CHAPTER ~~3~~ 4.

WILLS.

Article 1.

Requisites and Execution.

~~§ 64.1-45. "Will" construed.~~

~~Except when it would be inconsistent with the manifest intent of the legislature, the word "will" shall extend to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will, in exercise of a power; and also to any other testamentary disposition.~~

Drafting note: Relocated to proposed § 64.2-100 which collects various definitions used in proposed Title 64.2.

§ ~~64.1-45.1~~ 64.2-400. Separate writing identifying recipients of tangible personal property; liability for distribution; action to recover property.

A. If a will refers to a written statement or list to dispose of items of tangible personal property not otherwise specifically bequeathed, the statement or list shall be given effect to the extent that it describes items of tangible personal property and their intended recipients with reasonable certainty and is signed by the testator although it does not satisfy the requirements for a will. Bequests of a general or residuary nature, whether referring only to personal property or to the entire estate, are not specific bequests for the purpose of this section.

B. The written statement or list may be (i) referred to as one ~~which~~ that is in existence at the time of the testator's death, ~~may be~~ (ii) prepared before or after the execution of the will, ~~may be~~ (iii) altered by the testator at any time, and ~~may be~~ (iv) a writing that has no significance apart from its effect on the dispositions made by the will. When distribution is made pursuant to such a written statement or list, a copy thereof shall be furnished to the commissioner of accounts along with the legatee's receipt.

C. A personal representative shall not be liable for any distribution of tangible personal property to the apparent legatee under the testator's will made without actual knowledge of the existence of a written statement or list, nor shall he have any duty to recover property so distributed. However, a person named to receive certain tangible personal property in a written statement or list ~~which~~ that is effective under this section~~,~~ may recover that property, or its value if the property cannot be recovered, from an apparent legatee to whom it has been distributed in an action brought for that purpose within one year after the probate of the testator's will.

D. This section shall not apply to a writing admitted to probate as a will and, except as provided herein, shall not otherwise affect the law of incorporation by reference.

Drafting note: Technical changes.

~~§ 64.1-45.3. Nonprobate transfers on death.~~

~~A. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual~~

~~retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary.~~

~~Nontestamentary transfers also include writings stating that (i) money or other benefits due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later; (ii) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or (iii) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.~~

~~B. This section does not limit rights of creditors under other laws of this Commonwealth.~~

Drafting note: Relocated to proposed Chapter 6 ("Transfers without Qualification") which collects the various nonprobate transfer provisions.

§ ~~64.1-46~~ 64.2-401. Who may make a will; what estate may be disposed of.

~~Every person not prohibited by § 64.1-47~~A. Except as provided in subsection B, any individual may~~, by~~ make a will~~,~~ to dispose of ~~any~~ all or part of his estate ~~to which he shall be entitled,~~ at his death~~, and which~~ that, if not ~~so~~ disposed of, would ~~devolve upon his heirs, personal representative or next of kin. The power hereby given shall extend to~~ otherwise pass by intestate succession, including any estate, right, or interest ~~to which~~ that the testator may ~~be~~ subsequently become entitled to ~~at his death, notwithstanding he may become so entitled subsequently to~~ after the execution of the will.

B. An individual is not capable of making a will if he is (i) of unsound mind, or (ii) an unemancipated minor.

Drafting note: Proposed subsection B incorporates existing § 64.1-47 with technical changes and makes other technical changes to modernize language.

~~§ 64.1-47. Who may not make a will.~~

~~No person (i) of unsound mind or (ii) under the age of eighteen years, unless emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, shall be capable of making a will.~~

Drafting note: Relocated to subsection B of proposed § 64.2-401.

§ ~~64.1-48~~ 64.2-402. Advertisements to draw wills prohibited; penalty.

~~No~~Any person~~, firm or corporation shall advertise in any newspaper~~ that advertises any direct or indirect offer~~, direct or indirect,~~ to draw any will or have any will drawn is guilty of a Class 3 misdemeanor, provided that the provisions of this section shall not apply to a duly licensed attorney-at-law, partnership composed of duly licensed attorneys-at-law, or a professional corporation or professional limited liability company incorporated or organized for the practice of law so long as such attorney, partnership, or professional corporation conducts

such advertisement in accordance with the Rules of Court promulgated by the Supreme Court of Virginia.

~~Any violation of this section shall constitute a misdemeanor and be punished by a fine not exceeding $500.~~

Drafting note: Eliminated language that limited application of the section to newspaper advertisements only, thus expanding it to cover all advertisements. Also, the unclassified misdemeanor has been replaced by a Class 3 misdemeanor. The penalty for a Class 3 misdemeanor under § 18.2-11 and the penalty under the existing § 64.1-48, i.e., a fine not exceeding $500, are identical. It should also be noted that the unauthorized practice of law is a Class 1 misdemeanor pursuant to § 54.1-3904 which is punishable by confinement in jail for up to 12 months, a fine of up to $2,500, or both under § 18.2-11.

§ ~~64.1-49~~ 64.2-403. ~~Will must be in writing, etc.; mode of execution; witnesses, and proof of handwriting~~Execution of wills; requirements.

A. No will shall be valid unless it ~~be~~ is in writing and signed by the testator, or by some other person in ~~his~~ the testator's presence and by his direction, in such a manner as to make it manifest that the name is intended as a signature~~; and moreover, unless it be~~.

B. A will wholly in the testator's handwriting ~~of the testator, the signature shall be~~ is valid without further requirements, provided that the fact that a will is wholly in the testator's handwriting and signed by the testator is proved by at least two disinterested witnesses.

C. A will not wholly in the testator's handwriting is not valid unless the signature of the testator is made, or the will is acknowledged by ~~him~~ the testator, in the presence of at least two competent witnesses~~,~~ who are present at the same time~~;~~ and ~~such witnesses shall~~ who subscribe the will in the presence of the testator~~, but no~~. No form of attestation of the witnesses shall be necessary. ~~If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses.~~

Drafting note: Primarily technical changes to modernize language. Relocated provisions regarding holographic wills to proposed subsection B in order to ensure clarity.

§ ~~64.1-49.1~~ 64.2-404. Writings intended as wills~~, etc~~.

A. Although a document, or a writing added upon a document, was not executed in compliance with § ~~64.1-49~~ 64.2-403, the document or writing shall be treated as if it had been executed in compliance with § ~~64.1-49~~ 64.2-403 if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (i) the decedent's will, (ii) a partial or complete revocation of the will, (iii) an addition to or an alteration of the will, or (iv) a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will.

B. The remedy granted by this section (i) may not be used to excuse compliance with any requirement for a testator's signature, except in circumstances where two persons mistakenly sign each other's will, or a person signs the self-proving certificate to a will instead of signing the will itself and (ii) is available only in proceedings brought in a circuit court under the appropriate

provisions of this title, filed within one year from the decedent's date of death and in which all interested persons are made parties.

Drafting note: Technical changes.

§ ~~64.1-51~~ 64.2-405. Interested persons as competent witnesses.

No person ~~shall be~~ is incompetent to testify for or against ~~the~~ a will solely by reason of any interest he possesses in the will or the estate of the testator.

Drafting note: Technical changes.

§ ~~64.1-50~~ 64.2-406. When ~~execution~~ exercise of power of appointment by will valid.

~~No~~An exercise of a power of appointment made by will~~, in exercise of any power, shall be~~ is valid ~~unless the same be so executed that it would be valid for the disposition of the property to which the power applies, if it belonged to the testator; and every will so executed shall be a valid execution of a power of appointment by will~~ if the will made in execution of the power complies with the requirements of § 64.2-403, notwithstanding that the instrument creating the power expressly ~~require~~ requires that a will made in execution of such power ~~shall~~ be executed with some additional or other form of execution or solemnity.

Drafting note: Technical changes to modernize language.

~~§ 64.1-52.~~

Drafting note: Deleted; section number is carried as "reserved."

§ ~~64.1-53~~ 64.2-407. Will of personal estate of ~~soldiers, seamen and~~ nonresidents.

Notwithstanding the provisions of §§ ~~64.1-49~~ 64.2-403 and ~~64.1-50~~ 64.2-406, ~~a soldier being in actual military service, or a mariner or seaman being at sea, may dispose of his personal estate as he might heretofore have done; and~~ the will of a person domiciled out of ~~this~~ the Commonwealth at the time of his death shall be valid as to personal property in ~~this~~ the Commonwealth~~,~~ if ~~it be~~ the will is executed according to the law of the state or country in which ~~he~~ the person was so domiciled.

Drafting note: Provisions regarding soldiers and seamen have been relocated to proposed § 64.2-408. There are also technical changes.

§ ~~64.1-54~~ 64.2-408. Presumption of formal execution of wills made by persons in military service; will of personal estate of persons in military service and seamen.

A. A ~~testamentary paper~~ will executed ~~before or after October 1, 1940~~ by a person while in the military service of the United States, as that term is defined ~~by~~ in the ~~Soldiers' and Sailors' Relief Act of 1940~~ Servicemembers Civil Relief Act (50 U.S.C. app. § 501 et seq.), ~~while in such service, purporting~~ that purports on its face to be witnessed as required by § ~~64.1-49~~ 64.2-403, upon proof of the signature of the testator by any two disinterested witnesses, shall be presumed, in the absence of evidence to the contrary, to have been executed in accordance with the requirements of that section and shall be admitted to probate ~~in like manner and with like effect~~ as if the formalities of execution were ~~duly and regularly~~ proved.

