

Title 55 Recodification Reference Guide for Material to be presented on 5/7/18

Subtitle V (containing reorganized miscellaneous chapters):

- Proposed Subtitle V is created to reorganize miscellaneous chapters that are contained in existing Title 55 and belong in proposed Title 55.1 but that do not logically fit within any of the other proposed subtitles of proposed Title 55.1.
- Proposed Subtitle V contains six chapters for a total of 97 pages: [1] Escheats; [2] Uniform Disposition of Unclaimed Property Act; [3] Property Loaned to Museums; [4] Drift Property; [5] Trespasses; Fences; and [6] Virginia Self-Service Storage Act.

Chapter 1 - Escheats

- Escheat is the power of the state to acquire title to property for which there is no owner. The most common reason that an escheat takes place is that an individual dies intestate, meaning without a valid will indicating who is to inherit his or her property, and without relatives who are legally entitled to inherit in the absence of a will.
- Staff worked very closely with a representative of the Office of the Attorney General specializing in the escheat process to ensure provisions have been properly modernized and to maintain relevance to current practice.
- Consists of current Chapter 10. Section order is retained, except for the relocation of one chapter-wide definition to the beginning of the chapter, consistent with preferred Code organization
- Proposed chapter consists of 42 sections covering 21 pages. Of the 42 sections, 34 include recommendations for only technical changes

Chapter 2 - Uniform Disposition of Unclaimed Property Act (UDUPA)
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- The UDUPA (i) defines what constitutes unclaimed property, (ii) how long a business entity must maintain the property, and (iii) what to do with the property once it is determined to be abandoned.
- Staff worked closely with the Division of Unclaimed Property of the Virginia Treasury Department and a representative of the Office of the Attorney General.
- Consists of current Chapter 11.1. Proposed chapter consists of 47 sections organized into 3 Articles covering 38 pages. Of the 47 sections, 38 include recommendations for only technical changes.

Chapter 3 - Property Loaned to Museums

- Consists of existing Chapter 11.2, which provides a process for establishing ownership of property that is loaned to museums.
- Proposed chapter consists of 8 sections covering 5 pages. No substantive changes are recommended.

Chapter 4 - Drift Property

- Consists of existing Chapter 11 Estrays and Drift Property, which describes a procedure by which a property owner who finds a stray animal or a boat or vessel adrift on his land may notify the court of the finding and through a proceeding obtains an appraisal of the value of the property.
- Staff is recommending repeal of five sections as obsolete because other procedures in the Code of Virginia and common law cover the situations according to modern practice.
 - For stray animals, a procedure is provided for a humane investigator, law-enforcement officer, or animal control officer, to lawfully impound the animal under § 3.2-6569.
 - For stray companion animals, a property owner who (i) provides care or safekeeping or (ii) retains the companion animal in such a manner as to control its activities, has certain restrictions on his actions pursuant to § 3.2-6551.
 - For abandoned watercraft, the procedure by which an individual may claim title is set out in § 29.1-733.25.
- Proposed chapter consists of 4 sections (because the other existing five sections are recommended for repeal) covering four pages.

Chapter 5 - Trespasses; Fences

- Consists of existing Chapter 18, which contains provisions relating to fences and boundaries, trespasses by animals, and damages for timber cutting. Proposed chapter consists of 40 sections organized into 8 articles.
- Article 1 - Electrical Fences. (Requirements for electrical fences) A total of 4 sections with two having only technical changes recommended. (p. 1, l. 12 through p. 3, l. 73)

- Article 2 - What Constitutes a Lawful Fence. (Definition of lawful fence) A total of 4 sections with two having only technical changes recommended. (p. 3, L1 21 through P. 6, I. 159)
- Article 3 - Cattle Guards and Gates Across Rights-of-Way. A total of 2 sections both containing only technical changes recommended. (p. 7, II. 161 through 184)
- Article 4 - Trespass in Crossing Lawful Fence. (Damages cause by trespass of domesticated livestock) A total of 4 sections with two having only technical changes recommended. (p. 7, I. 185 through p. 9, I. 235)
- Article 5 - No-Fence Law. (Detailing how a county may establish local fence law) A total of 7 sections with 3 having only technical changes recommended and 1 with no changes recommended. (p. 9, I. 236 through p. 12, I. 306)
- Article 6 - Division Fences. (Provisions relating to the obligation of adjoining landowners to build and maintain division fences between their lands) A total of 6 sections all of which have only technical changes recommended. (p. 12, I. 307 through p. 15, I. 378)
- Article 7 - Special Provisions for Unincorporated Communities. (Fixing boundaries of villages to prevent animals from running at large) A total of 8 sections with 5 having only technical changes recommended. (p. 15, I. 379 through p. 19, I. 484)
- Article 8 - Cutting Timber. (Relating to process for recovering damages for trespass involving timber cutting) A total of 5 sections with 3 having only technical changes recommended and two with no changes recommended. (p. 19, I. 485 through p.21, I. 549)

Chapter 6 - Virginia Self-Service Storage Act
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- Consists of existing Chapter 27.2. Self-service storage facilities rent space on a short-term basis, often month-to-month, though options for longer-term leases are available. The rented spaces are typically secured by the tenant's own lock and key. A self-storage facility does not take possession or control of the contents of the space unless a lien is imposed for non-payment of rent.
- Contains 7 sections with 2 having only technical changes recommended and 3 with no changes recommended.

This completes the review of proposed Subtitle V.

Subtitle V: 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 "corporation" with "city" as necessary.
- Replacing the word "must" or "will" with the word "shall" as necessary.
- Replacing the phrase "shall be" with the word "is" or "does" as necessary.
- Replacing the phrase "shall have the authority to" with the word "may."
- Replacing the phrase "may not" with "shall not."
- 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.
- 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,")
- 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."
- Deleting "rules" in the phrase "rules and regulations" in the context of an administrative agency adopting regulations.
- Deleting the phrase "but not limited to" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

SUBTITLE V.

MISCELLANEOUS.

Drafting note: Proposed Subtitle V is created to reorganize miscellaneous chapters that are contained in existing Title 55 and belong in proposed Title 55.1 but that do not logically fit within any of the other proposed subtitles of proposed Title 55.1. Proposed Subtitle V contains seven chapters: [1] Escheats; [2] Uniform Disposition of Unclaimed Property Act; [3] Property Loaned to Museums; [4] Drift Property; [5] Trespasses; Fences; and [6] Virginia Self-Service Storage Act.

~~CHAPTER 10~~ XX [1].

~~ESCHEATS GENERALLY.~~

Drafting note: Existing Chapter 10, Escheats Generally, is retained as proposed Chapter XX [1] of Subtitle V and renamed. Section order is also retained, except for the relocation of one chapter-wide definition to the beginning of the chapter, consistent with preferred Code organization.

§ ~~55-170.1~~ 55.1-xxx. Definition.

As used in this chapter, ~~unless the context otherwise requires: "Knowledge" "known" in terms of a "known determining whether an owner" shall include is "known" includes~~ inspection of tax records and any other inquiry deemed to be reasonable. It need not include inspection of the premises or inspection of title records in the clerk's office in the county or city in which the land is located.

Drafting note: Existing § 55-170.1, which contains a chapter-wide definition, is relocated to the beginning of Chapter XX [1]. The terms "knowledge" and "known owner" do not appear in this chapter; instead, the definition of "known" is only necessary when making a determination as to whether an owner is known or not. Technical changes are made.

§ ~~55-168~~ 55.1-xxx. Appointment of escheators.

27 The Governor shall appoint one escheator for every judicial circuit as set forth in § 17.1-
28 506, to serve at the pleasure of the Governor. Such escheator shall reside within ~~a~~ the circuit to
29 which he is appointed.

30 **Drafting note: Technical change.**

31 § ~~55-169~~ 55.1-xxx. ~~Their bond; their removal~~ Bond of escheator.

32 Each escheator shall give bond for the judicial circuit for which he is appointed in the
33 circuit court for the locality in which he resides, in the penalty of \$3,000, and may continue in
34 office until removed or until a successor is duly appointed and qualified. If property in another
35 locality within the appointed judicial circuit escheats to the Commonwealth at the inquest hearing,
36 the escheator shall give bond within that locality as determined by the clerk of the circuit court in
37 the locality and in a penalty of a percentage of the assessed value of the property according to the
38 records of the commissioner of the revenue. The bond ~~must~~ shall be obtained within ~~ten~~ 10 days
39 following the inquest hearing.

40 **Drafting note: Language in the catchline is updated to reflect the content of the**
41 **statute. Technical changes are made.**

42 § ~~55-170~~ 55.1-xxx. Increase or reduction of penalty of ~~their bonds~~ escheator's bond; ~~its~~
43 effect.

44 The court may, at any time, ~~on~~ with reasonable notice to the escheator, increase or reduce
45 the penalty of the bond; ~~provided that in no case shall such penalty be reduced to less than \$1,000.~~
46 ~~If an escheator be required to give a bond with increased penalty and he fail to give it within a~~
47 ~~reasonable time to be prescribed by the court, such failure shall be deemed a neglect of official~~
48 ~~duty within the meaning of § 55-169.~~ Upon bond being given under an order increasing or
49 reducing the penalty of a former bond, the sureties in such former bond and their estates shall be
50 discharged from all liability for any breach of official duty committed by such escheator after that
51 time.

52 **Drafting note: The second sentence is deleted as obsolete; according to existing § 55-**
53 **168, escheators serve at the pleasure of the Governor, and may be removed with or without**

cause, including for neglect of official duty. Existing § 55-169 was amended in 1982 to remove language related to neglect of official duty, but this section was not amended at that time to reflect those changes. Technical changes are made.

§ ~~55-171~~ 55.1-xxx. Annual report to escheator; lands not liable.

Each treasurer shall, every May, furnish to the escheator of his county or city a list of all lands within his district ~~of which~~ owned by any person who has died ~~seised of an estate of inheritance~~ (i) intestate and without any known heir; or (ii) testate without disposing of all property by will and without leaving any surviving heir to inherit the property. No land shall be liable to escheat ~~which for fifteen years that~~ has been held for 15 years under adverse possession as at common law by the person claiming ~~the same such land~~, or those under whom he holds, but only if taxes were paid throughout that period by the claimant or those under whom he holds.

Drafting note: The archaic term "seised" is replaced with modern terminology; according to Black's Law Dictionary, "seisin" means the possession of real property under claim of freehold estate. Technical changes are made.

§ ~~55-172~~ 55.1-xxx. Escheator to hold inquest; notice ~~thereof of inquest~~.

On receiving ~~such a~~ list compiled pursuant to § 55.1-xxx [§ 55-171], or upon information from any person, in writing and under oath, that any of the conditions described in § ~~55-171~~ 55.1-xxx exists, the escheator shall proceed to hold his inquest to determine whether any land mentioned identified has escheated to the Commonwealth. He shall ~~give (i) post~~ notice of the time of taking such inquest, ~~by advertisement~~, at the front door of the courthouse, for ~~thirty~~ 30 days, prior to the inquest and (ii) advertise once in a newspaper of general circulation within the county or city ~~once, not more than thirty at least seven but not more than 30 nor less than seven~~ days, prior to the inquest. Notice shall also be mailed to the last owner of record, if any, as it appears in the tax records of the local treasurer. The escheator shall send a copy of the newspaper advertisement to the State Treasurer prior to the date of the inquest. The inquest shall be held in the same calendar year ~~as in which~~ the list or information is received by the escheator. The attorney for the Commonwealth shall act as attorney for this proceeding.

Drafting note: Clause designations are added for clarity. Technical changes are made.

§ ~~55-173~~ 55.1-xxx. Jury of inquest, ~~how summoned, etc.;~~ presentation of evidence, ~~how~~ given.

~~For this inquest there shall be summoned and returned by the~~ The sheriff of the county or ~~sergeant of the city~~ ten shall summon and return 10 qualified jurors for the inquest, of whom at least seven shall be impaneled as a jury. They shall meet at the courthouse and sit in public and may be adjourned by the escheator from day to day. Every person competent to testify as a witness shall be required to give evidence openly in the presence of the jurors.

Drafting note: The term "sergeant of the city" is deleted as obsolete. Technical changes are made.

§ ~~55-174~~ 55.1-xxx. Attendance of jurors.

If any person summoned or adjourned as a juror ~~fail~~ fails to attend according to the summons or adjournment, the escheator shall ~~return the fact to the next~~ report such failure to the circuit court having jurisdiction over the county or city in which the land that is the subject of the ~~inquisition may lie~~ inquest is located. Such court may fine such person an amount not ~~exceeding~~ fifty dollars to exceed \$50. Jurors shall be compensated as provided for jurors in civil cases.

Drafting note: The term "inquisition" is replaced with "inquest" for consistency throughout the chapter. Language is updated for modern usage. Technical changes are made.

§ ~~55-175~~ 55.1-xxx. How verdict signed; where returned and recorded.

When the inquest is ~~ended~~ concluded and the verdict concurred in by a majority of the jurors impaneled, ~~or at least seven of them, it~~ such verdict shall be signed by those so concurring and by the escheator. ~~This verdict is effective so long as it is signed by a majority of the jurors.~~ The escheator shall, within ~~ten~~ 10 days, return the verdict to the clerk's office of the circuit court. After receiving the verdict, the clerk of such court shall record it in accordance with § 17.1-266 and shall provide copies ~~thereof~~ within ~~ten~~ 10 days to the commissioner of the revenue and the

108 local treasurer or the person performing those duties. This escheat verdict shall be recorded in the
109 grantor index of the record books in the clerk's office.

110 **Drafting note: A substantive change regarding the number of jurors required to**
111 **concur in the verdict is recommended because there are conflicting requirements: the first**
112 **sentence states that at least seven of the jurors must concur in and sign the verdict but the**
113 **second sentence says that a verdict is effective if signed by a majority. Under existing § 55-**
114 **173, at least seven, but up to 10, jurors must be impaneled, and this section says at least**
115 **seven or a majority must concur in and sign the verdict for it to be effective. So if the**
116 **maximum of 10 jurors were impaneled, six jurors would be a majority. Language is updated**
117 **for modern usage. Technical changes are made.**

118 § ~~55-176~~ 55.1-xxx. Proceedings to claim land escheated.

119 When the verdict on ~~such an~~ inquest is for the Commonwealth, any person claiming any
120 interest in the lands, whether legal or equitable, may, before the sale ~~thereof of such land~~, petition
121 the circuit court for redress. The petition shall be accompanied by a bond with good security to
122 pay the Commonwealth all past due real estate taxes, penalties, and interest on such lands. ~~To~~
123 ~~such petition the~~ The escheator shall be the sole defendant on behalf of the Commonwealth, and
124 may appear on his own behalf. ~~He~~ The escheator shall file an answer stating the objections to the
125 claim. The cause shall be heard, without any unnecessary delay, upon the petition and answer and
126 the evidence. Upon a judgment in favor of the claimant, he shall pay all past due taxes, penalties,
127 and interest. Upon ~~said entry of such~~ judgment, the court may, ~~in its discretion, allow attorney's~~
128 award attorney fees to the escheator, ~~who may appear on his own behalf~~. For real estate
129 assessment purposes, the commissioner of the revenue or assessor shall continue to assess any
130 escheated property.

131 **Drafting note: Language allowing the escheator to appear on his own behalf is**
132 **relocated from the end of the section to clarify that the escheator may represent himself**
133 **throughout the entire claim. Technical changes are made.**

134 § ~~55-177~~ 55.1-xxx. Trial by jury; judgment of court.

~~The~~ Upon a petition filed pursuant to § 55.1-xxx [§55-176], the court may ~~cause impanel~~
a jury ~~to be impaneled~~ to ascertain any facts ~~which~~ that may be disputed and ~~if it see fit~~ may set
aside the verdict ~~and have a new jury impaneled. Its decision shall be such as the rights of the~~
~~petitioner may require.~~ The escheator may initiate a new inquest in accordance with § 55.1-xxx
[§ 55-172]

Drafting note: A cross-reference to existing § 55-176 is added for clarity. Language
stating that the escheator, rather than the court, may initiate a new inquest and have a new
jury impaneled is added to reflect that the decision to initiate an inquest is up to the
escheator, not the court. The existing last sentence is deleted as unnecessary because the
escheator is the one to determine whether to initiate a new inquest. Technical changes are
made.

~~§ 55-178~~ 55.1-xxx. Facts or evidence to be certified.

If witnesses ~~be~~ are sworn before the court or jury ~~and either party require it~~, the court shall,
upon request of either party, certify what facts are proved by such witnesses, ~~if the facts can be~~
~~certified~~. If the facts cannot be certified, the court shall then certify the evidence of the witnesses
~~and such~~. In either case, such certificate shall, ~~in either case~~, be a part of the record.

Drafting note: Technical changes.

~~§ 55-179~~ 55.1-xxx. Lands may be committed to claimant while claim pending.

Pending the petition, the court may commit the lands, or any part thereof, to the claimant,
~~on his giving after he has given~~ bond with good security to pay the Commonwealth the rents and
profits of ~~the same~~ such land, if ~~the right be found~~ judgment is subsequently entered for the
Commonwealth.

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

~~§ 55-180~~ 55.1-xxx. Disposition ~~thereof of lands while claim is pending~~, if not ~~so~~
committed to claimant.

If the escheator leases property remaining in his hands, he shall notify and transmit a copy
of such lease, ~~if in written form~~, to the State Treasurer within ~~thirty~~ 30 days and remit the rent

proceeds to the State Treasurer as they are received. ~~In either case the~~ The escheator shall be answerable, ~~as the right may be determined,~~ to the claimant or to the Commonwealth, as determined by the court, for the rents and profits ~~thereof of such land~~ and ~~that the same the~~ escheator shall ensure that such land be kept free from waste and destruction. Where the escheator deems that reasonable business practice would require that insurance be obtained on such income-producing property, he shall obtain insurance coverage on the escheated property after having first obtained the approval of the State Treasurer ~~therefor~~.

Drafting note: The phrase "if in written form" is deleted because every lease under the statute of frauds must be in writing. Language is updated for modern usage and clarity. Technical changes are made.

§ ~~55-181~~ 55.1-xxx. Escheator to notify State Treasurer of claim and decision.

The escheator shall certify to the State Treasurer, within ~~sixty~~ 60 days after the end of a year from the date of such ~~inquisition inquest~~, whether any ~~claim by~~ petition has been ~~made; filed~~ claiming an interest in the property pursuant to § 55.1-xxx [§ 55-176], and if such claim ~~be is~~ made, he shall certify the decision ~~thereon~~ on such petition within ~~sixty~~ 60 days after such decision.

Drafting note: The term "inquisition" is replaced with "inquest" for consistency throughout the chapter. Language regarding the petition, including a cross-reference, is added for clarity. Technical changes are made.

§ ~~55-182~~ 55.1-xxx. Escheators to certify lands escheated.

Every escheator shall, within ~~sixty~~ 60 days after ~~inquisition found an inquest that finds~~ on behalf of the Commonwealth, transmit to the State Treasurer a certificate showing the number of tracts or lots escheated ~~thereby~~, the reputed quantity of each parcel, a description sufficient to identify each parcel, and the names of the persons found to have died ~~seised thereof~~ owning such parcel, or from whom the land escheated.

Drafting note: The term "inquisition" is replaced with "inquest" for consistency throughout the chapter. The archaic term "seised" is replaced with modern terminology. Technical changes are made.

~~§ 55-182.1~~ § 55.1-xxx. Removal of parcels from the certificate.

