

DLS Drafting Policy Relating to Gender-Neutral Terms

- Except when otherwise required for context, draft in accordance with the rule of construction set forth in Va. Code § 1-216 that provides a word used in the masculine includes the feminine and neuter.
 - Delete "or she"
 - Delete "or her"
 - Delete "or herself"
- Except when otherwise required for context, standardize use of the following gender-neutral terms when drafting and make the following references consistent:
 - "husband" or "wife" to "spouse"
 - "father" or "mother" to "parent"
 - "grandfather" or "grandmother" to "grandparent"
 - "stepfather/step-father" or "stepmother/step-mother" to "step-parent"
 - "father-in-law" or "mother-in-law" to "parent-in-law"
 - "son" or "daughter" to "child"
 - "grandson" or "granddaughter" to "grandchild"
 - "stepson/step-son" or "stepdaughter/step-daughter" to "stepchild"
 - "son-in-law" or "daughter-in-law" to "child-in-law"
 - "brother" or "sister" to "sibling"
 - "stepbrother/step-brother" or "stepsister/step-sister" to "step-sibling"
 - "brother-in-law" or "sister-in-law" to "sibling-in-law"
 - "half-brother" or "half-sister" to "half-sibling"
 - "widow" or "widower" to "surviving spouse"

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Cotter, David M.

SUMMARY

Same-sex marriages; civil unions. Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions have been rendered obsolete by the United States Supreme Court decision in Obergefell v. Hodges, 576 U.S. ____ (June 26, 2015). This bill is a recommendation of the Virginia Code Commission.

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Cotter, David M.

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to repeal §§ 20-45.2 and 20-45.3 of the Code of Virginia, relating to same-sex marriages; civil
2 unions.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 20-45.2 and 20-45.3 of the Code of Virginia are repealed.**

5 #

§ 20-45.2. Marriage between persons of same sex.

A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.

1975, c. 644; 1997, cc. [354](#), [365](#).

§ 20-45.3. Civil unions between persons of same sex.

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

2004, c. [983](#).

SUMMARY

Elections; removal and revision of obsolete provisions. Repeals and revises several obsolete elections-related statutes. This bill is a recommendation of the Code Commission.

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 24.2-613, 24.2-614, 24.2-615, 24.2-641, and 24.2-644 of the Code of
2 Virginia and to repeal § 24.2-113 of the Code of Virginia, relating to obsolete statutes and
3 provisions in Title 24.2.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 24.2-613, 24.2-614, 24.2-615, 24.2-641, and 24.2-644 of the Code of Virginia are amended**
6 **and reenacted as follows:**

7 **§ 24.2-613. Form of ballot.**

8 A. The ballots shall comply with the requirements of this title and the standards prescribed by the
9 State Board.

10 B. For elections for federal, statewide, and General Assembly offices only, each candidate who
11 has been nominated by a political party or in a primary election shall be identified by the name of his
12 political party. Independent candidates shall be identified by the term "Independent." For the purpose of
13 this section, any Independent candidate may, by producing sufficient and appropriate evidence of
14 nomination by a "recognized political party" to the State Board, have the term "Independent" on the ballot
15 converted to that of a "recognized political party" on the ballot and be treated on the ballot in a manner
16 consistent with the candidates nominated by political parties. For the purpose of this section, a "recognized
17 political party" is defined as an organization that, for at least six months preceding the filing of its nominee
18 for the office, has had in continual existence a state central committee composed of registered voters
19 residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected
20 state chairman and secretary. A letter from the state chairman of a recognized political party certifying
21 that a candidate is the nominee of that party and also signed by such candidate accepting that nomination
22 shall constitute sufficient and appropriate evidence of nomination by a recognized political party. The
23 name of the political party, the name of the "recognized political party," or term "Independent" may be
24 shown by an initial or abbreviation to meet ballot requirements.