B. Notwithstanding the provisions of §§ 64.2-403 and 64.2-406, a person while in the military service of the United States, or a seaman or mariner while at sea, may dispose of his personal estate in the same manner as he might heretofore have done.

Drafting note: Proposed subsection B incorporates provisions relocated from existing § 64.1-53. There are also technical changes to modernize language.

~~§ 64.1-55. Validation of holographic wills.~~

~~The probate of all holographic wills admitted to probate in this Commonwealth prior to March 20, 1922, the handwriting of which was proved by one witness instead of two is validated and made as binding and effectual as if such wills had been proved according to § 5229 of the Code of 1919.~~

Drafting note: Section will be replaced with an enactment clause that reads as follows: "That the provisions of former § 64.1-55, which provide that holographic wills admitted to probate in the Commonwealth prior to March 20, 1922, where the handwriting was proved by one disinterested witness instead of two disinterested witnesses are validated and are as binding and effectual as if proved by two witnesses shall continue to apply, and shall apply only, to such holographic wills."

§ ~~64.1-56~~ 64.2-409. Wills of living persons lodged for safekeeping with clerks of certain courts.

~~Any~~ A. A person or his attorney ~~for him~~ may, during ~~his~~ the person's lifetime, lodge for safekeeping with the clerk of ~~a~~ the circuit court ~~having probate~~ serving the jurisdiction ~~in the county or city of his residence~~ where the person resides any will executed by such person~~; and the~~. The clerk shall ~~thereupon~~ receive such will and give the person lodging it a receipt ~~therefor~~. The clerk shall ~~then~~ (i) place the will in an envelope and seal it securely, ~~numbering~~ (ii) number the envelope and ~~endorsing thereon~~ endorse upon it the name of the testator and the date on which it ~~is so~~ was lodged, and ~~shall~~ (iii) index the same alphabetically in a permanent index ~~kept for the purpose, showing therein~~ that shows the number and date such will ~~is so~~ was deposited. ~~The fee for such lodging, indexing and preserving shall be two dollars, which shall be paid to the clerk when the will is received.~~

~~Any~~ B. An attorney-at-law, bank, or trust company ~~may, upon holding~~ that has held a will ~~lodged with him or it~~ for safekeeping ~~by~~ for a client for at least seven years ~~or more,~~ and ~~having~~ that has no knowledge of whether the ~~said~~ client is alive or dead after such time~~;~~ may lodge such will with the clerk as provided in ~~the preceding paragraph for which the clerk shall be paid two dollars for such lodging, indexing and preserving~~ subsection A.

C. The clerk shall carefully preserve the envelope containing the will unopened until it is returned to the testator or his nominee in ~~his~~ the testator's lifetime upon ~~his~~ request of the testator or his nominee in writing ~~therefor~~ or until the death of the testator. ~~Should~~ If such will ~~be~~ is returned ~~in~~ during the testator's lifetime ~~as hereinbefore provided~~ and is later returned to the clerk, it shall be considered ~~as~~ to be a separate lodging under the provisions of this section.

D. Upon notice of the testator's death, the clerk shall open the will and deliver the same to any person entitled to offer it for probate.

E. The clerk shall charge a fee of $2 for lodging, indexing, and preserving a will pursuant to this section.

~~Provided, the~~F. The provisions of this section ~~shall be~~ are applicable only to the clerk's office of a court ~~wherein theretofore has been entered, by~~ where the judge or judges of such court~~,~~ have entered an order authorizing the use of ~~its~~ the clerk's office for such purpose.

Drafting note: Technical changes to modernize language.

Article 2.

Revocation~~, etc~~ and Effect.

Drafting note: Technical changes.

~~§ 64.1-58.~~

Drafting note: Repealed by Acts 1985, c. 431.

§ ~~64.1-58.1~~ 64.2-410. Revocation of wills generally.

A. If a testator ~~having an~~ with the intent to revoke a will or codicil, or some person at his direction and in his presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or some provision thereof, such will, codicil, or provision thereof is ~~thereby~~ void and of no effect.

B. If a testator executes a will in the manner required by law or other writing in the manner in which a will is required to be executed~~, and such will or other writing~~ that expressly revokes a ~~previous~~ former will, such ~~previous~~ former will, including any codicil thereto, is ~~thereby~~ void and of no effect.

C. If a testator ~~duly~~ executes a will or codicil ~~which does not expressly revoke a former will or codicil, but which~~ in the manner required by law that (i) expressly revokes a part ~~thereof~~, but not all, of a former will or codicil, or (ii) contains provisions inconsistent ~~therewith~~ with a former will or codicil, such former will or codicil is revoked and superseded to the extent of such express revocation or inconsistency if the later will or codicil ~~becomes effectual~~ is effective upon the death of the testator.

Drafting note: Technical changes to modernize language.

§ ~~64.1-60~~ 64.2-411. Revival of wills after revocation.

~~No~~ Any will or codicil, or any part thereof~~, which shall have become void and of no effect~~ that has been revoked pursuant to § ~~64.1-58.1~~ 64.2-410 shall ~~thereafter~~ not be revived ~~and become operative otherwise than by the reexecution thereof, or by a codicil executed~~ unless such will or codicil is reexecuted in the manner ~~hereinbefore~~ required~~, and then~~ by law. Such revival operates only to the extent ~~to which an intention~~ that the testator's intent to revive the ~~same~~ will or codicil is shown.

Drafting note: Technical changes to modernize language.

§ ~~64.1-59~~ 64.2-412. Revocation by divorce or annulment; ~~no revocation by other change;~~ revival upon remarriage; no revocation by other change.

A. If, after making a will, the testator is divorced ~~a vinculo matrimonii~~ from the bond of matrimony or his marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse. ~~Any~~ Unless the will expressly provides otherwise, any provision conferring a general or special power of appointment on the former spouse ~~and any nomination of~~ or nominating the former spouse as executor, trustee, conservator, or guardian~~, unless the will expressly provides otherwise, shall~~ is also ~~be~~ revoked.

B. Property prevented from passing to a former spouse because of revocation ~~by divorce or annulment~~ pursuant to this section shall pass as if the former spouse failed to survive the testator. ~~The other provisions~~ Provisions of ~~the~~ a will conferring a power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

C, If the provisions of the will are revoked solely pursuant to this section, and there is no subsequent will or inconsistent codicil, the provisions shall be revived upon the testator's remarriage to the former spouse.

~~No~~D. Except as provided in this section, no change of circumstances~~, other than as described in this section,~~ shall be deemed to revoke a will.

Drafting note: Technical changes.

§ ~~64.1-61~~ 64.2-413. Effect of subsequent conveyance on will.

~~No~~Except for an act that results in the revocation of a will pursuant to this article, any conveyance or other act~~,~~ done subsequent to the execution of a will~~,~~ shall~~, unless it be an act by which the will is revoked as aforesaid,~~ not prevent ~~its~~ the operation of the will with respect to such interest in the estate ~~comprised in the will~~ as the testator may have power to dispose of by will at the time of his death.

Drafting note: Technical changes to modernize language.

Article 3.

Construction and Effect.

§ ~~64.1-62~~ 64.2-414. ~~Will to be construed as if made just before testator's death~~ When wills deemed to speak.

A. A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

B. Every will reexecuted or republished, or revived by any codicil, shall be deemed to have been made at the time it was reexecuted, republished, or revived.

Drafting note: Technical changes. Existing § 64.1-72 has been relocated into proposed subsection B with technical changes.

§ ~~64.1-62.3~~ 64.2-415. How certain ~~legacies~~ bequests and devises to be construed; nonademption in certain cases.

A. As used in this section:

"Incapacitated" means impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. Unless a contrary intention appears in the will:

1. A bequest of specific securities, whether or not expressed in number of shares, shall include as much of the bequeathed securities as is part of the estate at time of the testator's death, any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by the exercise of purchase options, and any securities of another entity acquired with respect to the specific securities mentioned in the bequest as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity;

2. A bequest or devise of specific property shall include the amount of any condemnation award for the taking of the property which remains unpaid at death and any proceeds unpaid at death on fire and casualty insurance on the property; and

3. A bequest or devise of specific property shall, in addition to such property ~~as is~~ that remains part of the estate of the testator, be deemed to be a ~~legacy~~ bequest of a pecuniary amount if such specific property ~~shall~~, during the life of the testator and while he is under a disability, ~~be~~ was sold by a conservator, guardian, or committee for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the ~~fiduciary~~ conservator, guardian, or committee for the testator. For purposes of this subdivision, the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2. This subdivision shall not apply if, after the sale or casualty, it is adjudicated that the disability of the testator ~~has~~ had ceased and the testator ~~survives~~ survived the adjudication by one year.

~~B~~C. Unless a contrary intention appears in a testator's will or durable power of attorney, a bequest or devise of specific property shall, in addition to such property ~~as is~~ that remains part of the estate of the testator, be deemed to be a ~~legacy~~ bequest of a pecuniary amount if such specific property ~~shall~~, during the life of the testator and while he is incapacitated, ~~be~~ was sold by an agent acting within the authority of a durable power of attorney for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the agent. For purposes of this ~~subdivision~~ subsection, (i) the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision B 2, (ii) no adjudication of testator's incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator~~, and (iv) an "incapacitated" person is one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions~~. This ~~subdivision~~ subsection shall not apply ~~(i)~~ (a) if the agent's sale of the specific property or receipt

of the insurance proceeds is thereafter ratified by the testator or ~~(ii)~~ (b) to a power of attorney limited to one or more specific purposes.

