:

1189 CERTIFICATE OF SATISFACTION

1190 Place of Record \_\_\_\_\_

1191 Date of Note/Deed of Trust \_\_\_\_\_

1192 Face Amount Secured/Face Amount of Note: \_\_\_\_\_

1193 Deed Book \_\_\_\_\_ Page \_\_\_\_\_

1194 Name(s) of Grantor(s)/Maker(s); \_\_\_\_\_

1195 Name(s) of Trustee(s) \_\_\_\_\_

1196 Face Amount of Note(s) \$\_\_\_\_\_

1197 I/we, holder(s) of the above-mentioned note(s) secured by the above-mentioned deed  
 1198 of trust, do hereby certify that the same has/have been paid in full, and the lien therein created  
 1199 and retained is hereby released.

1200 GIVEN UNDER MY/OUR HAND(S) THIS \_\_\_\_\_ DAY OF  
 1201 \_\_\_\_\_, 20\_\_\_\_\_.

1202 \_\_\_\_\_

1203 \_\_\_\_\_


1204 (NOTE HOLDERS)

1205 Commonwealth of Virginia,

1206 County/City of \_\_\_\_\_ to wit:

1207 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_ this

1208 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**1209** My Commission Expires: \_\_\_\_\_  
**1210** \_\_\_\_\_  
**1211** NOTARY PUBLIC  
**1212** [Notary Registration Number:](#) \_\_\_\_\_  
**1213** VIRGINIA;  
**1214** IN THE CLERK'S OFFICE OF THE CIRCUIT COURT  
**1215** This certificate was presented, and with the Certificate annexed, admitted to record on  
**1216** \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ .m.  
**1217** Clerk's fees: \$\_\_\_\_\_ have been paid.  
**1218** Attest: \_\_\_\_\_, Deputy Clerk  
**1219**   
**1220** CERTIFICATE OF PARTIAL SATISFACTION  
**1221** Place of Record \_\_\_\_\_  
**1222** Date of Deed of Trust \_\_\_\_\_  
**1223** Deed Book \_\_\_\_\_ Page \_\_\_\_\_  
**1224** Name(s) of Grantor(s) \_\_\_\_\_  
**1225** Name(s) of Trustee(s) \_\_\_\_\_  
**1226** Maker(s) of Note(s) \_\_\_\_\_  
**1227** Date of Note(s) \_\_\_\_\_  
**1228** Face Amount of Note(s) \$\_\_\_\_\_

**1229** The lien of the above-mentioned deed of trust securing the above-mentioned note is  
**1230** released insofar as the same is applicable to \_\_\_\_\_ (description of property)  
**1231** recorded in deed book \_\_\_\_\_ at page \_\_\_\_\_ in the clerk's office of this court. The  
**1232** undersigned is/are the legal holder(s) of the obligation, note, bond, or other evidence of debt  
**1233** secured by said deed of trust.  
**1234** Given under my/our hand(s) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1235 \_\_\_\_\_

1236 \_\_\_\_\_

1237 (NOTE HOLDERS)

1238 Commonwealth of Virginia,

1239 County/City of \_\_\_\_\_ to wit:

1240 Subscribed, sworn to, and acknowledged before me by \_\_\_\_\_ this

1241 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1242 My Commission Expires: \_\_\_\_\_

1243 \_\_\_\_\_

1244 NOTARY PUBLIC

1245 Notary Registration Number: \_\_\_\_\_

1246 The clerk shall satisfy the requirements of § 17.1-228.

1247 Certificates conforming to this section prior to the amendment effective July 1, 1984,

1248 shall be deemed to be in substantial conformity ~~thereto~~ to this section.

1249 **Drafting note: "Notary Registration Number" is added to the signature line of**  
 1250 **the certificate because it is a requirement of notarization. Technical changes are made.**

1251 ~~§ 55-66.4:2~~ 55.1-xxx. Where certificates of satisfaction are to be indexed.

1252 ~~A~~ The clerk shall record a certificate of partial satisfaction or a certificate of

1253 satisfaction ~~shall be recorded by the clerk~~ on the grantor index, both under the name of each

1254 grantor on the underlying deed of trust and under the name of the first-named trustee under

1255 which the deed of trust was indexed, all as identified on the certificate of satisfaction. The

1256 deed book and page number or the instrument number of the released deed of trust shall also

1257 be designated in the index. Any clerk using a separate index book or data file for grantees only

1258 shall also record ~~therein~~ in such book or file the name of each grantor on the underlying deed

1259 of trust as identified on the certificate of satisfaction.

1260 **Drafting note: Technical changes.**

1261 § ~~55-66.5~~ 55.1-xxx. Releases made by court; costs and attorney fees.

1262 A. Any person who owns or has any interest in real estate or personal property on  
1263 which ~~such an~~ encumbrance as described in § 55.1-xxx [§ 55-66.3] exists may, after 20 days'  
1264 notice ~~thereof~~ to the person entitled to such encumbrance, apply to the circuit court of the  
1265 county or city in ~~whose clerk's office~~ which such encumbrance is recorded to have the same  
1266 released or discharged. Upon proof that the encumbrance has been paid or discharged or upon  
1267 a finding by the court that more than 15 years have elapsed since the maturity of the lien or  
1268 encumbrance, raising a presumption of payment ~~which that~~ is not rebutted at the hearing, such  
1269 court shall order the clerk to record a certificate of satisfaction or a certificate of partial  
1270 satisfaction ~~which that~~, when so recorded, shall operate as a release of such encumbrance.

1271 All releases made prior to June 24, 1944, by any court under this section upon such  
1272 presumption of payment so arising and not rebutted shall be validated.

1273 B. If the court finds that the person entitled to such encumbrance cannot with due  
1274 diligence be located, and that notice has been given such person in the manner provided by §  
1275 8.01-319 or ~~55-66.10~~ 55.1-xxx, or that tender has been made of the sum due thereon but has  
1276 been refused for any reason by the party ~~or parties~~ to whom due, the court may in its discretion  
1277 order the sum due to be paid into court, to be there held as provided by law, and to be paid  
1278 upon demand to the person ~~or persons~~ entitled thereto. The court shall order the same to be  
1279 recorded as provided in subsection A ~~hereof~~, which and such certificate of satisfaction or  
1280 certificate of partial satisfaction shall operate as a release of the encumbrance.

