

1 SUBTITLE I.

2 PROPERTY CONVEYANCES.

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

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

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

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

21 Article 1.

22 Creation and Transfer of Estates.

23 **Drafting note: Proposed Article 1, Creation and Limitation of Estates, contains**
24 **sections from existing Chapter 1, Creation and Limitation of Estates; Their Qualities. These**
25 **sections encompass laws governing an individual's rights in holding and transferring both**
26 **personal and real property. Additionally, existing § 55-153, relating to removal of a cloud on**
27 **title, is relocated to this proposed article.**

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

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

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

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

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

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

56 § ~~55-3~~ 55.1-xxx. When gift of ~~goods or chattels~~ personal property invalid.

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

63 **Drafting note: The phrase "goods or chattels" is replaced with the modern term**
64 **"personal property" throughout the chapter. Technical changes are made.**

65 § ~~55-4~~ 55.1-xxx. Suicide or attainder of felony.

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

68 **Drafting note: Attainder of felony means conviction of a capital crime. Language is**
69 **clarified and technical changes are made.**

70 § ~~55-5~~ 55.1-xxx. Estates to lie in grant as well as in livery.

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

73 **Drafting note: No change.**

74 § ~~55-6~~ 55.1-xxx. Same estates may be created by deed as by will.

75 Any interest in or claim to real estate, including easements in gross, may be ~~disposed of~~
76 transferred by deed or will. Any estate may be made to commence ~~in future~~ at a future date, by
77 deed, in like manner as by will; and any estate ~~which that~~ would be ~~good~~ valid as an executory
78 devise or bequest ~~shall be good~~ is valid if created by deed.

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

80 § ~~55-7~~ 55.1-xxx. Power of disposal in life tenant not to defeat remainder unless exercised;
81 power of disposal held by fiduciary.

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

93 **Drafting note: Technical changes.**

94 ~~§§ 55-7.1, 55-7.2.~~

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

96 ~~§ 55-8 55.1-xxx.~~ Default or surrender of tenant for life not to prejudice remainderman, ~~ete.~~

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

100 **Drafting note: Technical changes.**

101 ~~§ 55-9 55.1-xxx.~~ Conveyance of estate or interest in property by grantor to himself and
102 another.

103 Any person having an estate or interest in real or personal property may convey ~~the same~~
104 such estate or interest to himself or to himself and another or others, including to himself and his
105 spouse as tenants by the ~~entireties~~ entirety or otherwise, and the fact that one or more persons are
106 both grantor or grantee or grantors and grantees in the same conveyance shall be no objection to
107 the conveyance. The grantee or grantees in any such conveyance shall take title in like manner.

108 and the estate vested in them shall be the same as if the conveyance had been made by one or more
109 persons who are not also grantee or grantees ~~therein~~.

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

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

114 § ~~55-10~~ 55.1-xxx. Deed ~~good~~ valid for grantor's right; operation of warranty.

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

121 **Drafting note: Technical changes.**

122 § ~~55-11~~ 55.1-xxx. ~~Grant, etc.,~~ Conveyance, devise, or grant without words of limitation.

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

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

128 § ~~55-12~~ 55.1-xxx. Fee tail converted into fee simple.

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

133 **Drafting note: Technical changes.**

134 § ~~55-14~~ 55.1-xxx. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's
135 Case abolished.

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

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

146 § ~~55-14.1~~ 55.1-xxx. Doctrine of worthier title abolished.

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

149 **Drafting note: Technical change.**

150 § ~~55-15~~ 55.1-xxx. When contingent remainder not to fail.

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

152 **Drafting note: Technical change.**

153 § ~~55-16~~ 55.1-xxx. When remainders not defeated.

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

157 **Drafting note: Technical change.**

158 § ~~55-17~~ 55.1-xxx. In what conveyances possession transferred to the use.

159 By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized
160 to the use, or deed operating by way of covenant to stand seized to the use, the possession of the

161 ~~bargainor, releasor or covenantor~~ grantor shall be deemed transferred to the ~~bargainee, releasee~~
162 grantee or other person entitled to the use, for the estate or interest ~~which~~ that such person has in
163 the use, as perfectly as if the ~~bargainee, releasee~~ grantee or other person entitled to the use had
164 been enfeoffed with livery of seisin of the land intended to be conveyed by such deed or covenant.