D. Unless a contrary intention appears in the will, a devise that would describe a leasehold estate, if the testator had no freehold estate that could be described by the devise, shall be construed to include such a leasehold estate.

Drafting note: Technical changes. Existing § 64.1-66 has been relocated to proposed subsection D with technical changes.

~~§ 64.1-63.~~

Drafting note: Repealed by Acts 1985, c. 432.

§ ~~64.1-65.1~~ 64.2-416. ~~How devises~~ Devises and bequests that fail~~, etc.,~~; how to pass.

A. Unless a contrary intention appears ~~by~~ in the will, and except as provided in § ~~64.1-64.1, if~~ 64.2-418:

1. If a devise or bequest other than a residuary devise or bequest fails for any reason, it shall become a part of the residue~~.~~; and

~~B. Unless a contrary intention appears by the will and except as provided in § 64.1-64.1, if~~2. If the residue is devised or bequeathed to two or more persons and the share of one fails for any reason, such share shall pass to the other residuary devisees or legatees in proportion to their interests in the residue.

~~C~~B. Notwithstanding the provisions of §§ ~~64.1-196.5~~ 64.2-2604 and ~~64.1-196.6~~ 64.2-2605 and unless a contrary intention ~~shall appear~~ appears in ~~a~~ the will, if a testator makes a bequest, not exceeding the value of $25, to a legatee and such legatee refuses to take possession of such bequest, then the bequest shall fail and becomes a part of the residue of the testator's estate.

Drafting note: Technical changes.

§ ~~64.1-63.1~~ 64.2-417. When advancement deemed satisfaction of devise or bequest.

Property ~~which~~ that a testator gave during his lifetime to a person shall not be treated as a satisfaction of a devise or bequest to that person, in whole or in part, unless (i) the will provides for deduction of the lifetime gift, (ii) the testator declares in a ~~contemporaneous~~ writing made contemporaneously with the gift that the gift is to be deducted from the devise or bequest or is in satisfaction thereof, or (iii) the devisee or legatee acknowledges in writing that the gift is in satisfaction of the devise or bequest.

Drafting note: Technical changes.

~~§ 64.1-64.~~

Drafting note: Repealed by Acts 1985, c. 592.

§ ~~64.1-64.1~~ 64.2-418. When children or descendants of devisee~~,~~ or legatee~~, etc.,~~ to take estate.

Unless a contrary intention appears in the will, if a devisee or legatee, including a devisee or legatee under a class gift, is (i) a grandparent or a descendant of a grandparent of the testator and (ii) dead at the time of execution of the will or dead at the time of testator's death, the children and the descendants of deceased children of the deceased devisee or legatee who survive the testator take in the place of the deceased devisee or legatee. ~~If the takers are all of the same degree of kinship to~~ The portion of the testator's estate that the deceased devisee or legatee~~, they take equally. However, if the takers are of unequal degree, then those of more remote degree take by representation~~ was to take shall be divided into as many equal shares as there are (a) surviving descendants in the closest degree of kinship to the deceased devisee or legatee and (b) deceased descendants, if any, in the same degree of kinship to the deceased devisee or legatee who left descendants surviving at the time of the testator's death. One share shall pass to each such surviving descendant and one share shall pass per stirpes to such descendants of deceased descendants.

Drafting note: Technical changes to modernize language. The language setting forth how descendants take under this section parallels the language in proposed § 64.2-202.

~~§ 64.1-65.~~

Drafting note: Repealed by Acts 1985, c. 592.

~~§ 64.1-66. Devises in general terms; how construed.~~

~~A devise of the testator which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include such leasehold estate unless a contrary intention appear by the will.~~

Drafting note: Relocated to subsection D of proposed § 64.2-415.

~~§ 64.1-66.1.~~

Drafting note: Repealed by Acts 1994, c. 917.

§ ~~64.1-70~~ 64.2-419. Provision for ~~pretermitted~~ omitted children when no child living when will made.

A. If ~~any person die leaving a child, or his wife with child, which shall be born alive, and leaving~~ a testator executes a will ~~made~~ when ~~such person had~~ the testator has no children, a child ~~living, wherein any child he might have is not provided for or mentioned, such child~~ born or adopted after the execution of the testator's will, or any descendant of his, ~~shall succeed~~ who is neither provided for nor mentioned in the will is entitled to such portion of the testator's estate as he would have been entitled to if the testator had died intestate~~; towards raising which portion the~~.

B. The devisees and legatees shall~~, out of what is devised and bequeathed to them,~~ contribute ratably to the portion of the testator's estate to which the afterborn or after-adopted child is entitled, either in kind or in money, out of what is devised and bequeathed to them, as ~~a~~ the court ~~of equity, in the particular case, may deem most~~ deems proper. ~~But~~ However, if ~~any~~

such afterborn or after-adopted child, or any descendant of his, ~~die under the age of eighteen years,~~ dies unmarried, ~~and~~ without issue, and before reaching 18 years of age, his portion of the estate, or so much ~~thereof~~ of his portion as may remain unexpended ~~in his support and education~~, shall revert to the person ~~or persons~~ to whom it was given by the will.

Drafting note: Technical changes to modernize language.

§ ~~64.1-71~~ 64.2-420. Provision for ~~pretermitted~~ omitted children when child living when will made.

A. If a testator executes a will ~~be made when a testator has~~ that makes provision for a living child ~~living, and that child is provided for in the will~~ of the testator, ~~and~~ a child ~~be~~ born or adopted ~~afterwards, such afterborn or after-adopted child, if not~~ after execution of a testator's will who is neither provided for ~~by any settlement and neither provided for~~ nor expressly excluded by the will, ~~but only pretermitted, shall succeed~~ is entitled to the lesser of ~~(a)~~ (i) such portion of the testator's estate as ~~he~~ the afterborn or after-adopted child would have been entitled to if the testator had died intestate or ~~(b)~~ (ii) the equivalent in amount to any bequests and devises to any child named in the will, and if there ~~be~~ are bequests or devises to more than one child, then to the ~~larger or~~ largest ~~of such total bequests and devises, towards raising which portion the~~ aggregate bequest or devise to any child.

B. The devisees and legatees of the testator's will shall, ~~out of what is devised and bequeathed to them,~~ contribute ratably to the portion of the testator's estate to which the afterborn or after-adopted child is entitled, either in kind or in money, out of what is devised and bequeathed to them, as ~~a~~ the court ~~of equity may deem~~ deems proper. ~~But~~ However, if such afterborn or after-adopted child ~~die under the age of eighteen years,~~ dies unmarried ~~and~~, without issue, and before reaching 18 years of age, his portion of the estate, or so much ~~thereof~~ of his portion as may remain unexpended, shall revert to the person to whom it was given by the will.

Drafting note: Technical changes to modernize language.

~~§ 64.1-72. When reexecuted wills deemed to be made.~~

~~Every will reexecuted or republished, or revived by any codicil, shall, for the purpose of this chapter, be deemed to have been made at the time at which the same shall be so reexecuted, republished or revived.~~

Drafting note: Relocated to subsection B of proposed § 64.2-414.

§ ~~64.1-66.2~~ 64.2-421. Construction of certain conditions of spouse's survivorship.

A. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death under a will or trust that provides that the spouse of the decedent shall survive until the distribution of the gift, the will or trust shall be construed as requiring that the spouse survive until the earlier of the date on which the distribution occurs or the date six months after the date of the death of the testator or decedent, unless the court shall find that the decedent intended a contrary result.

B. The proceeding to determine whether the decedent intended that the spouse actually survive until the distribution of the gift shall be filed within ~~twelve~~ 12 months following the death of the ~~testator or grantor, and not thereafter~~ decedent. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

Drafting note: Technical changes.

§ ~~64.1-69.1~~ 64.2-422. When omitted spouse to take intestate portion.

If a testator fails to provide by will for a surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate such spouse would have received if the decedent left no will, unless it appears from the will or from the provisions of a valid premarital or marital agreement ~~executed or validated under the Premarital Agreement Act (§ 20-147 et seq.)~~ that the omission was intentional.

Drafting note: Reference to the Premarital Agreement Act (PAA) eliminated so as to allow valid premarital or marital agreements executed outside the Commonwealth and valid agreements executed in the Commonwealth prior to the enactment of the PAA to be given effect.

~~§ 64.1-67.~~

Drafting note: Repealed by Acts 1985, c. 429.

§ ~~64.1-67.1~~ 64.2-423. Exercise of power of appointment.

Unless a contrary intention appears in the will, a residuary clause in a will or a will making general disposition of all the testator's property shall not exercise a power of appointment held by the testator.

Drafting note: No change.

~~§ 64.1-67.2.~~

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

§ ~~64.1-69~~ 64.2-424. When direction to purchase annuity binding on legatee.

If a ~~person direct~~ testator directs in his will ~~the purchase of~~ that an annuity sufficient to provide ~~a minimum~~ income of ~~ten dollars~~ at least $10 per month be purchased for a legatee, the ~~person or persons~~ legatee who is to ~~whom~~ receive the income ~~therefrom shall be paid,~~ from the annuity shall not have the right to instead take the sum directed to be used ~~for such purpose in lieu of~~ to purchase such annuity, except to the extent that the will expressly provides for such right or ~~except to the extent that the will expressly provides~~ that an assignable annuity be purchased.