1281 C. Upon a finding by the court that the holder of a mortgage or deed of trust ~~which~~  
1282 that has been fully paid or discharged has unjustifiably and without good cause failed or  
1283 refused to release such mortgage or deed of trust, the court, ~~in its discretion~~, may order that  
1284 costs and reasonable ~~attorneys~~ attorney fees be paid to the petitioning party. This subsection  
1285 shall not preclude a separate ~~suit~~ action by the petitioning party for actual damages sustained  
1286 by reason of such failure or refusal to release the encumbrance.



1313 release of a [mortgage security interest](#) regardless of when the [mortgage security interest](#) was  
1314 created, assigned, or satisfied by payment made by the settlement agent. The procedure  
1315 authorized by this section for the release of a [mortgage security interest](#) shall constitute an  
1316 optional method of accomplishing a release of a [mortgage security interest](#) secured by  
1317 property in the Commonwealth.

1318 **Drafting note: The term "mortgage" is replaced with "security interest" to**  
1319 **reflect that this article is applicable to all security interests, not only mortgages.**

1320 § ~~55-66.9~~ [55.1-xxx](#). Definitions.

1321 As used in this article, unless the context requires otherwise:

1322 "Day" means calendar day.

1323 "Document" means information that is:

1324 1. Inscribed on a tangible medium or that is stored in an electronic or other medium  
1325 and is retrievable in perceivable form; and

1326 2. Eligible to be recorded in the land records maintained by the clerk.

1327 "Electronic," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et  
1328 seq.), means relating to technology having electrical, digital, magnetic, wireless, optical,  
1329 electromagnetic, or similar capabilities.

1330 "Electronic document" means a document received by the clerk in electronic form.

1331 "Electronic notarization" means an official act by a notary public in accordance with  
1332 the Virginia Notary Act (§ 47.1-1 et seq.) and § ~~55-118.3~~ [55.1-xxx](#) with respect to an  
1333 electronic document.

1334 "Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-  
1335 479 et seq.), means an electronic sound, symbol, or process attached to or logically associated  
1336 with a record and executed or adopted by a person with the intent to sign the record.



1337 "eRecording System" means the automated electronic recording system implemented  
1338 by the clerk for the recordation of electronic documents among the land records maintained  
1339 by the clerk.

1340 "Filer" means an individual, corporation, business trust, estate, trust, partnership,  
1341 limited liability company, association, joint venture, public body, public corporation,  
1342 government, or governmental subdivision, agency, or instrumentality, or any other legal or  
1343 commercial entity ~~who~~ that files an electronic document among the land records maintained  
1344 by the clerk.

1345 "Good faith" means honesty in fact and the observance of reasonable commercial  
1346 standards of fair dealing.

1347 "Landowner" means a person that, before foreclosure, has the right of redemption in  
1348 the real property described in a security instrument. ~~The term~~ "Landowner" does not include  
1349 a person that holds only a lien on the real property.

1350 "Land records document" means any writing authorized by law to be recorded,  
1351 whether made on paper or in electronic format, ~~which~~ that the clerk records affecting title to  
1352 real property.

1353 "Organization" means a person other than an individual.

1354 "Person" means an individual, corporation, business trust, estate, trust, partnership,  
1355 limited liability company, association, joint venture, public corporation, government, or  
1356 governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

1357 "Real property" means real property that is used for residential or nonresidential  
1358 purposes.

1359 "Recording data" means the date, and deed book and page number or instrument  
1360 number, that ~~indieate~~ indicates where a document is recorded in the land records of the clerk  
1361 of the circuit court pursuant to Chapter ~~6~~ XX (§ ~~55-106~~ 55.1-xxx et seq.).

1362 "Secured creditor" means a person ~~who~~ that holds or is the beneficiary of a security  
1363 interest or that is authorized both to receive payments on behalf of a person that holds a  
1364 security interest in real property and to record a satisfaction of the security instrument upon  
1365 receiving full performance of the secured obligation. ~~The term~~ "Secured creditor" does not  
1366 include a trustee under a security instrument. ~~The term~~ "Secured creditor" also includes  
1367 "lender" as used in Chapter ~~27.3~~ XX (§ ~~55-525.16~~ 55.1-xxx et seq.) ~~of Title 55~~ and "lien  
1368 creditor" and "servicer" as used in § 55-66.3.

1369 "Secured obligation" means an obligation the payment or performance of which is  
1370 secured by a security interest.

1371 "Security instrument" means an agreement, however denominated, that creates or  
1372 provides for a security interest, whether or not it also creates or provides for a lien on personal  
1373 property.

1374 "Security interest" means an interest in real property created by a security instrument,  
1375 securing payment, or performance of an obligation and includes a mortgage or deed of trust.

1376 "Sign" means, with present intent to authenticate, accept, or adopt a document:

1377 1. To execute or adopt a tangible symbol; or

1378 2. To attach to or logically associate with the document an electronic sound, symbol,  
1379 or process.

1380 "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
1381 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction  
1382 of the United States.

1383 "Submit for recording" means to deliver, with required fees and taxes, a document  
1384 sufficient to be recorded under this article; ~~to the office of the clerk of the circuit court pursuant~~  
1385 ~~to Chapter 6~~ XX (§ ~~55-106~~ 55.1-xxx et seq.).

1386 **Drafting note: Technical changes.**

1387 § ~~55-66.10~~ 55.1-xxx. Document of rescission; effect; liability for wrongful recording.

1388           A. ~~In~~ As used in this section, "document of rescission" means a document stating that  
1389 an identified satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security  
1390 instrument was recorded erroneously or fraudulently, the secured obligation remains  
1391 unsatisfied, and the security instrument remains in force.

1392           B. If a person records a satisfaction, certificate of satisfaction, or affidavit of  
1393 satisfaction of a security instrument in error or by fraud, the person may execute and record a  
1394 document of rescission. Upon recording, the document rescinds an erroneously recorded  
1395 satisfaction, certificate, or affidavit.

1396           C. A recorded document of rescission has no effect on the rights of a person who:

1397           1. Acquired an interest in the real property described in a security instrument after the  
1398 recording of the satisfaction, certificate of satisfaction, or affidavit of satisfaction of the  
1399 security instrument and before the recording of the document of rescission; and

1400           2. Would otherwise have priority over or take free of the lien created by the security  
1401 instrument under the laws of the Commonwealth ~~of Virginia~~.

1402           D. A person, other than the clerk of the circuit court or any of his employees or other  
1403 governmental official in the course of the performance of his recordation duties, who  
1404 erroneously, fraudulently, or wrongfully records a document of rescission is subject to liability  
1405 under § ~~55-66.3~~ 55.1-xxx.