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

166 § ~~55-17.1~~ 55.1-xxx. Land trusts not to fail because no beneficiaries are specified by name
167 and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

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

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

181 In any case under this section where there is a recorded deed of conveyance to a trustee
182 and the trustee named in the deed declines to serve, resigns, is disqualified or removed, or is
183 adjudicated incapacitated and there is (a) no successor trustee named in the deed, (b) no successor
184 trustee designated by the terms of the trust instrument, or (c) no procedure set forth in the deed or
185 trust instrument to designate a successor trustee, the beneficiaries of the trust, by majority decision,
186 shall name a successor trustee. However, if the identities of the beneficiaries of the trust cannot be
187 identified from the recorded deed of conveyance or a majority of the beneficiaries are unable to

188 agree upon a successor trustee, the circuit court of the county or city in which the deed was
189 recorded, upon the motion of any party interested in the administration of the trust, shall appoint a
190 successor trustee whenever the court considers the appointment necessary for the administration
191 of the trust. The name and address of any successor trustee so named or appointed shall be recorded
192 with the clerk of the circuit court of the county or city in which the deed was recorded, and such
193 successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all
194 the duties, liabilities, and responsibilities imposed upon the original trustee unless the deed of
195 conveyance expressly provides to the contrary.

196 Nothing in this section shall be construed to (1) affect any right that a creditor may
197 otherwise have against a trustee or beneficiary except as provided ~~above in this section~~, (2) enlarge
198 upon the power of a corporation to act as trustee under § 6.2-1001, or (3) affect the rule against
199 perpetuities.

200 **Drafting note: Technical changes.**

201 ~~§ 55-18~~ 55.1-xxx. Deed of release effectual.

202 Every deed of release of any estate or interest capable of passing by ~~deeds~~ deed of lease or
203 release shall be as effectual for the purposes ~~therein~~ expressed in such deed of release, without the
204 execution of a lease, as if the same had been executed.

205 **Drafting note: Technical changes.**

206 ~~§ 55-19.~~

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

208 ~~§ 55-19.1.~~

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

210 ~~§ 55-19.2.~~

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

212 ~~§§ 55-19.3, 55-19.4.~~

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

214 ~~§ 55-22~~ 55.1-xxx. When person not a party, etc., may take or sue under instrument.

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

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

225 § ~~55-23~~ 55.1-xxx. Informalities in deeds made by attorneys-in-fact.

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

231 **Drafting note: Technical changes.**

232 § ~~55-24~~ 55.1-xxx. Time for objections to irregularities in advertising sales made by
233 trustees.

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

239 **Drafting note: Technical change.**

240 § ~~55-25~~ 55.1-xxx. Recovery at death of life tenant of taxes paid on life estate.

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

249 **Drafting note: Technical changes.**

250 ~~§ 55-25.1.~~

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

252 ~~§ 55-153~~ 55.1-xxx. Removal of a cloud on title; nature of plaintiff's title.

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

260 **Drafting note: This section is relocated from existing Chapter 8 because the majority**
261 **of that chapter is relocated to Title 45.1 but this section is more appropriately retained in**
262 **Title 55. Language is updated to reflect the merger of law and equity pleading in Virginia.**
263 **Technical changes are made.**

264 ~~§ 55-154.1.~~

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

266 Article 2.

267 Rule Against Perpetuities.

268 **Drafting note: Proposed Article 2 contains sections related to the Rule Against**
269 **Perpetuities, including the Uniform Statutory Rule Against Perpetuities.**

270 § ~~55-12-1~~ 55.1-xxx. Uniform Statutory Rule Against Perpetuities.

271 A. A nonvested property interest is invalid unless:

272 1. When the interest is created, it is certain to vest or terminate no later than ~~twenty-one~~ 21
273 years after the death of an individual then alive; or

274 2. The interest either vests or terminates within ~~ninety~~ 90 years after its creation.

275 B. A general power of appointment not presently exercisable because of a condition
276 precedent is invalid unless:

277 1. When the power is created, the condition precedent is certain to be satisfied or becomes
278 impossible to satisfy no later than ~~twenty-one~~ 21 years after the death of an individual then alive;

279 or

280 2. The condition precedent either is satisfied or becomes impossible to satisfy within ~~ninety~~
281 90 years after its creation.

282 C. A nongeneral power of appointment or a general testamentary power of appointment is
283 invalid unless:

284 1. When the power is created, it is certain to be irrevocably exercised or otherwise to
285 terminate no later than ~~twenty-one~~ 21 years after the death of an individual then alive; or

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

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

291 E. If, in measuring a period from the creation of a trust or other property arrangement,
292 language in a governing instrument (i) seeks to disallow the vesting or termination of any interest
293 or trust beyond $\frac{1}{2}$; (ii) seeks to postpone the vesting or termination of any interest or trust until $\frac{1}{2}$; or
294 (iii) seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period

295 of time not exceeding ~~twenty-one~~ 21 years after the death of the survivor of specified lives in being
296 at the creation of the trust or other property arrangement or (b) the expiration of a period of time
297 that exceeds or might exceed ~~twenty-one~~ 21 years after the death of the survivor of lives in being
298 at the creation of the trust or other property arrangement, that language is inoperative to the extent
299 it produces a period of time that exceeds ~~twenty-one~~ 21 years after the death of the survivor of the
300 specified lives.

