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CHAPTER ~~5~~ X [4].

FRAUDULENT AND VOLUNTARY CONVEYANCES, ~~BULK AND CONDITIONAL SALES, ETC.~~; WRITINGS NECESSARY TO BE RECORDED.

**Drafting note: Existing Chapter 5, Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writings Necessary to Be Recorded, is retained as proposed Chapter XX [4], its title shortened to more accurately reflect the substance of the chapter.**

§ ~~55-80~~ 55.1-xxx. Void fraudulent acts; bona fide purchasers not affected.

Every (i) gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, ~~every (ii)~~ suit commenced or decree, judgment, or execution suffered or obtained, and every (iii) bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to shall, as to such creditors, purchasers, or other persons, or their representatives or assigns, be void. This section shall not affect the title of a purchaser for valuable consideration, unless it ~~appear~~ appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

**Drafting note: Technical changes.**

§ ~~55-81~~ 55.1-xxx. Voluntary gifts, etc., void as to prior creditors.

Every gift, conveyance, assignment, transfer, or charge ~~which that~~ is not upon consideration deemed valuable in law, or ~~which that~~ is upon consideration of marriage, by an insolvent transferor, or by a transferor who is thereby rendered insolvent, shall be void as to creditors whose debts ~~shall have been~~ were contracted at the time ~~it such gift, etc.~~, was made, but shall not, on that account merely, be void as to creditors whose debts ~~shall~~ have been contracted, or as to purchasers who ~~shall~~ have purchased, after ~~it such gift, etc.~~, was made. Even though it is decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers.

**Drafting note: Technical changes.**

27           § ~~55-82~~ 55.1-xxx. Creditor's suits to avoid such gifts, etc.

28           ~~A creditor before~~ Before obtaining a judgment ~~or decree~~ for his claim, a creditor may,

29 whether such claim ~~be is~~ due and payable or not, institute any suit ~~which that~~ he ~~might~~ may

30 institute after obtaining such judgment or decree to avoid a gift, conveyance, assignment, or

31 transfer of, or charge upon, the estate of his debtor declared void by either § ~~55-80~~ 55.1-xxx or

32 ~~55-81; and he~~ 55.1-xxx. Such creditor may, in such suit, have all the relief ~~in with~~ respect to such

33 estate to which he would be entitled after obtaining a judgment or decree for the claim for which

34 he may be entitled to recover. A creditor availing himself of this section shall have a lien from the

35 time of bringing his suit on all the estate, real and personal, ~~hereinbefore mentioned~~, and a

36 petitioning creditor shall also be entitled to a ~~like~~ lien from the time of filing his petition in the

37 court ~~or in the clerk's office of the court~~ in which the suit is brought. If the proceeds of sale ~~be are~~

38 insufficient to satisfy the claims of all the creditors whose liens were acquired at the same time,

39 they shall be applied ~~ratably~~ proportionately to such claims, and the court may ~~make a personal~~

40 ~~decree~~ issue an order against the debtor for any deficiency remaining on the claim of any creditor

41 after applying ~~thereto~~ his share of the proceeds of sale, or, if any creditor ~~be is~~ not entitled to share

42 in such proceeds, may ~~render a personal decree~~ issue an order against the debtor for the full

43 amount of the creditor's claim. This section is subject to the provisions of §§ 8.01-268 and 8.01-

44 269.

45           **Drafting note: References to a "decree" and "a personal decree" are deleted as**

46 **obsolete. Technical changes are made.**

47           § ~~55-82-1~~ 55.1-xxx. Creditor's suits; attorney fees.

48           In any suit brought by a creditor pursuant to § ~~55-80~~ 55.1-xxx, ~~55-81~~ 5.1-xxx, or ~~55-82~~

49 55.1-xxx, where a (i) gift, (ii) deed, (iii) conveyance, assignment, or transfer of or charge upon

50 the estate of a debtor, (iv) suit commenced or decree, judgment, or execution suffered or

51 obtained, or (v) bond or other writing is declared void, the court shall award counsel for the

52 creditor reasonable attorney fees against the debtor. Upon a finding of fraudulent conveyance

53 pursuant to § ~~55-80~~ 55.1-xxx, the court may assess sanctions, including such attorney fees, against  
54 all parties over which it has jurisdiction who, with the intent to defraud and having knowledge of  
55 the judgment, participated in the conveyance. Should there be a resulting judicial sale, any award  
56 of attorney fees shall be paid out of the proceeds of the sale, as other costs are paid, provided that  
57 the award of attorney fees does not affect a prior lien creditor not represented by the attorney.

