

CHAPTER 3.
RIGHTS OF MARRIED PERSONS.

Article 1.

Elective Share of Surviving Spouse.

Drafting note: Provisions dealing with the rights of married persons that are in existing Chapter 1 of Title 64.1 have been relocated to proposed Article 1 of Chapter 3 of Subtitle II of Title 64.2. Proposed Article 1 also incorporates the sole section remaining in existing Chapter 2 (§ 64.1-19.2). Proposed Chapter 3 is designed to collect the various provisions dealing with the rights of married persons under one chapter.

§ 64.2-300. Definitions.

As used in this article, the terms "estate" and "property" shall include insurance policies, retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to the control of the decedent on the date of his death or the date of an irrevocable transfer by him during his lifetime. All such insurance policies and other benefits are included in the terms "estate" and "property" notwithstanding the presence of language contained in any statute otherwise providing that neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any other such similar language.

Drafting note: This is a new section that relocates identical definitions that are repeated in both subsection D of existing § 64.1-16.1 and subsection F of existing § 64.1-16.2. There are also technical changes.

§ ~~64.1-19.2~~ 64.2-301. Dower or curtesy abolished.

The interests of dower and curtesy are abolished. However, the abolition of dower and curtesy pursuant to this section shall not change or diminish the nature or right of (i) any dower or curtesy interest of a surviving spouse whose dower or curtesy vested prior to January 1, 1991, or (ii) a creditor or other interested third party in any real estate subject to a right of dower or curtesy.

The rights of all such parties, and the procedures for enforcing such rights, shall continue to be governed by the laws in force prior to January 1, 1991.

Drafting note: Relocated from § 64.1-19.2. No change.

§ ~~64.1-13~~ 64.2-302. When and how elective share may be claimed by surviving spouse.

A. ~~Whether or not~~ A surviving spouse may claim an elective share regardless of whether (i) any provision for ~~a husband or wife~~ the surviving spouse is made in the ~~spouse's~~ decedent's will, or (ii) the ~~spouse~~ decedent dies intestate, ~~the~~

B. The surviving ~~husband or wife~~ spouse of a decedent who dies domiciled in ~~this the~~ Commonwealth may, claim an elective share in the decedent's augmented estate within six months from the later of (i) the time of the admission of the decedent's will to probate or (ii) the

qualification of an administrator on the decedent's intestate estate, ~~claim an elective share in the spouse's augmented estate~~. The claim to an elective share shall be made either in person before the court having jurisdiction over administration of the decedent's estate, or by a writing recorded in ~~such the~~ court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under Chapter 6 (§ 55-106 et seq.) of Title 55.

BC. The right, if any, of the surviving ~~husband or wife~~ spouse of a decedent who dies domiciled outside ~~this of the~~ Commonwealth to take an elective share ~~amount~~ based upon the value of property in ~~this the~~ Commonwealth is governed by the law of the decedent's domicile at death.

Drafting note: Technical changes.

§ ~~64.1-14~~ 64.2-303. Extension of time until after determination of ~~suit action~~ for construction of will or extent of augmented estate.

If (i) a will is of doubtful import as to the amount or value of the property the ~~husband or wife surviving spouse~~ of the ~~testator decedent~~ is to receive thereunder or (ii) the composition or value of the augmented estate is uncertain, and ~~a suit in equity is pending wherein an action to resolve~~ such issues ~~will be resolved is pending~~, the court in which the ~~suit action~~ is pending shall, upon the application of the surviving spouse made within the six-month period ~~specified set forth~~ in § ~~64.1-13~~ 64.2-302, ~~on the application of the surviving spouse~~, enter an order extending the time within which the ~~survivor is to~~ surviving spouse may make a claim for an elective share ~~for such~~. Such additional period ~~beyond the six month period as will allow the survivor reasonable time, within which to make a claim for an elective share shall~~ not ~~to~~ exceed ninety 90 days, ~~for making the claim for an elective share~~ after a final order has been entered in such suit, either by a trial court or any appellate court to which it is appealed.

Drafting note: Technical changes.

§ ~~64.1-15~~.

Drafting note: Repealed by Acts 1970, c. 70.

§ ~~64.1-16~~ 64.2-304. Rights upon claiming an elective share.