If the escheator finds that the escheat of a parcel was improper, for whatever reason, he shall remove the parcel from the certificate transmitted to the State Treasurer pursuant to § 55.1-xxx [§ 55-182] at any time prior to sale pursuant to ~~§ 55-184.1~~ § 55.1-xxx. The escheator shall state in writing his reasons for such removal to the satisfaction of the State Treasurer. Thereafter, unless a petition has been filed in accordance with ~~§ 55-176~~ § 55.1-xxx, the escheator shall petition the circuit court to correct the verdict returned to the clerk of court pursuant to ~~§ 55-175~~ § 55.1-xxx. A copy of this petition shall be sent to the State Treasurer. The escheator shall notify in writing the local treasurer or the local official performing these duties, of any such error and improper escheat. The escheator shall be reimbursed the costs incurred by him for filing such a petition with the circuit court. The escheator shall file, and the clerk of court shall record, any such corrected verdict in the appropriate deed books.

Drafting note: A cross reference regarding the certificate is added for clarity. "Local" is added before "treasurer" and "official" to differentiate between those officials and the State Treasurer. A technical change is made.

~~§ 55-182.2~~ § 55.1-xxx. Escheat of property with hazardous materials.

In addition to any other remedy provided by law, the Virginia Waste Management Board, pursuant to its authority granted in § 10.1-1402, or the Department of ~~Waste Management~~ Environmental Quality, shall have recourse against any prior owner or the estate of any prior owner for the costs of ~~clean-up~~ cleanup of escheated property in or upon which any hazardous material as defined in § 44-146.34 is found.

Drafting note: Technical changes are made, including updating a state agency reference. The Department of Waste Management was incorporated into the Department of Environmental Quality effective April 1, 1993.

214 § ~~55-183~~ 55.1-xxx. Publication of escheator's certificate.

215 The State Treasurer shall cause the contents of ~~such~~ the certificate transmitted pursuant to
216 § 55.1-xxx [§ 55-182] to be published once each week for four consecutive weeks in a newspaper
217 of general circulation in the county or city where the ~~proceedings are~~ inquest was held.

218 **Drafting note: A cross-reference regarding the certificate is added for clarity.**

219 **"Proceedings" is changed to "inquest" for consistency with the contents of the certificate.**

220 **A technical change is made.**

221 § 55-184. Repealed.

222 **Drafting note: Repealed by Acts 1977, c. 583.**

223 ~~§ 55-184.1~~ 55.1-xxx. Order of sale by Governor.

224 Not less than six months after the publication of the escheator's certificate pursuant to §
225 55.1-xxx [§ 55-183], the State Treasurer shall ~~lay before~~ present to the Governor the escheator's
226 certificate, and proof of publication, and, if claim has not been made ~~as aforesaid~~ pursuant to §
227 55.1-xxx [§ 55-176], or, if made, has been decided in favor of the Commonwealth, the Governor
228 shall order the escheated land to be sold upon such terms, at such time, and at such place within
229 the county or city ~~wherein the lands lie~~ in which the property is located, or if the ~~lands lie~~ property
230 is located within a city that is located wholly within a county, then the sale may take place in the
231 city, or a contiguous county or city ~~or county~~ as he ~~may think~~ deems proper. The order of sale
232 shall be delivered to the State Treasurer, to be transmitted to the escheator, who shall proceed to
233 sell according to such order.

234 **Drafting note: Cross-references are added for clarity. Technical changes are made.**

235 ~~§ 55-184.2~~ 55.1-xxx. Form of sale agreement; notice of right to refund.

236 A sale agreement for the purchase of ~~escheat~~ escheated property shall include a statement
237 of the ~~buyer's~~ purchaser's right to claim a refund pursuant to ~~§ 55-200~~ 55.1-xxx upon submission
238 to the State Treasurer within 120 days of the sale of satisfactory evidence that the ~~escheat~~
239 escheated property does not exist or was improperly escheated. The following form may be used:

240 Sale Agreement of ~~Escheat~~ Escheated Property

241 This agreement of sale made in triplicate this ____ day of _____, 20____.
242 between _____, Escheator (hereinafter known as Seller) and _____ (hereinafter
243 known as Buyer Purchaser) and _____ (hereinafter known as Agent).

244 WITNESS

245 That for and in consideration of the full purchase price of \$_____ by cash/check in
246 hand paid, receipt of which is hereby acknowledged, the Seller agrees to sell and the Buyer
247 Purchaser agrees to buy all that certain lot or parcel of land with all the appurtenances (if any)
248 thereunto belonging and described as follows:

249 _____
250 _____
251 _____

252 The seller agrees to obtain a state grant. It is hereby understood that GRANTS for lots,
253 parcels and acreage sold pursuant to this agreement shall be ~~without warranty~~ WITHOUT
254 WARRANTY and in accordance with § ~~55-186.1~~ 55.1-xxx of the Code of Virginia. The recovery
255 of proceeds of each sale from the Commonwealth, less the expenses of sale and the escheator's
256 fee commission, may be obtained if the Buyer Purchaser, pursuant to § ~~55-200~~ 55.1-xxx of the
257 Code of Virginia, submits satisfactory evidence to the State Treasurer within 120 days of the sale
258 that the ~~escheat~~ escheated property does not exist or was improperly escheated.

259 WITNESS the following signatures and seals made this ____ day of _____,
260 20____.

261 _____ (SEAL)

262 _____ (SEAL)

263 Agent

264 _____ (SEAL)

265 Buyer Purchaser

266 _____ (SEAL)

267 Escheator for

268 _____, Virginia,

269 Seller

270 **Drafting note: The term "escheat property" is changed to "escheated property" for**
271 **consistency throughout the chapter. The term "buyer" is replaced with "purchaser" for**
272 **chapter-wide consistency. The term "fee" is replaced with "commission" for consistency**
273 **with § 55.1-xxx [§ 55-192]. The term "without warranty" is capitalized for its importance.**

274 ~~§ 55-185. Repealed.~~

275 **Drafting note: Repealed by Acts 1977, c. 583.**

276 ~~§ 55-186~~ 55.1-xxx. When grant to issue to purchaser; reimbursable expenses.

277 A. When the escheator sells for cash, he shall certify the purchase and the price to the State
278 Treasurer, who, after determining that such price, deducting the expenses, has been paid into the
279 state treasury and that the expenses of the inquest and sale have been paid to the escheator, shall
280 have a grant issued and executed for the lands so sold. At the time of sale, the escheator shall
281 require the purchaser to sign an authorization for recordation prior to distribution. A clerk's fee
282 per parcel purchased in accordance with subdivision A 2 of § 17.1-275 ~~per parcel purchased~~ shall
283 be collected by the escheator in addition to the purchase price. The fee shall be forwarded to the
284 State Treasurer, together with the names and addresses of the purchasers of the escheated property
285 and the sale proceeds as required in ~~§ 55-189~~ 55.1-xxx, who shall send the fee with the grants to
286 the local clerk's office for recording. The fee in effect at the time of sale shall be in lieu of all fees
287 and costs. Grants of escheated property shall be exempt from all recording taxes. After recording
288 the grants, the local clerk shall forward the grants to the escheator, who shall be responsible for
289 notifying the purchasers of the recordation and the distribution of the grants to the purchaser.

290 B. Expenses reimbursable by the State Treasurer under subsection A ~~of this section~~ shall
291 include an auctioneer's fee, which shall not exceed five percent of the sale proceeds. The State
292 Treasurer, by regulation, shall detail other appropriate reimbursable expenses.

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

294 ~~§ 55-186.1~~ 55.1-xxx. ~~In what form grant to issue~~ Form of grant of escheated property.

295 Such grant shall be without warranty, and to the following effect:
296 "A.B., Governor of the Commonwealth of Virginia, to all to whom these presents shall
297 come, greeting: Know ye, that in In consideration of the sum of \$_____ paid by _____
298 , the purchaser, into the treasury of ~~this~~ the Commonwealth, etc., there is granted without warranty
299 by the Commonwealth ~~unto the said to~~ _____, the purchaser, a certain tract or parcel
300 of land, containing _____ acres, lying in the county (or city) of _____, etc., (describing the
301 bounds of the land and date of the survey or other description sufficient to identify the parcel)
302 with its appurtenances, to ~~the said~~ _____, the purchaser, and his heirs forever. In
303 witness whereof, _____, ~~the said A.B.~~, Governor of the Commonwealth, has set his
304 hand and caused the lesser seal of the Commonwealth to be affixed hereunto, at _____, on
305 the _____ day of _____, in the year _____, ~~and of the Commonwealth~~
306 _____ A.B."

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

308 § ~~55-186.2~~ 55.1-xxx. Governor to sign and seal grant; Librarian of Virginia to record it,
309 etc.; delivery to and by State Treasurer.

310 The State Treasurer shall deliver such grant to the Governor, by whom it shall be signed
311 and ~~sealed~~ caused to be affixed with the lesser seal of the Commonwealth. The grant shall then
312 be delivered by the Governor to the Librarian of Virginia, who shall record it, and the plat and
313 certificate of survey, if provided, or other description sufficient to identify the parcel on which
314 the grant is founded, by a procedural microphotographic process ~~which~~ that meets archival
315 standards. The Librarian of Virginia shall certify to the State Treasurer that the grant has been
316 recorded and then deliver the grant to the State Treasurer, who shall in turn mail it to the party to
317 whom it is made, or his ~~order~~ another person, as directed by such party.

318 **Drafting note: Technical changes.**

319 § ~~55-186.3~~ 55.1-xxx. ~~Unrecorded escheat grants; original lost or destroyed; Recordation~~
320 of certified copy of grant.

321 The clerk shall accept for recordation a copy of the grant from the Commonwealth that is
322 certified as a true copy by the Librarian of Virginia under § ~~55-186.2~~ 55.1-xxx.

323 **Drafting note: The catchline is updated to reflect the text of the statute, which does**
324 **not speak to unrecorded escheat grants or original grants that are lost or destroyed.**

325 § ~~55-187~~ 55.1-xxx. Resale in case of default.

326 If the purchaser does not pay the purchase money into the state treasury within a
327 reasonable time, ~~deposits, if any deposit, are is~~ forfeited, and the State Treasurer may, ~~in his~~
328 ~~discretion~~, rescind the contract and order a new sale.

329 **Drafting note: The term "deposits" is replaced with "deposit" on the basis of § 1-**
330 **227, which states that throughout the Code any word used in the singular includes the plural**
331 **and vice versa. The phrase "in his discretion" is deleted as unnecessary. Technical changes**
332 **are made.**

333 § ~~55-188~~. ~~Repealed.~~

334 **Drafting note: Repealed by Acts 1990, c. 938.**

335 § ~~55-189~~ 55.1-xxx. Reports by escheators to State Treasurer; ~~payment of moneys into state~~
336 ~~treasury~~.

337 The escheator shall file reports with the State Treasurer as required by the State Treasurer
338 by agency directive.

339 **Drafting note: The catchline is updated to reflect the text of the statute, which does**
340 **not speak to payment of moneys into the state treasury. The phrase "with the State**
341 **Treasurer" is added to clarify where the reports are to be filed.**

342 § ~~55-190~~ 55.1-xxx. Reports by State Treasurer to the Governor; penalty on escheators for
343 failure of duty.

344 The State Treasurer shall, every May 1, file a report with the Governor containing the
345 name of any escheator who fails to perform any duty required of him by this chapter. If any
346 escheator fails to report to and account with the State Treasurer, or fails to pay into the state
347 treasury the proceeds of any sale made by him, or any such rents and profits, in the manner and

within the time prescribed by law, he shall be fined no more than \$200 for every ~~sixty~~ 60 days such failure continues. If any escheator fails to perform any other duty required of him by this chapter, ~~for the failure of which and~~ no specific penalty for such failure is provided, he shall be fined ~~therefor~~ no more than ~~fifty dollars~~ \$50. Any action ~~or motion~~ for any fine under this chapter may be instituted ~~or made~~, at the discretion of the State Treasurer, or of the Attorney General, in the Circuit Court of the City of Richmond, after ~~fifteen~~ 15 days' notice, ~~in the case of such motion~~.

Drafting note: References to "motion" are deleted as unnecessary; a proceeding to collect the fine would be instituted by an action. Technical changes are made.

§ ~~55-190.1~~ 55.1-xxx. State Treasurer may examine records of any escheator, commissioner of the revenue, ~~or escheator~~ treasurer.

The State Treasurer may at reasonable times and upon reasonable notice examine the records of any escheator, commissioner of the revenue, treasurer, or other person charged with his duties.

Drafting note: The catchline is updated to reflect the text of the statute. Technical changes are made.

§ ~~55-191~~ 55.1-xxx. When State Treasurer to issue grant to purchaser.

~~When The State Treasurer shall not request that the Governor issue a grant for the lands sold to the purchaser, or his heirs or assigns, until the purchase money shall have~~ has been fully paid, ~~according to law, and not before, the State Treasurer shall issue a grant, for the lands so sold to the purchaser, or his heirs or assigns.~~

Drafting note: Language is reorganized for clarity.

§ ~~55-192~~ 55.1-xxx. Escheator's pay.

Except as otherwise provided ~~hereinafter in this section~~, the escheator shall ~~have be~~ entitled to a commission of ~~ten~~ 10 percent on all proceeds of sales made by him of escheated lands ~~which that~~ are paid to him or into the state treasury. Where an escheator is replaced by the appointment and qualification of a successor and where such escheator ~~has published the notice of held an~~ inquest provided for in § ~~55-172~~ 55.1-xxx but the sale provided for in § ~~55-184.1~~ 55.1-

375 xxx has not been held, the ~~ten~~ 10 percent commission on the proceeds of the sales of the escheated
376 lands so advertised shall be divided equally between such escheator and his successor. For ~~the~~
377 ~~inquest of~~ each parcel ~~taken by him that escheats,~~ the escheator shall be paid ~~ten dollars,~~ \$10 out
378 of any money in the state treasury belonging to the ~~literary fund~~ Literary Fund.

379 **Drafting note: Language is corrected to state that the escheator must have held the**
380 **inquest prior to receiving his commission instead of just publishing notice for such inquest.**
381 **It is also corrected to reflect that the \$10 fee is only given to the escheator for each parcel**
382 **that is successfully escheated, not for every parcel for which an inquiry is held. Technical**
383 **changes are made.**

384 § ~~55-193~~ 55.1-xxx. Escheat of estates in trust and equitable titles.

385 An estate vested in a person ~~merely~~ solely by ~~way of~~ mortgage or ~~on deed of~~ trust shall
386 not escheat or be forfeited to the Commonwealth by reason of the mortgagee or trustee dying
387 without heirs; but any equitable title to lands shall escheat or be forfeited, ~~so far as it would as~~
388 the case may be, if the person having the equitable title also had the legal title.

389 **Drafting note: Language is updated for modern usage and clarity A technical**
390 **changes is made.**

391 § ~~55-194~~ 55.1-xxx. Provision in favor of tenant of escheated land.

392 If any person holds any escheated land under a lease or has right to any rent or other profit
393 out of ~~the same~~ such land, he shall hold and enjoy his lease, rent, or other profit, whether ~~the same~~
394 such lease or right to rent or other profit is found in the ~~inquisition~~ inquest or not.

395 **Drafting note: The term "inquisition" is replaced with "inquest" for consistency**
396 **throughout the chapter. A technical change is made.**

397 § ~~55-195~~ 55.1-xxx. In favor of creditor of decedent.

398 If any debt of a person who died ~~seized of owning~~ lands that escheated to the
399 Commonwealth, ~~remain~~ remains unpaid after all the personal estate of such person has been
400 applied to the payment of his debts, the creditor may file his ~~bill in equity~~ complaint, accompanied
401 with an affidavit that the debt is bona fide due, to recover such debt in the circuit court to which

the ~~inquisition~~ inquest of escheat was returned and make the escheator defendant. If the court ~~upon the evidence adduced shall be of opinion and decree~~ orders that the debt or any part thereof is due, the amount decreed to be due shall be paid by the escheator, if ~~so much of~~ the escheator ~~has enough of the~~ proceeds of sale ~~remain in his hands~~ remaining to cover the amount, or out of the state treasury, if ~~so much of such~~ enough of the proceeds ~~shall that~~ have been paid into ~~and~~ ~~still remain in~~ the state treasury still remain in the state treasury, or to the credit of the Literary Fund.

Drafting note: The archaic term "seized" is replaced with modern terminology. Language used in the old equitable pleading practice, including "bill in equity" and "decree" is replaced with modern terminology. The term "inquisition" is replaced with "inquest" for consistency throughout the chapter. Language is updated for modern usage and clarity. Technical changes are made.

~~§ 55-196~~ 55.1-xxx. Escheators to defend on behalf of Commonwealth.

The escheator shall answer and defend on the part of the Commonwealth any ~~such~~ suit against him or any petition filed under ~~§ 55-176~~ 55.1-xxx and shall be allowed the costs incurred by him in ~~defending the same~~ such defense.

Drafting note: Technical changes are made.

~~§ 55-197~~ 55.1-xxx. Recovery by escheator of decedent's escheated ~~residuum~~ residue; and of property abandoned or derelict; fee.

The ~~residuum~~ residue of a decedent's estate consisting of real property; belonging to the Commonwealth, or subject to escheat to the Commonwealth, and any such property abandoned or derelict, or having no rightful owner, may be recovered from any person in possession thereof by an escheator by a ~~bill in equity~~ complaint in the name of the Commonwealth. For his services in such recovery, the escheator shall be entitled to such fee as may be approved by the State Treasurer, but in no event shall such fee exceed ~~ten~~ 10 percent of the value of such recovered property.

Drafting note: The term "residuum" is replaced with "residue" for consistency throughout the Code. Language used in the old equitable pleading practice, including "bill in equity," is replaced with modern terminology. A technical change is made.

~~§ 55-198~~ 55.1-xxx. Publication of suit; what to state and require.

When any ~~such suit~~ action is instituted pursuant to § 55.1-xxx [§ 55-197], the court shall cause a publication to be made once each week for four consecutive weeks in ~~some a~~ a newspaper of general circulation in the county or ~~corporation~~ city in which the proceedings are ~~had~~ held, setting forth the nature of the claim, the name and ~~nativity~~ place of birth, when known, of the deceased person, or of the former owner of the property, if known, as the case may be, and ~~describing a description of~~ the property or estate claimed, and requiring all persons claiming an interest ~~therein in such property~~ to appear ~~and make themselves defendants by a given day of an ensuing term~~ assert their interests in such property.

Drafting note: Language used in the old equitable pleading practice, including "suit" is replaced with modern terminology. The term "corporation" is replaced with "city" for consistency with title-wide conventions. The term "nativity" is updated to the modern phrase, "place of birth." Language is updated for modern usage. Technical changes are made.

~~§ 55-199~~ 55.1-xxx. ~~Decree~~ Order of the court.

If no person ~~appear~~ appears and ~~show title in himself~~ shows that he has title to the property, the court shall ~~decree order that~~ the ~~residuum~~ residue or other property belongs to the Commonwealth, and enforce the collection thereof, or of the proceeds of the sale of such property. Provided, provided, however, that if the ~~residuum~~ residue or other property was given, bequeathed, or devised by will to a charitable institution in ~~this the~~ the Commonwealth and such gift, bequest, or devise failed by reason of insufficient witnessing of such will and would otherwise escheat to the Commonwealth, and the court finds that it is in the public interest, the court may order such ~~residuum~~ residue or other property, or so much thereof as was subject to ~~said such~~ such gift, bequest, or devise, to be paid to such charitable institution.

Drafting note: Language used in the old equitable pleading practice, including "decree" is replaced with modern terminology. The term "residuum" is replaced with "residue" for consistency throughout the Code. Language is updated for modern usage. Technical changes are made.

§ ~~55-200~~ 55.1-xxx. How money paid into state treasury from escheats may be recovered.