58 **Drafting note: Technical changes.**

59 § ~~55-82.2~~ 55.1-xxx. Authority of court to set aside.

60 The court ~~shall have the authority to~~ may set aside a fraudulent conveyance or voluntary  
61 transfer pursuant to § ~~55-80~~ 55.1-xxx or ~~55-81~~ 55.1-xxx during an action brought by a creditor to  
62 execute on a judgment, either on motion of the creditor or on its own motion, provided that all  
63 parties who have an interest in the property subject to the conveyance or transfer are given notice  
64 of the proceeding. The court, by order, may direct the clerk to issue the proper process against  
65 such parties; and, upon the maturing of the case ~~as to them~~, proceed to make such orders or decrees  
66 as would have been proper if the new parties had been made parties at the commencement of the  
67 suit.

68 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
69 **phrase "shall have the authority to" is replaced with "may." Technical changes are made.**

70 ~~§§ 55-83 through 55-86.~~

71 **Drafting note: Repealed by Acts 1964, c. 219.**

72 § ~~55-87~~ 55.1-xxx. Loans and reservations of a use or property to be recorded.

73 When any loan of ~~goods or chattels~~ personal property is pretended to have been made to  
74 any person with whom, or with those claiming under him, possession ~~shall have~~ has remained  
75 five years without demand made and pursued by due process of law on the part of the pretended  
76 lender, or when any reservation or limitation is pretended to have been made of a use or property  
77 by way of condition, reversion, remainder, or otherwise in ~~goods or chattels~~ personal property,  
78 the possession ~~whereof shall have~~ of which has so remained in another as aforesaid, the absolute

79 property shall be taken to be with the possession and such loan, reservation, or limitation void as  
80 to creditors of, and purchasers from, the person so remaining in possession, unless such loan,  
81 reservation, or limitation ~~be is~~ declared by will which, or a copy of which, or by deed or other  
82 writing which, is duly ~~admitted to record~~ recorded within ~~such a~~ period of five years in the circuit  
83 court of the county or ~~corporation~~ city in which the ~~goods or chattels may be~~ personal property is  
84 located.

85 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
86 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
87 **made.**

88 ~~§§ 55-88 through 55-94.~~

89 **Drafting note: Repealed by Acts 1964, c. 219.**

90 ~~§ 55-95~~ 55.1-xxx. Certain recorded contracts as valid as deeds.

91 Any such contract or bill of sale as is mentioned in § 11-1, if in writing and signed by the  
92 owner of the property, shall, from the time it is duly ~~admitted to record~~ recorded, be, as against  
93 creditors and purchasers, as valid, so far as it affects real estate, as if the contract were a deed  
94 conveying the estate or interest embraced in the contract, and, so far as it affects goods and  
95 chattels, as if possession had completely passed at the time of such ~~admission to record;~~ recording,  
96 provided, that, as to goods whose possession is retained by a merchant-seller, the provisions of  
97 subsection (2) of § 8.2-402 of the Uniform Commercial Code shall be controlling; and provided  
98 further, that, if any such contract or bill of sale as is mentioned in § 11-1 creates a security interest  
99 as defined in the Uniform Commercial Code, its validity and enforceability shall be governed by  
100 the provisions of that Code.

101 **Drafting note: Technical changes.**

102 ~~§ 55-96~~ 55.1-xxx. Contracts, etc., void as to creditors and purchasers until recorded;  
103 priority of credit line deed of trust.

104           A. 1. Every (i) ~~such~~ contract in writing, (ii) deed conveying any ~~such~~ estate or term, (iii)  
105 deed of gift, or deed of trust, or mortgage conveying real estate or ~~goods and chattels~~ personal  
106 property, and (iv) ~~such~~ bill of sale, or contract for the sale of ~~goods and chattels~~ personal property,  
107 when the possession is allowed to remain with the grantor, shall be void as to all purchasers for  
108 valuable consideration without notice not parties thereto and lien creditors, until and except from  
109 the time it is ~~duly admitted to record~~ recorded in the county or city ~~wherein in which~~  
110 embraced in subject to such contract, deed, or bill of sale ~~may be~~ is located. The fact that any such  
111 instrument is in the form of or contains the terms of a quit-claim or release shall not prevent the  
112 grantee ~~therein~~ from being a purchaser for valuable consideration without notice, nor be of itself  
113 notice to such grantee of any unrecorded conveyance of or encumbrance upon such real estate  
114 ~~goods and chattels or personal property~~. The mere possession of real estate shall not, of itself, be  
115 notice to purchasers ~~thereof~~ for value of any interest or estate therein of the person in possession.  
116 As to ~~goods~~ personal property whose possession is retained by a merchant-seller, the provisions  
117 of subsection (2) of § 8.2-402 of the Uniform Commercial Code shall ~~be controlling~~ control. This  
118 section shall not apply to any security interest in ~~goods~~ personal property under the Uniform  
119 Commercial Code. Any bill of sale or contract for the sale of ~~goods or chattels~~ personal property  
120 when possession is allowed to remain with the grantor shall be deemed to be duly recorded when  
121 it is filed in the same manner as Uniform Commercial Code financing statements are filed under  
122 the criteria and in the places established by § 8.9A-501 as if the grantor were a debtor and the  
123 grantee a secured party. A recordation under the provisions of this section shall, when any real  
124 estate subject to the lien of any such contract has been annexed to or merged with an adjoining  
125 city subsequent to such docketing, be deemed to have been recorded in the proper clerk's office  
126 of such city.