301 **Drafting note: Technical changes.**

302 § ~~55-12.2~~ 55.1-xxx. When nonvested property interest or power of appointment created.

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

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

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

316 **Drafting note: Technical changes.**

317 § ~~55-12.3~~ 55.1-xxx. Reformation.

318 Upon the petition of an interested person, a circuit court ~~of equity~~ in the county or city
319 wherein in which the affected property or the greater part ~~thereof of such property~~ is located shall
320 reform a disposition in the manner that most closely approximates the transferor's manifested plan

321 of distribution and is within the ~~ninety~~ 90 years allowed by subdivision A 2, B 2, or C 2 of § ~~55-~~
322 ~~12.1~~ 55.1-xxx if:

323 1. A nonvested property interest or a power of appointment becomes invalid under § ~~55-~~
324 ~~12.1~~ 55.1-xxx;

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

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

329 **Drafting note: Technical changes.**

330 § ~~55-12.4~~ 55.1-xxx. Exclusions from statutory rule against perpetuities.

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

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

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

342 3. A power to appoint a fiduciary;

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

345 5. A nonvested property interest held by a charity, government, or governmental agency or
346 subdivision, if the nonvested property interest is preceded by an interest held by another charity,
347 government, or governmental agency or subdivision;

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

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

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

361 B. The exception to the Uniform Statutory Rule Against Perpetuities under subdivision A
362 8 shall not extend to real property held in trust. For purposes of this subsection, real property ~~shall~~
363 does not include an interest in a corporation, limited liability company, partnership, business trust,
364 or other entity, even if such entity owns an interest in real property.

365 **Drafting note: Technical changes.**

366 § ~~55-12.5~~ 55.1-xxx. Prospective application.

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

372 **Drafting note: Technical changes.**

373 § ~~55-12.6~~ 55.1-xxx. Uniformity of application and construction.

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

377 **Drafting note: Technical changes.**

378 § ~~55-13~~ 55.1-xxx. Certain limitations construed.

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

386 **Drafting note: Technical changes.**

387 § ~~55-13.1~~ 55.1-xxx. Employee trusts.

388 Pension, profit sharing, stock bonus, annuity, or other employee trusts ~~heretofore or~~
389 hereafter established by employers for the purpose of distributing the income and principal ~~thereof~~
390 of such trust to some or all of their employees, or the beneficiaries of such employees, shall not be
391 invalid as violating any laws or rules against perpetuities or restraints on the power of alienation
392 of title to property; but such trusts may continue for such period of time as may be required by ~~the~~
393 their provisions ~~thereof~~ to accomplish the purposes for which they are established.

394 **Drafting note: Technical changes.**

395 § ~~55-13.2~~ 55.1-xxx. Determination of "lives in being" for purpose of rule against
396 perpetuities.

397 A. For the purpose of determining whether the terms of an "inter vivos" trust provide for a
398 duration in excess of that allowed under the rule against perpetuities, the determination of "lives
399 in being" shall be made as of the death of the settlor, if the settlor has at his death the unrestricted
400 right, acting alone, to revoke the trust or to have transferred to himself the entire legal and

401 beneficial interest in all property, both principal and income, held in the trust. In the event that the
402 settlor surrenders both such rights at any time prior to his death, the determination of "lives in
403 being" shall be made as of the time that the settlor, upon establishment of the trust or otherwise,
404 surrenders the unrestricted right acting alone to revoke the trust and the unrestricted right acting
405 alone to have transferred to himself the entire legal and beneficial interest in all property, both
406 principal and income, held in the trust.

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

409 **Drafting note: Technical changes.**

410 § ~~55-13.3~~ 55.1-xxx. Application of the rule against perpetuities to nondonative transfers.

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

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

418 **Drafting note: Technical changes.**

419 Article 3.

420 Joint Ownership of Real or Personal Property.

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

423 § ~~55-20~~ 55.1-xxx. Survivorship between joint tenants abolished.