If a claim for an elective share is made, the surviving spouse ~~shall~~, is entitled to (i) one-third of the decedent's augmented estate if the decedent left surviving children or their descendants, ~~have one-third or (ii) one-half~~ of the decedent's augmented estate, ~~or if the decedent left no surviving children or their descendants survive, the surviving spouse shall have one-half of such augmented estate~~. The surviving spouse ~~shall be~~ is entitled to interest at the legal rate specified in § 6.2-301 from the date of the decedent's death to the date of satisfaction of the elective share.

Drafting note: Technical changes.

§ ~~64.1-16.1~~ 64.2-305. Augmented estate; exclusions; valuation.

A. The augmented estate means the decedent's entire estate passing by ~~testate will~~ or intestate succession, real and personal, after payment of allowances and exemptions ~~elected~~

under Article ~~5.1 2~~ (§ ~~64.1-151.1 64.2-309~~ et seq.) ~~of Chapter 6~~ of this ~~title chapter~~, funeral expenses, charges of administration ~~which that~~ shall not include federal or state transfer taxes, and debts, and to which is added ~~the sum of~~ the following amounts:

1. The value of property, other than tangible personal property received by gift and the proceeds thereof, owned or acquired by the surviving spouse at the decedent's death, to the extent the property is derived from the decedent, by any means other than ~~testate by will~~ or intestate succession, without ~~a~~ full consideration in money or money's worth;

2. The value of property, other than tangible personal property received by gift and the proceeds thereof, derived by the surviving spouse from the decedent without ~~a~~ full consideration in money or money's worth, ~~by any means~~ other than by ~~testate will~~ or intestate succession, and transferred by the surviving spouse at any time during the marriage to a person other than the decedent, which would have been ~~includible~~ includable in the surviving spouse's augmented estate if the surviving spouse had predeceased the decedent; and

3. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive ~~adequate and~~ full consideration in money or money's worth for the transfer, if the transfer ~~is of~~ was any of the following types:

a. Any transfer under which the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the possession or enjoyment of, or the right to income from, the property;

b. Any transfer to the extent that the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, ~~a the~~ power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

c. Any transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship; or

d. Any transfer made to or for the benefit of a donee within the calendar year of the decedent's death or any of the five preceding calendar years to the extent that the aggregate value of the transfers to the donee exceeds \$10,000 in that calendar year.

B. ~~Nothing herein shall cause to be included in~~ Notwithstanding the provisions of this section, the augmented estate shall not include (i) the value of any property transferred by the decedent during marriage with the written consent or joinder of the surviving spouse; (ii) the value of any property, its income, or proceeds, received by the decedent, before or during the marriage to the surviving spouse, by gift, will, intestate succession, or any other method or form of transfer to the extent it ~~is was~~ (a) received without full consideration in money or money's worth, ~~before or during the marriage to the surviving spouse~~, from a person other than the surviving spouse ~~to the extent such property, income, or proceeds were~~, (b) maintained by the decedent as separate property; ~~or~~ (iii) any transfer made to anyone other than the surviving

spouse prior to January 1, 1991, to the extent that such transfer ~~is~~ was irrevocable on that date; or (iv) the value of any property excluded from the augmented estate pursuant to § 64.2-317.

C. Property is valued as of the decedent's death, except that property irrevocably transferred ~~irrevocably~~ during the lifetime of the decedent is valued as of the date the transferee came into possession or enjoyment of the property if that occurs first such date precedes the date of the decedent's death.

1. Life estates and remainder interests are valued in the manner prescribed in Article 2 (§ 55-269.1 et seq.) of Chapter 15 of Title 55, and deferred payments and estates for years are discounted to present value using the interest rate specified in § 55-269.1.

2. The value of an insurance policy that is irrevocably transferred during the lifetime of a decedent is the cost of a comparable policy on the date of the transfer or, if such a policy is not readily available, the policy's interpolated terminal reserve. The value of any premiums paid on an insurance policy owned by another person is only the amount of the premiums ~~only paid~~ and not the insurance purchased or maintained with such premiums.

3. An initial interest in property owned as a joint tenant with survivorship is valued at the time the interest is acquired, and a further interest received upon the death of a cotenant is valued at the time of the cotenant's death. Property owned jointly by persons married to each other ~~shall be is~~ rebuttably presumed to have been acquired with contributions of equal value by each tenant. The mere creation of an indebtedness secured by jointly owned property is not a contribution to its acquisition, but any satisfaction of such an indebtedness is a contribution. An interest in a tenancy by the ~~entirety shall be~~ entireties is valued as if it were an interest in a joint tenancy with survivorship. Joint accounts in financial institutions ~~shall be are~~ valued in accordance with the provisions of Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2.