127           2. The clerk of each court in which any such instrument is by law required to be recorded  
128 shall keep a daily index of all such instruments admitted to record in his office, and, immediately  
129 upon ~~admission of any such instrument to record~~ recording such instrument, the clerk shall index

130 the same either in the daily index or the appropriate general index of his office. All instruments  
131 indexed in the daily index shall be indexed by the clerk in the appropriate general index within 90  
132 days after ~~admission to record~~ recording. During the period permitted for transfer from the daily  
133 index to the general index, indexing in the daily index shall be a sufficient compliance with the  
134 requirements of this section as to indexing.

135 3. a. In any circuit court in which any such instrument required to be recorded is not  
136 recorded on the same day as delivered, the clerk shall install a time stamp machine. The time  
137 stamp machine shall affix the current date and time of each delivery of any instrument delivered  
138 to the clerk for recording that is not immediately recorded and entered into the general or daily  
139 index.

140 b. In the event ~~there is no~~ that a time stamp machine, has not been installed or ~~it~~ is not  
141 functioning, the clerk shall designate an employee to affix the current date and time of each  
142 delivery of any instrument delivered to the clerk for recording.

143 c. In any circuit court in which instruments required to be recorded are not recorded on  
144 the same day as delivered, for purposes of subdivision 1 ~~of this subsection~~, the term "from the  
145 time it is ~~duly admitted to record~~ recorded" shall be presumed to be the date and time affixed upon  
146 the instrument by the time stamp machine or affixed by the clerk in accordance with subdivision  
147 3 b of this subsection unless the clerk determines that the applicable requirements for recordation  
148 of the instrument have not been satisfied.

149 d. The provisions of subdivision 3 shall not apply to certificates of satisfaction or partial  
150 satisfaction or assignments of deeds of trust delivered to the clerk's office other than by hand.

151 B. A credit line deed of trust, recorded pursuant to § ~~55-58.2~~ 55.1-xxx, ~~shall have validity~~  
152 and is valid and has priority over any (i) contract in writing, deed, conveyance, or other instrument  
153 conveying any such estate or term subsequently recorded or (ii) judgment subsequently docketed  
154 as to all advances made under such credit line deed of trust from the date of recordation of such  
155 credit line deed of trust, ~~regardless of~~ whether or not the particular advance or extension of credit

156 has been made or unconditionally committed at the time of delivery or recordation of such contract  
157 in writing, deed, or other instrument or the docketing of such judgment. Any judgment creditor  
158 shall have the right to give the notice contemplated by § ~~55-58.2~~ 55.1-xxx and, from the day  
159 following receipt of such notice, the judgment as docketed shall have priority over all subsequent  
160 advances made pursuant to the credit line deed of trust except those ~~which that~~ have been  
161 unconditionally and irrevocably committed prior to such date. Mechanics' liens created under  
162 Title 43 shall continue to ~~enjoy~~ have the same priority as created by that title. Purchase money  
163 security interests in goods and fixtures shall have the same priority as provided in Part 3 of Title  
164 8.9A (§ 8.9A-317 et seq.).

165 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
166 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
167 **made.**

168 ~~§ 55-96.1.~~

169 **Drafting note: Repealed by Acts 1966, c. 401.**

170 ~~§ 55-97~~ 55.1-xxx. Where to be recorded.