1406           **Drafting note: Technical changes.**

1407           § ~~55-66.11~~ 55.1-xxx. Secured creditor to submit satisfaction for recording; liability for  
1408 failure.

1409           A. A secured creditor shall submit for recording a satisfaction of a security instrument  
1410 within 90 days after the creditor receives full payment or performance of the secured  
1411 obligation in accordance with subsection A B of § ~~55-66.3~~ 55.1-xxx. If a security instrument  
1412 secures a line of credit or future advances, the secured obligation is fully performed only if,  
1413 in addition to full payment, the secured creditor has received a notification requesting the

1414 creditor to terminate the line of credit or containing a statement sufficient to terminate the  
1415 effectiveness of the provision for future advances in the security instrument.

1416 B. A secured creditor who is required to submit a satisfaction of a security instrument  
1417 for recording and fails to do so by the end of the period specified in subsection A is subject to  
1418 liability under § ~~55-66.3~~ 55.1-xxx.

1419 **Drafting note: No change.**

1420 § ~~55-66.12~~ 55.1-xxx. Form and effect of satisfaction.

1421 A. A document is sufficient to constitute a satisfaction of a security instrument if it  
1422 conforms substantially in form and content to the requirements of § ~~55-66.4:1~~ 55.1-xxx and  
1423 it:

1424 1. Identifies the security instrument, the original parties to the security instrument, the  
1425 recording data for the security instrument, and the office in which the security instrument is  
1426 recorded;

1427 2. States that the person signing the satisfaction is the secured creditor;

1428 3. Contains a legal description of the real property identified in the security instrument,  
1429 but only if a legal description is necessary for a satisfaction to be properly indexed; otherwise,  
1430 the deed book and page number or instrument number is sufficient;

1431 4. Contains language terminating the effectiveness of the security instrument; and

1432 5. Is signed by the secured creditor and acknowledged as required by law for a  
1433 conveyance of an interest in real property.

1434 B. The clerk of the circuit court shall accept for recording a satisfaction document,  
1435 unless:

1436 1. An amount equal to or greater than the applicable recording fees and taxes is not  
1437 tendered;

1438 2. The document is submitted by a method or in a medium not authorized by the laws  
1439 of the Commonwealth ~~of Virginia~~; or

1440 3. The document is not signed by the secured creditor and acknowledged as required  
1441 by law for a conveyance of an interest in real property.

1442 **Drafting note: Technical changes.**

1443 § ~~55-66.13~~ 55.1-xxx. Relation to Electronic Signatures in Global and National  
1444 Commerce Act.

1445 To the extent permitted by law, this article modifies, limits, and supersedes the  
1446 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except  
1447 that nothing in this article modifies, limits, or supersedes §§ 7001(c) and 7004 of that Act or  
1448 authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

1449 **Drafting note: No change.**

1450 § ~~55-66.14~~ 55.1-xxx. Uniform standards.

1451 In consultation with the circuit court clerks, the Executive Secretary of the Supreme  
1452 Court, and interested citizens and businesses, the Virginia Information Technologies Agency  
1453 shall develop standards to implement electronic recording of real property documents. The  
1454 [Virginia Information Technologies](#) Agency shall consider standards and practices of other  
1455 jurisdictions; the most recent standards promulgated by national standard-setting bodies, such  
1456 as the Property Records Industry Association; views of interested persons and other  
1457 governmental entities; and needs of localities of varying sizes, population, and resources.

1458 **Drafting note: Technical change.**

1459 Article ~~3~~ 4.

1460 Effect of Certain Expressions in Deeds ~~and Leases~~.

1461 **Drafting note: Existing Article 3 is retained as proposed Article 4 and contains**  
1462 **provisions pertaining to the effect of certain expressions in deeds. Existing §§ 55-76**  
1463 **through 55-79, dealing with deeds of lease, are relocated to Chapter XX of Subtitle III.**

1464 § ~~55-67~~ 55.1-xxx. Effect of word "covenants."

1465           When a deed uses the words "the said \_\_\_\_\_ covenants," such covenant shall  
1466 have the same effect as if it were expressed to be by the covenantor, for himself, and his heirs,  
1467 personal representatives, and assigns and shall be deemed to be with the covenantee, and his  
1468 heirs, personal representatives, and assigns.

1469           **Drafting note: Technical changes.**

1470           § ~~55-68~~ 55.1-xxx. Effect of covenant of general warranty.

1471           A covenant by the grantor in a deed, "that he will warrant generally the property hereby  
1472 conveyed," shall have the same effect as if the grantor had covenanted that he, and his heirs  
1473 and personal representatives will forever warrant and defend such property unto the grantee,  
1474 and his heirs, personal representatives, and assigns, against the claims and demands of all  
1475 persons ~~whomsoever~~.

1476           **Drafting note: Technical changes.**

1477           § ~~55-69~~ 55.1-xxx. ~~Of Covenant of~~ special warranty.

1478           A covenant by any such grantor "that he will warrant specially the property hereby  
1479 conveyed" shall have the same effect as if the grantor has covenanted that he, and his heirs  
1480 and personal representatives will forever warrant and defend such property unto the grantee,  
1481 and his heirs, personal representatives, and assigns, against the claims and demands of the  
1482 grantor, and all persons claiming or to claim by, through, or under him.

1483           **Drafting note: Technical changes.**

1484           § ~~55-70~~ 55.1-xxx. Words "with general warranty," "with special warranty," and "with  
1485 English covenants of title" construed.

1486           The words "with general warranty," in the granting part of any deed, shall be deemed  
1487 to be a covenant by the grantor "that he will warrant generally the property hereby conveyed."  
1488 The words "with special warranty," in the granting part of any deed, shall be deemed to be a  
1489 covenant by the grantor "that he will warrant specially the property hereby conveyed."

1490 The words "with English covenants of title" or words of similar import, in the granting  
1491 part of any deed shall be deemed to be an expression by the grantor of those covenants set out  
1492 in §§ ~~55-74~~ 55.1-xxx through ~~55-74~~ 55.1-xxx, ~~inclusive~~, and in addition thereto the covenant  
1493 that he is seized in fee simple of the property conveyed.

1494 **Drafting note: Technical changes.**

1495 § ~~55-70.1~~ 55.1-xxx. Implied warranties on new homes.