~~D. As used in this section, the terms "estate" and "property" shall include insurance policies, retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to the control of the decedent on the date of his death or the date of an irrevocable transfer by him during his lifetime. All such insurance policies and other benefits are included in the terms "estate" and "property" notwithstanding the presence of language contained in any statute otherwise providing that neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any other such similar language.~~

Drafting note: The definitions contained in subsection D of § 64.1-16.1 have been relocated to proposed § 64.2-300 in order to avoid the need to repeat them in other sections in the article. Clause (iv) has been added to subsection B providing that the augmented estate does not include a decedent's interest in one-half of that property to which the Uniform Disposition of Community Property Rights at Death Act applies. This addition is merely a restatement of current law that such property is not subject to the surviving

spouse's right to an elective share under proposed § 64.2-317. There are also technical changes.

§ ~~64.1-16.2~~ 64.2-306. Charging spouse with gifts the value of property received; liability of others for balance of elective share; ~~determination; satisfaction~~.

A. In determining the elective share, values the value of property included in the augmented estate ~~which pass or have~~ that passes or has passed to the surviving spouse, or ~~which that~~ that would have passed to the spouse but ~~were was~~ disclaimed, are is applied first to satisfy the elective share ~~and in order~~ to reduce any contributions due from other recipients of transfers included in the augmented estate.

B. ~~Remaining~~ The recipients of the remaining property of the augmented estate ~~is so applied that liability for~~ are liable to contribute the balance of the elective share ~~of the surviving spouse~~ and any interest thereon ~~is equitably apportioned among the recipients of the augmented estate~~ in proportion to the value of their interests ~~therein~~.

C. The only persons subject to contribution to make up the elective share ~~of the surviving spouse~~ are (i) an original ~~transferees~~ transferee from or ~~appointees~~ appointee of the decedent, and any subsequent gratuitous inter vivos ~~donees~~ donee or ~~persons~~ person claiming by ~~testate will~~ or intestate succession, to the extent such ~~persons have~~ person has the property or its proceeds on or after the date of the decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share in the decedent's estate. A corporate fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no address is shown therein, at the office of its registered agent.

No other party is subject to contribution to make up the elective share even though the party makes a payment or transfers an item of property or other benefit to any person with actual knowledge that a surviving spouse has claimed an elective share in the decedent's estate.

D. Upon the petition of the surviving spouse, the decedent's personal representative, or any party in interest, the court having jurisdiction over the administration of the decedent's estate shall determine the amount of the elective share and the ratable portion of the elective share attributable to each person liable to contribution. Such petition may be brought against fewer than all persons ~~against from~~ whom relief could be sought, but no person is subject to contribution in any ~~greater~~ greater amount greater than that which he would have been if relief had been secured against all persons subject to contribution.

E. Within ~~thirty~~ 30 days after the court's determination of the contributions due under subsection D becomes final and not subject to further appeal, any person liable to the surviving spouse for contribution may file with the court a written statement specifying any of the following methods for satisfying his contribution and interest liability:

1. Conveyance to the surviving spouse of a portion of the property included in the augmented estate, ~~which portion is~~ equal in value to his liability on the date the contribution

statement is filed ~~as provided in this subsection; however,~~ or if, on the date of filing, the value of the property included in the augmented estate is less than his liability, ~~he may convey the property conveyance~~ to the surviving spouse of the entire property included in the augmented estate in full satisfaction;

2. Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

3. Partial conveyance and partial payment under subdivisions 1 and 2 ~~above~~, provided that the value conveyed and paid is equal to his liability.

In the event a contribution statement is not filed within ~~thirty~~ 30 days, the court shall enter an order specifying the method by which a person's liability to the surviving spouse shall be satisfied.

~~F. As used in this section, the terms "estate" and "property" shall include insurance policies, retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to the control of the decedent on the date of his death or an irrevocable transfer by him during his lifetime. All such insurance policies and other benefits are included in the terms "estate" and "property" notwithstanding the presence of language contained in any statute otherwise providing that neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any other such similar language.~~

Drafting note: The definitions in subsection F, which are identical to those in subsection D of § 64.1-16.1, have been relocated to proposed § 64.2-300. There are also technical changes.

~~§ 64.1-16.4~~ 64.2-307. Rights in family residence.