Drafting note: Technical changes.

§ ~~64.1-68~~ 64.2-425. Interest on pecuniary legacies.

A. Unless a contrary intent is expressed in or to be implied from a will~~,~~ or trust: (i) interest on a pecuniary ~~legacies shall begin~~ legacy begins to run at the expiration of one year after the date of the death of the testator, and (ii) interest on a pecuniary amount from a trust

begins to run at the expiration of one year after the date on which the beneficiary is entitled to receive the pecuniary amount.

B. For the purposes of this section, a marital formula pecuniary bequest either outright to the testator's spouse or in trust for the benefit of such spouse, designed in either case to qualify for the benefit of the marital deduction allowed by the ~~Federal~~ Internal Revenue Code, shall not be considered a pecuniary legacy entitled to interest at the expiration of one year after the death of the testator but, instead, shall share ratably with the residue of the estate in the income earned by the estate during the period of administration, unless a contrary intent is expressed in the will.

~~The provisions of this section shall also apply to the distribution of interest to a beneficiary entitled to receive a pecuniary amount from a trust, in accordance with § 55-277.5.~~

Drafting note: Technical changes.

§ ~~64.1-73~~ 64.2-426. ~~Devise or bequest to trustee of an established trust~~ Testamentary additions to trusts by testator dying on or after July 1, 1994, and before July 1, 1999.

A. A devise or bequest, ~~(~~including the exercise of a power of appointment~~),~~ may be made by a will ~~duly executed pursuant to the provisions of this chapter~~ to the ~~trustee or~~ trustees of an inter vivos trust or testamentary trust, whether the trust was established by the testator, by the testator and another, or by some other person if:

1. In the case of an inter vivos trust, the trust is identified in the testator's will and its terms are set forth in a written instrument, ~~(~~other than a will~~),~~ executed before or concurrently with the execution of the testator's will; or

2. In the case of a testamentary trust, the trust is identified in the testator's will and its terms are set forth in the valid last will of a person who has predeceased the testator and whose will was executed before or concurrently with the execution of the testator's will.

In either event, at the time the devise or bequest is to be distributed to the ~~trustee or~~ trustees at least one trustee of the trust shall be (i) an individual or (ii) ~~a corporation or association~~ an entity authorized to do a trust business in ~~this~~ the Commonwealth. However, prior to distribution of the devise or bequest to the ~~trustee~~ trustees, each nonresident individual or entity shall file~~,~~ with the clerk of the circuit court of the jurisdiction wherein the testator's will was admitted to probate, ~~his~~ a consent in writing that service of process in any action against him as trustee or any other notice with respect to administration of the trust in his charge, may be by service upon the clerk of the court in which he is qualified or upon a resident of ~~this~~ the Commonwealth at such address as he may appoint in the written instrument filed with the clerk. Where any nonresident qualifies pursuant to this ~~paragraph~~ subsection, bond with surety shall be required in every case unless at least one other trustee is a resident or the court in which the nonresident qualifies waives surety under the provisions of § ~~26-4~~ 64.2-1411.

~~A corporation or association~~ An entity not authorized to do a trust business in ~~this~~ the Commonwealth at the time the devise or bequest is to be distributed shall not, in any case, be a trustee of such trust.

B. The inter vivos trust may be an unfunded trust.

For the, and for the purposes of this section:

1. An inter vivos trust shall be deemed established upon execution of the instrument creating such trust; and

2. An inter vivos trust may contain provisions whereby the amount of corpus to be allocated to any particular portion of the trust will be determined, measured, or affected by the "adjusted gross estate" of the settlor or testator for federal estate tax purposes, or by the amount of the "marital deduction allowable" to the settlor's or testator's estate, by the amount of deductions or credits available to the estate of the settlor or testator for federal estate tax purposes, or by the value of such estate for federal estate tax purposes, or by any other method, and such that an unfunded trust shall not be deemed to be testamentary by for that reason thereof.

C. The devise or bequest shall not be invalid because (i) the trust is amendable or revocable or both by the settlor or any other person, either prior or subsequent to the testator's death, (ii) the trust instrument or any amendment thereto was not executed in the manner required for wills, or (iii) the trust was amended after the execution of the will or after the death of the testator.

D. Unless the testator's will provides otherwise, the property so devised or bequeathed:

1. Shall not be deemed held under a testamentary trust of the testator, but shall become a part of the corpus of the trust to which it is given or, if the will so specifies, it the property shall become a part of any one or more particular portions of the corpus; and

2. Shall be administered and disposed of (i) in accordance with the terms of the trust as they appear in writing at the testator's death, including any amendments thereto made before the death of the testator and, regardless of whether made before or after the execution of the testator's will, or (ii) if the testator expressly so specifies in his will, and only in such event, as such terms are amended after the death of the testator.

E. In the event that the settlor or other person having the right to do so revokes or otherwise terminates the trust pursuant to a power so to do so reserved in the trust instrument, and such revocation or termination is effected at a date subsequent to the death of a testator who has devised or bequeathed property to such trust, the revocation or termination shall be ineffective as to property devised or bequeathed to such trust by a testator other than the settlor, unless the testator's will expressly provides to the contrary.

F. The devise or bequest shall not be valid should the entire trust not be operative for any reason at the testator's death. If the devise or bequest is to augment only one or more portions of the trust, the devise or bequest shall not be valid should the trust not be operative for any reason as to such portion at the testator's death.

G. In any case in which the devise or bequest to the trustee of a trust such as is contemplated in the foregoing provisions fails to take effect by reason of the fact that there is no qualified trustee acting at the time the devise or bequest is to be distributed, or that one or more of the trustees then acting is a corporation or association an entity not authorized to do a trust

business in ~~this~~ the Commonwealth, the court having jurisdiction with respect to the probate of the will or the administration of the testator's estate, upon sufficient evidence of the existence of a trust estate for administration, independent of the testator's estate, and of the validity of the trust established by virtue of such separate written instrument, may determine that the trusts declared by such separate written instrument are the trusts upon which the devise or bequest is made~~, so far as applicable in the nature of the case,~~ to the same extent and with like effect as if such trust provisions had been extensively incorporated in the testamentary documents, and that such trusts ~~will~~ do not fail for want of a qualified trustee to administer the trust estate so devised or bequeathed. The court may then grant such further and ancillary relief as the nature of the case may require, including the appointment of a qualified trustee to perform the trusts with respect to the estate so devised or bequeathed, and granting instruction and guidance to the trustee so appointed in the performance of his duties. Nothing herein shall be deemed to authorize any such trustee to be excused from any obligations of accounting or performance ~~such~~ as are required by law of fiduciaries, nor to prevent the transfer of the trust estate to a trustee appointed by or qualified in a court of record in a foreign state in accordance with the provisions of § ~~55-541.08~~ 64.2-706.

H. This section shall apply to any devise or bequest under the will of a decedent dying on or after July 1, 1994, and before July 1, 1999.

Drafting note: Technical changes.

§ ~~64.1-73.1~~ 64.2-427. Testamentary additions to trusts by testator dying after June 30, 1999.

A. A will may validly devise or bequeath property, ~~(~~including by the exercise of a power of appointment~~)~~, to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts or (ii) at the testator's death by the testator's devise or bequest to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

B. Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection A is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

C. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

D. Unless at least one trustee of the trust is an individual resident of ~~this~~ the Commonwealth or an entity authorized to do a trust business in ~~this~~ the Commonwealth, at the time the devise or bequest is to be distributed to the trust, the testator's personal representative shall not make any distribution to the trust until each nonresident individual or entity files with the clerk of the circuit court of the jurisdiction wherein the testator's will was admitted to probate, a consent in writing that service of process in any action against the trustee or any other notice with respect to administration of the trust in the trustee's charge~~,~~ may be by service upon a resident of ~~this~~ the Commonwealth at such address as the trustee may appoint in the written instrument filed with the clerk. No further requirement shall be imposed upon any nonresident individual or entity as a condition to receiving the devise or bequest.

E. This section applies to a will of a testator who dies after June 30, 1999, and it shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

Drafting note: Technical changes

§ ~~64.1-74~~ 64.2-428. Distribution of assets by fiduciaries in satisfaction of pecuniary bequests or transfers in trust of pecuniary amount.

~~(a)~~A. Where a will or trust agreement authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount, unless the instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date ~~or dates~~ of their distribution.

~~(b)~~B. Whenever a fiduciary under the provisions of a will or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse and is authorized to satisfy such bequest or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will or other governing instrument otherwise specifically directs, shall distribute assets, including cash, in a manner that is fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of such pecuniary bequest or transfer. This ~~section~~ subsection shall not ~~apply to~~ prevent a fiduciary from carrying ~~into effect~~ out the provisions of the will or other governing instrument that require the fiduciary, in order to implement such a bequest or transfer, ~~must~~ to distribute assets, including cash, having an aggregate fair market value at the date ~~or dates~~ of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

~~(c)~~C. Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary

bequest or transfer in trust in favor of the testator's or donor's spouse shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the ~~United States~~ U.S. Department of ~~America~~ the Treasury and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust, and any such agreement heretofore entered into after April 1, 1964, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the ~~internal revenue laws of the United States of America~~ Internal Revenue Code, and to do and perform all acts incident to securing such ~~purpose~~ deduction.

