

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

2

3                   **Relocation to Title 45.1:**

4

~~TITLE 55~~

5

~~PROPERTY AND CONVEYANCES~~

6

~~TITLE 45.1.~~

7

~~MINES AND MINING.~~

8

~~CHAPTER 8 14.7:3.~~

9

~~CLOUDS ON TITLE MINERAL RIGHTS.~~

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

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

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

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

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

45 ~~§ 55-154.1. Repealed.~~

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

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

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

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

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

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

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

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

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

82 **Drafting note: Technical changes.**

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

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

99 **Drafting note: Technical changes.**

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

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

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

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

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

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

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

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

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

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