Until the surviving spouse's rights in the principal family residence have been determined and satisfied by an agreement between the parties or a final court decree, in cases (i) where the principal family residence passes under the provisions of ~~§ 64.1-1~~ 64.2-200 and the ~~deceased spouse~~ decedent is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, or (ii) where the surviving spouse claims an elective share in the ~~deceased spouse's~~ decedent's augmented estate under this article, the surviving spouse may hold, occupy, and enjoy the principal family residence and curtilage without charge for rent, repairs, taxes, or insurance. If ~~such the~~ surviving spouse is deprived of possession of the principal family residence and curtilage, ~~he or she may, on upon the filing of a complaint of for~~ unlawful entry or detainer, he is entitled to recover the possession thereof, with of such residence and damages for sustained by him by reason of such deprivation during the time the surviving spouse he was so deprived; ~~but nothing. Nothing~~ in this section shall be construed to impair the lien or delay the enforcement ~~thereof~~ of such lien of ~~any state, city or county~~ the Commonwealth or any locality for the taxes assessed upon the property.

Drafting note: Technical changes.

~~§ 64.1-16.3~~ 64.2-308. Statutory rights barred by desertion or abandonment.

A. If a ~~husband or wife~~ spouse willfully deserts or abandons ~~his or her~~ the other spouse and such desertion or abandonment continues until the death of the other spouse, the party who deserted the deceased spouse shall be barred of all interest in the decedent's estate ~~of the other~~ by intestate succession, elective share, exempt property, family allowance, and homestead allowance.

B. If a parent willfully deserts or abandons his ~~or her~~ minor or incapacitated child and such desertion or abandonment continues until the death of the child, the parent shall be barred of all interest in the child's estate ~~of the child~~ by intestate succession ~~unless the parent resumes the parental relationship and duties and such parental relationship and duties continue until the death of the child.~~

Drafting note: Technical changes.

~~§ 64.1-17. In division of estate of intestate, advancements to be brought into hotchpot.~~

~~When any descendant of a person dying intestate as to his estate, or any part thereof, shall have received from such intestate in his lifetime, or under his will, any estate, real or personal, by way of advancement, and he, or any descendant of his, shall come into the partition and distribution of the estate with the other pareners and distributees, such advancement shall be brought into hotchpot with the whole estate, real and personal, descended or distributable, and thereupon such party shall be entitled to his proper portion of the estate, real and personal.~~

Drafting note: Relocated to proposed § 64.2-206 in Chapter 2.

~~§ 64.1-18.~~

Drafting note: Repealed by Acts 1981, c. 469.

~~CHAPTER 2.~~

~~CURTESY, DOWER AND JOINTURE.~~

Drafting note: All provisions in existing Chapter 2, except § 64.1-19.2, were repealed effective January 1, 1991. Existing § 64.1-19.2 has been relocated to proposed Article 1 of Chapter 3.

~~§§ 64.1-19., 64.1-19.1.~~

Drafting note: Repealed by Acts 1990, c. 831, effective January 1, 1991.

~~§ 64.1-19.2. Dower or curtesy abolished.~~

~~The interests of dower and curtesy are abolished. However, the abolition of dower and curtesy pursuant to this section shall not change or diminish the nature or right of (i) any dower or curtesy interest of a surviving spouse whose dower or curtesy vested prior to January 1, 1991, or (ii) a creditor or other interested third party in any real estate subject to a right of dower or curtesy.~~

~~The rights of all such parties, and the procedures for enforcing such rights, shall continue to be governed by the laws in force prior to January 1, 1991.~~

Drafting note: Relocated to proposed § 64.2-301.

~~§§ 64.1-20 through 64.1-44.~~

Drafting note: Repealed by Acts 1990, c. 831, effective January 1, 1991.

~~Article 5.1 2.~~

Exempt Property and Allowances.

Drafting note: Existing Article 5.1 of Chapter 6 of Title 64.1 has been relocated to proposed Article 2 of Chapter 3 of Title 64.2. Proposed Chapter 3 is designed to collect the various provisions dealing with the rights of married persons under one chapter.

~~§ 64.1-151.1~~ 64.2-309. Family allowance.

~~Upon~~ A. In addition to any other right or allowance under this article, upon the death of a ~~domiciliary of this decedent who was domiciled in the~~ Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance ~~may~~ shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum ~~in one or more installments not to exceed \$18,000,~~ or in periodic installments not to exceed \$1,500 per month for one year. It is payable to the surviving spouse, ~~if living,~~ for the use of the surviving spouse and minor children, ~~otherwise, or, if there is no surviving spouse,~~ to the person having the care and custody of the minor children; ~~but in case.~~ If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the ~~child's~~ care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.

