

CHAPTER ~~3~~ XX [2].

PROPERTY RIGHTS OF MARRIED ~~WOMEN~~ PERSONS.

**Drafting note: Existing Chapter 3, Property Rights of Married Women, is retained as proposed Chapter XX [2]. The language of the chapter title is updated in accordance with title-wide conventions to replace a gender-specific term with a gender-neutral one. Additionally, throughout the chapter, changes are made consistent with the statutory convention provided in § 1-216 of the Code of Virginia, which states, "A word used in the masculine includes the feminine and neuter."**

§ ~~55-35~~ 55.1-xxx. How married ~~women~~ persons may acquire and dispose of property.

~~A married woman~~ Married persons shall have the right to acquire, hold, use, control, and dispose of property as if ~~she~~ they were unmarried ~~and such~~. Such power of use, control, and disposition shall apply to all property of a married ~~woman which has been acquired by her since April 4, 1877, or shall be hereafter acquired~~ person. ~~Her husband's~~ The marital rights of persons married to each other shall not entitle ~~him~~ either spouse to the possession or use, or to the rents, issues, and profits, of such real estate of the other spouse during the coverture; nor shall the property of ~~the wife~~ either spouse be subject to the debts or liabilities of the ~~husband~~ other spouse.

**Drafting note: In accordance with title-wide conventions, the gender-specific terms are replaced with gender-neutral ones. These amendments also resolve the current law's potentially unconstitutional sex-based classification, which applies to wives but not husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983) (holding that the doctrine of necessities, which made a husband responsible for the necessary goods and services furnished to his wife, was unconstitutional). Technical changes are made.**

§ ~~55-36~~ 55.1-xxx. Contracts of, and suits by and against, married ~~women~~ persons.

A married ~~woman~~ person may contract and be contracted with and sue and be sued in the same manner and with the same consequences as if ~~she~~ he were unmarried, ~~whether regardless of the date on which~~ the right or liability asserted by or against ~~her~~ him accrued ~~heretofore or~~

28 ~~hereafter~~. In an action by a married ~~woman~~ person to recover for a personal injury inflicted on  
29 ~~her~~ ~~she~~ him, he may recover the entire damage sustained, including the personal injury and  
30 expenses arising out of the injury, whether chargeable to ~~her~~ him or ~~her husband~~ his spouse,  
31 notwithstanding that the ~~husband~~ spouse may be entitled to the benefit of ~~her~~ his services about  
32 domestic affairs and consortium, and any sum recovered therein shall be chargeable with  
33 expenses arising out of the injury, including hospital, medical, and funeral expenses, and any  
34 person, including the ~~husband~~ spouse, partially or completely discharging such debts shall be  
35 reimbursed out of the sum recovered in the action, whensoever paid, to the extent ~~to which~~ that  
36 such payment was justified by services rendered or expenses incurred by the obligee, provided,  
37 ~~however~~, that written notice of such claim for reimbursement, and the amount and items thereof,  
38 shall ~~have been~~ be served on such married ~~woman~~ person and on the defendant prior to any  
39 settlement of the sum recovered by ~~her~~ him, and no action for such injury, expenses, or loss of  
40 services or consortium shall be maintained by ~~the husband~~ his spouse.

41 **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
42 **are replaced with gender-neutral ones. These amendments also resolve the current law's**  
43 **potentially unconstitutional sex-based classification, which applies to wives but not**  
44 **husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983)**  
45 **(holding that the doctrine of necessities, which made a husband responsible for the**  
46 **necessary goods and services furnished to his wife, was unconstitutional). Technical**  
47 **changes are made.**

48 § ~~55-37~~ 55.1-xxx. Spouse not responsible for other spouse's contracts, etc.; mutual  
49 liability for necessities; responsibility of personal representative.

50 Except as otherwise provided in this section, a spouse shall not be responsible for the  
51 other spouse's contract or tort liability to a third party, whether such liability arose before or after  
52 the marriage. The doctrine of necessities as it existed at common law shall apply equally to both  
53 spouses, except where they are permanently living separate and apart, but shall in no event create  
54 any liability between such spouses as to each other. No lien arising out of a judgment under this

55 section shall attach to the judgment debtors' principal residence held by them as tenants by the  
56 ~~entireties~~ entirety or that was held by them as tenants by the ~~entireties~~ entirety prior to the death  
57 of either spouse where the tenancy terminated as a result of the death of either spouse.