~~(d)~~D. Where a will or trust agreement directs the fiduciary to satisfy a pecuniary or fractional ~~bequests~~ bequest or ~~transfers~~ transfer in trust of a pecuniary amount or fractional share in favor of the testator's or donor's spouse with amounts or assets having a value equal to the maximum marital deduction available under the ~~internal revenue laws of the United States of America~~ Internal Revenue Code, the interest of such spouse shall vest immediately upon the testator's death in the case of a will, and upon the execution of the trust agreement in the case of a trust, regardless of when the exact amount of the bequest or transfer is finally determined.

Drafting note: Technical changes.

§ ~~64.1-74.1~~ 64.2-429. Construction of trust provisions otherwise eligible for the election permitted under Section 2056(b)(7) of the ~~Federal~~ Internal Revenue Code.

If any trust created under a will or trust agreement made by a decedent dying after December 31, 1981, would qualify for the election specified in Section 2056(b)(7) of the Internal Revenue Code but for (i) a direction that accrued income remaining in the hands of a trustee at the death of the surviving spouse of the decedent not be paid to the estate of the surviving spouse, or ~~but for~~ (ii) an authorization to retain unproductive property as an asset of the trust, then, unless the decedent shall have specifically otherwise provided in the will or trust agreement by reference to this section, ~~(i)~~ (a) all accrued and undistributed income of the trust at the death of the surviving spouse shall be paid to the personal representative of the surviving spouse as contemplated by the ~~Virginia~~ Uniform Principal and Income Act ~~in the absence of a contrary direction in the will or trust~~ (§ 64.2-1000 et seq.), and ~~(ii)~~ (b) the surviving spouse shall have the right to require the trustee of the trust to make the trust assets productive of income, ~~to the end that~~ so as to render the trust ~~shall be~~ eligible for the election provided in Section 2056(b)(7) of the Internal Revenue Code.

This section shall apply to all wills and revocable trusts made by decedents dying after December 31, 1981, ~~whether before or after its passage~~ regardless of when the will or trust was made.

Drafting note: Technical changes.

§ ~~64.1-62.1~~ 64.2-430. Certain marital deduction formula clauses to be construed to refer to federal marital deduction allowable if decedent had died on December 31, 1981.

A. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death ~~(i)~~ under a will executed before September 12, 1981, or a trust created before September 12, 1981, and ~~(ii)~~ such will or trust contains a formula providing that the spouse of the decedent is to receive the maximum amount of property qualifying for the marital deduction allowable under federal law, ~~and further, (iii) such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer specifically to an unlimited marital deduction or an amount qualifying therefor, or otherwise to manifest an intent to have the estate qualify for the unlimited marital deduction,~~ then such formula provision shall be construed as referring to the maximum amount of property eligible for the marital deduction as was allowable under the Internal Revenue Code as if the decedent had died on December 31, 1981, unless the court shall find that the decedent intended to refer to the maximum marital deduction of the Internal Revenue Code in effect at the time of his death, provided that such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer specifically to an unlimited marital deduction or an amount qualifying for such deduction, or to otherwise manifest an intent to have the estate qualify for the unlimited marital deduction.

B. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death ~~(i)~~ under a will executed before September 12, 1981, or a trust created before September 12, 1981, and ~~(ii)~~ such will or trust contains a formula providing that the spouse of the decedent is to receive the maximum amount of property qualifying for the marital deduction allowable under federal law, but no more than will reduce such federal estate tax to zero or any other pecuniary or fractional share of property determined with reference to the marital deduction, ~~and further, (iii) such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer to the federal estate tax on a date later than September 12, 1981, than~~ then such provision reducing such bequest to such amount necessary to reduce the federal tax to zero or any other pecuniary or fractional share of property determined with reference to the marital deduction, shall be construed as referring to a computation done as of December 31, 1981, that would have reduced the federal estate tax to zero if the decedent had died on December 31, 1981, unless the court shall find that the decedent intended the computation to be made as of date of death, provided that such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer to the federal estate tax on a date later than September 12, 1981.

C. The proceeding to determine whether the decedent intended that the computation under subsection A or B be made as of the date of death, rather than the earlier 1981 date, ~~must~~ shall be filed within ~~twelve~~ 12 months following the death of the testator or grantor~~, and not~~

~~thereafter~~. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

Drafting note: Technical changes.

§ ~~64.1-62.2~~ 64.2-431. Certain powers of appointment construed to refer to federal gift tax exclusion in effect on date of execution.

If an instrument executed before September 12, 1981, provides for a power of appointment ~~which (i)~~ that may be exercised during any period after December 31, 1981, and ~~(ii)~~ such power of appointment is defined in terms of, or by reference to, the maximum amount of property qualifying for the gift tax exclusion under federal law, ~~and further, (iii) the instrument described has not been amended after September 12, 1981, to refer specifically to the federal gift tax exclusion available after December 31, 1981, or the amount qualifying therefor,~~ then such instrument shall be construed as referring to the maximum amount of property eligible for the annual gift tax exclusion as was allowable under the Internal Revenue Code in effect on the date of execution of such instrument provided that the instrument described has not been amended after September 12, 1981, to refer specifically to the federal gift tax exclusion available after December 31, 1981, or the amount qualifying for such exclusion.

Drafting note: Technical changes.

§ ~~64.1-62.4~~ 64.2-432. Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax laws applicable to estates of decedents dying after December 31, 2009, and before January 1, 2011.

A. A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction," "unlimited marital deduction," "inclusion ratio," "applicable fraction," or any section of the Internal Revenue Code relating to the federal estate tax or generation-skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009. This provision shall not apply with respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective before that date, the reference to January 1, 2011, in this subsection shall refer instead to the first date on which such tax becomes legally effective.

B. The personal representative or any affected beneficiary under the will or other instrument may bring a proceeding to determine whether the decedent intended that the formulae under subsection A be construed with respect to the law as it existed after December 31, 2009. Such a proceeding shall be commenced within 12 months following the death of the testator or grantor.

Drafting note: No change.

Article ~~6~~ 4.

Uniform International Wills Act.

Drafting note: Existing Article 6 has been relocated to proposed Article 4 of proposed Chapter 4 of Title 64.2, relocating its provisions before the provisions governing probate which likewise apply to international wills. Existing Article 6 is based on the Uniform International Wills Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1977, and there is little variation between the language of the Act as promulgated and as adopted in Virginia.

§ ~~64.1-96.2~~ 64.2-433. Definitions.

~~In~~ As used in this article:

~~(1)~~ "Authorized person" and "person authorized to act in connection with international wills" means a person who by § ~~64.1-96.10~~ 64.2-441 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

~~(2)~~ "International will" means a will executed in conformity with §§ ~~64.1-96.3~~ 64.2-434 through ~~64.1-96.6~~ 64.2-437.

Drafting note: Technical changes.

§ ~~64.1-96.3~~ 64.2-434. ~~International will; validity~~ Validity.

~~(a)~~A. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this article.

~~(b)~~B. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

~~(c)~~C. This article shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Drafting note: Technical changes.

§ ~~64.1-96.4~~ 64.2-435. Requirements.

~~(a)~~A. The will shall be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.

~~(b)~~B. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he

knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

~~(c)~~C. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

~~(d)~~D. When the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator to sign the testator's name for him, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him.

~~(e)~~E. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Drafting note: Technical changes.

§ ~~64.1-96.5~~ 64.2-436. Other points of form.

~~(a)~~A. The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet ~~will~~ shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

~~(b)~~B. The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

~~(c)~~C. The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so, and at the express request of the testator, the place where he intends to have his will kept shall be mentioned in the certificate provided for in § ~~64.1-96.6~~ 64.2-437.

~~(d)~~D. A will executed in compliance with § ~~64.1-96.4~~ 64.2-435 shall not be invalid merely because it does not comply with this section.

Drafting note: Technical changes.

§ ~~64.1-96.6~~ 64.2-437. Certificate.

The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this ~~Act~~ article for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

```
                              CERTIFICATE
(Convention of October 26, 1973)
~~1.~~ I,  ..... (name, address and capacity), a person authorized
to act in connection with international wills
~~2.~~ Certify that on  ..... (date)  ..... (place)
~~3.~~ (testator)  ..... (name, address, date and place of birth)
in my presence and that of the witnesses
```

~~4.~~ (a) ..... (name, address, date and place of birth)
(b) ..... (name, address, date and place of birth) has declared that the attached document is his will and that he knows the contents thereof.
~~5.~~ I furthermore certify that:
~~6.~~ (a) in my presence and in that of the witnesses
(1) the testator has signed the will or has acknowledged his signature previously affixed.
*(2) following a declaration of the testator stating that he was unable to sign his will for the following reason .....
I have mentioned this declaration on the will
*and the signature has been affixed by (name and address)
~~7.~~ (b) the witnesses and I have signed the will;
~~8.~~ *(c) each page of the will has been signed by ..... and numbered;
~~9.~~ (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;
~~10.~~ (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;
~~11.~~ (f) the testator has requested me to include the following statement concerning the safekeeping of his will:
~~12.~~ PLACE OF EXECUTION
~~13.~~ DATE
~~14.~~ SIGNATURE and, if necessary, SEAL.
* to be completed if appropriate

Drafting note: Technical changes.

§ ~~64.1-96.7~~ 64.2-438. Effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this article. The absence or irregularity of a certificate shall not affect the formal validity of a will under this article.

