

REVISION OF TITLE 64.1 WILLS AND DECEDENTS' ESTATES

May 14, 2009

I. Issues Prompting Revision

1. Title 64.1 has not been recodified since 1968 (Acts Ch. 656). Many sections have not been amended since that time and contain obsolete language and style.

2. When recodified in 1968, the title had seven chapters. Since then, four chapters have been added to the title, one of which has been repealed. The title currently has ten chapters, of which some would more properly fit as articles within other chapters.

3. The title currently has one chapter (Ch. 2: Curtesy, Dower and Jointure) that has essentially been repealed, leaving only a statute saying that these estates no longer exist unless the right to these estates vested prior to January 1, 1991.

4. Placement of new sections and chapters into the existing framework is problematic and results in convoluted section numbering. Chapters added to the title since 1968 have been added the end of the title, which has compromised any previous organizational scheme.

5. Other provisions relating to wills and decedents' estates are located throughout the Code, creating a certain degree of difficulty for users of the Code. Many of these provisions should be relocated to Title 64.2.

II. Proposed Work Plan

- May 2009: Convened a work group to assist in the project:
 - Gary W. Lonergan, City of Alexandria Ass't Comm'r of Accounts
 - John H. Rust, Jr., Fairfax City/County Comm'r of Accounts
 - Philip R. Trapani, Jr., City of Norfolk Comm'r of Accounts
 - Tommy L. Moore, Botetourt County Cir. Ct. Clerk
 - James P. Cox, III, Michie, Hamlett, Lowry, Rasmussen & Tweel
Chair of Wills, Trusts & Estates section of the VBA
 - Helen Lewis Kemp, Virginia Estate Plans
 - Dana G. Fitzsimons, McGuireWoods
 - John T. Midgett, Midgett & Pretti
Chair of Trusts & Estates section of the VSB
 - Martha L. Sotelo, Vaughan, Fincher & Sotelo
 - Joseph E. Spruill, Virginia Bankers Association
- May - June 2009: Identify provisions of the Code that should be incorporated in the revised Title 64.2. Review with work group.
- June 18, 2009: Present proposed work plan for Code Commission review and approval.
- July - August 2009: Finalize the outline of structural reorganization of title, including moving provisions of other titles to Title 64.2. Review with work group.
- August 2009: Present outline of structural reorganization for Code Commission review and approval.
- August 2009 - 2010: Present chapters of proposed Title 64.2 to Code Commission for comment and approval. Periodically meet with work group to discuss proposed revisions.
- Last Code Commission meeting in 2010: Present proposed final report for the 2011 General Assembly session.

III. Role of work group in Recodification (Source: DLS Drafting Manual)

One of the main purposes of a recodification is to improve the organization of the title. As sections are added, amended and repealed over the years, the title loses its organizational structure. One of the first tasks is to examine the structure of the title and see how it can be reorganized in a more cohesive and logical manner. There may be chapters, articles, sections or portions of sections that would more logically fit in another title of the Code and there may be provisions in another title that should be moved into the title being recodified. In addition, sections may be combined or portions of sections incorporated into different sections as appropriate. The title will be divided into subtitles that contain chapters and the chapters will contain articles. Chapters that are not long or complex may not need to be broken into articles. In some revisions, one of the subtitles or chapters has been entitled "General Provisions" and contains definitions and other information that is applicable to the entire title or a subtitle. This is helpful because general information does not have to be repeated for each specific program or agency in the title or subtitle. Another goal of a title revision is to identify and eliminate or update obsolete provisions in the title and to revise wordy language.

The Code Commission prefers that the staff person working on the recodification work closely with entities affected by the recodification so that problems can be resolved early in the process. The Code Commission likes to have interested parties review drafts and make comments prior to meetings. The drafter will have to make the judgment as to whether the person's comments should be incorporated into the draft that will be presented to the Code Commission. The drafter may wish to incorporate non-controversial technical suggestions and discuss more questionable changes with the Code Commission at the meeting. Alternate versions of a particular section can be prepared for the Code Commission to consider.