58 **Drafting note: The term "tenants by the entireties" is conformed to the title-wide**  
59 **convention "tenants by the entirety."**

60 § ~~55-38~~ 55.1-xxx. ~~Wife's~~ Spouse's right of entry into land not barred by certain  
61 judgments; when ~~she~~ a spouse may defend ~~her~~ his right in lands ~~which that~~ are ~~her~~ his inheritance.

62 A ~~woman~~ spouse shall not be barred of ~~her~~ his right of entry into land by a judgment in  
63 ~~her husband's~~ the other spouse's lifetime by default or collusion, but after ~~his~~ the other spouse's  
64 death may prosecute the same by any proper suit; or, in the lifetime of the ~~husband~~ other spouse,  
65 if ~~he~~ the other spouse will not appear, or, against ~~his wife's~~ the spouse's consent, will render the  
66 ~~wife's~~ spouse's lands during the coverture in a suit against ~~the husband and wife~~ both spouses for  
67 lands ~~which that~~ are ~~her~~ the spouse's inheritance, the ~~wife~~ spouse may come at any time before  
68 judgment, and defend ~~her~~ his right.

69 **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
70 **are replaced with gender-neutral ones. These amendments also resolve the current law's**  
71 **potentially unconstitutional sex-based classification, which applies to wives but not**  
72 **husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983)**  
73 **(holding that the doctrine of necessities, which made a husband responsible for the**  
74 **necessary goods and services furnished to his wife, was unconstitutional). Technical**  
75 **changes are made.**

76 § ~~55-39~~ 55.1-xxx. Rights of ~~wife, etc.,~~ spouse not affected by ~~husband's~~ other spouse's  
77 acts only.

78 No conveyance or other act ~~suffered or done~~ by ~~the husband~~ one spouse only of any land  
79 ~~which that~~ is the inheritance of ~~his wife~~ the other spouse shall be or make any discontinuance  
80 thereof, or be prejudicial to the ~~wife~~ other spouse or ~~her~~ his heirs; or to any having right or title  
81 right and title ~~therein in such land~~, as if no such conveyance or act had been done.

82           **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
83 **are replaced with gender-neutral ones. These amendments also resolve the current law's**  
84 **potentially unconstitutional sex-based classification, which applies to wives but not**  
85 **husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983)**  
86 **(holding that the doctrine of necessities, which made a husband responsible for the**  
87 **necessary goods and services furnished to his wife, was unconstitutional). Language is**  
88 **updated for clarity, and technical changes are made.**

89           ~~§ 55-40. Repealed.~~

90           **Drafting note: Repealed by Acts 1990, c. 831.**

91           ~~§ 55-41 55.1-xxx.~~ Conveyance from ~~husband and wife~~ married persons; effect on right  
92 of ~~wife or husband~~ either spouse.

93           When ~~a husband and his wife~~ persons married to each other have signed and delivered a  
94 writing purporting to convey any estate, real or personal, such writing, whether ~~admitted to~~  
95 ~~record~~ recorded or not, shall (i) if delivered prior to January 1, 1991, operate to convey from the  
96 spouse her right of dower or his right of curtesy in the real estate embraced therein, and (ii) if  
97 delivered after December 31, 1990, operate to manifest the spouse's written consent or joinder,  
98 as contemplated in § 64.2-305 or 64.2-308.9 to the transfer embraced ~~therein in such writing~~. In  
99 either case, the writing passes from such spouse and his ~~or her~~ representatives all right, title, and  
100 interest of every nature ~~which that~~ at the date of such writing he ~~or she~~ may have in any estate  
101 conveyed thereby as effectually as if he ~~or she~~ were at such date an unmarried person. If, in either  
102 case, the writing is a deed conveying a spouse's land, no covenant or warranty ~~therein in such~~  
103 land on behalf of the other spouse joining in the deed shall operate to bind him ~~or her~~ any further  
104 than to convey ~~her or~~ his interest in such land, unless it is expressly stated that such spouse enters  
105 into such covenant or warranty for the purpose of binding himself ~~or herself~~ personally.