Drafting note: No change.

§ ~~64.1-96.8~~ 64.2-439. Revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

Drafting note: No change.

§ ~~64.1-96.9~~ 64.2-440. Source and construction.

Sections ~~64.1-96.2~~ 64.2-433 through ~~64.1-96.8~~ 64.2-439 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this article, regard shall be had to its international origin and to the need for uniformity in its interpretation.

Drafting note: Technical changes.

§ ~~64.1-96.10~~ 64.2-441. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of ~~this~~ the Commonwealth and who are members in good standing ~~as active law practitioners in this Commonwealth,~~ of the Virginia State Bar are hereby declared to be authorized persons in relation to international wills.

Drafting note: Technical changes.

§ ~~64.1-96.11~~ 64.2-442. International will information registration.

The Secretary of the Commonwealth shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the ~~maker~~ testator and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual-identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the ~~maker~~ testator. The Secretary of the Commonwealth, at the request of the authorized person, may cause the information ~~it~~ he receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in ~~this~~ the Commonwealth.

Drafting note: Technical changes.

Article ~~4~~ 5.

Probate.

Drafting note: Technical changes.

§ ~~64.1-75~~ 64.2-443. Jurisdiction of probate of wills.

A. The circuit courts ~~of the Commonwealth, and the clerks of such courts, and the duly qualified deputies of such clerks, and the clerks of all other courts having jurisdiction of the probate of wills,~~ shall have ~~such~~ jurisdiction ~~according to the following rules: In~~ of the probate of wills. A will shall be offered for probate in the circuit court in the county or city wherein the decedent has a ~~mansion house or~~ known place of residence; if he has no such ~~house or~~ known place of residence, then in a county or city wherein any real estate lies that is devised or owned by the decedent; and if there ~~be~~ is no such real estate, then in the county or city wherein he dies or a county or city wherein he has estate~~; provided, however, that in the City of Richmond the circuit court of such city, and the clerk of such court and his duly qualified deputies shall have such jurisdiction which shall be exercised within its respective territorial jurisdiction as defined by law and in the manner heretofore provided by law~~.

B. Where any person has become, either voluntarily or involuntarily, a patient in a nursing home, convalescent home, or similar institution due to advanced age or impaired health,

the place of legal residence of the person shall be rebuttably presumed to be the same as it was before he became a patient.

Drafting note: Technical changes to modernize language. The Code has never given other courts apart from circuit courts the authority to probate wills, so language referring to other courts having probate jurisdiction has been eliminated. Language regarding the ability of clerks to probate will has been eliminated as it was duplicative of the provisions in existing § 64.1-77. Existing § 64.1-76 has been relocated to proposed subsection B with technical changes.

~~§ 64.1-76. Residence of patient in nursing home, convalescent home, etc.~~

~~Where any person has because of advanced age or impaired health either voluntarily or involuntarily become a patient in a nursing home, a convalescent home, or a similar institution, the place of legal residence of such person shall be presumed to be the same as it was before he became such a patient; provided, however, that such presumption may be rebutted by competent evidence.~~

Drafting note: Relocated to subsection B of proposed § 64.2-443.

§ ~~64.1-77~~ 64.2-444. Clerks may probate wills~~; appoint appraisers or administrators, qualify executors, etc~~.

A. The clerk of any circuit court, ~~having jurisdiction of the probate of wills, within their respective territorial jurisdictions as defined by law,~~ or any duly qualified deputy of ~~any~~ such ~~clerks~~ clerk, may ~~appoint appraisers of estates of decedents,~~ admit wills to probate, appoint and qualify executors, administrators, and curators of decedents, and require and take from them the necessary bonds, in the same manner and with like effect as the circuit court ~~could do if in session. Such powers and duties may be exercised and discharged as well during the sessions of the court as at other times.~~

~~Such~~B. The clerk shall keep an order book, in which shall be entered all orders made by him, or his deputy, ~~respecting the subjects aforesaid~~ in performance of his duties pursuant to subsection A, except probate orders ~~which~~ that are recorded in the will book need not be entered in the ~~clerk's~~ order book.

C. All wills heretofore admitted to probate by any duly qualified deputy clerk of any circuit court ~~of competent jurisdiction shall be~~ are deemed to have been properly admitted to probate to the same extent as if the clerk had acted in the proceeding.

Drafting note: Clerk's authority to appoint appraisers has been eliminated. The section requiring such an appraisal (§ 64.1-133) was repealed in 1998 (1998 Acts ch. 610). There are also technical changes to modernize language.

§ ~~64.1-78~~ 64.2-445. Appeal from order of clerk.

Any person interested in the probate of the will may~~,~~ appeal any order entered pursuant to § 64.2-444 within six months after the entering of such an order, ~~appeal therefrom as a matter of right,~~ without giving any bond, to the circuit court whose clerk, or deputy, has made the order. Upon application ~~being made~~ for such appeal, the clerk or deputy shall enter forthwith in his

order or will book an order allowing such appeal~~, and~~. The appeal shall be given precedence on the court's docket ~~the same as a preferred cause for trial at the next term of the court~~. The matter shall be heard de novo by the court ~~at any term shall hear and determine the matter as though it had been presented to the court in the first instance, and shall cause a copy of the order on the order book of the court embracing~~ and a copy of its final ~~action to~~ order shall be ~~copied by the clerk, or deputy,~~ entered into ~~his~~ the clerk's order or will book. At any time after such appeal is allowed, the court~~, or the judge thereof in vacation,~~ may ~~make any such~~ enter an order for the protection of the ~~parties~~ persons interested in the probate of the will or for the protection or preservation of any property involved as ~~might have been made had the matter been originally presented to the court, or as may seem needful~~ it finds necessary.

Drafting note: Technical changes to modernize language.

§ ~~64.1-79~~ 64.2-446. ~~Person offering will~~ Motion for probate ~~may have~~; process against persons interested ~~cited to appear~~ in probate.

A. A person offering, or intending to offer, to a circuit court ~~having jurisdiction of the probate of wills~~ or to the clerk of ~~a~~ the circuit court ~~having such jurisdiction,~~ a will for probate, may ~~obtain from~~ request that the clerk of such court ~~process directed to the proper officer of any county or corporation, requiring him to~~ summon any person interested in ~~such~~ the probate of the will to appear ~~at the next term of such court, on a day named in the summons,~~ to show cause why the will should not be admitted to probate. Upon such request, the clerk shall, or in the absence of such request the court may, summon all persons interested in the probate of the will to appear to show cause why the will should not be admitted to probate.

B. The court shall hear the motion to admit the will to probate when all persons interested in the probate of the will have been summoned or otherwise appear as parties. Upon the request of any person interested in the probate of the will, the court shall order a trial by jury to ascertain whether any paper produced is the will of the decedent. The court shall enter a final order as to the probate.

C. In the absence of a request that the clerk summon any person interested in the probate of the will to appear to show cause why the will should not be admitted to probate, the court in which the will is offered for probate may proceed to admit or reject the will without summoning any party.

Drafting note: Technical changes to modernize language. Existing § 64.1-80 has been incorporated into proposed subsection A. Existing §§ 64.1-82 and 64.1-83 have been relocated to proposed subsection B. Existing § 64.1-85 has been relocated to proposed subsection C. Technical changes have been made to the relocated sections to modernize language.

~~§ 64.1-80. Circuit courts may do same.~~

~~A circuit court to which a will is offered for probate, or into which the question of probate is removed by appeal or otherwise, may cause all persons interested in the probate to be summoned to appear on a certain day.~~

Drafting note: Relocated to subsection A of proposed § 64.2-446.

~~§ 64.1-81. Process against persons interested; guardian ad litem.~~

~~Any person interested in such probate may be summoned, or proceeded against, by order of publication; and to any person so interested a guardian ad litem may be assigned, as in other cases.~~

Drafting note: Relocated to subsections B and C of proposed § 64.2-449.

~~§ 64.1-82. When court to hear motion.~~

~~When all the persons interested in such probate shall be properly convened by such summons or order of publication, or assignment of guardian, or shall otherwise appear as parties, the court shall proceed to hear the motion for such probate.~~

Drafting note: Relocated to subsection B of proposed § 64.2-446.

~~§ 64.1-83. Court may require all testamentary papers to be produced; trial by jury; judgment.~~

~~In every such proceeding the court may require all testamentary papers of the same decedent to be produced. If any person interested ask it, it shall order a trial by a jury, to ascertain whether any paper, or if there be more than one, which of the papers produced, be the will of the decedent and if no such trial be asked shall proceed without it to decide the question of probate. The court shall make a final decree or order as to the probate.~~

Drafting note: Relocated to subsection B of proposed § 64.2-446.

~~§ 64.1-84. Effect of judgment.~~

~~In such a proceeding any such decree or final order shall be a bar to a bill in equity to impeach or establish such will, unless on such a ground as would give to a court of equity jurisdiction over other judgments at law.~~

Drafting note: Relocated to subsection G of proposed § 64.2-448.

~~§ 64.1-85. Motion for probate may be ex parte.~~

~~Any court having jurisdiction of the probate of wills under § 64.1-75 may, however, without summoning any party, proceed to probate and admit the will to record or reject the same.~~

Drafting note: Relocated to subsection C of proposed § 64.2-446.