A. If within 120 days from the date of sale, a purchaser submits evidence satisfactory to the State Treasurer that the property described in the grant does not exist or was improperly escheated, the State Treasurer may refund the purchase price, less the expenses of sale and the escheator's fee. Before any such refund is made, the purchaser ~~must~~ shall return the grant to the State Treasurer, who shall inform the Librarian of Virginia of its return. Both of these officials shall note the grant's return in their records. When the ~~purchaser~~ Commonwealth has recorded ~~his~~ the grant ~~from the Commonwealth, he the purchaser~~ shall record a quitclaim deed and send proof thereof to the State Treasurer prior to the issuance of any refund.

B. After any sale of escheated lands and upon certification verified by oath of the ~~city,~~ town or county local treasurer or other officer charged with the collection of local real estate taxes that the land so sold was, at the time of escheat to the Commonwealth, subject to the lien of unpaid local real estate taxes or that the land so sold was, at any time prior to sale, subject to other assessments, including liens for demolition, cutting or removing weeds, or abating any nuisance on the escheated land, all of which assessments were validly assessed, levied, or imposed by the ~~city, town or county~~ locality on the lands within ~~twenty~~ 20 years preceding the date of the escheat or inquest, the State Treasurer shall, upon receipt of the proceeds of sale, deduct the escheator's commission and costs of the inquest and sale. The State Treasurer shall then pay to the ~~city, town or county~~ local treasurer out of the net proceeds of such sale, if any, the amount of the local real estate taxes ~~and/or~~ and assessments, including accrued penalties and interest, up to but not exceeding the amount of the funds remaining in the hands of the State Treasurer from the proceeds of the sale. To the extent that local taxes and other appropriate local charges exceed the proceeds obtained for such escheated land at the escheat sale, such local taxes and other charges are

482 exonerated. Any other liens on property ~~which is that was~~ escheated and sold ~~will~~ shall shift to
483 the proceeds of the sale and ~~will~~ shall no longer remain a lien on the property.

484 C. Any person who had not asserted a claim before the sale of escheated property, being
485 entitled to any property so escheated and sold, may recover so much of the net proceeds as remain
486 after deduction of the escheator's commission, costs of the inquest and sale, and allowance of
487 claims for unpaid real estate taxes and assessments due on the land or from any creditors of the
488 decedent. The same may be allowed by the State Treasurer or, if a claim in any such case is
489 rejected by him, a petition for recovery may be made in the manner provided in § 8.01-192 for
490 recovering claims against the Commonwealth, but subject to the limitation in § 8.01-255.

491 **Drafting note: In subsection A, language is updated to reflect that the**
492 **Commonwealth records the grant, not the purchaser, as reflected in subsection A of § 55.1-**
493 **xxx [§ 55-186]. In subsection B, "city, town or county" is replaced with "local" or "locality,"**
494 **as appropriate, on the basis of § 1-221, which states that throughout the Code "locality"**
495 **means a county, city, or town." Also in subsection B, the grammatical shortcut "and/or" is**
496 **amended to reflect the appropriate meaning: "and" in the sense of "both/all." Technical**
497 **changes are made.**

498 ~~§ 55-200.1 55.1-xxx.~~ Rules and regulations Regulations of the State Treasurer.

499 The State Treasurer shall adopt any necessary ~~rules and~~ regulations in accordance with the
500 Administrative Process Act (§ 2.2-4000 et seq.) to carry out the provisions of this chapter.

501 **Drafting note: The word "rules" is deleted because state agencies adopt regulations,**
502 **not rules.**

503 ~~§ 55-201 55.1-xxx.~~ Continuation of certain statutes.

504 The first section of Chapter 114 of the Code of 1849, and the sections following that to
505 the seventeenth section, inclusive, of such chapter; the act passed April 12, 1852 (Chapter 18,
506 Acts 1852); the act passed April 7, 1858 (Chapter 39, Acts 1858); and the Acts of 1857-8, as
507 amended by the act passed March 30, 1860 (Acts of 1859-60) are continued in force.

508 **Drafting note: Technical change.**

509 § ~~55-201.1~~ 55.1-xxx. Pendency of escheat proceedings no bar to condemnation
510 proceedings.

511 Notwithstanding any provision contained in this chapter, the Commissioner of Highways
512 or any ~~city, town, county~~ locality or other political subdivision or agency of ~~this the~~
513 Commonwealth possessing the power of eminent domain may, ~~for any a~~ public purpose in
514 accordance with the law and notwithstanding the pendency of any proceeding brought for the
515 escheat of any land wanted and needed by such Commissioner of Highways or such ~~city, town,~~
516 ~~county~~ locality or other political subdivision or agency of ~~this the~~ Commonwealth for such
517 purpose, institute, maintain, and conduct to final judgment condemnation proceedings to acquire
518 in fee simple such land or such lesser estate, title, or interest therein as is wanted and needed for
519 such public purpose, provided, however, that the escheator in whose name such escheat
520 proceedings ~~be is~~ pending and the Commonwealth of Virginia ~~be are~~ made codefendants to such
521 condemnation proceedings, together with the owner ~~or owners~~, if known, of the land proposed to
522 be condemned in such proceeding. The pendency of such escheat proceedings shall not constitute
523 a bar or defense to such condemnation proceedings, nor to any proceeding therein seeking a right
524 of entry as provided in § 25.1-223, in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, or in Article 1
525 (§ 33.2-1000 et seq.) of Chapter 10 of Title 33.2. No escheator, after being served with notice of
526 the filing of any such condemnation proceeding, shall sell or dispose of any land sought to be
527 acquired in such condemnation proceeding except upon order entered by the court in which such
528 condemnation proceeding is pending. The funds paid into court as compensation ~~and/or or~~
529 damages for the land so taken or damaged shall, after payment of taxes and other claims
530 constituting valid liens against the land so taken, be ordered distributed to the party ~~or parties~~
531 entitled thereto or be ordered paid to the escheator of ~~said such~~ land, or to the State Treasurer, as
532 the court, ~~in its discretion, shall~~ may direct.

533 **Drafting note: "City, town or county" is replaced with "locality" on the basis of § 1-**
534 **221, which states that throughout the Code "locality" means a county, city, or town." The**
535 **phrase "in accordance with the law" is added to ensure that the Commissioner is only**

536 exercising his power of eminent domain in accordance with the Constitution and other
537 statutory requirements. The plural "owners" and "parties" are stricken on the basis of § 1-
538 227, which states that throughout the Code any word used in the singular includes the plural
539 and vice versa. The grammatical shortcut "and/or" is amended to reflect the appropriate
540 meaning: "or" in the sense of "either/any" or "both/all." The phrase "in its discretion,
541 shall" is replaced with "may" for consistency with code-wide conventions. Technical
542 changes are made.

543 #

1 CHAPTER ~~11.1~~ X [2].

2 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

3 **Drafting note: Existing Chapter 11.1, Disposition of Unclaimed Property, is retained**
4 **as proposed Chapter XX [2]. The title of the chapter is renamed in accordance with existing**
5 **§ 55-210.1.**

6 Article 1.

7 ~~Citation of Chapter and~~ Definitions; Property Abandoned or Assumed Abandoned.

8 ~~Article 2.~~

9 ~~Property Abandoned or Assumed Abandoned.~~

10 **Drafting note: Existing Articles 1 and 2 are proposed to be combined and retained**
11 **as proposed Article 1.**

12 ~~§ 55-210.1. Citation of chapter.~~

13 ~~This chapter may be cited as "The Uniform Disposition of Unclaimed Property Act."~~

14 **Drafting note: Existing § 55-210.1 is recommended for repeal on the basis of § 1-244,**
15 **which states that the caption of a subtitle, chapter, or article operates as a short title citation.**
16 **The short title citation is retained in the title of the chapter.**

17 ~~§ 55-210.2~~ 55.1-xxx. Definitions.

18 As used in this chapter, unless the context ~~otherwise~~ requires a different meaning:

19 "Act" means the Uniform Disposition of Unclaimed Property Act (§ 55.1-xxx et seq.).

20 "Administrator" means the State Treasurer or his designee.

21 "Apparent owner" means the person whose name appears on the records of the holder as
22 the person entitled to property held, issued, or owing by the holder.

23 "Banking organization" means any bank, trust company, savings bank (industrial bank,
24 land bank, safe deposit company), or ~~a~~ private banker, or any other organization defined by law
25 as a bank or banking organization.

26 "Business association" means any corporation, joint-stock company, investment company,
27 business trust, partnership, limited liability company, cooperative, or association for business

purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

"Credit balance" means an item of intangible property resulting from or attributable to the sale of goods or services, ~~which includes, by way of illustration, including~~ an overpayment, credit memo, refund, discount, rebate, unidentified remittance, or deposit.

"Domicile" means (i) the state of incorporation, in the case of a corporation incorporated under the laws of a state; (ii) the state of organization, in the case of an unincorporated business association formed under the laws of a state; (iii) the state of the principal place of business, in the case of a nonnatural person not incorporated or formed under the laws of a state; and (iv) the state of principal residency, in the case of a natural person.

"Due diligence" ~~shall include, but not be limited to, includes~~ the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

"Financial organization" means any savings and loan association (cooperative bank), building and loan association, or credit union.

"Gift certificate" means a certificate, electronic card, or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of an equal value.

"Holder" means a person, wherever organized or domiciled, ~~who that~~ is (i) in possession of property belonging to another; (ii) a trustee, in ~~the~~ case of a trust; or (iii) indebted to another on an obligation.

"Insurance company" means an association, corporation, ~~or~~ fraternal or mutual benefit organization, whether or not for profit, ~~which that~~ is engaged in providing insurance coverage, including, ~~by way of illustration, accident, burial, casualty, credit life, contract performance, credit life,~~ dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

"Intangible property" includes, ~~by way of illustration,~~ (i) moneys, checks, drafts, deposits, interest, ~~and~~ dividend income; (ii) credits, customer overpayments, gift certificates, security

deposits, refunds, unpaid wages, and unidentified remittances; (iii) stocks and other intangible ownership interests in business associations; (iv) moneys deposited to redeem stocks, bonds, coupons, and other securities; or to make distributions; (v) amounts due and payable under the terms of insurance policies; and (vi) amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

"Last known address" means a description of the location of the apparent owner sufficient to identify the state of residence of the apparent owner for the purpose of the delivery of mail.

"Owner" means (i) a depositor, in the case of a deposit; (ii) a beneficiary, in the case of a trust, other than a deposit in trust; (iii) a creditor, claimant, or payee, in the case of other intangible property; or (iv) a person having a legal or equitable interest in property subject to this chapter or his legal representative.

"Payable" means the earliest date upon which the owner of property could become entitled to the payments, possession, delivery, or distribution of such property from a holder.

"Person" means an individual; a business association; a government or governmental subdivision or agency, public corporation, or public authority; an estate; a trust; two or more persons having a joint or common interest; or any other legal or commercial entity.

"Promotional incentive" means a coupon, rebate, or other promotional device offered to induce a consumer to purchase goods, food, or services and for which (i) no direct consideration is given by the consumer or (ii) the consideration given is less than the value of the goods, food, or services to be received.

"State," when applied to a part of the United States, includes any state, district, commonwealth, territory, and insular possession; and any other area subject to the legislative authority of the United States.

"Unclaimed property" means property for which the owner, as shown by the records of the holder of his property, has ceased, failed, or neglected, within the times provided in this

chapter, to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. ~~This definition shall be construed as excluding~~ As used in this definition, "act" excludes any act of a holder of unclaimed property not done at the express request or authorization of the owner.

"Utility" means a person ~~who~~ that owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Drafting note: A definition for the term "Act" is added because the term is used throughout the chapter. In the definition of "due diligence," the phrase "but not be limited to" is deleted on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In the definitions of "credit balance," "insurance company," and "intangible property," the phrase "by way of illustration" is deleted as unnecessary. In the definition of "unclaimed property," the exclusion is rewritten to logically reflect that it excludes acts related to the defined term. Technical changes are made.

~~§ 55-210.2-1~~ 55.1-xxx. Property presumed abandoned; general rule.

All tangible and intangible property, including any income or increment thereon, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable is presumed abandoned, except as otherwise provided by this chapter. Property is payable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

Drafting note: Technical change.

~~§ 55-210.2-2~~ 55.1-xxx. ~~General rules for taking~~ Taking custody of intangible unclaimed property; general rules.

Unless otherwise provided in this chapter or by other law of ~~this~~ the Commonwealth, intangible property is subject to the custody of ~~this~~ the Commonwealth as unclaimed property if

the conditions leading to a presumption of abandonment as described in §§ ~~55-210.2:1~~ 55.1-xxx,
~~55-210.3:01~~ 55.1-xxx and ~~55-210.3:2~~ 55.1-xxx through ~~55-210.10:2~~ 55.1-xxx are satisfied, and:

1. The last known address, as shown on the records of the holder, of the apparent owner
is in ~~this~~ the Commonwealth;

2. The records of the holder do not reflect the identity of the person entitled to the property,
and it is established that the last known address of the person entitled to the property is in ~~this~~ the
Commonwealth;

3. The records of the holder do not reflect the last known address of the apparent owner,
and it is established that (i) the last known address of the person entitled to the property is in ~~this~~
the Commonwealth or (ii) the holder is a domiciliary or a government or governmental
subdivision or agency of ~~this~~ the Commonwealth and has not previously paid the property to the
state of the last known address of the apparent owner or other person entitled to the property;

4. The last known address, as shown on the records of the holder, of the apparent owner
or other person entitled to the property is in a state that does not provide by law for the escheat or
custodial taking of the property,₂ or its escheat or unclaimed property law is not applicable to the
property,₂ and the holder is a domiciliary or a government or governmental subdivision or agency
of ~~this~~ the Commonwealth;

5. The last known address, as shown on the records of the holder, of the apparent owner
is in a foreign nation,₂ and the holder is a domiciliary or a government or governmental subdivision
or agency of ~~this~~ the Commonwealth; or

6. ~~(i)~~ a. The transaction out of which the property arose occurred in ~~this~~ the
Commonwealth, and (i) the last known address of the apparent owner or other person entitled to
the property is unknown;₇ or (ii) the last known address of the apparent owner or other person
entitled to the property is in a state that does not provide by law for the escheat or custodial taking
of the property,₂ or its escheat or unclaimed property law is not applicable to the property;₂ and ~~(ii)~~
the

[b. The](#) holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

Drafting note: Technical changes.

~~§ 55-210.3. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

~~§ 55-210.3-01~~ [55.1-xxx](#). Bank deposits and funds in financial organizations.

A. Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner has, within five years:

1. In the case of a deposit or ownership of shares, increased or decreased the amount of the deposit or the number of shares owned, ~~or~~ presented the passbook or other similar evidence of the deposit or ownership of shares for the crediting of interest or dividends, or negotiated a check in payment of interest or dividends on a time deposit or ownership of shares;

2. Communicated in writing with the banking or financial organization concerning the property;

3. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

4. Owned other property to which subdivision ~~A~~ 1, ~~A~~ 2, or ~~A~~ 3 is applicable if the banking or financial organization communicated in writing with the owner with regard to the property that would otherwise be presumed abandoned under this ~~paragraph~~ [section](#) at the address to which communications regarding the other property regularly are sent;

5. Had another relationship with the banking or financial organization concerning which the owner has (i) communicated in writing with the banking or financial organization, or (ii) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization if the banking or financial organization

communicates in writing with the owner with regard to the property that would otherwise be abandoned under this ~~paragraph~~ section at the address to which communications regarding the other relationship regularly are sent; or

6. A deposit made with or purchase of shares in a banking or financial organization by a court or by a guardian pursuant to an order of a court or by any other person for the benefit of a person who was an infant at the time of the making of such deposit or purchase of shares, which deposit or ownership of shares is subject to withdrawal or transfer only upon the further order of such court or such guardian or other person, shall not be subject to the provisions of this chapter until one year after such infant attains the age of ~~eighteen~~ 18 years or until one year after the death of such infant, whichever occurs sooner. These accounts are not subject to dormant service charges.

B. Notwithstanding any other provision of this section, share accounts of a member of a state or federally chartered credit union that is subject to or covered by life savings insurance provided by the credit union at no additional charge to the member shall be presumed abandoned five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable; or five years after the date the credit union discontinued the mailings to the member, whichever ~~is~~ occurs earlier. Funds held or owing under the life savings insurance policy are presumed abandoned pursuant to § ~~55-210.4-01~~ 55.1-xxx.

C. For purposes of this section, "property" includes any interest or dividends thereon. No banking or financial organization may deduct any service charge or cease to accrue interest on any account; from the date the account is declared dormant or inactive by such organization except in conformity with cessation of interest or service charges generally assessed upon active accounts. With respect to any property described in this section, a holder may not impose any charges due to dormancy or inactivity ~~which~~ that differ from those imposed on active accounts or cease to pay interest unless:

1. There is an enforceable contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest;

2. For property in excess of \$100, the holder, no more than three months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease; however, such notice need not be given with respect to charges imposed or interest ceased before July 1, 1984; and

3. When the holder imposes those charges or ceases payment of interest, it does ~~not for any reason other than~~ so solely to correct a documented internal error reverse or cancel those charges or retroactively credit interest with respect to such property. Notwithstanding any provision of this subsection to the contrary, a holder that is a state-chartered credit union may refund charges or reverse or cancel those charges or retroactively credit interest with respect to such property to the same extent that a ~~federally-chartered~~ federally chartered credit union is authorized ~~so~~ to do so pursuant to applicable provisions of federal law.

D. Any automatically renewable property to which this section applies is matured upon the expiration of its initial time period. However, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicates consent as specified in subsection A ~~of this section~~, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in subsection D of § ~~55-210.12~~ 55.1-xxx, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. Notwithstanding any other provision of this section to the contrary, any automatically renewable time deposit that has matured shall be presumed abandoned five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable, or five years after the date the holder discontinued the mailings to the apparent owner, whichever is occurs earlier. However, any automatically renewable time deposit for which no such statement or other notification or mailing is required to be sent by the banking or financial organization shall be presumed abandoned as otherwise provided in this section.

Drafting note: Technical changes.

§ ~~55-210.3-02~~ 55.1-xxx. ~~Travelers'~~ Traveler's checks and money orders.

A. Except as otherwise provided in this section, any sum payable on a traveler's check that has been outstanding for more than ~~fifteen~~ 15 years after its issuance is presumed abandoned unless the owner, within ~~fifteen~~ 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

Except as otherwise provided in this section, any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

B. No holder may deduct from the amount of any traveler's check or money order any charges imposed by reason of the failure to present those instruments for payment unless (i) there is a valid and enforceable written contract between the issuer and the owner of the property pursuant to which the issuer may impose those charges and (ii) the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to such property.

C. Any sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, described in this section ~~may~~ shall not be subjected to the custody of ~~this~~ the Commonwealth as unclaimed property unless:

1. The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in ~~this~~ the Commonwealth;

2. The issuer has its principal place of business in ~~this~~ the Commonwealth, and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

3. The issuer has its principal place of business in ~~this~~ the Commonwealth, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

D. Notwithstanding any other provision of this chapter, the provisions of ~~the preceding paragraph subsection C~~ relating to the requirements for subjecting certain written instruments to the custody of the Commonwealth apply to sums payable on ~~travelers'~~ traveler's checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Drafting note: The section is divided into subsections for clarity. In proposed subsection C, the word "may" is replaced with "shall" because the phrase "may not" as used in this section expresses an absolute prohibition, which, to be consistent throughout the Code, is more properly expressed by the phrase "shall not." Technical changes are made.