106           **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
107 **are replaced with gender-neutral ones. Technical changes are made.**

108           ~~§ 55-42. Repealed.~~

109 **Drafting note: Repealed by Acts 1990, c. 831.**

110 § ~~55-42.1~~ 55.1-xxx. How infant spouse may release interests in spouse's property.

111 Notwithstanding the disability of infancy, on or after January 1, 1991, an infant spouse,  
 112 whether married before or after January 1, 1991, may release his ~~or her~~ marital rights in the other  
 113 spouse's real or personal property by uniting in any contract, deed, or other instrument executed  
 114 by the other spouse or by a commissioner of a court pursuant to a decree entered under §§ 8.01-  
 115 67 through 8.01-77 or any other law with respect to the infant's property.

116 **Drafting note: Technical change.**

117 § ~~55-43~~ 55.1-xxx. Appointment of ~~attorney in fact~~ attorney-in-fact by married ~~women~~  
 118 person; effect of writing executed by such attorney.

119 A married ~~woman~~ person, whether a resident of ~~this~~ the Commonwealth or not, may, by  
 120 power of attorney duly executed and acknowledged as prescribed in § ~~55-113~~ 55.1-xxx or § ~~55-~~  
 121 ~~114~~ 55.1-xxx, appoint an attorney-in-fact to execute and acknowledge, for ~~her~~ him and in ~~her~~ his  
 122 name, any deed or other writing ~~which she~~ that he might execute. Every deed or other writing so  
 123 executed by such attorney-in-fact in pursuance of such power of attorney while the same remains  
 124 in force shall be valid and effectual, in all respects, to convey the interest and title of such married  
 125 ~~woman~~ person in and to any real estate thereby conveyed or otherwise transferred.

126 **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
 127 **are replaced with gender-neutral ones. These amendments also resolve the current law's**  
 128 **potentially unconstitutional sex-based classification, which applies to wives but not**  
 129 **husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983)**  
 130 **(holding that the doctrine of necessities, which made a husband responsible for the**  
 131 **necessary goods and services furnished to his wife, was unconstitutional). Technical**  
 132 **changes are made.**

133 §§ ~~55-44, 55-45~~. Repealed.

134 **Drafting note: Repealed by Acts 1999, c. 16.**

135 § ~~55-46~~ 55.1-xxx. How estate of a married ~~woman~~ person to pass at death.

136 When a married ~~woman~~ person, having title to any estate, dies intestate, ~~as to such estate,~~  
137 ~~or any part thereof, it, or such part~~ such estate, or any part of such estate, shall pass according to  
138 the provisions of Chapter 2 (§ 64.2-200 et seq.) of Title 64.2, subject to ~~her~~ his debts.

139 **Drafting note: In accordance with title-wide conventions, the gender-specific terms**  
140 **are replaced with gender-neutral ones. These amendments also resolve the current law's**  
141 **potentially unconstitutional sex-based classification, which applies to wives but not**  
142 **husbands. See *Schilling v. Bedford Co. Mem'l Hosp.*, 225 Va. 539, 303 S.E.2d 905 (1983)**  
143 **(holding that the doctrine of necessities, which made a husband responsible for the**  
144 **necessary goods and services furnished to his wife, was unconstitutional). Language is**  
145 **updated for clarity.**

146 ~~§ 55-47. Repealed.~~

147 **Drafting note: Repealed by Acts 1992, cc. 617 and 647.**

148 ~~§ 55-47.01~~ 55.1-xxx. Equitable separate estates abolished.

149 The estate known as the equitable separate estate no longer exists, and any language in  
150 any writing, whenever executed, ~~which that~~ purports to convey real property to a person as an  
151 equitable separate estate has no legal or equitable significance after January 1, 1991, except as  
152 provided in § 64.2-301 or 64.2-308.2.

153 **Drafting note: Technical change.**

154 ~~§ 55-47.1~~ 55.1-xxx. Tangible personal property.

155 No presumption of ownership of tangible personal property shall arise by operation of  
156 law to prefer one spouse of a marriage over the other if such presumption is based solely on the  
157 sex of the spouse.

158 **Drafting note: No change.**

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