1496 A. As used in this section:

1497 "New dwelling" means a dwelling or house that has not previously been occupied for  
1498 a period of more than 60 days by anyone other than the vendor or the vendee or that has not  
1499 been occupied by the original vendor or subsequent vendor for a cumulative period of more  
1500 than 12 months, excluding dwellings constructed solely for lease. "New dwelling" does not  
1501 include a condominium or condominium units created pursuant to Chapter XX (§ 55.1-xxx et  
1502 seq.) [Chapter 4.2 (§ 55-79.39 et seq.)].

1503 "Structural defects" means a defect or defects that reduce the stability or safety of the  
1504 structure below accepted standards or that restrict the normal use of the structure.

1505 B. In every contract for the sale of a new dwelling, the vendor shall be held to warrant  
1506 to the vendee that, at the time of the transfer of record title or the vendee's taking possession,  
1507 whichever occurs first, the dwelling with all of its fixtures is, to the best of the actual  
1508 knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to  
1509 pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to  
1510 pass without objection in the trade.

1511 B.-C. In addition, in every contract for the sale of a new dwelling, the vendor, if he is  
1512 in the business of building or selling such dwellings, shall be held to warrant to the vendee  
1513 that, at the time of transfer of record title or the vendee's taking possession, whichever occurs  
1514 first, the dwelling together with all of its fixtures is sufficiently (i) free from structural defects,

1515 so as to pass without objection in the trade; (ii) constructed in a workmanlike manner, so as  
1516 to pass without objection in the trade; and (iii) fit for habitation.

1517 ~~C. D.~~ The ~~above~~ warranties described in subsections B and C implied in the contract  
1518 for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not  
1519 in lieu of, any other express or implied warranties pertaining to the dwelling, or its materials  
1520 or fixtures. A contract for sale may waive, modify, or exclude any or all express and implied  
1521 warranties and sell a new home "as is" only if the words used to waive, modify, or exclude  
1522 such warranties are conspicuous ~~(, as defined by subdivision (b) (10) of § 8.1A-201)~~, set forth  
1523 on the face of such contract in capital letters ~~which that~~ are at least two points larger than the  
1524 other type in the contract and only if the words used to waive, modify, or exclude the  
1525 warranties state with specificity the warranty or warranties that are being waived, modified,  
1526 or excluded. If all warranties are waived or excluded, a contract ~~must~~ shall specifically set  
1527 forth in capital letters ~~which that~~ are at least two points larger than the other type in the contract  
1528 that the dwelling is being sold "as is."

1529 ~~D. E.~~ If there is a breach of warranty under this section, the vendee, or his heirs or  
1530 personal representatives in case of his death, shall have a cause of action against his vendor  
1531 for damages; provided, however, for any defect discovered after July 1, 2002, such vendee  
1532 shall first provide the vendor, by ~~registered or~~ certified mail at his last known address, or by  
1533 commercial overnight delivery service or the United States Postal Service, and a receipt  
1534 obtained, a written notice stating the nature of the warranty claim. Such notice also may be  
1535 hand delivered to the vendor with the vendee retaining a receipt of such ~~hand-delivered~~ hand-  
1536 delivered notice to the vendor or its authorized agent. After such notice, the vendor shall have  
1537 a reasonable period of time, not to exceed six months, to cure the defect that is the subject of  
1538 the warranty claim.

1539 ~~E. F.~~ The warranty shall extend for a period of one year from the date of transfer of  
1540 record title or the vendee's taking possession, whichever occurs first, except that the warranty



1541 pursuant to clause (i) of subsection ~~B~~C for the foundation of new dwellings shall extend for  
1542 a period of five years from the date of transfer of record title or the vendee's taking possession,  
1543 whichever occurs first. Any action for its breach shall be brought within two years after the  
1544 breach thereof. For all warranty claims arising on or after January 1, 2009, sending the notice  
1545 required by subsection ~~D~~E shall toll the limitations period for six months.

1546 ~~F. As used in this section, the term "new dwelling" shall mean a dwelling or house that~~  
1547 ~~has not previously been occupied for a period of more than 60 days by anyone other than the~~  
1548 ~~vendor or the vendee or that has not been occupied by the original vendor or subsequent~~  
1549 ~~vendor for a cumulative period of more than 12 months excluding dwellings constructed~~  
1550 ~~solely for lease. The term "new dwelling" shall not include a condominium or condominium~~  
1551 ~~units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.~~

1552 ~~G. The term "structural defects," as used in this section, shall mean a defect or defects~~  
1553 ~~that reduce the stability or safety of the structure below accepted standards or that restrict the~~  
1554 ~~normal use thereof.~~

1555 ~~H. G.~~ In the case of new dwellings where fire-retardant treated plywood sheathing or  
1556 other roof sheathing materials are used in lieu of fire-retardant treated plywood, the vendor  
1557 shall be deemed to have assigned the manufacturer's warranty, at settlement, to the vendee.  
1558 The vendee shall have a direct cause of action against the manufacturer of such roof sheathing  
1559 for any breach of such warranty. To the extent any such manufacturer's warranty purports to  
1560 limit the right of third parties or prohibit assignment, ~~said~~ such provision shall be  
1561 unenforceable and of no effect.

1562 **Drafting note: Definitions are relocated to subsection A. In proposed subsection**  
1563 **E, the methods of delivery of notice are updated to conform with other delivery methods**  
1564 **used throughout the title. Technical changes are made.**

1565 ~~§ 55-70.2~~ 55.1-xxx. Effect of certain transfer fee covenants.

1566 A. As used in this section, unless the context requires a different meaning:

1567 "Transfer" means assignment, conveyance, gift, inheritance, sale, or other transfer of  
1568 ownership interest in real property located in the Commonwealth.