B. The family allowance has priority over all claims against the estate.

C. The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

D. The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid.

Drafting note: The amount of the family allowance has been relocated from existing § 64.1-151.4 to proposed subsection A, which is consistent with the location of the amounts of exempt property (existing § 64.1-151.2) and the homestead allowance (existing § 64.1-151.3). There are also technical changes.

~~§ 64.1-151.2~~ 64.2-310. Exempt property.

A. In addition to ~~the family any other right or~~ allowance under this article, the surviving spouse of a decedent who was domiciled in ~~this the~~ Commonwealth is entitled from the estate to value not exceeding \$15,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If ~~encumbered chattels are the value of the exempt property selected and if the value~~ in excess of any security interests, ~~plus that of other exempt property, therein~~ is less than \$15,000, or if there

is not \$15,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$15,000 value.

~~Rights~~B. The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property ~~have~~ has priority over all claims against the estate, ~~but not over~~ except the family allowance.

C. The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

Drafting note: Technical changes.

~~§ 64.1-151.3~~ 64.2-311. Homestead allowance.

A. In addition to ~~the any other~~ right to family or allowance ~~and exempt property, a under this article, a~~ surviving spouse of a decedent who was domiciled in ~~this the~~ Commonwealth is entitled to a homestead allowance of \$15,000. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to \$15,000, divided by the number of minor children ~~of the decedent~~.

B. The homestead allowance has priority over all claims against the estate, ~~but not over~~ except the ~~right to~~ family allowance and the right to exempt property.

C. The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will ~~of the decedent~~ or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will ~~of the decedent~~ or by intestate succession is less than \$15,000, then the surviving spouse or minor children ~~shall be~~ are entitled to a homestead allowance in an amount ~~which, that~~ when added to the property passing to the surviving spouse and minor children by the decedent's will ~~of the decedent~~ or by intestate succession, ~~will equal~~ equals the sum of \$15,000.

D. If the surviving spouse claims and receives an elective share of the decedent's estate under §§ ~~64.1-13~~ 64.2-302 through ~~64.1-16~~ 64.2-307, the surviving spouse shall not have the benefit of any homestead allowance.

Drafting note: Technical changes.

~~§ 64.1-151.4~~ 64.2-312. Source, determination, and documentation of family allowance, exempt property, and homestead allowance; petition for relief.

~~If the estate is otherwise sufficient, property~~A. Property specifically bequeathed or devised shall not be used to satisfy ~~rights~~ the right to exempt property and the homestead allowance if there are sufficient assets in the estate otherwise to satisfy such rights. Subject to this restriction, the surviving spouse or the guardian of the minor children may select property of the estate as exempt property and the homestead allowance. The personal representative may make these selections if the surviving spouse or the guardian of the minor children is unable or fails to do so within a reasonable time, or if there is no guardian of the minor children. The personal representative may execute a deed of distribution to establish the ownership of property

taken as the homestead allowance or exempt property, which deed, if executed, shall: (i) describe the property with reasonable certainty; and (ii) state the value of each asset included therein. The personal representative may determine the family allowance in a lump sum ~~not exceeding \$18,000~~, or periodic installments ~~not exceeding \$1,500 per month for one year~~; and he in accordance with § 64.2-309. The personal representative may disburse funds of the estate in payment of the family allowance and in payment of any part of the exempt property or the homestead allowance; that is payable in cash.

B. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the circuit court for appropriate relief, ~~which relief may provide including the award of~~ a family allowance that is larger or smaller than ~~that which~~ what the personal representative determined or could have determined. Such petition may be ex parte; provided, however, that the court in its discretion may require such notice to and the convening of interested parties as it may deem proper in each case.

Drafting note: The amount of the family allowance has been relocated to subsection A of proposed § 64.2-309. There are also technical changes.

~~§ 64.1-151.5~~ 64.2-313. When and how exempt property and allowances may be claimed.

The Any election to take a family allowance, exempt property ~~and, or a~~ homestead allowance, ~~or any of them, may shall~~ be made within one year from the decedent's death ~~of the testator or intestate~~. The election shall be made either in person before the court having jurisdiction over probate or administration of the decedent's estate, or by a writing recorded in the court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under Chapter 6 (§ 55-106 et seq.) of Title 55.

Drafting note: Technical changes.

~~§ 64.1-151.6~~ 64.2-314. Waiver.