~~§ 55-210.3:1. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

~~§ 55-210.3:2~~ 55.1-xxx. Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

Any sum payable on a check, draft, or similar instrument, except money orders, ~~travelers'~~ traveler's checks, and other similar instruments subject to ~~§ 55-210.3:02~~ 55.1-xxx, on which a banking or financial organization is directly liable, including ~~but not limited to,~~ cashier's checks and certified checks, ~~which~~ that has been outstanding for more than five years after it was payable, or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

A holder may not deduct from the amount of any instrument subject to this section any charges imposed by reason of the failure to present the instrument for payment unless there is a

valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges; and the holder regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to such instruments.

Drafting note: The phrase "but not limited to" is deleted on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

Technical changes are made.

~~§ 55-210.3:3~~ § 55.1-xxx. Contents of safe deposit box or other safekeeping repository.

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in ~~this~~ the Commonwealth in the ordinary course of the holder's business and all proceeds resulting from the lawful sale of this property shall be presumed abandoned if unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired.

Drafting note: Technical change.

~~§ 55-210.4. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

~~§ 55-210.4:01~~ § 55.1-xxx. Funds owing under life insurance policies.

A. Funds held or owing under any life or endowment insurance policy or annuity contract ~~which~~ that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, except that property described in ~~subsection~~ subdivision C 2 is presumed abandoned if unclaimed for more than two years.

B. If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

C. For purposes of this section, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is deemed matured and the proceeds due and payable if:

1. The company knows that the insured or annuitant has died; or
2. (i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based; (ii) the policy was in force at the time the insured attained, or would have attained, the limiting age specified in ~~paragraph~~ clause (i); and (iii) neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

D. For purposes of this section, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection A if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of ~~a~~ the policy by the application of those provisions.

E. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to locate the beneficiary and pay the proceeds to the beneficiary.

F. Commencing July 1, 1986, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of ~~this~~ the Commonwealth ~~must~~ shall request the following information:

1. The name of each beneficiary, ~~or,~~ or, if the class of beneficiaries is named, the name of each current beneficiary in the class;
2. The address of each beneficiary; and

3. The relationship of each beneficiary to the insured.

Drafting note: Technical changes.

~~§ 55-210.4:1 55.1-xxx. When intangible Intangible~~ personal property held by insurance corporation subject to ~~§ 55-210.2:1 55.1-xxx.~~

An insurance corporation holding any other intangible personal property not covered by subsection A of ~~§ 55-210.4:01 55.1-xxx~~ or ~~§ 55-210.4:2 55.1-xxx~~ shall be otherwise subject to ~~§ 55-210.2:1 55.1-xxx.~~

Drafting note: Technical change.

~~§ 55-210.4:2 55.1-xxx.~~ Unclaimed demutualization proceeds.

Unclaimed property payable or distributable in the course of the demutualization of an insurance company is presumed abandoned five years after the earlier of (i) the date of last contact with the policyholder or (ii) the date the property became payable or distributable. The report filed on November 1, 2003 will include demutualization distribution property for which there has been no policyholder contact for the five years prior to June 30, 2003.

Drafting note: No change.

~~§ 55-210.5 55.1-xxx.~~ Deposits held by utilities.

Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, ~~which that~~ remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

Drafting note: Technical change.

~~§ 55-210.6. Repealed.~~

Drafting note: Repealed by Acts 1991, c. 357.

~~§ 55-210.6:1 55.1-xxx. When intangible Intangible~~ interest in business association ~~presumed abandoned.~~

A. Any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned five years after the date of the

most recent dividend or other distribution unclaimed by the apparent owner with respect to the stock or other interest; or, if a dividend or other distribution has not been paid on the stock or other interest, or the stock or other interest is held pursuant to a plan that provides for the automatic reinvestment of dividends or other distributions, five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable; or five years after the date the holder discontinued the mailings to the apparent owner, whichever is occurs earlier. With respect to such interest, the business association shall be deemed the holder.

B. Any dividend or other distribution held for or owing to a person at the time the stock or other security to which such dividend or other distribution attaches; is considered abandoned at the same time.

Drafting note: Technical changes.

§ ~~55-210.6-2~~ 55.1-xxx. Refunds held by business associations.

Except to the extent otherwise ordered by a court or administrative agency of competent jurisdiction, any sum that a business association has been ordered to refund by a court or administrative agency ~~which~~ that has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

Drafting note: Technical change.

§ ~~55-210.7~~ 55.1-xxx. Property of business associations held in course of dissolution.

All intangible property distributable in the course of a voluntary or involuntary dissolution of a business association ~~which~~ that remains unclaimed by the owner for more than one year after the date for specified final distribution; is presumed abandoned.

Drafting note: Technical changes.

§ ~~55-210.8~~ 55.1-xxx. ~~When intangible~~ Intangible personal property held in fiduciary capacity ~~presumed abandoned~~.

A. All intangible personal property₂ and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it ~~becomes~~ became payable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with and prepared by the fiduciary or an employee of the fiduciary.

B. Funds in an individual retirement account, a retirement plan for self-employed individuals₂ or a similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable ~~within the meaning of~~ under this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

C. For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless such person's agreement with the business association provides otherwise. A person who is so deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

Drafting note: Subsection designations are added for clarity. Technical changes are made.

~~§ 55-210.8-1~~ 55.1-xxx. Gift certificates and credit balances.

A. Except as described in subsection B, a gift certificate or credit balance issued in the ordinary course of the issuer's business that has remained unclaimed by the owner for more than five years after ~~becoming~~ such gift certificate or credit balance became payable is presumed abandoned.

B. The following property is exempt from the provisions of this chapter and shall not be assessed by the administrator as unclaimed property: (i) credit balances payable to a business association₂; (ii) outstanding checks resulting from or attributable to the sale of goods or services

to a business association; (iii) promotional incentives; and (iv) credits, gift certificates, coupons, layaways, and similar items, provided that such credits, gift certificates, coupons, layaways, and similar items are redeemable in merchandise, in services, or through future purchases.

Drafting note: Technical changes.

§ ~~55-210.8-2~~ 55.1-xxx. Wages.

Unpaid wages, including wages represented by unrepresented payroll checks owing in the ordinary course of the holder's business, that have remained unclaimed by the owner for more than one year after ~~becoming~~ such unpaid wages became payable are presumed abandoned.

Drafting note: Technical changes.

§ ~~55-210.9~~ 55.1-xxx. ~~When intangible~~ Intangible property held for owner by public agency ~~presumed abandoned~~.

All intangible property held for the owner by any government or governmental subdivision or agency, public corporation, or public authority that has remained unclaimed by the owner for more than one year after it became payable is presumed abandoned.

Drafting note: Technical changes.

§ ~~55-210.9-1~~ 55.1-xxx. Property held by courts.

All intangible property held for the owner by any state or federal court that has remained unclaimed by the owner for more than one year after it became payable is presumed abandoned.

Drafting note: No change.

§ ~~55-210.9-2~~ 55.1-xxx. Responsibilities of general receiver and clerk.

The general receiver, if one has been appointed, and the clerk of each circuit court shall be responsible for identifying moneys held by them in their respective accounts ~~which~~ that have remained unclaimed by the owner for more than one year after such moneys became payable and for petitioning the court to remit such money to the ~~State Treasurer~~ administrator. There shall be no obligation to report or remit funds deposited as compensation and damages in condemnation proceedings pursuant to § 25.1-237 prior to a final court order or pursuant to § 33.2-1019.

Drafting note: "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. A technical change is made.

~~§ 55-210.10. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

~~§ 55-210.10:1~~ 55.1-xxx. Employee benefit trust distribution.

A. All employee benefit trust distributions and any income or other increment thereon are abandoned to ~~this~~ the Commonwealth under the provisions of this chapter if the owner has not, within ~~ten~~ 10 years after it ~~becomes~~ became payable, accepted such distribution, corresponded in writing concerning such distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which such trust or fund is established.

B. An employee benefit trust distribution and any income or other increment thereon shall not be presumed abandoned to ~~this~~ the Commonwealth under the provisions of this chapter if, at the time such distribution ~~shall become~~ becomes payable to a participant in an employee benefit plan, (i) such plan contains a provision for forfeiture or expressly authorizes the trustee to declare a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time specified in such plan; and (ii) the trust or fund established under the plan has not terminated prior to the date on which such distribution would become forfeitable in accordance with such provision.

Drafting note: Technical changes.

~~§ 55-210.10:2~~ 55.1-xxx. Holder of tangible or intangible personal property may voluntarily report ~~same~~ such property.

Any holder of tangible or intangible personal property; the owner of which is unlocatable; may voluntarily report the property to the ~~State Treasurer~~ administrator, prior to the statutory due dates, whereupon the property shall be presumed abandoned under this chapter.

Drafting note: "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes are made.

Article ~~3~~ 2.

Reciprocity for Property Presumed Abandoned or Escheated under Laws of Another State.

Drafting note: Existing Article 3, containing provisions related to reciprocity for property presumed abandoned or escheated under laws of another state, is retained as proposed Article 2.

§ ~~55-210.11~~ 55.1-xxx. ~~When certain~~ Certain property not presumed abandoned in ~~this the~~ Commonwealth.

If specific property ~~which that~~ is subject to the provisions of §§ ~~55-210.2:1~~ 55.1-xxx, ~~55-210.3:01~~ 55.1-xxx, ~~55-210.4:01~~ 55.1-xxx, ~~55-210.6:1~~ 55.1-xxx, ~~55-210.7~~ 55.1-xxx, ~~55-210.8~~ 55.1-xxx, ~~55-210.10:1~~ 55.1-xxx, and ~~55-210.10:2~~ 55.1-xxx is payable to an owner whose last known address is in another state by a holder ~~who that~~ is subject to the jurisdiction of that state, the specific property is not presumed abandoned in ~~this the~~ Commonwealth and subject to this chapter if:

~~(a)~~ 1. It may be claimed as abandoned or escheated under the laws of such other state; and
~~(b)~~ 2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when payable to an owner whose last known address is within ~~this the~~ Commonwealth by a holder ~~who that~~ is subject to the jurisdiction of ~~this the~~ Commonwealth.

Drafting note: Technical changes.

§ ~~55-210.11:01~~ 55.1-xxx. Interstate agreements and cooperation.

A. The administrator may enter into agreements with other states to exchange information needed to enable ~~this the Commonwealth~~ or another state to audit or otherwise determine unclaimed property ~~that it to which the Commonwealth~~ or another state may be entitled ~~to~~ subject to a claim of custody. The administrator may by rule require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

B. To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the

administrator shall, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending, or repealing rules, advise and consult with administrators in other jurisdictions that enact substantially the ~~Uniform Unclaimed Property~~ Act and take into consideration the rules of administrators in other jurisdictions that enact the ~~Uniform Unclaimed Property~~ Act.

C. The administrator may join with other states to seek enforcement of ~~this the~~ Act against any person who is or may be holding property reportable under ~~this the~~ Act. At the request of another state, the Attorney General of ~~this the~~ Commonwealth may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in ~~this the~~ Commonwealth of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in bringing the action.

Similarly, the administrator may request that the Attorney General of another state, or any other person, bring an action in the other state in the name of the administrator. ~~This The~~ Commonwealth shall pay all expenses, including ~~attorney's attorney~~ fees, in any such action, and such expenses shall not be deducted from the amount that is subject to the claim by the owner under this chapter.

Drafting note: Subsection designations are added for clarity. Technical changes are made.

~~§ 55-210.11:1. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

Article ~~4~~ 3.

Procedural and Administrative Matters.

Drafting note: Existing Article 4, containing provisions related to procedural and administrative matters, is retained as proposed Article 3.

~~§ 55-210.12~~ 55.1-xxx. Report and remittance to be made by holder of funds or property presumed abandoned; holder to exercise due diligence to locate owner.

509 A. Every person holding funds or other property, tangible or intangible, presumed
510 abandoned under this chapter shall report and remit to the administrator with respect to the
511 property as ~~hereinafter~~ provided in this article. Reports containing 25 or more items shall be
512 remitted in an electronic format as prescribed by the administrator. The administrator may waive
513 this requirement when he determines, ~~in his discretion~~, that it creates an undue hardship.

514 B. The report shall be verified and shall include:

515 1. The name and social security or federal identification number, if known, and last known
516 address, including ~~ZIP~~ zip code, if any, of each person appearing from the records of the holder
517 to be the owner of any property of the value of \$100 or more presumed abandoned under this
518 chapter;

519 2. In the case of unclaimed funds of insurance corporations, the full name of the insured
520 or annuitant and any beneficiary, if known, and the last known address according to the insurance
521 corporation's records;

522 3. In the case of the contents of a safe deposit box or other safekeeping repository or in
523 the case of other tangible property, a description of the property and the place where it is held and
524 may be inspected by the administrator; and any amounts owing to the holder;

525 4. The nature and identifying number, if any, or description of the property and the amount
526 appearing from the records to be due, except that items of value under \$100 each may be reported
527 in aggregate;

528 5. The date when the property became payable, demandable, or returnable; and the date of
529 the last transaction with the owner with respect to the property; and

530 6. Other information ~~which~~ that the administrator prescribes by rule as reasonably
531 necessary for the administration of this chapter.

532 C. If the person holding property presumed abandoned is a successor to other persons who
533 previously held the property for the owner, or if the holder has changed his name while holding
534 the property, he shall file with his report all prior known names and addresses of each holder of
535 the property.

D. The report and remittance, including the remittance of unclaimed demutualization proceeds made pursuant to § ~~55-210.4:2~~ 55.1-xxx, shall be filed before November 1 of each year ~~as of for the period ending~~ June 30 ~~next preceding of such year~~, but the report and remittance of insurance corporations shall be filed before May 1 of each year ~~as of for the period ending~~ December 31 ~~next preceding of the previous year~~. When property is evidenced by certificate of ownership as set forth in § ~~55-210.6:1~~ 55.1-xxx, the holder shall deliver to the ~~State Treasurer~~ administrator a duplicate of any such certificate registered in the name "Treasurer of Virginia" or the Treasurer's designated nominee at the time of report and remittance. The administrator may postpone the reporting and remittance date upon written request by any person required to file a report.

E. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. All holders shall exercise due diligence, as defined in § ~~55-210.2~~ 55.1-xxx, at least 60 days prior to the submission of the report to ascertain the whereabouts of the owner if (i) the holder has in its records an address for the apparent owner ~~which that~~ the holder's records do not disclose to be inaccurate and (ii) the property has a value of \$100 or more.

F. Verification; shall be executed (i) if made by a partnership, ~~shall be executed~~ by a partner; (ii) if made by an unincorporated association or private corporation, by an officer; and (iii) if made by a public corporation, by its chief fiscal officer.

Drafting note: In subsection A, the phrase "in his discretion" is deleted because it is redundant when following the word "may." In subsection D, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2], and language is updated for modern usage and clarity. In subsection E, the cross-reference to the definitions section is deleted as unnecessary. Clause designations are added to subsection F for clarity. Technical changes are made.

§ 55-210.12:1. Repealed.

Drafting note: Repealed by Acts 1983, c. 190.

§ ~~55-210.13~~ 55.1-xxx. Notices to be published by ~~State Treasurer~~ administrator.

A. The ~~State Treasurer~~ administrator shall cause to be published notice of the report filed under subsection D of § ~~55-210.12~~ 55.1-xxx once each year in ~~an English language~~ a newspaper of general circulation in the area in which ~~is located~~ the last known address of any person to be named in the notice is located. If no address is listed or if the address is outside of the Commonwealth, the notice shall be published in the area in which the holder of the abandoned property has his principal place of business.

B. The published notice shall be entitled "Commonwealth of Virginia Unclaimed Property List" and shall contain:

1. The names in alphabetical order and account numbers of persons listed in the report and entitled to notice within the area as ~~hereinbefore~~ specified in subsection A; and

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the ~~State Treasurer~~ administrator.

C. The administrator is not required to publish in such notice any item of less than \$100 unless he deems such publication to be in the public interest.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. In subsection A, the requirement that the newspaper be in "an English language" is deleted for consistency throughout the Code. Technical changes are made.

~~§ 55-210.14. Repealed.~~

Drafting note: Repealed by Acts 1988, c. 378.

§ ~~55-210.15~~ 55.1-xxx. Holder relieved of liability for property paid or delivered to administrator; payment to owner by holder; proceedings against prior holder; notice to administrator and Attorney General; reimbursement of holder.

~~(a)~~ A. Upon the payment or delivery of abandoned property to the administrator, the Commonwealth shall assume custody and shall be responsible for the safekeeping ~~thereof~~ of such property. Any person who pays or delivers abandoned property to the administrator under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim ~~which that~~ then exists or ~~which that~~ thereafter may arise or be made in respect to the property. Any holder ~~who that~~ has paid moneys to the administrator pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the administrator shall forthwith reimburse the holder for the payment.

~~(b)~~ B. In the event that legal proceedings are instituted against a prior holder in a court of ~~this the~~ Commonwealth, or in any other state or federal court, by any other state claiming to be entitled to unclaimed funds or abandoned property previously paid or delivered to the administrator, such holder shall give written notice to the administrator and the Attorney General of ~~this the~~ Commonwealth of such proceedings (i) within ~~ten~~ 10 days after service of process, or ~~in the alternative~~ (ii) at least ~~ten~~ 10 days before the return date on which an answer or similar pleading is required to be filed. The Attorney General may intervene or take such other action as he deems appropriate or necessary to protect the interests of ~~this the~~ Commonwealth.

~~(c)~~ C. If the notice provided in ~~paragraph (b)~~ subsection B is given by the holder and thereafter a judgment is entered against the holder for any amount paid to the administrator pursuant to the terms of this chapter, the administrator shall, upon being furnished with proof thereof, return to the holder the amount of such judgment, not to exceed, however, the amount of the abandoned property paid to the administrator.

~~(d)~~ D. Property removed from a safe deposit box or other safekeeping repository that is received by the administrator shall be subject to the holder's right under this ~~paragraph~~ subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall make the

reimbursement to the holder out of the proceeds remaining after the deduction of the administrator's selling cost.

Drafting note: Technical changes.

~~§ 55-210.16. Repealed.~~

Drafting note: Repealed by Acts 1981, c. 47.

~~§ 55-210.16:~~ § 55.1-xxx. Crediting of dividends, interest, or increments to owner's account.

Whenever property other than money is paid or delivered to the administrator under this chapter, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion ~~thereof~~ of such property into money.

Drafting note: Technical change.

~~§ 55-210.17~~ § 55.1-xxx. Periods of limitation.

A. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, ~~nor~~ or affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the ~~State Treasurer~~ administrator.

B. Except as provided in subsection C ~~of this section~~, an action or proceeding shall not be maintained by the administrator to enforce this chapter more than five years after the earlier of (i) the date on which the holder identified the property on a report filed with the administrator, (ii) the date on which the holder first filed a report with the administrator wherein the holder should have but failed to report the property, or (iii) the date on which the holder filed a report with the administrator giving reasonable notice to the administrator of a dispute regarding the property.

C. An action or proceeding shall not be maintained by the administrator to enforce this chapter with respect to any property more than ~~ten~~ 10 years following the date on which such property first became reportable if the holder (i) filed a materially false or fraudulent report with

the intent to evade delivery of property otherwise subject to this chapter or (ii) failed to file a report with the administrator.

Drafting note: "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes.

~~§ 55-210.18~~ 55.1-xxx. Sale of abandoned property by administrator.

~~Except as provided in subsection (d) of this section:~~

~~(a) All~~ A. Except as provided in subsection C, all abandoned property other than money or other certificate of ownership delivered to the administrator under this chapter shall be sold by him to the highest bidder at public sale (i) in such city ~~or cities~~, within or outside the Commonwealth, as affords in his judgment the most favorable market for the property involved or (ii) through the use of electronic media in a format approved by the administrator. The administrator may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

~~(b) B.~~ Any sale held under this section within the Commonwealth shall be preceded by a single publication of notice ~~thereof of such sale~~ at least three weeks in advance of the sale. Such notice shall be published in ~~an English language~~ a newspaper of general circulation in the county or city where the property is to be sold. If any sale is to occur outside the Commonwealth, then the administrator may use such forms of notice or advertising as he deems necessary to constitute reasonable notice, including post, print, visual, telecommunications, electronic media, or any combination thereof. For the purposes of this section, any sale through the use of electronic media, including the Internet, shall be deemed to be a sale outside of the Commonwealth.