1569 "Transfer fee" means a fee or charge payable to a nongovernmental person or entity  
1570 upon transfer or payable for the right to make or accept such transfer, regardless of whether  
1571 the fee or charge is a fixed amount or is determined as a percentage of the value of the property,  
1572 the purchase price of the property, or other consideration given for the transfer. "Transfer fee"  
1573 does not include:

1574 1. Any consideration that is payable by a grantee to a grantor for the interest in real  
1575 property being transferred;

1576 2. Any commission that is payable to a licensed real estate broker for a transfer under  
1577 an agreement between the broker and the grantor or grantee;

1578 3. Any amount, charge, fee, or interest that is payable by a borrower to a lender under  
1579 a loan secured by a deed of trust or mortgage on real property, including (i) any fee that is  
1580 payable to the lender for consenting to an assumption of the loan or a transfer of the real  
1581 property subject to the deed of trust or mortgage and (ii) any consideration allowed by law  
1582 that is payable to the lender in connection with the loan;

1583 4. Any amount, charge, fee, reimbursement, or rent that is payable by a lessee to a  
1584 lessor under a lease, including any fee that is payable to the lessor for consenting to an  
1585 assignment, sublease, encumbrance, or transfer of the lease;

1586 5. Any consideration that is payable to the holder of an option to purchase an interest  
1587 in real property, the holder of a right of first refusal, or the holder of a right of first offer to  
1588 purchase an interest in real property for releasing, waiving, or not exercising the option or  
1589 right upon the transfer of the property to a person other than the holder;

1590 6. Any assessment, charge, or fee authorized by statute, the recorded condominium  
1591 instrument, or the recorded declaration to be charged by, or payable to, a common interest

1592 community as defined in § ~~55-528~~ [55.1-xxx](#) or a cooperative as defined in § ~~55-426~~ [55.1-xxx](#);  
1593 or

1594 7. Any amount, assessment, charge, fee, fine, or tax that is payable to or imposed by a  
1595 governmental authority.

1596 "Transfer fee covenant" means a covenant or declaration that purports to affect real  
1597 property and that requires or purports to require, upon a subsequent transfer of such property,  
1598 the payment of a transfer fee to the declarant or other nongovernmental person or entity  
1599 specified in the covenant or declaration or to the assigns or successors of such declarant or  
1600 nongovernmental person or entity.

1601 B. A transfer fee covenant recorded in the Commonwealth on or after July 1, 2011,  
1602 shall not run with the title to real property and is not binding on, or enforceable at law or in  
1603 equity against, any subsequent owner, purchaser, or mortgagee of any interest in real property  
1604 as an equitable servitude or otherwise. Any lien purporting to secure the payment of a transfer  
1605 fee under a transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, is  
1606 void and unenforceable.

1607 **Drafting note: Technical changes.**

1608 § ~~55-71~~ [55.1-xxx](#). Covenant of "right to convey."

1609 A covenant by the grantor in a deed for land; "that he has the right to convey the said  
1610 land to the grantee;" shall have the same effect as if the grantor had covenanted that he has  
1611 good right, full power, and absolute authority to convey the land, with all the buildings  
1612 thereon; and the privileges and appurtenances thereto belonging, unto the grantee, in the  
1613 manner in which the same is conveyed or intended so to be by the deed, and according to its  
1614 true intent.

1615 **Drafting note: Technical changes.**

1616 § ~~55-72~~ [55.1-xxx](#). ~~For~~ [Covenant for](#) "quiet possession" and "free from all  
1617 encumbrances."

1618 A covenant by any such grantor "that the grantee shall have quiet possession of the  
1619 said land" shall have as much effect as if he covenanted that the grantee, and his heirs and  
1620 assigns might, at any and all times thereafter, peaceably and quietly enter upon and have, hold,  
1621 and enjoy the land conveyed by the deed, or intended so to be, with all the buildings thereon  
1622 and the privileges and appurtenances thereto belonging, and receive and take the rents and  
1623 profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit,  
1624 claim, or demand whatever. If to such covenant there be added "free from all encumbrances,"  
1625 these words shall have as much effect as the words "and that freely and absolutely acquitted,  
1626 exonerated, and forever discharged, or otherwise by the said grantor or his heirs saved  
1627 harmless and indemnified of, from, and against any and every charge and encumbrance  
1628 whatever."

1629 **Drafting note: Technical changes.**

1630 § ~~55-73~~ 55.1-xxx. ~~For~~ Covenant for "further assurances."

1631 A covenant by any such grantor "that he will execute such further assurances of the  
1632 said lands as may be requisite" shall have the same effect as if he covenanted that he, the  
1633 grantor, and his heirs or personal representative will at any time, upon any reasonable request,  
1634 at the charge of the grantee, and his heirs or assigns, do, execute, or cause to be done or  
1635 executed all such further acts, deeds, and things for the better, more perfectly and absolutely  
1636 conveying and assuring the said lands and premises thereby conveyed or intended so to be  
1637 unto the grantee, and his heirs and assigns in manner aforesaid, as by the grantee, and his heirs  
1638 or assigns, and his or their ~~counsel in the law~~ attorney, shall be reasonably devised, advised,  
1639 or required.

1640 **Drafting note: Technical changes.**

1641 § ~~55-74~~ 55.1-xxx. ~~Of~~ Covenant of "no act to encumber."

1642 A covenant by any such grantor "that he has done no act to encumber the said lands"  
1643 shall have the same effect as if he covenanted that he had not done or executed, or knowingly

1644 suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to  
1645 be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or  
1646 otherwise.

1647 **Drafting note: Technical changes.**

1648 § ~~55-75~~ 55.1-xxx. Effect of certain words of release in a deed.

1649 Whenever ~~in~~ any deed ~~there shall be used~~ uses the words: "The said grantor (or the  
1650 said \_\_\_\_\_) releases to the said grantee (or the said \_\_\_\_\_) all his claims upon  
1651 the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) ~~hath~~  
1652 has remised, released, and forever quitted claim and by these presents ~~doth~~ does remise,  
1653 release, and forever quitclaim ~~unto to~~ the grantee (or releasee); and his heirs and assigns all  
1654 right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises  
1655 granted (or released) or intended ~~so~~ to be granted (or released), so that neither he nor his  
1656 personal representative, ~~his~~ heirs, or assigns, shall at any time thereafter, have, any type of  
1657 claim, challenge, or demand on the lands and premises, or any part thereof, ~~in any manner~~  
1658 whatever.

1659 **Drafting note: Language is updated for modern usage. Technical changes are**  
1660 **made.**

1661 #

1 CHAPTER ~~5~~ X [4].

2 FRAUDULENT AND VOLUNTARY CONVEYANCES, ~~BULK AND CONDITIONAL~~  
3 ~~SALES, ETC.~~; WRITINGS NECESSARY TO BE RECORDED.

4 **Drafting note: Existing Chapter 5, Fraudulent and Voluntary Conveyances, Bulk**  
5 **and Conditional Sales, etc.; Writings Necessary to Be Recorded, is retained as proposed**  
6 **Chapter XX [4], its title shortened to more accurately reflect the substance of the chapter.**

7 § ~~55-80~~ 55.1-xxx. Void fraudulent acts; bona fide purchasers not affected.