25 C. Except as provided for primary elections, the State Board shall determine by lot the order of the
26 political parties, and the names of all candidates for a particular office shall appear together in the order
27 determined for their parties. In an election district in which more than one person is nominated by one
28 political party for the same office, the candidates' names shall appear alphabetically in their party groups
29 under the name of the office, with sufficient space between party groups to indicate them as such. For the
30 purpose of this section, except as provided for presidential elections in § 24.2-614, "recognized political
31 parties" shall be treated as a class; the order of the recognized political parties within the class shall be
32 determined by lot by the State Board; and the class shall follow the political parties as defined by § 24.2-
33 101 and precede the independent class. Independent candidates shall be treated as a class under
34 "Independent", and their names shall be placed on the ballot after the political parties and recognized
35 political parties. Where there is more than one independent candidate for an office, their names shall
36 appear on the ballot in an order determined by the priority of time of filing all required paperwork for the
37 office. In the event two or more candidates file simultaneously, the order of filing shall then be determined
38 by lot by the electoral board as in the case of a tie vote for the office.

39 No individual's name shall appear on the ballot more than once for the same office.

40 D. In preparing the printed ballots for general, special, and primary elections, the State Board and
41 ~~electoral boards-general registrars~~ shall cause to be printed in not less than 10-point type, immediately
42 below the title of any office, a statement of the number of candidates for whom votes may be cast for that
43 office. For any office to which only one candidate can be elected, the following language shall be used:
44 "Vote for only one." For any office to which more than one candidate can be elected, the following
45 language shall be used: "Vote for not more than."

46 E. Any locality that uses machine-readable ballots at one or more precincts, including any central
47 absentee precinct, may, with the approval of the State Board, use a printed reproduction of the machine-
48 readable ballot in lieu of the official machine-readable ballot. Such reproductions shall be printed and
49 otherwise handled in accordance with all laws and procedures that apply to official paper ballots.

~~In every county and city using voting systems requiring printed ballots, the electoral board shall furnish a sufficient number of ballots printed on plain white paper, of such form and size as will fit in the ballot frames.~~

§ 24.2-614. Preparation and form of presidential election ballots.

As soon as practicable after the seventy-fourth day before the presidential election, the State Board shall certify to the general registrar of each county and city the form of official ballot for the presidential election which shall be uniform throughout the Commonwealth. Each general registrar shall have the official ballot printed at least 45 days preceding the election.

The ballot shall contain the name of each political party and the party group name, if any, specified by the persons naming electors by petition pursuant to § 24.2-543. Below the party name in parentheses, the ballot shall contain the words "Electors for _____, President and _____, Vice President" with the blanks filled in with the names of the candidates for President and Vice President for whom the candidates for electors are expected to vote in the Electoral College. ~~A printed square shall precede the name of each political party or party designation.~~

Groups of petitioners qualifying for a party name under § 24.2-543 shall be treated as a class; the order of the groups shall be determined by lot by the State Board; and the groups shall immediately precede the independent class on the ballot. The names of the candidates within the independent class shall be listed alphabetically.

§ 24.2-615. Separate questions for proposed constitutional amendments, etc.; uniform ballots.

A separate ~~ballot question~~ shall be ~~printed presented~~ for each of the following: proposed amendments to the Constitution submitted to the qualified voters at one election; proposals submitted to the qualified voters after a constitutional convention pursuant to Article XII, Section 2 of the Constitution; candidates for President, Vice President, and presidential electors; and candidates for the Congress of the United States.

75 The form of the ballot shall be the same throughout the election district in which the same
76 candidates are running to fill the same offices and throughout the district in which a question is submitted
77 to the voters.

78 **§ 24.2-641. Sample ballot.**

79 The electoral board or general registrar shall provide for each precinct in which any voting or
80 counting machines are used two sample ballots, ~~which shall be arranged as a diagram of the front of the~~
81 ~~voting or counting machine as it will appear with the official ballot for voting on election day for each~~
82 ballot style in use at that precinct. Such sample ballots shall be posted for public inspection at each polling
83 place during the day of election.