~~(c) The purchaser at any sale conducted by the administrator pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of title.~~

667 ~~(d)~~C. Securities listed on an established stock exchange shall be sold at prices prevailing
668 at the time of sale on the exchange. Other securities may be sold over the counter at prices
669 prevailing at the time of sale or by any other method the administrator deems advisable.

670 ~~(d1)~~ Unless the administrator deems it to be in the best interest of the Commonwealth to
671 do otherwise, all securities delivered to the administrator shall be held for at least one year before
672 the securities may be sold. If the administrator sells any securities before the expiration of the
673 one-year period, any person making a claim pursuant to this chapter before the end of the one-
674 year period is entitled to either the proceeds of the sale of the securities or the market value of the
675 securities at the time the claim is made, whichever amount is greater. Any person making a claim
676 pursuant to this chapter after the expiration of the one-year period is entitled to receive either the
677 securities delivered to the administrator by the holder, if they still remain in the hands of the
678 administrator, or the proceeds ~~received from~~ of the sale, but no person has any claim under this
679 chapter against the Commonwealth, the holder, or any transfer agent, registrar, or other person
680 acting for or on behalf of ~~a~~ the holder for any appreciation in the value of the property occurring
681 after delivery by the holder to the Commonwealth.

682 ~~(d2)~~D. The purchaser of property at any sale conducted by the administrator pursuant to
683 this chapter shall receive title to property purchased pursuant to subsections A or B and is entitled
684 to ownership of ~~the~~ property purchased pursuant to subsection C, free from all claims of the owner
685 or previous holder thereof and of all persons claiming through or under ~~them~~ such owner or
686 previous holder. The administrator shall execute all documents necessary to complete the transfer
687 of ownership.

688 ~~(e)~~E. If the administrator determines after investigation that any property delivered to him
689 pursuant to this chapter has insubstantial commercial value, he may destroy or otherwise dispose
690 of the property at any time. No action or proceeding may be maintained against the
691 Commonwealth or any officer or against the holder for or on account of any action taken by the
692 administrator with respect to the property pursuant to this ~~paragraph~~ subsection.

Drafting note: Language at the beginning of the section is logically relocated into subsection A. In subsection A, the plural "cities" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subsection B, the requirement that the newspaper be in "an English language" is deleted for consistency throughout the Code. Existing subsection C is stricken and its language combined with the language in proposed subsection D, both of which discuss that the purchaser of property owns such property free from all claims of the previous owner. Technical changes are made.

§ ~~55-210.18-1~~ 55.1-xxx. ~~When securities~~ Securities received in name of owner.

Whenever the ~~State Treasurer shall receive~~ administrator receives securities under this chapter in the name of the owner, he shall ~~forthwith~~ take appropriate action to transfer the record of ownership of ~~said~~ such securities into the title of the State Treasurer of the Commonwealth of Virginia as soon as practical.

Drafting note: The first instance of the term "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]; it is not changed in the second instance because that specifies the titling of the property. Technical changes.

§ ~~55-210.19~~ 55.1-xxx. Disposition of funds received under chapter; records to be kept by administrator.

~~(a)~~ A. All funds received under this chapter, including the proceeds from the sale of abandoned property under § ~~55-210.18~~ 55.1-xxx, shall ~~forthwith~~ be deposited by the administrator in the Literary Fund of the Commonwealth as soon as practical, except that the administrator shall retain in a separate trust fund a sum sufficient from which he shall make prompt payment of claims duly allowed by him as ~~hereinafter~~ provided by subsection B. Before making the deposit, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property ~~and of~~ the name and last known address of each insured person

or annuitant, and, with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

~~(b)~~ B. Before making any deposit to the credit of the Literary Fund, the administrator may deduct: ~~(1)~~ (i) any costs in connection with the sale of abandoned property, ~~(2)~~ (ii) any costs of mailing and publication in connection with any abandoned property, ~~(3)~~ (iii) operating expenses, and ~~(4)~~ (iv) amounts required to make payments to other states, during the next fiscal year, through reciprocity agreements.

Drafting note: Technical changes.

§ ~~55-210.20~~ 55.1-xxx. Filing claim to property or proceeds of sale ~~thereof of such~~ property.

A. Any person claiming an interest in any property delivered to the Commonwealth under this chapter may file a claim ~~thereto to such property~~ or to the proceeds from the sale ~~thereof of~~ such property on a form prescribed by the ~~State Treasurer~~ administrator.

B. Notwithstanding any other provision of law, any person claiming an interest in any property delivered to the Commonwealth under this chapter for a reported owner who is deceased shall submit evidence of the claimant's entitlement to payment together with a form prescribed by the ~~State Treasurer~~ administrator. In order of preference, such evidence may include (i) a certificate of qualification as the executor or an order of appointment as the administrator or personal representative of the decedent's estate under the laws of the state of the decedent's domicile; (ii) if applicable, an affidavit authorizing the claimant to be the designated successor under the Virginia Small Estate Act (§ 64.2-600 et seq.), or its equivalent under the laws of the state of the decedent's domicile that names the claimant as the designated successor; or (iii) the order of distribution or the final accounting for a closed estate that reflects payment due in whole or in part to the claimant. When, in the absence of any such evidence, (a) the death of the reported owner occurred at least one year prior to filing the claim and (b) the amount claimed is ~~\$15,000~~ 25,000 or less, exclusive of any interest owed pursuant to subsection C of § ~~55-210.21~~ 55.1-xxx, the administrator may allow the claimant to submit an affidavit stating the claimant's entitlement

to payment in the absence of sufficient documentation, and the administrator may approve the claim in his discretion, returning or paying all or the appropriate share of the deceased owner's property to the claimant. The administrator may pay or deliver all of the deceased owner's property to a claimant who submits the prescribed affidavit evidencing his agreement to receive and distribute the property to the other rightful heirs or beneficiaries and acknowledging his assumption of liability to those beneficiaries or heirs for failure to do so.

C. Notwithstanding any other provision of law, when paying or delivering unclaimed property under subsection B to a claimant who is not authorized to represent the decedent's estate as the personal representative or the designated successor or the equivalent, the administrator is discharged and released to the same extent as if the administrator dealt with the authorized representative or designated successor for the decedent's estate. The administrator shall deny any subsequent claim to the same property. Any person subsequently claiming an equal or superior right to the deceased owner's property whose claim is denied by the administrator for this reason may seek redress from the claimant to whom payment was made.

D. The ~~State Treasurer~~ [administrator](#) shall develop and make available a plain English explanation of a person's right to make a claim, in accordance with the provisions of this section, for property delivered to the Commonwealth in cases where the reported owner of the property is deceased. The ~~State Treasurer~~ [administrator](#) shall also post such document on ~~its~~ [the Department of the Treasury's](#) website.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. In subsection B, \$15,000 is replaced with \$25,000 in accordance with the Virginia Small Estate Act (§64.2-600 et seq.). Technical changes are made.

§ ~~55-210.21~~ [55.1-xxx](#). Consideration of and hearing on claim by ~~State Treasurer~~ [administrator](#); payment; interest.

A. The ~~State Treasurer~~ [administrator](#) shall consider any claim for property held by the ~~State Treasurer~~ [administrator](#) pursuant to the provisions of this chapter that is filed under this

chapter and may hold a hearing and receive evidence concerning such claim. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

B. If the claim is allowed, the ~~State Treasurer~~ administrator shall make payment ~~forthwith~~ as soon as practical. The ~~State Treasurer~~ administrator is authorized to deduct from the claim the costs for notices, sales, and other related incurred expenses.

C. The ~~State Treasurer~~ administrator shall add interest at the rate of five percent or such lesser rate as the property earned while in the possession of the holder, compounded annually, to the amount of any claim paid to the owner, if the property claimed was interest-bearing to the owner while in the possession of the holder. If the holder fails to report an applicable rate of interest, the interest rate will be set at five percent or such lesser rate as determined by the one-year Treasury Constant Maturity Rate as published by the Board of Governors of the Federal Reserve System as of November 1 of the report year. Such interest shall begin to accumulate on the date the property is delivered to the ~~State Treasurer~~ administrator and shall cease on the date on which payment is made to the owner. No interest shall be payable for any period prior to July 1, 1981.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. A technical change is made.

~~§ 55-210.22~~ 55.1-xxx. Judicial review of decision of ~~State Treasurer~~ administrator.

Any person aggrieved by an act or decision of the ~~State Treasurer~~ administrator with respect to a claim for property held by the ~~State Treasurer~~ administrator pursuant to the provisions of this chapter may commence an action in the circuit ~~or corporation~~ court of the county or city ~~wherein in which~~ the property claimed is situated to establish his claim. The proceeding shall be brought within three years after the decision of the ~~State Treasurer~~ administrator; or, if the administrator fails to act, within three years from the filing of the claim ~~if the State Treasurer fails to act~~.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. "Or corporation" is deleted because the Commonwealth no longer has corporation courts. Technical changes are made.

§ ~~55-210.23~~ 55.1-xxx. Election of ~~State Treasurer~~ administrator not to receive property or to postpone taking possession of funds.

The ~~State Treasurer~~ administrator, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported ~~which~~ that he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under § ~~55-210.12~~ 55.1-xxx, the ~~State Treasurer~~ administrator shall be deemed to have elected to receive the custody of the property.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. A technical change is made.

§ ~~55-210.24~~ 55.1-xxx. Requests for verified reports and examinations of records.

A. Except as otherwise provided in this chapter, the administrator may require any person ~~who~~ that has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

B. Except as otherwise provided in this chapter, the administrator may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of this chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter. The administrator may examine all necessary records to determine the amount, if any, of property that would have been reportable or deliverable under this chapter for the ~~ten~~ 10 years prior to the fiscal year end preceding the opening of the examination; ~~provided~~, however,

for any holder that has not previously filed any report under this chapter, the administrator may examine property presumed abandoned for report year 1985 and subsequent years.

C. If a holder fails to maintain the records required by § ~~55-210.24:1~~ 55.1-xxx and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

D. The ~~State Treasurer~~ administrator may contract with a person who is not an employee of the Commonwealth to perform an audit or examination under this article; ~~provided~~, however, with respect to any holder that is domiciled in the Commonwealth or that maintains its principal place of business in the Commonwealth, no such contract shall (i) be on a contingency fee basis or (ii) permit statistical estimation without the consent of the holder.

Drafting note: In subsection D, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes.

§ ~~55-210.24:1~~ 55.1-xxx. Retention of records.

A. Every holder required to file a report under § ~~55-210.12~~ 55.1-xxx, shall retain all books, records, and documents necessary to establish the accuracy and compliance of such report for five years after the report is filed pursuant to subsection B of § ~~55-210.12~~ 55.1-xxx. If no report is filed, the holder shall retain such books, records, and documents for ~~ten~~ 10 years after the property becomes reportable, except to the extent that shorter time is provided in accordance with the Virginia Public Records Act (§ 42.1-76 et seq.), ~~or in accordance with~~ in accordance with subsection B ~~of this section~~, or by rule of the administrator. As to any property for which it has obtained the last known address of the owner, the holder shall maintain a record of the name and last known address of the owner for the same retention period.

B. Any business association that sells in ~~this the~~ the Commonwealth its ~~travelers~~ traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in ~~this the~~ the Commonwealth, shall maintain a record of those instruments while they remain

outstanding, indicating the state and date of issue for three years after the date the property is reportable.

Drafting note: Technical changes.

§ ~~55-210.24:2~~ 55.1-xxx. Confidentiality of information and records.

Any information or records required to be furnished to the Division of Unclaimed Property shall be confidential except as is otherwise necessary in the proper administration of this chapter.

Drafting note: No change.

§ ~~55-210.25~~ 55.1-xxx. Enforcement of chapter.

The administrator may bring an action in a court of competent jurisdiction to enforce this chapter. The administrator shall commence enforcement for compliance with the provisions of this chapter within the period specified in § ~~55-210.17~~ 55.1-xxx. The holder may waive in writing the protection of this section.

Drafting note: No change.

§ ~~55-210.26~~. ~~Repealed.~~

Drafting note: Repealed by Acts 1984, c. 121.

§ ~~55-210.26:1~~ 55.1-xxx. Interest and penalties.

A. Any person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the administrator interest at the same annual rate as is applicable to delinquent taxes under § 58.1-1812 on the property or value thereof from the date the property should have been paid or delivered. Such interest rate shall vary with the rate specified in § 58.1-1812.

B. Any person who does not exercise due diligence as defined in § ~~55-210.2~~ 55.1-xxx shall pay a civil penalty not to exceed ~~fifty dollars~~ \$50 for each account upon which due diligence was not performed.

C. Except as otherwise provided in subsection D, a holder ~~who~~ that (i) fails to report, pay, or deliver property within the time prescribed by this chapter; (ii) files a false report; or (iii) fails to perform other duties imposed by this chapter without good cause, shall pay to the administrator,

in addition to interest as provided in subsection A, a civil penalty of \$100 for each day the report, payment, or delivery is withheld or the duty is not performed, up to a maximum of the lesser of \$10,000 or ~~twenty-five~~ 25 percent of the value of the property that should have been but was not reported.

D. A holder ~~who~~ that (i) willfully fails to report, pay, or deliver property within the time prescribed by this chapter; (ii) willfully fails to perform other duties imposed by this chapter without good cause; or (iii) makes a fraudulent report to the administrator shall pay to the administrator, in addition to interest as provided in subsection A, a civil penalty of \$1,000 for each day the report, payment, or delivery is withheld or the duty is not performed, up to a maximum of the lesser of \$50,000 or 100 percent of the value of the property that should have been but was not reported.

E. The administrator for good cause may waive, in whole or in part, interest under subsection A and penalties under subsections B, C, and D. All civil penalties shall be payable to the State Treasurer and credited to the Literary Fund.

Drafting note: In subsection E, the specific fun into which the civil penalties are paid is added; this addition is consistent with existing § 55-210.19, which states that all funds received under this chapter shall be deposited into the Literary Fund. Technical changes are made.

~~§ 55-210.27 55.1-xxx~~. Determinations; appeal procedures; ~~rules and~~ regulations of ~~State Treasurer~~ administrator.

A. For the purposes of this section, "jeopardized by delay" means a finding that the applicant intends to undertake a wrongful act with the intent to prejudice, or to render ineffectual, future proceedings to enforce this chapter.

B. The ~~State Treasurer~~ administrator may ~~make~~ adopt necessary ~~rules and~~ regulations to carry out the provisions of this chapter.

B. C. If the ~~State Treasurer~~ administrator ascertains that any person has failed to pay or deliver abandoned property in accordance with the provisions of this chapter, he shall issue a

908 written notice to such person demanding remittance of the property and payment of any penalties
909 and interest prescribed by law. Every such notice shall be accompanied by a detailed explanation
910 of the holder's right to secure an administrative or judicial review. The abandoned property,
911 together with penalties and interest, if any, shall be remitted to the ~~State Treasurer~~ administrator
912 within ~~ninety~~ 90 days from the date notice is received by the holder unless the holder requests (i)
913 an administrative review in accordance with regulations promulgated pursuant to subsection ~~C D~~
914 or (ii) a judicial review in accordance with § ~~55-210.22~~ 55.1-xxx.

915 C. D. The ~~State Treasurer~~ administrator shall promulgate regulations pursuant to which
916 any person (i) asserting ownership of property remitted to the Commonwealth under this chapter,
917 (ii) required to pay or deliver abandoned property pursuant to this chapter, or (iii) otherwise
918 aggrieved by a decision of the administrator, may file an application for administrative appeal and
919 correction of the administrator's determination.

920 D. E. On receipt of the application as provided in regulations promulgated pursuant to
921 subsection ~~C D~~, or if regulations promulgated thereunder are not in effect, on receipt of an
922 application requesting an administrative review by the State Treasurer, the administrator shall
923 suspend collection activity until a final determination is issued by the State Treasurer, unless the
924 administrator determines that collection would be jeopardized by delay. Interest shall continue to
925 accrue in accordance with the provisions of § ~~55-210.26:1~~ 55.1-xxx, but no further penalty shall
926 be imposed while collection activity is suspended. ~~The term "jeopardized by delay" means a~~
927 ~~finding that the applicant intends to undertake a wrongful act with the intent to prejudice, or to~~
928 ~~render ineffectual, future proceedings to enforce this chapter.~~

929 E. F. If the State Treasurer is satisfied, by evidence submitted or otherwise, that there has
930 been an erroneous or improper demand for the remittance of property, the State Treasurer shall
931 order that the applicant be exonerated from the remittance of ~~so much~~ such portion as is
932 erroneously or improperly demanded, if not already collected, and, ~~if collected~~, that it be returned
933 or refunded to the applicant, if already collected. The State Treasurer shall refrain from collecting
934 a contested charge until he has made a final determination under this section unless he determines

that collection may be jeopardized by delay. ~~The term "jeopardized by delay" shall have the meaning set forth in subsection D.~~

~~F. G.~~ Except as otherwise provided in regulations promulgated pursuant to subsection ~~C~~ D, the State Treasurer shall issue a written determination to the applicant within ~~ninety~~ 90 days of receipt of an application for correction, unless the applicant ~~and the administrator are~~ is notified that a longer period will be required. All determinations of the State Treasurer shall include a written finding of fact and supporting law, and all such determinations shall be publicly reported.

~~G. H.~~ Following a determination by the State Treasurer, ~~either the applicant or the administrator~~ may apply (i) in the case of a claim for property by a purported owner, to the appropriate circuit court pursuant to § ~~55-210.22~~ 55.1-xxx and (ii) in the case of a dispute between a holder and the State Treasurer, to the Circuit Court ~~for~~ of the City of Richmond, within the time period established in § ~~55-210.22~~ 55.1-xxx.

Drafting note: The definition of "jeopardized by delay" is relocated to proposed subsection A. In the catchline and proposed subsection B, "rules" is stricken because administrative agencies adopt regulations, not rules. In proposed subsections B, C and D, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]; similar changes are not made in proposed subsections E through H, which provide for administrative review of the administrator's decision by the State Treasurer. In proposed subsections G and H, "administrator" is stricken as unnecessary because the administrator is the State Treasurer. Technical changes are made.

§ ~~55-210.27:1~~ 55.1-xxx. Agreements to locate reported property; penalty.

A. It is unlawful for any person to seek or receive from another person or contract with another person for a fee or compensation for locating property ~~which~~ that he knows has been reported or paid or delivered to the ~~State Treasurer~~ administrator pursuant to this chapter prior to ~~thirty-six~~ 36 months after the date of delivery of the property by the holder to the ~~State Treasurer~~ administrator as required by this chapter.

B. No agreement entered into after ~~thirty-six~~ 36 months from the required date of delivery of the property by the holder to the ~~State Treasurer~~ administrator is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding ~~ten~~ 10 percent of the value of the recoverable property. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

C. State warrants that may be issued in payment and redemption of previously abandoned property or the liquidation proceeds of previously abandoned property may be issued in the discretion of the ~~State Treasurer~~ administrator directly to the person ~~or persons~~ entitled to the money as the owner, heir, or legatee, or as fiduciary of the estate of the deceased owner, heir, or legatee, and not to a named attorney-in-fact, agent, or assignee, or any other person regardless of a written instruction to the contrary. The ~~State Treasurer~~ administrator need not recognize nor is the ~~State Treasurer~~ administrator bound by any terms of a purported power of attorney or assignment that may be presented as having been executed by a person as the purported owner, heir, legatee, or fiduciary of the estate of a deceased owner of such abandoned property.