8 Every (i) gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or  
9 personal, ~~every (ii)~~ suit commenced or decree, judgment, or execution suffered or obtained, and  
10 every (iii) bond or other writing given with intent to delay, hinder, or defraud creditors,  
11 purchasers, or other persons of or from what they are or may be lawfully entitled to shall, as to  
12 such creditors, purchasers, or other persons, or their representatives or assigns, be void. This  
13 section shall not affect the title of a purchaser for valuable consideration, unless it ~~appear~~ appears  
14 that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void  
15 the title of such grantor.

16 **Drafting note: Technical changes.**

17 § ~~55-81~~ 55.1-xxx. Voluntary gifts, etc., void as to prior creditors.

18 Every gift, conveyance, assignment, transfer, or charge ~~which that~~ is not upon  
19 consideration deemed valuable in law, or ~~which that~~ is upon consideration of marriage, by an  
20 insolvent transferor, or by a transferor who is thereby rendered insolvent, shall be void as to  
21 creditors whose debts ~~shall have been~~ were contracted at the time ~~it such gift, etc.,~~ was made, but  
22 shall not, on that account merely, be void as to creditors whose debts ~~shall~~ have been contracted,  
23 or as to purchasers who ~~shall~~ have purchased, after ~~it such gift, etc.,~~ was made. Even though it is  
24 decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it  
25 shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers.

26 **Drafting note: Technical changes.**

27           § ~~55-82~~ 55.1-xxx. Creditor's suits to avoid such gifts, etc.

28           ~~A creditor before~~ Before obtaining a judgment ~~or decree~~ for his claim, a creditor may,

29 whether such claim ~~be is~~ due and payable or not, institute any suit ~~which that~~ he ~~might~~ may

30 institute after obtaining such judgment or decree to avoid a gift, conveyance, assignment, or

31 transfer of, or charge upon, the estate of his debtor declared void by either § ~~55-80~~ 55.1-xxx or

32 ~~55-81; and he~~ 55.1-xxx. Such creditor may, in such suit, have all the relief ~~in~~ with respect to such

33 estate to which he would be entitled after obtaining a judgment or decree for the claim for which

34 he may be entitled to recover. A creditor availing himself of this section shall have a lien from the

35 time of bringing his suit on all the estate, real and personal, ~~hereinbefore mentioned~~, and a

36 petitioning creditor shall also be entitled to a ~~like~~ lien from the time of filing his petition in the

37 court ~~or in the clerk's office of the court~~ in which the suit is brought. If the proceeds of sale ~~be are~~

38 insufficient to satisfy the claims of all the creditors whose liens were acquired at the same time,

39 they shall be applied ~~ratably~~ proportionately to such claims, and the court may ~~make a personal~~

40 ~~decree~~ issue an order against the debtor for any deficiency remaining on the claim of any creditor

41 after applying ~~thereto~~ his share of the proceeds of sale, or, if any creditor ~~be is~~ not entitled to share

42 in such proceeds, may ~~render a personal decree~~ issue an order against the debtor for the full

43 amount of the creditor's claim. This section is subject to the provisions of §§ 8.01-268 and 8.01-

44 269.

45           **Drafting note: References to a "decree" and "a personal decree" are deleted as**

46 **obsolete. Technical changes are made.**

47           § ~~55-82-1~~ 55.1-xxx. Creditor's suits; attorney fees.

48           In any suit brought by a creditor pursuant to § ~~55-80~~ 55.1-xxx, ~~55-81~~ 5.1-xxx, or ~~55-82~~

49 55.1-xxx, where a (i) gift, (ii) deed, (iii) conveyance, assignment, or transfer of or charge upon

50 the estate of a debtor, (iv) suit commenced or decree, judgment, or execution suffered or

51 obtained, or (v) bond or other writing is declared void, the court shall award counsel for the

52 creditor reasonable attorney fees against the debtor. Upon a finding of fraudulent conveyance

53 pursuant to § ~~55-80~~ 55.1-xxx, the court may assess sanctions, including such attorney fees, against  
54 all parties over which it has jurisdiction who, with the intent to defraud and having knowledge of  
55 the judgment, participated in the conveyance. Should there be a resulting judicial sale, any award  
56 of attorney fees shall be paid out of the proceeds of the sale, as other costs are paid, provided that  
57 the award of attorney fees does not affect a prior lien creditor not represented by the attorney.

58 **Drafting note: Technical changes.**

59 § ~~55-82.2~~ 55.1-xxx. Authority of court to set aside.

60 The court ~~shall have the authority to~~ may set aside a fraudulent conveyance or voluntary  
61 transfer pursuant to § ~~55-80~~ 55.1-xxx or ~~55-81~~ 55.1-xxx during an action brought by a creditor to  
62 execute on a judgment, either on motion of the creditor or on its own motion, provided that all  
63 parties who have an interest in the property subject to the conveyance or transfer are given notice  
64 of the proceeding. The court, by order, may direct the clerk to issue the proper process against  
65 such parties; and, upon the maturing of the case ~~as to them~~, proceed to make such orders or decrees  
66 as would have been proper if the new parties had been made parties at the commencement of the  
67 suit.

68 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
69 **phrase "shall have the authority to" is replaced with "may." Technical changes are made.**

70 ~~§§ 55-83 through 55-86.~~

71 **Drafting note: Repealed by Acts 1964, c. 219.**

72 § ~~55-87~~ 55.1-xxx. Loans and reservations of a use or property to be recorded.

73 When any loan of ~~goods or chattels~~ personal property is pretended to have been made to  
74 any person with whom, or with those claiming under him, possession ~~shall have~~ has remained  
75 five years without demand made and pursued by due process of law on the part of the pretended  
76 lender, or when any reservation or limitation is pretended to have been made of a use or property  
77 by way of condition, reversion, remainder, or otherwise in ~~goods or chattels~~ personal property,  
78 the possession ~~whereof shall have~~ of which has so remained in another as aforesaid, the absolute



79 property shall be taken to be with the possession and such loan, reservation, or limitation void as  
80 to creditors of, and purchasers from, the person so remaining in possession, unless such loan,  
81 reservation, or limitation ~~be is~~ declared by will which, or a copy of which, or by deed or other  
82 writing which, is duly ~~admitted to record~~ recorded within ~~such a~~ period of five years in the circuit  
83 court of the county or ~~corporation~~ city in which the ~~goods or chattels may be~~ personal property is  
84 located.