424 A. When any joint tenant dies, before or after the vesting of the estate, whether the estate
425 is real or personal, or whether partition could have been compelled or not, his part shall descend
426 to his heirs, ~~or~~ pass by devise, or go to his personal representative, subject to debts or distribution,
427 as if he had been a tenant in common. ~~And if hereafter any estate, real or personal, is conveyed or~~

428 ~~devised to a husband and his wife, they shall take and hold the same by moieties in like manner as~~
429 ~~if a distinct moiety had been given to each by a separate conveyance.~~

430 ~~§ 55-21. Exceptions to § 55-20.~~

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

437 **Drafting note: Existing §§ 55-20, Survivorship between joint tenants abolished, and**
438 **55-21, Exemptions to § 55-20, are combined. The last sentence in existing § 55-20 is relocated**
439 **to proposed § 55.1-xxx [§ 55-20.1] because it is more logically located with other provisions**
440 **regarding joint ownership. Technical changes are made.**

441 ~~§ 55-20.1~~ 55.1-xxx. Joint ownership in real and personal property.

442 Any persons may own real or personal property as joint tenants with or without a right of
443 survivorship. When any person causes any real or personal property, or any written memorial of a
444 chose in action, to be titled, registered, or endorsed in the name of two or more persons "jointly,"
445 as "joint tenants," in a "joint tenancy," or other similar language, such persons shall own the
446 property in a joint tenancy without survivorship as provided in ~~§ 55-20~~ 55.1-xxx. If, in addition,
447 the expression "with survivorship," or any equivalent language, is employed in such titling,
448 registering, or endorsing, it shall be presumed that such persons are intended to own the property
449 as joint tenants with the right of survivorship as at common law. This section is not applicable to
450 multiple party accounts under Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2, or to any other
451 matter specifically governed by another provision of ~~this code~~ the Code.

452 If any real or personal property is conveyed or devised to spouses, they shall take and hold
453 such property by moieties in the same manner as if a distinct moiety had been given to each spouse
454 by a separate conveyance, unless language as provided in this section or in § 55.1-xxx [55-20.2]

455 is used that designates the tenancy as a joint tenancy or a tenancy by the entirety and all
456 requirements for holding property by such tenancy are met.

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

461 § ~~55-20.2~~ 55.1-xxx. Tenants by the ~~entireties~~ entirety in real and personal property; certain
462 trusts.

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

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

472 C. Notwithstanding any contrary provision of § 64.2-747, any property of ~~a husband and~~
473 ~~wife~~ spouses that is held by them as tenants by the ~~entireties~~ entirety and conveyed to their joint
474 revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, and any
475 proceeds of the sale or disposition of such property, shall have the same immunity from the claims
476 of their separate creditors as it would if it had remained a tenancy by the entirety, so long as (i)
477 they remain ~~husband and wife~~ married to each other, (ii) it continues to be held in the trust or trusts,
478 and (iii) it continues to be their property, including where both spouses are current beneficiaries of
479 one trust that holds the entire property or each spouse is a current beneficiary of a separate trust
480 and the two separate trusts together hold the entire property, whether or not other persons are also
481 current or future beneficiaries of the trust or trusts. The immunity from the claims of separate

482 creditors under this subsection may be waived as to any specific creditor, including any separate
483 creditor of either spouse, or any specifically described property, including any former tenancy by
484 the ~~entireties~~ entirety property conveyed into trust, by the trustee acting under the express provision
485 of a trust instrument or with the written consent of both ~~the husband and the wife~~ spouses.

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

489 ~~CHAPTER 20.~~

490 ~~VIRGINIA SOLAR EASEMENTS ACT.~~

491 Article 4.

492 Virginia Solar Easements Act.

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

495 ~~§ 55-352. Short title.~~

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

497 **Drafting note: This section is recommended for repeal on the basis of § 1-244, which**
498 **states that the caption of a subtitle, chapter, or article operates as a short title citation. The**
499 **short title citation is retained in the title of proposed Article 4.**

500 ~~§ 55-353~~ 55.1-xxx. Creation of solar easements.

501 Any easement obtained for the purpose of exposure of solar energy equipment, facilities,
502 or devices shall be created in writing and shall be subject to the same conveyancing and instrument
503 recording requirements as other easements.

504 **Drafting note: Technical change.**

505 ~~§ 55-354~~ 55.1-xxx. Contents of solar easement agreements.

506 Any instrument creating a solar easement shall include, ~~but the contents shall not be limited~~
507 ~~to~~ at a minimum:

508 1. The vertical and horizontal angles, expressed in degrees, at which the solar easement
509 extends over the real property subject to the solar easement~~;~~

510 2. Any terms or conditions ~~or both~~ under which the solar easement is granted or will be
511 terminated~~;~~ and

512 3. Any provisions for compensation of the owner of the property subject to the solar
513 easement.

514 **Drafting note: Technical changes.**

515 ~~§§ 55-355 through 55-359. Reserved.~~

516 **Drafting note: These sections are removed because they are carried as reserved in the**
517 **existing title.**

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