D. A person who violates subsection A or B ~~of this section shall be~~ is guilty of a misdemeanor, punishable by a fine not to exceed \$1,000.

Drafting note: Throughout the section, "State Treasurer" is replaced with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. "The person or persons" is changed to "the person" per § 1-227, which states that a word used in the singular includes the plural and vice versa. Technical changes are made.

~~§ 55-210.28~~ § 55.1-xxx. Property presumed abandoned or escheated under laws of another state.

This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to January 1, 1961.

Drafting note: No change.

~~§ 55-210.28-1~~ § 55.1-xxx. Property held or payable pursuant to Title 51.1.

988 This chapter shall not apply to any funds or other property, tangible or intangible, held or
989 payable pursuant to Title 51.1 ~~of this Code~~.

990 Drafting note: Technical change.

991 § ~~55-210.29~~ 55.1-xxx. Construction of chapter.

992 This chapter shall be ~~so~~ construed so as to effectuate its general purpose to make uniform
993 the law of those states ~~which~~ that enact it.

994 Drafting note: Technical changes.

995 ~~§ 55-210.30. Repealed.~~

996 **Drafting note: Repealed by Acts 2015, c. 709, cl. 2.**

997 #

CHAPTER ~~11.2~~ XX [3].

PROPERTY LOANED TO MUSEUMS.

Drafting note: Existing Chapter 11.2, Property Loaned to Museums, is retained as proposed Chapter XX [3].

§ ~~55-210.31~~ 55.1-xxx. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Loaned property" means all museum property deposited on or after July 1, 2002, with a museum not accompanied by a transfer of title to the property.

"Museum" means an institution located in ~~Virginia~~ the Commonwealth and operated by a nonprofit corporation or public agency whose primary purpose is educational, scientific, or aesthetic, and that owns, borrows, or cares for, and studies, archives, or exhibits museum property.

"Museum property" means all tangible objects, animate and inanimate, under a museum's care that have intrinsic value to science, history, art, or culture, except for botanical or zoological specimens loaned to a museum for scientific research.

Drafting note: Technical changes.

§ ~~55-210.32~~ 55.1-xxx. Status of loaned property; statute of limitations on recovery.

A. Except as may be otherwise provided in a written agreement between a lender and a museum, no action shall be brought against a museum to recover loaned property when more than five years have passed from (i) the receipt by the museum of written communication concerning the loaned property or (ii) any display of interest in the property by the lender as evidenced by a memorandum or other record on file prepared by an employee of the museum.

B. Loaned property shall be deemed to have been donated to the museum if no action to recover the property is initiated within one year after the museum ~~gave~~ gives notice of termination of the loan as provided in §§ ~~55-210.35~~ 55.1-xxx and ~~55-210.36~~ 55.1-xxx.

C. Loaned property shall not be delivered to the Commonwealth, and shall be exempt from the provisions of Chapter ~~11.1~~ XX (§ ~~55-210.1~~ 55.1-xxx et seq.) ~~of this title~~, but shall pass to the museum if no person takes action under Chapter 2 (§ 64.2-200 et seq.) of Title 64.2.

28 **Drafting note: Technical changes.**

29 § ~~55-210.33~~ 55.1-xxx. Notice to lenders of the provisions of this chapter.

30 When a museum accepts a loan of property, the museum shall inform the lender in writing
31 of the provisions of this chapter.

32 **Drafting note: No change.**

33 § ~~55-210.34~~ 55.1-xxx. Status of title to property acquired from museum.

34 Any person who purchases property from a museum acquires good title to the property if
35 the museum represents that it has acquired title to the property pursuant to § ~~55-210.32~~ 55.1-xxx.

36 **Drafting note: No change.**

37 § ~~55-210.35~~ 55.1-xxx. Notice of termination of loan; content of notice.

38 A. ~~A. If the property was loaned to the museum for an indefinite time, the~~ museum may
39 provide notice of termination of a loan of property at any time on the museum's ~~official Internet~~
40 website, ~~if any,~~ or ~~may give by providing~~ written notice of such termination ~~of a loan of property~~
41 at any time if the property was loaned to the museum for an indefinite time to the lender, if known.

42 If the property was loaned to the museum for a specified term, the museum may ~~give~~ provide
43 notice of termination of the loan in the same manner at any time after the expiration of the
44 specified term.

45 B. Notices given under this section shall contain:

46 1. The name and address, if known, of the lender;

47 2. The date of the loan;

48 3. The name, address, and telephone number of the appropriate office or official to be
49 contacted at the museum for information regarding the loan; and

50 4. Any other information deemed necessary by the museum.

51 **Drafting note: Language is updated for clarity and technical changes are made.**

52 § ~~55-210.36~~ 55.1-xxx. Procedure for giving notice of termination of a loan of property;
53 responsibility of owner of loaned property.

54 A. To give notice of termination of a loan of property, the museum shall mail a notice to
55 the lender at the most recent address of the lender as shown on the museum's records pertaining
56 to the loaned property ~~on loan~~. If the museum has no address in its records, or the museum does
57 not receive written proof of receipt of the mailed notice within ~~thirty~~ 30 days of the date the notice
58 was mailed, the museum shall cause to be published notice at least once a week for three
59 consecutive weeks in a newspaper of general circulation in the county or city in which the museum
60 is located; and in a newspaper of general circulation in the county or city of the lender's last known
61 address; if different from the county or city in which the museum is located.

62 B. For purposes of this section, if the loan of property was made to a branch of the
63 museum, the museum shall be deemed to be located in the county or city ~~or county~~ where the
64 branch is located. In all other cases, the museum shall be deemed to be located in the county or
65 city ~~or county~~ in which its principal place of business ~~is~~ is located.

66 C. The owner of property loaned to a museum shall notify the museum promptly in writing
67 of any change of address or change in ownership of the property.

68 **Drafting note: Language in the section catchline is amended for clarity and technical**
69 **changes are made.**

70 § ~~55-210.37~~ 55.1-xxx. Acquiring title to undocumented property.

71 A. A museum shall have the authority to acquire legal title to undocumented property if
72 the museum can verify through written records that it has held such property for five years or
73 longer, during which period no valid claim to the property has been asserted and no person has
74 contacted the museum regarding the property, by complying with the following procedure:

75 1. The museum shall cause to be published a notice once a week for two consecutive weeks
76 in a newspaper of general circulation in the county or city in which the museum is located; and in
77 a newspaper of general circulation in the county or city of the lender's last known address; if
78 different from the county or city in which the museum is located. The notice shall include:

79 a. A brief and general description of the undocumented property;

b. The date or approximate date of the loan or acquisition of the property by the museum, if known;

c. Notice of the museum's intent to claim title to the property if no valid claims are made within ~~sixty-five~~ 65 days following the date of the first publication of the notice under this subdivision 1;

d. The name, address, and telephone number of the representative of the museum to contact for more information or to make a claim; and

e. If known, the name and last known address of the lender.

2. If no valid claims have been made by the end of the ~~sixty-five-day~~ 65-day period following the date of the first publication of the notice under subdivision 1 ~~c-of this subsection~~, the museum shall cause to be published a second notice once a week for two consecutive weeks in a newspaper of general circulation in the county or city in which the museum is located, and in a newspaper of general circulation in the county or city of the lender's last known address, if different from the county or city in which the museum is located. The second notice shall include:

a. A brief and general description of the undocumented property;

b. The date or approximate date of the loan or acquisition of the property by the museum, if known;

c. Notice that the museum claims title to the property as of the date of the end of the ~~sixty-five-day~~ 65-day period following the date of the first publication of the notice under subdivision 1 ~~of this subsection~~; and

d. If known, the name and last known address of the lender.

B. Upon compliance with the requirements set forth in subsection A, clear and unrestricted title is transferred, as of the date specified in subdivision A 1 ~~c-of this section~~, to the museum and not to the Commonwealth.

Drafting note: Technical changes.

§ ~~55-210.38~~ 55.1-xxx. Status of property loaned to or deposited with museum prior to July 1, 2002.

107 Except as otherwise provided in a written agreement between a lender and a museum,
108 property loaned to or deposited with a museum prior to July 1, 2002, may be discarded or
109 transferred to another museum located in Virginia, provided that (i) the notice provisions of §§
110 ~~55-210.35~~ 55.1-xxx and ~~55-210.36~~ 55.1-xxx have been complied with and (ii) such property is
111 held by the museum receiving the transfer for at least three years before it sells or disposes of
112 such property.

113 Drafting note: No change.

114 #

1 CHAPTER ~~11~~ XX [4].2 ~~ESTRAYS AND~~ DRIFT PROPERTY.

3 **Drafting note:** Existing Chapter 11, Estrays and Drift Property, is retained as
4 proposed Chapter XX [4] and renamed. Existing §§ 55-202 through 55-206 are proposed to
5 be repealed as obsolete. (According to the dictionary, the common meaning of the term
6 "estray" is a stray domesticated animal of unknown ownership.) Existing Chapter 11
7 describes a procedure by which a property owner who finds a stray animal on his land or a
8 boat or vessel adrift may notify a court of such finding and three freeholders shall appraise
9 the value of such property. There are other procedures in the Code and common law that
10 cover these situations according to modern practice. For stray animals, a humane
11 investigator, law-enforcement officer, or animal control officer, who may lawfully impound
12 the animal under § 3.2-6569. For stray companion animals, a property owner who (i)
13 provides care or safekeeping or (ii) retains the companion animal in such a manner as to
14 control its activities, has certain restrictions on his actions pursuant to § 3.2-6551. For
15 abandoned watercraft, the procedure by which an individual may claim title is set out in §
16 29.1-733.25.

17 ~~§ 55-202. Estray, or boat adrift, to be valued and described.~~

18 ~~Any person may take up an estray found on his land or a boat or vessel adrift. He shall~~
19 ~~immediately inform the court not of record, or clerk thereof, of his county or corporation, who~~
20 ~~shall issue warrants to three freeholders, requiring them under oath to view and appraise such~~
21 ~~estray or boat or vessel, and certify the result, with a description of the kind, marks, brand, stature,~~
22 ~~color and age of the animal, or kind, burden and build of the boat or vessel.~~

23 **Drafting note:** Repealed as obsolete.

24 ~~§ 55-203. Valuation, etc., to be recorded and posted.~~

25 ~~The freeholders shall return their certificate, with the warrant, to the clerk of the circuit~~
26 ~~court of the county, or clerk of the corporation court of the city, who shall record the same in a~~

~~book kept for that purpose and post a copy thereof at the front door of his courthouse on the first day of two terms of court next after receiving the certificate.~~

Drafting note: Repealed as obsolete.

~~§ 55-204. When landowner, etc., entitled to the property.~~

~~If the owner of such property has not then appeared and the valuation thereof be under five dollars, or if such valuation is as much as five dollars and the owner shall not have appeared after the certificate has been published as aforesaid and also three times in some newspaper published nearest to the place where such property was taken up, it shall belong in either case to the owner of the land on which it was so taken, if an estray, or to the person taking it up in the case of a boat or vessel.~~

Drafting note: Repealed as obsolete.

~~§ 55-205. Right of recovery by former owner.~~

~~The former owner may at any time after recover the valuation money except the amount of the clerk's and printer's fees and such compensation for keeping the property as shall be certified under oath by any two freeholders in the county or corporation where the property was valued to be reasonable, and also fees of the freeholders for services rendered by them.~~

Drafting note: Repealed as obsolete.

~~§ 55-206. When landowner, etc., not liable.~~

~~If such estray die or any such property be lost to the owner of the land or person taking it up, without his fault, he shall not be liable for the same or its valuation.~~

Drafting note: Repealed as obsolete.

~~§ 55-207~~ 55.1-xxx. Who is entitled to drift property.

When any property, ~~not mentioned in § 55-202 is~~ other than abandoned watercraft has drifted on any of the waters of ~~this the~~ Commonwealth and is deposited and left on the lands of any person other than the owner of such property, and there is no indicia of ownership, the owner of such land shall, as against all persons other than the owner of such property, be deemed and

53 treated, and have the same rights and remedies relating thereto, as such owner ~~thereof~~ of such
54 property.

55 **Drafting note: The term "abandoned watercraft" is used for consistency with § 29.1-**
56 **733.25, which described the procedure by which a landowner may claim title to watercraft**
57 **that is abandoned on his land or the water immediately adjacent to his land. Because the**
58 **existing preceding sections outline the procedure for claiming title to boats and vessels adrift**
59 **is proposed for repeal due to the procedures set out in Title 29.1, it is appropriate to use the**
60 **Title 29.1 term here. The phrase "and there is no indicia of ownership" is added to reflect**
61 **that the land owner may have a duty under common law to attempt to contact the owner of**
62 **the drift property if it is clear who the owner of such property is. Technical changes are**
63 **made.**

64 ~~§ 55-208~~ 55.1-xxx. Conditions on which owner may remove ~~it~~ drift property.

65 The owner of ~~such~~ property described in § 55.1-xxx [§ 55-207], after he ~~shall have~~ has
66 paid to the owner of the land a just compensation for any proper care, labor, or expense bestowed,
67 done, or incurred by him ~~about for~~ such property, but not before, may enter upon the land and,
68 doing as little injury as possible ~~thereto~~, remove the property ~~therefrom~~, but shall pay the owner
69 of the land for any damage caused to him by such entry and removal.

70 **Drafting note: Language is added for clarity. Technical changes are made.**

71 ~~§ 55-209~~ 55.1-xxx. When owner of land may sell drift property; owner of property entitled
72 to proceeds after payment of expenses, etc.

73 If the owner of ~~the property shall~~ drift property described in § 55.1-xxx [§ 55-207] does
74 not, within three months from the time the ~~same~~ property was so deposited, remove or demand
75 the property from the owner of the land, the owner of the land may sell the property or otherwise
76 convert it to his own use; ~~but,~~ provided that the owner of the land, after deducting a just
77 compensation for any proper care, labor, or expense bestowed, done, or incurred by him ~~about for~~
78 the property from the amount received by him as the price thereof, or the actual value thereof at
79 the time of such sale or other conversion, shall pay to the owner of the property, if he ~~shall elect~~

elects to receive it, the residue of the price or of the actual value, as the case may be. The owner of the property, after he ~~shall have~~ has demanded such residue, and proved by the affidavit of some other person, or by a competent witness, his right thereto, or offered to prove such right, and if the owner of the land ~~shall have~~ has refused or declined to inspect or hear the evidence thereof, ~~but not before~~, (i) may recover such residue, when the property has been sold, as money received for his use, ~~or~~; (ii) may recover such residue, when the property has not been sold, as the price of goods sold by the owner of the property to the owner of the land; ~~or he~~ (iii) may have his action of trover to the extent of such residue.

Drafting note: Language is added for clarity, and technical changes are made.

~~§ 55-240~~ § 55.1-xxx. Right of property to be proved.

In any action, ~~suit, prosecution or controversy about~~ relating to the ownership of any ~~such~~ property described in § 55.1-xxx [§ 55-207], the person, other than the owner of such land, claiming to be the owner of the property, must prove his ownership in order to sustain his claim.

Drafting note: Language used in the old equitable pleading practice, including "suit," "prosecution," and "controversy" is deleted in favor of using the modern term "action." Technical changes are made.

#

1 CHAPTER ~~18~~ XX [5].

2 TRESPASSES; FENCES.

3 **Drafting note: Existing Chapter 18, Trespasses; Fences, is retained as proposed**
4 **Chapter XX [5].**

5 Article 1.

6 Electric Fences.

7 **Drafting note: Existing Article 1, containing provisions relating to electric fences, is**
8 **retained as proposed Article 1.**

9 ~~§ 55-298. Repealed.~~

10 **Drafting note: Repealed by Acts 1982, c. 280.**

11 ~~§ 55-298.4~~ 55.1-xxx. Definition.

12 As used in this article, "electric fence" means a fence designed to conduct electric current
13 along one or more wires ~~thereof of such fence~~ so that a person or animal touching any such wire
14 or wires will receive an electric shock.

15 **Drafting note: Existing § 55-298.4, containing a definition, is relocated to the**
16 **beginning of the article. Technical change.**

17 ~~§ 55-298.1~~ 55.1-xxx. Unlawful to sell, distribute, construct, install, maintain, or use certain
18 electric fences upon agricultural land ~~except as provided in § 55-298.2.~~

19 A. It ~~shall be~~ is unlawful for any person to sell, distribute, construct, install, maintain, or
20 use upon any land used for agricultural purposes; or, for any person exercising supervision or
21 control over any such land, to permit any other person to construct, install, maintain, or use any
22 electric fence energized with an electric charge unless the charge is regulated by a controlling
23 device. Except as otherwise provided in this article, such controlling device shall display the
24 approved label of and shall ~~meet~~ conform to the safety standards promulgated by the Underwriters
25 Laboratories, Inc., in its publication number UL69, dated ~~August 31, 1977~~ June 30, 2009, and
26 entitled "Standard for Safety for Electric-Fence Controllers," as the same may from time to time
27 be supplemented, or shall display the approved label of and meet the safety standards promulgated

by the International ~~Commission for Conformity Certification of Electrical Equipment~~
~~Electrotechnical Commission~~ in its publication ~~number 5, Second Edition, approved April, 1979,~~
~~and entitled "Specification for Mains Operated Electric Fence Controllers," IEC 60335-2-76,~~
~~second edition (BS EN 69335-2-76),~~ as the same may from time to time be supplemented.

B. No metallically continuous fence or set of electrically connected fences shall be
supplied by more than one controlling device.

C. Any controlling device shall be suitably grounded when placed in service.

**Drafting note: References to the safety standards are updated. Technical changes are
made.**

§ ~~55-298.2~~ 55.1-xxx. Unlawful to sell other controlling devices unless they meet certain
standards.

A. A controlling device ~~which that~~ does not conform to the requirements of § ~~55-298.1~~
55.1-xxx may not be sold, distributed, constructed, installed, maintained, or used unless it meets
the following standards:

1. A peak-discharge-output type controlling device ~~which that~~ delivers intermittent current
of a value not in excess of four milliamperes-seconds for a maximum "on" period of two-tenths
second and a minimum "off" period of three-quarters second. The mean value of the peak output
from such device shall progressively decrease from four milliamperes-seconds at maximum "on"
periods of both two-tenths and one-tenth second to three and two-tenths milliamperes-seconds at
six-hundredths second, one and nine-tenths milliamperes-seconds at three-hundredths second, and
consequently to shorter "on" periods as output current increases.

2. A sinusoidal-output type controlling device ~~which that~~ delivers an intermittent current
of a value not in excess of five milliamperes for a maximum "on" period of two-tenths second and
a minimum "off" period of nine-tenths second. The effective value of the output from such device
may increase as the "on" period decreases, increasing from ~~forty~~ 40 milliamperes for one-tenth
second to ~~fifty-seven~~ 57 milliamperes for five-hundredths second, and ~~sixty-five~~ 65 milliamperes
for twenty-seven thousandths second.

3. Any other type of controlling device ~~which that~~ delivers a maximum intermittent current output of a value not in excess of four milliamperes-seconds for a maximum "on" period of two-tenths second and a minimum "off" period of nine-tenths second.

~~§ 55-298.3. Exceptions to § 55-298.2.~~

B. Notwithstanding the provisions of ~~§ 55-298.2 subsection A~~, no electric fence controlling device shall be sold, distributed, constructed, installed, maintained, or used ~~which that~~ will permit for longer than one second an uninterrupted electric current on the fence with an effective value in excess of ~~5~~ five milliamperes when the load, including the measuring device, is not less than 450 ohms nor more than 550 ohms.