85 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
86 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
87 **made.**

88 ~~§§ 55-88 through 55-94.~~

89 **Drafting note: Repealed by Acts 1964, c. 219.**

90 ~~§ 55-95~~ 55.1-xxx. Certain recorded contracts as valid as deeds.

91 Any such contract or bill of sale as is mentioned in § 11-1, if in writing and signed by the  
92 owner of the property, shall, from the time it is duly ~~admitted to record~~ recorded, be, as against  
93 creditors and purchasers, as valid, so far as it affects real estate, as if the contract were a deed  
94 conveying the estate or interest embraced in the contract, and, so far as it affects goods and  
95 chattels, as if possession had completely passed at the time of such ~~admission to record;~~ recording,  
96 provided, that, as to goods whose possession is retained by a merchant-seller, the provisions of  
97 subsection (2) of § 8.2-402 of the Uniform Commercial Code shall be controlling; and provided  
98 further, that, if any such contract or bill of sale as is mentioned in § 11-1 creates a security interest  
99 as defined in the Uniform Commercial Code, its validity and enforceability shall be governed by  
100 the provisions of that Code.

101 **Drafting note: Technical changes.**

102 ~~§ 55-96~~ 55.1-xxx. Contracts, etc., void as to creditors and purchasers until recorded;  
103 priority of credit line deed of trust.

104           A. 1. Every (i) ~~such~~ contract in writing, (ii) deed conveying any ~~such~~ estate or term, (iii)  
105 deed of gift, or deed of trust, or mortgage conveying real estate or ~~goods and chattels~~ personal  
106 property, and (iv) ~~such~~ bill of sale, or contract for the sale of ~~goods and chattels~~ personal property,  
107 when the possession is allowed to remain with the grantor, shall be void as to all purchasers for  
108 valuable consideration without notice not parties thereto and lien creditors, until and except from  
109 the time it is ~~duly admitted to record~~ recorded in the county or city ~~wherein in which~~ the property  
110 ~~embraced in~~ subject to such contract, deed, or bill of sale ~~may be~~ is located. The fact that any such  
111 instrument is in the form of or contains the terms of a quit-claim or release shall not prevent the  
112 grantee ~~therein~~ from being a purchaser for valuable consideration without notice, nor be of itself  
113 notice to such grantee of any unrecorded conveyance of or encumbrance upon such real estate  
114 ~~goods and chattels or~~ personal property. The mere possession of real estate shall not, of itself, be  
115 notice to purchasers ~~thereof~~ for value of any interest or estate therein of the person in possession.  
116 As to ~~goods~~ personal property whose possession is retained by a merchant-seller, the provisions  
117 of subsection (2) of § 8.2-402 of the Uniform Commercial Code shall ~~be controlling~~ control. This  
118 section shall not apply to any security interest in ~~goods~~ personal property under the Uniform  
119 Commercial Code. Any bill of sale or contract for the sale of ~~goods or chattels~~ personal property  
120 when possession is allowed to remain with the grantor shall be deemed to be duly recorded when  
121 it is filed in the same manner as Uniform Commercial Code financing statements are filed under  
122 the criteria and in the places established by § 8.9A-501 as if the grantor were a debtor and the  
123 grantee a secured party. A recordation under the provisions of this section shall, when any real  
124 estate subject to the lien of any such contract has been annexed to or merged with an adjoining  
125 city subsequent to such docketing, be deemed to have been recorded in the proper clerk's office  
126 of such city.

127           2. The clerk of each court in which any such instrument is by law required to be recorded  
128 shall keep a daily index of all such instruments admitted to record in his office, and, immediately  
129 upon ~~admission of any such instrument to record~~ recording such instrument, the clerk shall index

130 the same either in the daily index or the appropriate general index of his office. All instruments  
131 indexed in the daily index shall be indexed by the clerk in the appropriate general index within 90  
132 days after ~~admission to record~~ recording. During the period permitted for transfer from the daily  
133 index to the general index, indexing in the daily index shall be a sufficient compliance with the  
134 requirements of this section as to indexing.

135 3. a. In any circuit court in which any such instrument required to be recorded is not  
136 recorded on the same day as delivered, the clerk shall install a time stamp machine. The time  
137 stamp machine shall affix the current date and time of each delivery of any instrument delivered  
138 to the clerk for recording that is not immediately recorded and entered into the general or daily  
139 index.

140 b. In the event ~~there is no~~ that a time stamp machine, has not been installed or ~~it~~ is not  
141 functioning, the clerk shall designate an employee to affix the current date and time of each  
142 delivery of any instrument delivered to the clerk for recording.

143 c. In any circuit court in which instruments required to be recorded are not recorded on  
144 the same day as delivered, for purposes of subdivision 1 ~~of this subsection~~, the term "from the  
145 time it is ~~duly admitted to record~~ recorded" shall be presumed to be the date and time affixed upon  
146 the instrument by the time stamp machine or affixed by the clerk in accordance with subdivision  
147 3 b of this subsection unless the clerk determines that the applicable requirements for recordation  
148 of the instrument have not been satisfied.

149 d. The provisions of subdivision 3 shall not apply to certificates of satisfaction or partial  
150 satisfaction or assignments of deeds of trust delivered to the clerk's office other than by hand.

151 B. A credit line deed of trust, recorded pursuant to § ~~55-58.2~~ 55.1-xxx, ~~shall have validity~~  
152 and is valid and has priority over any (i) contract in writing, deed, conveyance, or other instrument  
153 conveying any such estate or term subsequently recorded or (ii) judgment subsequently docketed  
154 as to all advances made under such credit line deed of trust from the date of recordation of such  
155 credit line deed of trust, ~~regardless of~~ whether or not the particular advance or extension of credit

156 has been made or unconditionally committed at the time of delivery or recordation of such contract  
157 in writing, deed, or other instrument or the docketing of such judgment. Any judgment creditor  
158 shall have the right to give the notice contemplated by § ~~55-58.2~~ 55.1-xxx and, from the day  
159 following receipt of such notice, the judgment as docketed shall have priority over all subsequent  
160 advances made pursuant to the credit line deed of trust except those ~~which that~~ have been  
161 unconditionally and irrevocably committed prior to such date. Mechanics' liens created under  
162 Title 43 shall continue to ~~enjoy~~ have the same priority as created by that title. Purchase money  
163 security interests in goods and fixtures shall have the same priority as provided in Part 3 of Title  
164 8.9A (§ 8.9A-317 et seq.).

165 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
166 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
167 **made.**

168 § ~~55-96.1~~.