~~§ 64.1-86. How production of will compelled.~~

~~Any court having jurisdiction of the probate of wills, on being informed that a person has in his custody the will of a testator, may summon him and by proper process compel him to produce the same.~~

Drafting note: Relocated to subsection A of proposed § 64.2-449.

§ ~~64.1-87~~ 64.2-447. ~~When deposition of witness may be taken and read on probate of will~~ Use of depositions.

~~When any will, or authenticated copy thereof, is offered for probate, and~~A. The deposition of a witness who subscribed a will attesting ~~the same~~ that the will is the will of the

testator, or in ~~event~~ the case of a holographic will ~~be wholly in the handwriting of the testator~~, a witness ~~to prove such~~ attesting that the will is wholly in the handwriting~~,~~ of the testator, may be admitted as evidence to prove the will if the witness (i) resides ~~out~~ outside of ~~this~~ the Commonwealth, or ~~though~~ (ii) resides in ~~this~~ the Commonwealth ~~is confined in another county or corporation under legal process, or~~ but is unable ~~from sickness, age or any other cause~~ to ~~attend~~ testify for any reason before the court or clerk where the ~~same~~ will is offered~~, the same may be proved by the deposition of the witness or witnesses, which~~. For the purpose of taking such depositions, the person offering the will for probate shall be permitted to withdraw the will temporarily, leaving an attested copy with the court or clerk, or the clerk may give such person a certified copy of the will.

B. The deposition of such witnesses shall be taken and certified ~~as depositions are taken in other cases~~ in accordance with § 8.01-420.4 and the Rules of the Supreme Court of Virginia, except that no notice ~~need be given~~ of the time and place of taking the ~~same,~~ deposition need be given unless ~~it be in a case in which~~ the probate is opposed by some person ~~who has made himself a party; and the proof so given shall have the same effect as if it had been given before such court or clerk.~~ interested in the probate of the will. ~~For the purpose of making such proof the party offering such will or copy shall be permitted to withdraw temporarily the original thereof upon leaving an attested copy with such court or clerk, or, in the discretion of the clerk, the party may be given a certified copy of the original.~~ Such deposition may be taken prior to the time that the will is offered for probate~~,~~ and ~~the deposition~~ may be filed at the same time the will is offered for probate, provided, that if probate is opposed by some person ~~who has made himself a party~~ interested in the probate of the will, such person shall have the right to examine such witness.

Drafting note: Technical changes to modernize language.

§ ~~64.1-88~~ 64.2-448. ~~Bill~~ Complaint to impeach or establish a will; limitation of action; venue.

~~After a decree or order under § 64.1-85 or under § 64.1-77, a~~A. A person interested~~,~~ in the probate of the will who ~~was~~ has not ~~a party to the~~ otherwise been before the court or clerk in a proceeding~~,~~ to probate the will pursuant to § 64.2-444 or in an ex parte proceeding to probate the will pursuant to subsection B of § 64.2-446 may ~~proceed by bill in equity~~ file a complaint to impeach or establish the will~~, on which bill a trial by jury shall be ordered to ascertain whether any, and if any how much, of what was so offered for probate be the will of the decedent. The court may also, if it deem proper, require all testamentary papers of the same decedent to be produced and direct the jury to ascertain whether any, or if there be more than one which, of the papers produced, or how much of what was so produced, be the will of the decedent.~~ within one year from the date of the order entered by the court in exercise of its original jurisdiction or after an appeal of an order entered by the clerk, or, if no appeal from an order entered by the clerk is taken, from the date of the order entered by the clerk.

B. A person interested in the probate of the will who had been proceeded against by an order of publication pursuant to subsection B of § 64.2-449 may file a complaint to impeach or establish the will within two years from the date of the order entered by the court in the exercise of its original jurisdiction, unless he actually appeared as a party or had been personally served with a summons to appear.

C. A person interested in the probate of the will who has not otherwise been before the court and who was a minor at the time of the order pursuant to § 64.2-444 or 64.2-446 may file a complaint to impeach or establish the will within one year after such person reaches the age of maturity or is judicially declared emancipated.

D. A person interested in the probate of the will who has not otherwise been before the court and who was incapacitated at the time of the order pursuant to § 64.2-444 or 64.2-446 may file a complaint to impeach or establish the will within one year after such person is restored to capacity.

E. Upon the filing of a complaint to impeach or establish the will pursuant to this section, the court shall order a trial by jury to ascertain whether what was offered for probate is the will of the testator. The court may require all testamentary papers of the testator be produced and direct the jury to ascertain whether any paper produced is the will of the testator. The court shall decide whether to admit the will to probate.

F. The venue for filing a complaint to impeach or establish the will shall be as specified in subdivision 7 of § 8.01-261.

G. Subject to the provisions of § 8.01-428, a final order determining whether to admit a will to probate bars any subsequent complaint to impeach or establish a will.

Drafting note: Technical changes to modernize language. Existing § 64.1-84 has been relocated to proposed subsection G. Existing § 64.1-89 has been relocated to proposed subsections A and F. Existing § 64.1-90 has been relocated to proposed subsections B, C, and D. Technical changes have been made to the relocated sections to modernize language.

~~§ 64.1-89. When bill must be filed and where.~~

~~If the decree or order be made by the court in the exercise either of its original jurisdiction or an appeal from the clerk, such bill shall be filed within one year from the date of such order made by the court. If no appeal be taken from a decree or order made by the clerk under § 64.1-77, the bill shall be filed within one year from the date of such order or decree by the clerk. If no such bill be filed within that time, the decree or order shall be forever binding. The venue for filing a bill under § 64.1-88 shall be as specified in subdivision 7 of § 8.01-261.~~

Drafting note: Relocated to subsections A and F of proposed § 64.2-448.

~~§ 64.1-90. Saving in favor of infants, persons of unsound mind.~~

~~Sections 64.1-84, 64.1-88 and 64.1-89 are subject to these provisos: that any person interested who has not otherwise been before the court and who, at the time of the decree or order, is under the age of eighteen years or of unsound mind may file a bill in equity to impeach or establish the will within one year after he becomes of age or is restored to capacity, as the case~~

~~may be, and that any person interested who has been proceeded against by order of publication may, unless he actually appeared as a party or was personally summoned, file such bill within two years after such decree or order.~~

Drafting note: Relocated to subsections B, C, and D of proposed § 64.2-448.

§ ~~64.1-91~~ 64.2-449. ~~What may be admitted as evidence on trial by jury~~ Procedure in probate proceedings.

A. In every probate proceeding, the court may require all testamentary papers of the testator be produced and may compel the production of the will of a testator that is in the custody of any person.

B. A summons may be served by an order of publication on any person interested in the probate of the will in accordance with § 8.01-316.

C. The court may appoint a guardian ad litem for any person interested in the probate of the will in accordance with § 8.01-9.

D. The record of ~~what is proved or deposed in court~~ the testimony given by witnesses in court on the motion to admit a will to ~~record~~ probate and any out of court depositions ~~lawfully taken out of court, on such motion,~~ of witnesses who cannot be produced at a jury trial ~~afterwards before a jury~~ may~~, on such trial,~~ be admitted as evidence~~, to have~~ and given such weight as the jury ~~shall think it deserves~~ deems proper.

Drafting note: Technical changes to modernize language. Existing § 64.1-81 has been relocated to proposed subsections B and C. Existing § 64.1-86 has been relocated to proposed subsection A. Technical changes have been made to the relocated sections to modernize language.

§ ~~64.1-92~~ 64.2-450. Probate of copy of will proved ~~without~~ outside the Commonwealth; ~~to what extent admitted to probate~~ authenticated copy.

When a will relative to an estate within ~~this~~ the Commonwealth has been proved ~~without the same~~ in another jurisdiction, an authenticated copy ~~thereof~~ of the will and the certificate of probate ~~thereof~~ of the will may be offered for probate in ~~this~~ the Commonwealth. ~~When such copy is so offered, the court or the clerk thereof to which it is offered~~, and there shall ~~presume, in the absence of evidence to the contrary,~~ be a rebuttable presumption that the will was duly executed and admitted to probate as a will of ~~personalty~~ personal estate in the ~~state or country~~ jurisdiction of the testator's domicile and the circuit court, or the clerk of such court, where it is offered shall admit such copy to probate as a will of ~~personalty~~ personal estate in ~~this~~ the Commonwealth. ~~And if it appear from~~ If such copy indicates that the will was admitted to probate in ~~the foreign~~ a court of ~~probate~~ another jurisdiction and was so executed as to be a valid will of ~~lands~~ real estate in ~~this~~ the Commonwealth by the law of ~~this~~ the Commonwealth, such copy may be admitted to probate as a will of real estate. An authenticated copy of any will which has been self-proved under the laws of another state shall, when offered with its authenticated certificate of probate, be admitted to probate as a will of ~~personalty~~ personal estate and real

estate. ~~The probate of any such copy of a will before any such clerk shall have the same legal operation and effect as if such copy had been admitted to probate by the court.~~

Drafting note: Technical changes to modernize language.

§ ~~64.1-93~~ 64.2-451. Appointment of curator; when made; his duties.