171 Notwithstanding ~~that~~ any ~~such~~ writing ~~shall be duly admitted to record~~ is recorded in one  
172 county or ~~corporation wherein~~ city in which there is real estate or ~~goods or chattels~~ personal  
173 property, it ~~shall~~ nevertheless ~~be~~ is void as to such creditors and purchasers in respect to other real  
174 estate or ~~goods or chattels~~ personal property without, ~~the same~~ such recording until it is duly  
175 ~~admitted to record~~ recorded in the county or ~~corporation wherein~~ city in which such other real  
176 estate or ~~goods or chattels~~ personal property may be; located, but it shall be sufficient to record a  
177 deed releasing the lien of a deed of trust, in whole or in part, either in the county or city in which  
178 the property thereby released is located; or in the county or city in which the property so released  
179 was situated at the time of the recordation of the deed of trust; and any recordation thereof so  
180 made of any such release is hereby validated.

181 **Drafting note: As noted in the list of titlewide conventions in proposed Title 55.1, the**  
182 **phrase "goods or chattels" is modernized as "personal property." Technical changes are**  
183 **made.**

184 ~~§§ 55-98, 55-99.~~

185 **Drafting note: Repealed by Acts 1964, c. 219.**

186 ~~§ 55-100~~ 55.1-xxx. Recordation of instruments affecting civil aircraft of United States.

187 No instrument ~~which that~~ affects the title to or interest in any civil aircraft of the United  
188 States, as defined by federal law, or any portion ~~thereof of such aircraft~~, shall be valid in respect  
189 of such aircraft or portion ~~thereof of such aircraft~~ against any person other than the person by  
190 whom the instrument is made or to whom the instrument is given, his heir or devisee, and any  
191 person having actual notice ~~thereof of such instrument~~, until such instrument is recorded in the  
192 office of the ~~Civil Aeronautic~~ Administrator of the Federal Aviation Administration of the United  
193 States, or such other office as is designated by the laws of the United States as the one in which  
194 such instruments should be filed. Every such instrument so recorded in such office shall be valid  
195 as to all persons without further recordation in any office in ~~this the~~ Commonwealth, the  
196 provisions of any other recordation statute to the contrary notwithstanding. Any instrument,  
197 ~~recording of for~~ which recordation is required by the provisions of this section, shall take effect  
198 from the date of its recordation and not from the date of its execution.

199 **Drafting note: Technical changes.**

200 ~~§ 55-104~~ 55.1-xxx. Priority of writings, when admitted to record same day.

201 ~~When-Unless otherwise provided for in this chapter, when~~ two or more writings ~~embracing~~  
202 pertaining to the same property are ~~admitted to record recorded~~ in the same county or city on the  
203 same day and stamped with the identical time, ~~if the previous sections do not provide for the case,~~  
204 the instrument number shall determine the writing that was first ~~admitted to record recorded~~. The  
205 instrument ~~which that~~ was first ~~admitted to record recorded~~ shall have priority ~~in with~~ respect to  
206 the property in such county or city.



207 **Drafting note: Technical changes.**

208 ~~§ 55-102. When writings to be recorded in county, and when in corporation.~~

209 ~~The provisions of this and any other chapter of this Code or of any subsequent statute, by~~  
210 ~~virtue of which a writing is to be or may be recorded in the county or corporation wherein the~~  
211 ~~property embraced in such writing is, shall be construed, in respect to the county, as relating only~~  
212 ~~to property within the county and without the corporate limits of the corporation having a court~~  
213 ~~wherein writings may be lawfully admitted to record, and, in respect to the corporation, as relating~~  
214 ~~only to property within the corporate limits of such corporation having such a court.~~

215 **Drafting note: Recommended for repeal as obsolete. This section has not been**  
216 **amended since 1919, and no cases have referenced it since 1875.**

217 ~~§ 55-103~~ 55.1-xxx. Words "creditors" and "purchasers," how construed.

218 The words "creditors" and "purchasers," when used in any previous section of this chapter,  
219 shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall  
220 also extend to and embrace all creditors and purchasers who, but for the deed or writing, would  
221 have had title to the property conveyed or a right to subject it to their debts.

222 **Drafting note: No change.**

223 ~~§ 55-104~~ 55.1-xxx. Lien of subsequent purchaser for purchase money paid before notice.

224 As against any person claiming under the deed or other writing ~~which shall not have that~~  
225 ~~has not~~ been ~~admitted to record~~ recorded before payment by a subsequent purchaser for valuable  
226 consideration of the whole or a part of his purchase money, such subsequent purchaser,  
227 notwithstanding such deed or other writing ~~be admitted to record~~ recorded before he becomes a  
228 complete purchaser, shall, ~~in equity~~, have a lien on the property purchased by him, for so much  
229 of his purchase money as he may have paid before notice of such lien.

230 **Drafting note: The reference to "equity" is deleted as obsolete. Technical changes**  
231 **are made.**

232 ~~§ 55-105~~ 55.1-xxx. When purchaser not affected by record of deed or contract.