169 **Drafting note: Repealed by Acts 1966, c. 401.**

170 § ~~55-97~~ 55.1-xxx. Where to be recorded.

171 Notwithstanding that any ~~such~~ writing ~~shall be duly admitted to record~~ is recorded in one  
172 county or ~~corporation wherein~~ city in which there is real estate or ~~goods or chattels~~ personal  
173 property, it ~~shall~~ nevertheless ~~be~~ is void as to such creditors and purchasers in respect to other real  
174 estate or ~~goods or chattels~~ personal property without, ~~the same~~ such recording until it is duly  
175 ~~admitted to record~~ recorded in the county or ~~corporation wherein~~ city in which such other real  
176 estate or ~~goods or chattels~~ personal property may be; located, but it shall be sufficient to record a  
177 deed releasing the lien of a deed of trust, in whole or in part, either in the county or city in which  
178 the property thereby released is located; or in the county or city in which the property so released  
179 was situated at the time of the recordation of the deed of trust; and any recordation thereof so  
180 made of any such release is hereby validated.

181           **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
182 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
183 **made.**

184           ~~§§ 55-98, 55-99.~~

185           **Drafting note: Repealed by Acts 1964, c. 219.**

186           ~~§ 55-100~~ 55.1-xxx. Recordation of instruments affecting civil aircraft of United States.

187           No instrument ~~which that~~ affects the title to or interest in any civil aircraft of the United  
188 States, as defined by federal law, or any portion ~~thereof of such aircraft~~, shall be valid in respect  
189 of such aircraft or portion ~~thereof of such aircraft~~ against any person other than the person by  
190 whom the instrument is made or to whom the instrument is given, his heir or devisee, and any  
191 person having actual notice ~~thereof of such instrument~~, until such instrument is recorded in the  
192 office of the ~~Civil Aeronautic~~ Administrator of the Federal Aviation Administration of the United  
193 States, or such other office as is designated by the laws of the United States as the one in which  
194 such instruments should be filed. Every such instrument so recorded in such office shall be valid  
195 as to all persons without further recordation in any office in ~~this the~~ Commonwealth, the  
196 provisions of any other recordation statute to the contrary notwithstanding. Any instrument,  
197 ~~recording of for~~ which recordation is required by the provisions of this section, shall take effect  
198 from the date of its recordation and not from the date of its execution.

199           **Drafting note: Technical changes.**

200           ~~§ 55-104~~ 55.1-xxx. Priority of writings, when admitted to record same day.

201           ~~When~~ Unless otherwise provided for in this chapter, when two or more writings ~~embracing~~  
202 pertaining to the same property are ~~admitted to record~~ recorded in the same county or city on the  
203 same day and stamped with the identical time, ~~if the previous sections do not provide for the case,~~  
204 the instrument number shall determine the writing that was first ~~admitted to record~~ recorded. The  
205 instrument ~~which that~~ was first ~~admitted to record~~ recorded shall have priority ~~in~~ with respect to  
206 the property in such county or city.

207 **Drafting note: Technical changes.**

208 ~~§ 55-102. When writings to be recorded in county, and when in corporation.~~

209 ~~The provisions of this and any other chapter of this Code or of any subsequent statute, by~~  
210 ~~virtue of which a writing is to be or may be recorded in the county or corporation wherein the~~  
211 ~~property embraced in such writing is, shall be construed, in respect to the county, as relating only~~  
212 ~~to property within the county and without the corporate limits of the corporation having a court~~  
213 ~~wherein writings may be lawfully admitted to record, and, in respect to the corporation, as relating~~  
214 ~~only to property within the corporate limits of such corporation having such a court.~~

215 **Drafting note: Recommended for repeal as obsolete. This section has not been**  
216 **amended since 1919, and no cases have referenced it since 1875.**

217 ~~§ 55-103~~ 55.1-xxx. Words "creditors" and "purchasers," how construed.

218 The words "creditors" and "purchasers," when used in any previous section of this chapter,  
219 shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall  
220 also extend to and embrace all creditors and purchasers who, but for the deed or writing, would  
221 have had title to the property conveyed or a right to subject it to their debts.

222 **Drafting note: No change.**

223 ~~§ 55-104~~ 55.1-xxx. Lien of subsequent purchaser for purchase money paid before notice.

224 As against any person claiming under the deed or other writing ~~which shall not have that~~  
225 has not been ~~admitted to record~~ recorded before payment by a subsequent purchaser for valuable  
226 consideration of the whole or a part of his purchase money, such subsequent purchaser,  
227 notwithstanding such deed or other writing ~~be admitted to record~~ recorded before he becomes a  
228 complete purchaser, shall, ~~in equity~~, have a lien on the property purchased by him, for so much  
229 of his purchase money as he may have paid before notice of such lien.

230 **Drafting note: The reference to "equity" is deleted as obsolete. Technical changes**  
231 **are made.**

232 ~~§ 55-105~~ 55.1-xxx. When purchaser not affected by record of deed or contract.



## Titles Recodification Candidates

<p><b><i>Title 45.1. Mines and Mining</i></b></p>	<p>Title 45.1 was last recodified in 1966. The first 14 chapters of the title were repealed in 1994 creating havoc with the numbering in most of the title. Here's an example in Article 9 of Chapter 14.4:1 (note the chapter number as well as the section number):</p> <p style="padding-left: 40px;"><b>§ 45.1-161.292:73.</b> Mineral mining safety training program.</p> <p>Consideration might be given to combining Title 67, Virginia Energy Plan, with Title 45.1. Title 45.1 also contains gas and oil law that is not reflected in the current title "Mines and Mining.</p>
<p><b><i>Title 51.1. Persons with Disabilities</i></b></p>	<p>Title 51.5 was last recodified in 1985. All of Chapters 2, 3, 3.1, 4, 5, 6, 8, and 10 have been repealed. Only one of the two original sections remains in Chapter 1 (§ 51.5-1, Declaration of Policy) and only one of the thirteen original sections remains in Chapter 8.1 (§ 51.5-39.13, "Conversion of the Virginia Office for Protection and Advocacy to a nonprofit entity"). The only chapters with more than one section remaining are Chapters 7, 9, 11, 12, 13, and 14.</p> <p>Many changes were made to this title when the Department for Aging was combined with the Department for Rehabilitative Services in 2012. A recodification would provide additional opportunity to reorganize the chapter, remove obsolete language, update terminology, and perform general clean up.</p>