Drafting note: Existing § 55-298.2, which provides the general rule for electric fence controlling devices, and existing § 55-298.3, which provides the exception to the general rule, are combined into this proposed section. Technical changes are made.

~~§ 55-298.5 55.1-xxx.~~ Penalty.

~~Punishment for violation of Any person who violates any provision of this article shall be as prescribed by § 18.2-324.1 is guilty of a Class 1 misdemeanor.~~

Drafting note: The provisions of § 18.2-324.1, which provide that a violation of existing §§ 55-298.1 through 55-298.5 is a Class 1 misdemeanor, are moved to this proposed section. There are no other substantive provisions in § 18.2-324.1, so it is recommended for repeal in this report.

Article 2.

What Constitutes Lawful Fence.

Drafting note: Existing Article 2, containing provisions relating to what constitutes a lawful fence, is retained as proposed Article 2.

~~§ 55-299 55.1-xxx.~~ Definition Description of lawful fence.

Every fence shall be deemed a lawful fence as to any domesticated livestock ~~named in § 55-306, which that~~ could not ~~creep pass~~ through ~~the same~~ such fence, if it is:

~~(1) Five~~ 1. At least five feet high, including, if the fence ~~be is~~ on a mound, the mound to the bottom of the ditch;

~~(2) Of~~ 2. Made of barbed wire, at least 42 inches high, consisting of at least four strands of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced no farther than 12 feet apart unless a substantial stay or brace is installed halfway between such posts, trees, or other supports to which such wires ~~shall be~~ are also fixed;

~~(3) Of~~ 3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground;

~~(4) Three~~ 4. At least three feet high, if such fence is within the limits of any ~~incorporated~~ town whose charter ~~does not prescribe neither prescribes~~, nor ~~give gives~~ to the town council ~~thereof~~ power ~~of prescribing to prescribe~~, what shall constitute a lawful fence within such corporate limits; or

~~(5) 5.~~ Any other fence ~~of any kind whatsoever~~, except as otherwise described in this section, ~~and except in the case of incorporated towns as set forth in subdivision (4), which shall be if it is:~~

a. At least 42 inches high;

b. Constructed from materials sold for fencing or consisting of systems or devices based on technology generally accepted as appropriate for the confinement or restriction of domesticated livestock ~~named in § 55-306~~; and

c. Installed pursuant to generally acceptable standards so that applicable domesticated livestock ~~named in § 55-306~~ cannot ~~creep pass~~ through the same.

A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a lawful fence as to any domesticated livestock ~~mentioned in § 55-306~~.

Nothing contained in this section shall affect the right of any such town to regulate or forbid the running at large of cattle and other domestic animals within its corporate limits.

The Board of Agriculture and Consumer Services may adopt ~~rules and~~ regulations regarding lawful fencing consistent with this section to provide greater specificity as to the

requirements of lawful fencing. The absence of any such ~~rule or~~ regulation shall not affect the validity or applicability of this section as it relates to what constitutes lawful fencing.

Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man," which in this proposed section is changed to "domesticated livestock"; all references throughout this chapter to "any livestock mentioned in § 55-306" are updated to "domesticated livestock" for clarity and consistency. The phrase "at least" is logically added as necessary throughout the section. Since all towns in the Commonwealth are incorporated, "incorporated" is removed in subdivision 4. In subdivision 5, the phrase "and except in the case of incorporated towns as set forth in subdivision (4)" is deleted as unnecessary because such exception is included in the general exception language ("except as otherwise described in this section"). The word "rule" is deleted in to instances prior to "regulation" because administrative agencies adopt regulations, not rules. Technical changes are made.

~~§ 55-300 55.1-xxx. Court may Proceeding to~~ declare stream of water or canal a lawful fence; ~~proceeding therefor.~~

A. The circuit court of any county, upon a petition of any ~~proprietor~~ owner or tenant of lands on any stream of water or canal, may, ~~in its discretion,~~ declare and establish ~~the same~~ such stream or canal, or any part of either within the limits and jurisdiction of the county, a lawful fence as to any ~~of the stock named in § 55-306~~ domesticated livestock. Notice of the application shall be given by posting a copy of the petition at the front door of the courthouse and at two or more public places at or near the stream or canal, ~~to the part whereof to which~~ the petition applies, for ~~thirty~~ 30 days, and by publishing ~~the same~~ such notice once a week for four successive weeks in a newspaper, ~~if one is published in the county of general circulation in such county~~. At or before the trial of the cause, any person interested may enter himself a defendant ~~thereto, and the same~~ shall thereafter be proceeded in as other causes.

~~§ 55-301. Revocation of order.~~

~~Such~~ B. The court may, upon ~~like~~ petition and notice of any person interested, revoke or alter any order made under ~~§ 55-300; subsection A,~~ but such order shall not be made within one year from the date of the original, and shall not take effect until six months after it is made.

Drafting note: Because they are closely related, existing §§ 55-300 and 55-301 are combined into one new section with subsection designations. The phrase "in its discretion" is deleted following the word "may" because it is unnecessary. Existing § 55-306 uses the term "any livestock domesticated by man," which in this proposed § 55.1-xxx section is changed to "domesticated livestock;" livestock"; all references throughout this chapter to "any livestock mentioned in § 55-306," are updated to "domesticated livestock" for clarity and consistency. Language regarding the publication of notice in a newspaper is added for consistency throughout the Code. The phrase "and the same shall thereafter be proceeded in as other causes" is deleted as unnecessary. Technical changes are made.

~~§ 55-302~~ 55.1-xxx. Boundary lines of certain low grounds on James River a lawful fence. The owners and occupants of low grounds on either side of the James River in the Counties of ~~Buckingham~~, Albemarle, Buckingham, and Goochland, enclosed by lawful fences on the back and hill lands, need not keep up any fence on the boundary lines running across the low grounds to the river, and such boundary lines shall be deemed a lawful fence, except where public roads cross the river or run parallel with its banks.

Drafting note: Technical changes.

~~§ 55-303~~ 55.1-xxx. Statutes declaring watercourses lawful fences continued.

All acts declaring any river, stream, or watercourse, or any part thereof, or any boundary in any county, a lawful fence, or authorizing any court so to declare the same, or enacting a special fence law for any county or any part thereof, and all acts relating to the making or repairing of division fences in any county or in any part thereof ~~which~~ that may be in force on the day before the Code of 1887 took effect, shall continue in force.

Drafting note: Technical change.

Article 3.

Cattle Guards and Gates Across Rights-of-Way.

Drafting note: Existing Article 3, containing provisions relating to cattle guards and gates across rights-of-way, is retained as proposed Article 3.

§ ~~55-304~~ 55.1-xxx. Property owner may place cattle guards or gates across right-of-way.

Any owner of property on which there is a road or way, not a public road, a highway, a street, or an alley, over which an easement exists for ingress and egress of others may place cattle guards or gates across such way when required for the protection of livestock.

Drafting note: Technical change.

§ ~~55-305~~ 55.1-xxx. Persons having easement may replace gate with cattle guard; maintenance and use thereof; deemed lawful gate.

Any person having an easement of right-of-way across the lands of another, may, at his own expense, replace any gate thereon with a substantial cattle guard sufficient to turn livestock. These Such cattle guards shall be maintained by the owner of the easement, who shall be responsible for keeping such cattle guards at all times in sufficient condition to turn livestock. If a cattle guard is rendered inoperative by inclement weather, the easement owner shall utilize and maintain any reasonable alternative method sufficient to turn livestock from the inoperative cattle guard until such cattle guard is rendered operative again. If the gate to be replaced is needed or used for the orderly ingress and egress of equipment or animals thereover, then such persons acting under the authority of this section shall construct such cattle guards so as to allow such ingress and egress or, if such easement is of sufficient width, may place such cattle guard adjacent to such gate.

Such a cattle guard shall be deemed a lawful gate and not an interference with such easement.

Drafting note: Technical change.

Article 4.

Trespass in Crossing Lawful Fence.

Drafting note: Existing Article 4, containing provisions relating to trespass in crossing a lawful fence, is retained as proposed Article 4.

§ ~~55-306~~ 55.1-xxx. Damages for trespass by animals; punitive and double damages.

A. If any domesticated livestock ~~domesticated by man shall enter~~ enters into any grounds enclosed by a lawful fence, as defined in §§ ~~55-299~~ 55.1-xxx through ~~55-303~~ 55.1-xxx, the owner or manager of any such animal shall be liable for the actual damages sustained.

~~When punitive~~ B. Punitive damages ~~are awarded, the same may be awarded but~~ shall not exceed ~~twenty dollars~~ \$20 in any case.

C. For every succeeding trespass, the owner or manager of such animal shall be liable for double damages, both actual and punitive.

Drafting note: Subsection designations are added for clarity. The phrase "any livestock domesticated by man" is replaced with the term "domesticated livestock" because many existing sections throughout this chapter refer to the livestock named in existing § 55-306, and using a term instead provides clarity to those other sections. Technical changes are made.

§ ~~55-307~~ 55.1-xxx. Lien on animals.

~~After a judgment of~~ If the court enters judgment for the owner or tenant of the grounds enclosed by a lawful fence pursuant to § 55.1-xxx [§ 55-306], the landowner shall have a lien upon such animal ~~shall enure for the benefit of the owner or tenant of such enclosed ground, and execution shall thereupon issue from the court rendering the judgment~~ Upon entry of the judgment, the court shall issue a writ of fieri facias pursuant to § 8.01-478, and the animal ~~or animals so trespassing found to have trespassed~~ shall be levied upon by the officer to whom ~~the~~ such execution was issued, who shall sell ~~the same~~ such animal, as provided ~~by statute in Chapter 18 (§ 8.01-466 et seq.) of Title 8.01.~~

Drafting note: Language is updated to reflect modern practice, including the use of a writ of fieri facias to initiate the proceeding for the execution of the judgment, and for

clarity. The plural "animals" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~55-308~~ 55.1-xxx. Impounding animals.

Whenever any ~~such~~ animal is found trespassing upon any ~~such~~ enclosed ~~ground~~ grounds enclosed by a lawful fence, the owner or tenant of such enclosed grounds shall have the right to take up and impound such animal ~~and impound the same~~ until the damages provided for ~~by the preceding sections shall~~ pursuant to this article have been paid, or until ~~the same are~~ such animal is taken under execution by the officer as ~~hereinbefore~~ provided, and the by § 55.1-xxx [§ 55-307]. The costs of taking up and impounding such animal shall be estimated as a part of the actual damage.

Drafting note: Technical changes.

§ ~~55-309~~ 55.1-xxx. Duty to issue warrant when animal impounded.

~~It shall be the duty of such~~ An owner or tenant of ~~such~~ lands ~~so~~ trespassed upon, ~~within three days after the taking up and impounding such animal unless the damages be otherwise settled, to apply to a person authorized to issue warrants of the county or city in which such land is situated for a warrant for the amount of damages so claimed by him, and such court, or the clerk thereof, shall issue the same, to be made returnable at as early a date, not less than three days thereafter, as shall be deemed best by him; and upon the hearing of the case the judge shall give such judgment as is deemed just and right by any domesticated livestock may recover damages for taking up and impounding such animal by filing a warrant in debt pursuant to § 16.1-79 for the amount of damages claimed.~~

Drafting note: Language is updated to reflect modern practice in general district courts and for clarity.

Article 5.

No-Fence Law.

Drafting note: Existing Article 5, containing provisions relating to no-fence law, is retained as proposed Article 5.

240 § ~~55-310~~ 55.1-xxx. How governing body of county may make local fence law.

241 The board of supervisors or other governing body in any county ~~in this State~~, after ~~posting~~
242 ~~publishing~~ notice ~~of the time and place of meeting thirty days at the front door of the courthouse,~~
243 ~~and at each voting place in the county, and by publishing the same once a week for four successive~~
244 ~~weeks in some newspaper of such county, if any be published therein, and if none be published~~
245 ~~therein, in some newspaper having a general circulation therein, a majority of the board being~~
246 ~~present and concurring as required by subsection F of § 15.2-1427~~, may, by ordinance, declare
247 the boundary line of each lot or tract of land, or any stream in such county, ~~or~~ any magisterial
248 district ~~thereof of such county~~, or any selected portion of such county, to be a lawful fence as to
249 any or all ~~of the animals mentioned in § 55-306~~ domesticated livestock, or may declare any other
250 kind of fence for such county, magisterial district, or selected portion of the county than as
251 prescribed by § ~~55-299~~ 55.1-xxx to be a lawful fence, as to any or all of such animals.

252 **Drafting note: Language is updated to provide that the county must act by ordinance**
253 **and a cross-reference to the notification requirements for adopting an ordinance is added;**
254 **the current language is not clear as to the process needed for the declaration since, pursuant**
255 **to § 15.2-1425, counties may only act by ordinances, resolutions, and motions. Existing § 55-**
256 **306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is**
257 **changed to "domesticated livestock"; all references throughout this chapter to "the animals**
258 **mentioned in § 55-306," are updated to "domesticated livestock" for clarity and consistency.**
259 **Technical changes are made.**

260 § ~~55-311~~ 55.1-xxx. Effect of such law on certain fences.

261 ~~Such A~~ declaration made by ordinance adopted pursuant to § 55.1-xxx [§ 55-310] shall
262 not ~~be construed as applying and shall not~~ apply to relieve the adjoining landowners from making
263 and maintaining their division fences, as defined by § ~~55-299, but as to such division fences, §§~~
264 ~~55-317 to 55-322, inclusive, 55.1-xxx; however, Article 6 (§ 55.1-xxx et seq.) shall be applicable~~
265 apply to such division fences.

266 **Drafting note: Language is updated to reflect that localities must act by ordinance.**

267 **Language is updated for clarity. Technical changes are made.**

268 § ~~55-312~~ 55.1-xxx. Application to railroad companies.

269 No action taken under the provisions of § ~~55-310~~ 55.1-xxx shall relieve any railroad
270 company of any duty or obligation imposed on every such company by § 56-429, or imposed by
271 any other statute now in force, in reference to fencing their lines of railway, and rights-of-way.

272 **Drafting note: Technical change.**

273 § ~~55-313~~ 55.1-xxx. No authority to adopt more stringent fence laws.

274 Nothing in § ~~55-310~~ 55.1-xxx shall authorize or require the boards of supervisors or other
275 governing bodies of counties to declare a more stringent fence as a lawful fence for any county,
276 magisterial district, or selected portion of any county, than as prescribed by § ~~55-299~~ 55.1-xxx.

277 **Drafting note: No change.**

278 § ~~55-314~~ 55.1-xxx. Effect on existing fence laws or no-fence laws.

279 Nothing in § ~~55-310~~ 55.1-xxx shall repeal the existing fence laws in any county,
280 magisterial district, or selected portion of any county, until changed by the board of supervisors
281 or other governing body, by ordinance and in accordance with the provisions thereof, nor shall
282 the provisions of ~~such section~~ § 55.1-xxx [§ 55-310] apply to any county, magisterial district, or
283 selected portion of any county, in which the no-fence law is now in force, if such no-fence law
284 exists otherwise than ~~under an order of~~ in an ordinance adopted by the board of supervisors or
285 other governing body of such county entered pursuant to ~~such section~~ § 55.1-xxx [§ 55-310].

286 **Drafting note: Language is updated to reflect that localities must act by ordinance.**

287 **Technical changes are made.**

288 § ~~55-315~~ 55.1-xxx. Lands under quarantine.

289 The boundary line of each lot or tract of land in any county in ~~this~~ the Commonwealth
290 which that is under quarantine shall be a lawful fence as to any and all ~~of the animals mentioned~~
291 in § 55-316 domesticated livestock.

Drafting note: The existing cross-reference to § 55-316 is an error. Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "the animals mentioned in § 55-306" are updated to "domesticated livestock" for clarity and consistency. Technical changes are made.

§ ~~55-316~~ 55.1-xxx. When unlawful for animals to run at large.

It ~~shall be is~~ unlawful for the owner or manager of any ~~animal or type of animal described in § 55-306~~ domesticated livestock to permit any such animal, as to which the boundaries of lots or tracts of land have been or may be constituted a lawful fence, to run at large beyond the limits of his own lands within the county, magisterial district, or portion of such county ~~wherein~~ in which such boundaries have been constituted and ~~shall be~~ are a lawful fence.

Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "any livestock mentioned in § 55-306" are updated to "domesticated livestock" for clarity and consistency. A technical change is made.

Article 6.

Division Fences.

Drafting note: Existing Article 6, containing provisions relating to division fences, is retained as proposed Article 6.

§ ~~55-317~~ 55.1-xxx. Obligation to provide division fences.

Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them ~~shall choose~~ chooses to let his land lie open or unless they ~~shall otherwise~~ agree ~~between themselves~~ otherwise.

Drafting note: Technical changes.

§ ~~55-318~~ 55.1-xxx. When no division fence has been built.

~~When-If~~ no division fence has been built, either one of the adjoining ~~owners~~ landowners may give notice in writing of his desire and intention to build such fence to the ~~owner~~ landowner

of the adjoining land, or to his agent, and require him to ~~come forward and~~ build his half ~~thereof~~ of such fence. The ~~owner~~ landowner so notified may, within ~~ten~~ 10 days after receiving such notice, give notice in writing to the person so desiring to build such fence, or to his agent, of his intention to let his land lie open, ~~in which event, and if,~~ If the ~~one~~ landowner giving the original notice ~~shall build~~ subsequently builds such division fence and the ~~one~~ landowner who has so chosen to let his land lie open, or his successors in title, ~~shall afterwards enclose it~~ subsequently encloses his land, he, or ~~they, as the case may be~~ his successors, shall be liable to the ~~one~~ landowner who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land ~~shall be~~ was so enclosed, and such fence shall thereafter be deemed a division fence between such lands.

If, however, the person so notified ~~shall fail~~ fails to give notice of his intention to let his land lie open, ~~as hereinabove provided,~~ and ~~shall fail~~ fails to ~~come forward~~ agree, within ~~thirty~~ 30 days after being so notified, ~~and to~~ build his half of such fence, he shall be liable to the person who builds the ~~same fence~~ same fence for one-half of the expense ~~thereof~~, and such fence shall thereafter be deemed a division fence between such lands.

Notwithstanding the provisions of this section, no successor in title shall be liable for any amount prior to the recordation and proper indexing recordation of the ~~original~~ notice in the clerk's office of the county in which the land is located.

Drafting note: The term "owner" is replaced with "landowner" for consistency throughout the article. Language is rewritten for clarity and modern usage. Technical changes are made.

§ ~~55-319~~ 55.1-xxx. When division fence already built.

When any fence ~~which~~ (i) that has been built and used by adjoining landowners as a division fence, or any fence ~~which~~ that has been built by one, landowner and the other landowner is afterwards required to pay half of the value, or expense ~~thereof, of such fence~~ under the provisions ~~hereinbefore~~ contained in this article, and ~~which~~ (ii) that has thereby become a division fence between such lands, ~~shall become~~ becomes out of repair to the extent that it is no longer a

lawful fence, either one of such adjoining landowners may give written notice to the other, or to his agent, of his desire and intention to repair such fence; and require him to ~~come forward and~~ repair his half ~~thereof, and if he shall fail to do so of such fence. If the landowner receiving written~~ notice fails to repair his half within ~~thirty~~ 30 days after being so notified, the one giving such notice may then repair the entire fence so as to make it a lawful fence, and the other shall be liable to him for one-half of the expense ~~thereof of such repairs~~.

Drafting note: Language is rewritten for clarity. Technical changes are made.

§ ~~55-320~~ 55.1-xxx. Recovery of amount due in connection with division fence.

Any sum ~~which~~ that may be due and payable by one adjoining landowner to another in pursuance of any of the provisions of §§ ~~55-318~~ 55.1-xxx and ~~55-319~~ 55.1-xxx may be recovered by ~~motion~~, action or warrant in debt, according to the jurisdictional amount.