A. The right of a decedent's surviving spouse to a homestead allowance in the estate of a ~~deceased spouse~~ decedent as provided in ~~§ 64.1-151.3~~ 64.2-311 may be waived during the ~~deceased spouse's~~ decedent's lifetime only by execution of a marital or premarital agreement in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20 or by execution of a waiver provided (i) the waiver is in writing, (ii) the language of the waiver mentions homestead allowance in conspicuous language, and (iii) the waiver has been signed by the surviving spouse.

B. The right to the family allowance and exempt ~~articles allowanee~~ property, as provided in §§ ~~64.1-151.1~~ 64.2-309 and ~~64.1-151.2~~ 64.2-310, may be waived during the ~~deceased spouse's~~ decedent's lifetime only by execution of a marital or premarital agreement made in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20.

Drafting note: Technical changes.

CHAPTER 9 Article 3.

Uniform Disposition of Community Property Rights at Death Act.

Drafting note: Existing Chapter 9 has been relocated to proposed Article 3 of proposed Chapter 3 of Title 64.2, which is designed to collect the various provisions dealing with the rights of married persons under one chapter.

Existing Chapter 9 is based on the Uniform Disposition of Community Property Rights at Death Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1971, and there is little variation between the language of the Act as promulgated and as adopted in Virginia.

§ ~~64.1-197~~ 64.2-315. Application.

This ~~chapter~~ article applies to the disposition at death of the following property acquired by a married person:

1. All personal property, wherever situated:
 - a. Which was acquired as or became, and remained, community property under the laws of another jurisdiction; ~~or~~
 - b. ~~All~~ Which, all or the proportionate part of that property, was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or
 - c. ~~Traceable~~ Which is traceable to that community property;
2. All or the proportionate part of any real property situated in the Commonwealth which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

Drafting note: Technical changes.

§ ~~64.1-198~~ 64.2-316. Presumptions.

In determining whether this ~~chapter~~ article applies to specific property, the following rebuttable presumptions apply:

1. Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which this ~~chapter~~ article applies; and
2. Real property situated in the Commonwealth and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this ~~chapter~~ article applies.

Drafting note: Technical changes.

§ ~~64.1-199~~ 64.2-317. Disposition upon death.

Upon death of a married person, one-half of the property to which this ~~chapter~~ article applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of intestate succession of ~~this the~~ Commonwealth. One-half of that property is the property of the decedent and is subject to testamentary

disposition or distribution under the laws of intestate succession of ~~this~~ the Commonwealth. With respect to property to which this ~~chapter~~ article applies, the decedent's one-half of the property ~~of the decedent~~ is not subject to the surviving spouse's right to an elective share under § ~~64.1-13~~ 64.2-302.

Drafting note: Technical changes.

§ ~~64.1-200~~ 64.2-318. Perfection of title of surviving spouse.

If the title to any property to which this ~~chapter~~ article applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative or the heirs or ~~devisee~~ devisees of the decedent with the approval of the commissioner of accounts. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this ~~chapter~~ article applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

Drafting note: Technical changes.

§ ~~64.1-201~~ 64.2-319. Perfection of title of personal representative, heir or devisee.

If the title to any property to which this ~~chapter~~ article applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this ~~chapter~~ article applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

Drafting note: Technical changes.

§ ~~64.1-202~~ 64.2-320. Purchaser for value or lender.

A. If a surviving spouse has apparent title to property to which this ~~chapter~~ article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

B. If a personal representative or an heir or devisee of the decedent has apparent title to property to which this ~~chapter~~ article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

C. A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

D. The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

Drafting note: Technical changes.

§ ~~64.1-203~~ 64.2-321. Creditor's rights.

This ~~chapter article~~ does not affect rights of creditors with respect to property to which this ~~chapter article~~ applies.

Drafting note: Technical changes.

§ ~~64.1-204~~ [64.2-322](#). Acts of married persons.

The provisions of this ~~chapter article~~ do not prevent married persons from severing or altering their interests in property to which this ~~chapter article~~ applies.

Drafting note: Technical changes.

§ ~~64.1-205~~ [64.2-323](#). Limitations on testamentary disposition.

This ~~chapter article~~ does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

Drafting note: Technical change.

§ ~~64.1-206~~ [64.2-324](#). Uniformity of application and construction.

This ~~chapter article~~ shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this ~~chapter article~~ among those states which enact it.

Drafting note: Technical changes.