~~Such~~ The court or the clerk ~~as is mentioned in § 64.1-75,~~ of such court, or ~~any~~ his duly qualified deputy ~~of such clerk~~, may appoint a curator of the estate of a decedent during a contest about ~~his~~ the decedent's will, ~~or~~ during the infancy or in the absence of an executor, or until administration of the estate be granted~~, taking from him~~ and may require the curator to give a bond in a reasonable penalty. The curator shall ~~take care~~ ensure that the estate is not wasted before the qualification of an executor or administrator, or before such estate ~~shall~~ lawfully ~~come~~ comes into possession of such executor or administrator. ~~He~~ The curator may demand, sue for, recover, and receive the decedent's personal estate and all debts due to the ~~decedent, and all his other personal estate, and likewise~~ testator. The curator may lease or receive the rents and profits of any real estate ~~whereof~~ that the decedent ~~or testator may have died seized or~~ possessed when he died. ~~He~~ The curator shall pay debts, ~~so far as such payment may not affect the priority~~ to the extent that there are sufficient assets to do so in the order of payment prescribed by law, and may be sued in ~~like~~ the same manner as an executor or administrator~~; and upon~~. Upon the qualification of an executor or administrator, the curator shall account ~~with him~~ for and pay and deliver to him such estate as he ~~has in his hands~~ controls or may be liable for.

Drafting note: Technical changes to modernize language.

§ ~~64.1-87.1~~ 64.2-452. How will may be made self-proved; affidavits of witnesses.

A will, at the time of its execution or at any subsequent date, may be made self-proved by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of ~~this~~ the Commonwealth or the laws of the state where acknowledgment occurred, or before an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed, and evidenced by the officer's certificate, attached or annexed to the will. The officer's certificate shall be substantially as follows in form and content:

```
STATE OF VIRGINIA
COUNTY/CITY OF  .............
Before me, the undersigned authority, on this day personally appeared
.........,  ........., and  ........, known to me to be the testator and
the witnesses, respectively, whose names are signed to the attached or
foregoing instrument and, all of these persons being by me first duly
sworn,  ....., the testator, declared to me and to the witnesses in
my presence that said instrument is his last will and testament and
that he had willingly signed or directed another to sign the same
for him, and executed it in the presence of said witnesses as his
free and voluntary act for the purposes therein expressed; that said
```

witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.

.....

Testator

.....

Witness

.....

Witness

Subscribed, sworn and acknowledged before me by ....., the testator, and subscribed and sworn before me by ..... and ....., witnesses, this .... day of ....., A.D., ...

SIGNED .....

.....

(OFFICIAL CAPACITY OF OFFICER)

The ~~sworn statement~~ affidavits of any such witnesses taken as ~~herein~~ provided~~, whether before, on or after July 1, 1986~~ by this section, whenever made, shall be accepted by the court as if it had been taken ore tenus before such court, notwithstanding that ~~(i)~~ the officer did not attach or affix his official seal thereto ~~or (ii) the acknowledgment was before an officer authorized to administer oaths under the laws of another state~~. Any codicil ~~which~~ that is self-proved under the provisions of this section ~~which also~~ that, by its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have the effect of self-proving the will whether or not the will was so executed originally.

Drafting note: Technical changes.

§ ~~64.1-87.2~~ 64.2-453. ~~Same; alternate method~~ How will may be made self-proved; acknowledgment of witnesses.

A will, at the time of its execution or at any subsequent date, may be made self-proved by the acknowledgment thereof by the testator and the attesting witnesses, each made before an officer authorized to administer oaths under the laws of the Commonwealth~~,~~ or the laws of the state where the acknowledgment occurred, or before an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed, and evidenced by the officer's certificate, attached or annexed to the will. The officer's certificate shall be substantially as follows in form and content:

STATE OF VIRGINIA

CITY/COUNTY OF .....

Before me, the undersigned authority, on this day personally appeared ....., ..., and ....., known to me to be the testator and the witnesses, respectively whose names are signed to the

attached or foregoing instrument and, all of these persons being by me first duly sworn, ..., the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed, that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who in his presence and at his request and in the presence of each other did subscribe their names thereto as attesting witnesses on the day of the date of said will and that the testator, at the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.
Sworn and acknowledged before me by ....., the testator, and ..... and ....., witnesses, this .... day of ..... A.D., ...
SIGNED .....
.....
(OFFICIAL CAPACITY OF OFFICER)

Any codicil that is self-proved under the provisions of this section that, by its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have the effect of self-proving the will whether or not the will was so executed originally.

Drafting note: Language has been added to this section tracking language in proposed 64.2-452 that allows a self-proved codicil to have the effect of self-proving the will in order to make the two sections consistent, even though such language does not appear in the original version of this section. This addition is consistent with existing § 64.1-45 which provides that the term "will" includes a codicil. There are also technical changes.

§ ~~64.1-75.1~~ 64.2-454. Appointment of administrator for prosecution of action for personal injury or wrongful death against or on behalf of estate of deceased resident or nonresident.

~~In~~An administrator may be appointed in any case in which it is represented that ~~an~~ a civil action ~~at law~~ for personal injury or death by wrongful act ~~upon a cause of action~~ arising within ~~this~~ the Commonwealth is contemplated against or on behalf of the estate or the beneficiaries of the estate of a resident or nonresident of ~~this~~ the Commonwealth who has died within or ~~without this~~ outside the Commonwealth ~~and for whose estate an~~ if an executor of the estate has not been appointed~~, an administrator of such person may be appointed~~, solely for the purpose of prosecution of ~~said suit, by the~~ such action, by the clerk of the circuit court ~~having jurisdiction for the probate of wills~~ in the county or city in which jurisdiction and venue would have been properly laid for such action ~~in the same manner as~~ if the person for whom the appointment ~~thereof~~ is sought had survived.

Drafting note: Technical changes.

Article ~~5~~ 6.
Recordation and Effect ~~Thereof~~.

Drafting note: Technical changes.

§ ~~64.1-94~~ 64.2-455. Wills to be recorded; recording copies; effect; ~~indexing;~~ transfer to The Library of Virginia.

A. Every will or authenticated copy admitted to probate by any circuit court or clerk of any circuit court shall be recorded by the clerk and remain in the clerk's office, except during such time as the same may be carried to another court under a subpoena duces tecum ~~and except~~ or as otherwise provided in § 17.1-213. A ~~duly~~ certified copy of such will or of any authenticated copy ~~so admitted to record~~ may be recorded in any county or city wherein there is any estate, real or personal, devised or bequeathed by such will.

B. The personal representative of the testator shall cause a ~~duly~~ certified copy of any will or of any authenticated copy so admitted to record to be recorded in any county or city wherein there is any real estate of which the testator ~~died seized~~ possessed at the time of his death or ~~which~~ that is devised by his will. ~~On and after July 1, 1964, such will shall be indexed in the General Indices of Deeds in such clerk's office in the name of the testator as grantor, except in such clerk's office wherein General Indices to Wills are kept.~~

C. Every will~~,~~ or ~~such a duly~~ certified copy ~~as is mentioned in this section,~~ when ~~duly~~ recorded shall have the effect of notice to all persons of any devise or disposal by the will of real estate situated in a county or city in which such will or copy is so recorded.

~~Every clerk on recording any will, or such a copy as is mentioned in this section, shall index the same as required by law.~~

D. With the approval of the judges of a circuit court of any county or city, the clerk of such court may transfer such original wills from his office to the Archives Division of The Library of Virginia. A copy of any will that has been microfilmed or stored in an electronic medium, prepared from such microfilmed or electronic record and certified as authentic by the clerk or his designee, shall constitute a ~~"duly~~ certified copy~~"~~ of the will for any purpose arising under this title for which a ~~duly~~ certified copy of the will is required.

Drafting note: Technical changes. Clerks already have the duty to index wills pursuant to §§ 17.1-223, 17.1-231, and 17.1-249 so it is unnecessary to repeat that duty in this section.

§ ~~64.1-95~~ 64.2-456. Bona fide purchaser of real estate without notice of devise protected.

The title of a bona fide purchaser without notice ~~for valuable consideration~~ from the heir at law of a person who has died heretofore, or who may die hereafter, having title to any real estate of inheritance in ~~this~~ the Commonwealth, shall not be affected by a devise of such real estate made by the decedent, unless within one year after the testator's death the will devising the same or, if such will has been probated ~~without this~~ outside of the Commonwealth, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

Drafting note: Definition of bona fide purchaser in existing § 64.1-01 obviated need for "valuable consideration" language. There are also technical changes.

§ ~~64.1-96~~ 64.2-457. ~~Same~~ Bona fide purchaser of real estate without notice of devise protected; later will.

The title of a bona fide purchaser without notice ~~for valuable consideration~~ from the devisee, or from the personal representative with power to sell, encumber, lease, or exchange, under the will of a person who has died heretofore, or may die hereafter, having title to any real estate of inheritance in ~~this~~ the Commonwealth, shall not be affected by any other devise of such real estate made by the testator in another will, unless within one year after the testator's death such other will or, if such other will has been probated ~~without this~~ outside of the Commonwealth, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

Drafting note: Technical changes.

§ ~~64.1-96.1~~ 64.2-458. Bona fide purchaser of real estate without notice of devise protected; intestacy.

The title of a bona fide purchaser without notice ~~for valuable consideration~~ from the devisee, or from the personal representative with power to sell, encumber, lease, or exchange, under the will of a person who has died heretofore, or may die hereafter, having title to any real estate of inheritance in ~~this~~ the Commonwealth, shall not be affected by the later impeachment of the testator's will ~~or wills which~~ that results in intestacy, unless within one year after the testator's death a ~~bill in equity~~ complaint is filed before the court having jurisdiction for that purpose.

Drafting note: Technical changes.