Drafting note: Language is updated to reflect modern practice. Technical changes are made.

§ ~~55-321~~ 55.1-xxx. Requirements for agreement to bind successors in title; subsequent owners.

No agreement made between adjoining landowners, with respect to the construction or maintenance of the division fence between their lands, shall be binding on their successors in title; unless it ~~be~~ (i) is in writing and specifically so state, ~~and be (ii) is~~ recorded in the deed book in the clerk's office of the county in which the land is located, and (iii) is properly indexed as deeds are required by law to be indexed.

If any notice, as required by § ~~55-318~~ 55.1-xxx or § ~~55-319~~ 55.1-xxx is recorded in the deed book in the clerk's office of the county in which the land is located and is properly indexed as deeds are required by law to be indexed, then any subsequent owners of such land shall be liable for any sum ~~which~~ that may be due pursuant to § ~~55-320~~ 55.1-xxx.

Drafting note: Technical changes.

§ ~~55-322~~ 55.1-xxx. How notice given.

Any notice ~~herein provided~~ required to be given pursuant to this article shall be given to the ~~owner of the land~~ landowner, if he ~~reside~~ resides in the county in which the land lies; otherwise, it may be given to such person as, under the laws of ~~this~~ the Commonwealth, would be his agent; or to any person occupying such land as tenant of the ~~owner~~ landowner, who shall, for the purposes of this article, be deemed the agent of such ~~owner~~ landowner.

Drafting note: The term "owner" is replaced with "landowner" for consistency throughout the article. Technical changes are made.

Article 7.

Special Provisions for Unincorporated Communities.

Drafting note: Existing Article 7, containing special provisions for unincorporated communities, is retained as proposed Article 7.

§ ~~55-323~~ 55.1-xxx. Courts to fix boundaries of villages to prevent animals from running at large.

The circuit court of any county in which is situated any village or unincorporated community having within defined boundaries a population of 300 or more, shall have jurisdiction ~~as herein provided~~, to fix the boundaries of such village or unincorporated community for the purpose of preventing ~~those animals specified in § 55-306~~ domesticated livestock from running at large within such boundaries.

Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "those animals specified in § 55-306" are updated to "domesticated livestock" for clarity and consistency. Technical changes are made.

§ ~~55-324~~ 55.1-xxx. Petition for action ~~under § 55-323~~ to fix boundaries of villages.

Twenty or more ~~freeholders~~ landowners residing within the boundaries referred to in § ~~55-323~~ 55.1-xxx may ~~present to such court~~ file a petition signed by them ~~praying~~ requesting that the boundaries of such village or unincorporated community be fixed for the purposes of § ~~55-323~~; ~~notice~~ 55.1-xxx. Notice of the intention to ~~present~~ file such petition, stating the date on which the

same petition will be ~~presented~~ filed, and such notice shall be posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries, at least ten days before the day on which such petition is to be presented and published once a week for four successive weeks in a newspaper having general circulation in such county where the village is located. Such petition shall state with reasonable certainty the boundaries within which it is desired to prohibit such animals from running at large, ~~and shall also state~~ that at least 300 persons reside within such boundaries, and that a majority of the ~~freeholders~~ landowners residing therein are in favor of prohibiting such animals from running at large.

Drafting note: A requirement to publish notice in a newspaper of general circulation is added for consistency throughout the chapter. Language is updated for modern usage. Technical changes are made.

~~§ 55-325~~ 55.1-xxx. Entry of order if petition not contested.

~~The petitions referred to in~~ A petition filed pursuant to ~~§ 55-324~~ 55.1-xxx, if verified by the oath of one or more of the petitioners, shall be prima facie evidence of the facts stated therein, and the court without further evidence shall proceed to enter the order ~~herein provided for fixing the boundaries of the village or unincorporated community~~ unless such petition ~~be is~~ contested.

Drafting note: Language is added for clarity. Technical changes are made.

~~§ 55-326~~ 55.1-xxx. Procedure in case of contest.

Any person having a lawful interest in any land within the boundaries referred to in any petition ~~as provided for in § 55-324 to fix the boundaries of a village or unincorporated community~~ who wishes to contest such petition may ~~have himself entered~~ intervene in such action as a ~~party~~ defendant ~~thereto~~. In case of such contest, the ~~court, without a jury, judge~~ shall hear the evidence, and, if in doubt as to the facts, may appoint one or more persons to canvass such community and report to the court the number of persons residing within such boundaries, ~~and also~~ the names of all the ~~freeholders~~ landowners residing therein, and whether ~~the latter~~ such landowners are for or against the petition.

Drafting note: Language is updated for modern usage and clarity. Technical changes are made.

§ ~~55-327~~ 55.1-xxx. Order of court.

~~If~~ The court shall enter an order fixing the boundaries of any village or unincorporated community having within defined boundaries a population of 300 or more for the purpose of preventing domesticated livestock from running at large within such boundaries (i) if, in the case of a contested petition, it appears from the evidence or from ~~such a~~ report, if any ~~be made is~~ required pursuant to § 55.1-xxx [§ 55-326], that ~~as many as three hundred~~ at least 300 persons reside within ~~such the~~ boundaries referred to in a petition filed pursuant to § 55.1-xxx [§ 55-324] and that a majority of the ~~freeholders~~ landowners residing therein are in favor of prohibiting ~~those animals specified in § 55-306~~ domesticated livestock from running at large; ~~and, or (ii)~~ in case of an uncontested petition, ~~without other on the basis of the~~ evidence ~~than presented in~~ the petition itself, ~~such court shall enter an order fixing such boundaries as aforesaid.~~

Drafting note: Proposed § 55.1-xxx is rewritten for modern usage and clarity. Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "those animals specified in § 55-306" are updated to "domesticated livestock" for clarity and consistency.

§ ~~55-328~~ 55.1-xxx. Animals may not run at large after entry of order.

After the expiration of ~~ten~~ 10 days from the date of entering ~~such an~~ order pursuant to § 55.1-xxx [§ 55-327], it ~~shall be is~~ unlawful for any ~~animal specified in § 55-306~~ domesticated livestock to run at large within such boundaries, and any person owning or having charge of any such animal who ~~shall permit the same~~ permits such livestock to run at large within such boundaries ~~shall be is~~ guilty of a Class 4 misdemeanor; ~~each~~ Each day such animal is permitted to run at large ~~to constitute~~ constitutes a separate offense; ~~and~~ any such animal found running at large upon any street, alley, road, or other public ground within such boundaries may be taken up

and impounded by any person who may retain such animal in his custody until the expense of keeping such animal ~~shall have been~~ is paid.

Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "any animal specified in § 55-306" are updated to "domesticated livestock" for clarity and consistency. Technical changes are made.

~~§ 55-329 55.1-xxx. Costs; by whom fines imposed.~~

If the petition ~~be is~~ uncontested, the costs ~~thereof~~ shall be borne by the ~~petitioners~~ petitioner; if it ~~be is~~ contested, costs shall be awarded to the prevailing party ~~prevailing~~. ~~The fine provided for by § 55-328 may be imposed by the general district court of the county within which such village or unincorporated community is located.~~

Drafting note: The last sentence of proposed § 55.1-xxx is deleted because there is no fine provided for in existing § 55-328. A Class 4 misdemeanor is provided for in existing § 55-328, but the normal laws of jurisdiction will dictate what court may impose such a penalty. Technical changes are made.

~~§ 55-330 55.1-xxx. Owner of animals~~ domesticated livestock liable for trespasses.

If any ~~of the animals specified in § 55-306~~ domesticated livestock, as to which the boundaries of the lots or tracts of land in any county, ~~or~~ magisterial district ~~thereof~~, or ~~in any~~ selected portion of such county, constitute a lawful fence, ~~shall be~~ are found going at large within such county, district, or portion of such county, or upon the lands of any person other than the owner, the owner or manager of such animals shall be liable for all damage or injury done by such animals to the owner of the crops or lands upon which they ~~may~~ trespass, whether the animals wander from the premises of their owner in the county in which the trespass was committed, or from another county, provided, that when the boundaries of lots or tracts of land in only one of two adjoining counties ~~shall constitute~~ constitutes a lawful fence, and any of such animals ~~shall~~ escape escapes across the line or boundary of the two counties, the owner of such animal shall not be liable to the fine imposed by ~~the second paragraph subsection B~~ of § 55-306 55.1-xxx, nor for

any trespass committed by such animal upon the lands lying next to such line or boundary, nor to a forfeiture of the animal, unless the land upon which the trespass is alleged to have been committed ~~shall be~~ is enclosed, as provided in § ~~55-299~~ 55.1-xxx.

Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to "animals specified in § 55-306" are updated to "domesticated livestock" for clarity and consistency. Technical changes are made.

Article 8.

Cutting Timber.

Drafting note: Existing Article 8, containing provisions relating to cutting timber, is retained as proposed Article 8.

§ ~~55-331~~ 55.1-xxx. Damages recoverable for timber cutting.

If any person, firm, or corporation, encroaches and cuts timber, except when acting prudently and under bona fide claim of right, the owner ~~thereof~~ of such timber shall, in addition to all other remedies afforded by law, have the benefit of a right to, and a summary remedy for recovery of, damages in an amount as ~~hereinafter~~ specified in this article and recovered as ~~hereinafter~~ provided for in this article.

If the trespass is proven, the defendant shall have the burden of proving that he acted prudently and under a bona fide claim of right.

Drafting note: Technical changes.

§ ~~55-332~~ 55.1-xxx. Procedure for determination of damage.

A. The owner of the land on which ~~such a~~ trespass as described in § 55.1-xxx [§ 55-331] was committed shall have the right, within 30 days after the discovery of such trespass and the identity of the trespasser, to notify the trespasser and to appoint an experienced timber estimator to determine the amount of damages. For the purposes of determining damages, the value of the timber cut shall be calculated by first determining the value of the timber on the stump. Within 30 days after receiving notice of the alleged trespass and of the appointment of such estimator,

the alleged trespasser, if he does not deny the fact of trespass, shall appoint an experienced timber estimator to participate with the one already so appointed in the estimation of damages. If the two estimators cannot agree, they shall select a third person, experienced and disinterested, ~~and the~~ who shall make a decision ~~thereafter made that~~ shall be final and conclusive and not subject to appeal. The estimation of damages and the rendition of statement must be effected within 30 days from the receipt of notice of appointment, by the trespasser, of an estimator.

If the alleged trespasser fails to appoint an estimator within the prescribed time, or to notify, within such time, that the allegation of the fact of trespass is disputed, the estimator appointed by the injured party may make an estimate, and collection or recovery may be had accordingly.

B. Any person who (i) severs or removes any timber from the land of another without legal right or permission or (ii) authorizes or directs the severing or removal of timber or trees from the land of another without legal right or permission shall be liable to pay to the rightful owner of the timber three times the value of the timber on the stump and shall pay to the rightful owner of the property the reforestation costs incurred not to exceed \$450 per acre, the costs of ascertaining the value of the timber, any directly associated legal costs, and reasonable attorney fees incurred by the owner of the timber as a result of the trespass.

Drafting note: Technical changes.

~~§ 55-333. Repealed.~~

Drafting note: Repealed by Acts 2004, cc. 604 and 615.

~~§ 55-334~~ 55.1-xxx. When person damaged may proceed in court.

If the amount specified in subsection B of ~~§ 55-332~~ 55.1-xxx is not paid within 30 days after rendition of statement, the person upon whose land the trespass occurred may proceed for judgment in the amount of payment as specified in ~~§ 55-332~~ 55.1-xxx.

If, upon receiving notice of the alleged trespass and of the appointment of an estimator, the person so receiving notice does not admit the fact of trespass, he may decline to appoint an

estimator and notify the other party to such effect, together with his reason for refusing to appoint an estimator, and in such case the aggrieved party may proceed in the appropriate court.

Drafting note: No change.

§ ~~55-334.1~~ 55.1-xxx. Larceny of timber; penalty.

A. Any person who knowingly and willfully takes, steals, and removes from the lands of another any timber growing, standing, or lying on the lands ~~shall be~~ is guilty of larceny. Any person so convicted shall be ordered to pay restitution calculated pursuant to § ~~55-332~~ 55.1-xxx.

B. In a criminal prosecution pursuant to subsection A, it shall be prima facie evidence of the intent to steal the timber if the timber was harvested or removed from property marked with readily visible paint marks not more than 100 feet apart on trees or posts along the property line, where the paint marks were vertical lines at least two inches in width and at least eight inches in length and the center of the mark was ~~no~~ not less than three feet ~~or~~ nor more than six feet from the ground or normal water surface.

Drafting note: Technical changes.

§ ~~55-335~~ 55.1-xxx. Effect of article.

Nothing in this article shall have the effect of precluding any compromise or agreed settlement that the parties in dispute may effect as to the civil remedies provided by this article, nor of barring any other remedy provided for by law.

Drafting note: No change.

#

CHAPTER ~~23~~ XX [6].

VIRGINIA SELF-SERVICE STORAGE ACT.

Drafting note: Existing Chapter 23, Virginia Self-Service Storage Act, is retained as proposed Chapter XX [6].

~~§ 55-416. Short title.~~

~~This chapter shall be known as the "Virginia Self-Service Storage Act."~~

Drafting note: Existing § 55-416 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of the chapter.

~~§ 55-417~~ 55.1-xxx. Definitions.

As used in this chapter, unless the context ~~clearly~~ requires ~~otherwise~~ a different meaning:

~~1. "Self-service storage facility" means any real property designed and used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.~~

~~2. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.~~

~~The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102, unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.~~

~~3. "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.~~

~~4. "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.~~

~~5. "Leased space" means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement.~~

~~6. "Personal property" means movable property, not affixed to land and includes, but is not limited to, goods, wares, merchandise, and household items and furnishings.~~

~~7. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.~~

~~8. "Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address.~~

~~9. "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.~~

"Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.

"Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address.

"Leased space" means the individual storage space at the self-service facility that is leased or rented to an occupant pursuant to a rental agreement.

"Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.

"Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.

The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102, unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.

"Personal property" means movable property not affixed to land and includes goods, wares, merchandise, and household items and furnishings.

"Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

"Self-service storage facility" means any real property designed and used for renting or leasing individual storage spaces, other than storage spaces that are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.

"Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

Drafting note: Definitions have been unnumbered and reordered alphabetically, consistent with Code style. In the definition of "personal property," the phrase "but is not limited to" is deleted on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

~~§ 55-418.55.1-xxx.~~ Lien on personal property stored within a leased space.

A. The owner shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter. Such lien shall attach as of the date the personal property is stored within each leased space, and, to the extent that the property remains stored within such leased space, as ~~hereinafter~~ provided in this subsection, shall be superior to any other existing liens or security interests to the extent of \$250 or, if the leased space is a climate-controlled facility, \$500. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens, and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

B. In the case of any watercraft ~~which~~ that is subject to a lien, previously recorded on the certificate of title, the owner, so long as the watercraft remains stored within such leased space, shall have a lien on such watercraft as provided ~~for herein~~ in this subsection to the extent of \$250

82 or ~~\$500~~, if the leased space is a climate-controlled facility, \$500. In addition, such lien shall extend
83 to the proceeds, if any, remaining after the satisfaction of any recorded liens, and the owner may
84 retain possession of such proceeds until the balance, if any, of such charges is paid.

85 C. The rental agreement shall contain a statement, in bold type, advising the occupant of
86 the existence of such lien, and that the personal property stored within the leased space may be
87 sold to satisfy the lien if the occupant is in default.

88 D. In the case of any motor vehicle that is subject to a lien, previously recorded on the
89 certificate of title, the owner, so long as the motor vehicle remains stored within such leased space,
90 shall have a lien on such vehicle in accordance with § 46.2-644.01.

91 **Drafting note: Language is added to the catchline for clarity. Technical changes are**
92 **made.**

93 § ~~55-419~~ 55.1-xxx. Enforcement of lien.

94 A. 1. If any occupant is in default under a rental agreement, the owner shall notify the
95 occupant of such default by regular mail at his last known address, or, if expressly provided for
96 in the rental agreement, such notice may be given by electronic means. If such default is not cured
97 within 10 days after its occurrence, then the owner may proceed to enforce such lien by selling
98 the contents of the occupant's unit at public auction, for cash, and apply the proceeds to
99 satisfaction of the lien, with the surplus, if any, to be disbursed as ~~hereinafter~~ provided in this
100 section. Before conducting such a public auction, the owner shall notify the occupant as prescribed
101 in subsection C and shall advertise the time, place, and terms ~~thereof of such auction~~ in such
102 manner as to give ~~publicity thereto~~ the public notice.

103 2. In the case of personal property having a fair market value in excess of \$1,000, and
104 against which a creditor has filed a financing statement in the name of the occupant at the State
105 Corporation Commission or in the county or city ~~or county~~ where the self-service storage facility
106 is located or in the county or city ~~or county~~ in ~~Virginia~~ the Commonwealth shown as the last
107 known address of the occupant, or if such personal property is a watercraft required by the laws
108 of ~~Virginia~~ the Commonwealth to be registered and the Department of Game and Inland Fisheries

shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior to the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings [hereunder provided for in this section](#) and no written notice shall be required. Whenever a watercraft is sold [hereunder pursuant to this subsection](#), the Department of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser [thereof of such watercraft](#) upon his application containing the serial or motor number of the watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance with the provisions [hereof of this subsection](#).

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of 10 days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by verified mail, postage prepaid, to the occupant at his last known address, or, if expressly provided for in the rental agreement, such notice may be given by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;

2. A demand for payment of the charges due within a specified time not less than 20 days after the date of the notice;

3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and

5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.

D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.

E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction; and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien creditor, that fails to claim an interest in the balance within 30 days of the public auction. So long as the owner complies with the provisions of this chapter, the owner's liability to the occupant under this chapter shall be limited to the net proceeds received from the public auction of any personal property; and, as to other lienholders, shall be limited to the net proceeds received from the public auction of any personal property covered by such superior lien.

F. Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the ~~county, city or town~~ locality in which the public auction is to be held at least once prior to the public auction. The advertisement ~~must~~ shall state (i) the fact that it is a public auction; (ii) the date, time, and location of the public auction; and (iii) the form of payment that will be accepted.

G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this chapter takes such property free and clear of any rights of persons against whom the lien was valid.

H. Any notice made pursuant to this section shall be presumed delivered when it is (i) deposited with the United States Postal Service and properly addressed to the occupant's last known address with postage prepaid or (ii) sent by electronic means, provided that the sender

retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of default.

I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased space, the owner shall have a lien on such vehicle in accordance with § 46.2-644.01.

Drafting note: In subsection F, "county, city, or town" is replaced with "locality" on the basis of § 1-221, which states that throughout the Code "'locality' means a county, city, or town." Also in subsection F, the word "must" is replaced with "shall," consistent with Code style. Technical changes are made.

~~§ 55-419.1~~ § 55.1-xxx. Other legal remedies may be used.

The provisions of this chapter shall not preempt or limit the owner's use of any additional remedy otherwise allowed by law.

Drafting note: No change.

~~§ 55-420~~ § 55.1-xxx. Care, custody, and control of property.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.

Drafting note: No change.

~~§ 55-421. Savings clause.~~

~~All rental agreements, entered into prior to July 1, 1981, which have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this Commonwealth.~~

Drafting note: Repealed as obsolete.

~~§ 55-422. Repealed.~~

Drafting note: Repealed by Acts 2015, c. 709, cl. 2.

~~§ 55-423~~ § 55.1-xxx. Effective date and application of chapter.

188 The provisions of this chapter shall apply to all rental agreements entered into or extended
189 or renewed after July 1, 1981.

190 **Drafting note: No change.**

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