84 **§ 24.2-644. Voting by paper ballot; voting for presidential electors; write-in votes.**

85 A. The qualified voter shall take the official paper ballot and enter the voting booth. After entering
86 the voting booth, the qualified voter shall mark ~~immediately preceding the name of the ballot in~~
87 accordance with the instructions for the type of ballot, for each candidate for whom he wishes to vote ~~a~~
88 ~~check (✓) or a cross (✓ or +) or a line (-) in the square provided for such purpose~~, leaving unmarked ~~the~~
89 ~~square preceding~~ the name of each candidate for whom he does not wish to vote. Any ballot marked so
90 that the intent of the voter is clear shall be counted.

91 B. The qualified voter at a presidential election shall mark ~~the square preceding the names and~~
92 ~~party designation the ballot in accordance with the instructions for the type of ballot~~, for his choice of
93 candidates for President and Vice President. His ballot so marked shall be counted as if he had marked
94 squares the ballot in accordance with the instructions for the type of ballot preceding the names of the
95 individual electors affiliated with his choice for President and Vice President. The qualified voter at a
96 presidential election may cast a write-in vote for President and Vice President as provided in subsections
97 C and D.

98 C. At all elections except primary elections it ~~shall be~~ is lawful for any voter to vote for any person
99 other than the listed candidates for the office by writing or hand printing the person's name on the official
100 ballot. No check or other mark shall be required to cast a valid write-in vote. Write-in votes for President
101 and Vice President shall be counted only for candidates who have filed a joint declaration of intent to be

102 write-in candidates for the offices with the Commissioner of Elections not less than 10 days before the
103 date of the presidential election. The declaration of intent shall be on a form prescribed by the State Board
104 and shall include a list of presidential electors pledged to those candidates which equals the whole number
105 of senators and representatives to which the Commonwealth at that time is entitled in the Congress of the
106 United States. A write-in vote cast for candidates for President and Vice President, or for a candidate for
107 President only, shall be counted for the individual electors listed on the declaration of intent as pledged to
108 those candidates.

109 D. No write-in vote shall be counted unless the name is entered on the ballot in conformance with
110 this section. No write-in vote shall be counted when it is apparent to the officers of election that a voter
111 has voted for the same person for the same office more than one time. No write-in vote shall be counted
112 for an office for any person whose name appears on the ballot as a candidate for that office. If two or more
113 persons are to be elected to the same office, a voter may vote for one or more persons whose names do
114 appear on the ballot and one or more persons whose names do not appear on the ballot, provided that the
115 total number of votes cast by him for that office does not exceed the number of persons to be elected to
116 that office.

117 **2. That § 24.2-113 of the Code of Virginia is repealed.**

118 #

Subtitle I: List of Technical Changes

- Striking out the words/phrases: "thereof," "the same," "therein," "herein," "wherein," "thereto," "whereby," "thereafter," "therefrom," "hereof," "hereunder," "thereunder" and replacing such words with clearer, more explanatory language.
- Striking plural words used after identical singular words on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural.
- Replacing the phrase "county, city, or town" with the word "locality" on the basis of § 1-221, which states that throughout the Code, "'locality' means a county, city, or town."
- Replacing the word "must" with the word "shall" as necessary.
- Replacing the phrase "shall be" with the word "is" or "does" as necessary.
- Replacement of the phrase "shall have the authority to" with the word "may."
- Spelling out the numbers one through nine.
- Using numerals for the numbers 10 or more, except when the numbers begins a sentence or subdivision.
- Replacing the word "which" with the word "that" as necessary.
- Replacing the phrase "goods or chattels" with the modern term "personal property."
- Use of the phrase "tenants by the entirety" instead of "tenancy by the entireties" for consistency
- Language is updated to reflect the merger of law and equity in Virginia (replacing "bill in equity" with "petition," replacing "bill of complaint" with "complaint," replacing "suit" with "action," removal of the phrase "of equity" after "circuit court," replacing "decree" and "personal decree" with "order," strike reference to "corporation court")
- Replacement of the phrase "husband and wife" with "spouse" or "spouses" for consistency in accordance with title-wide conventions.
- Replacing the phrase "admitted to record" with the word "recorded."
- Replacing the word "attorney's" with the word "attorney" when referring to "attorney fees."
- Replacing the word "Virginia" with the phrase "the Commonwealth," and striking the words "of Virginia" after the word "Commonwealth."

SUBTITLE I.

PROPERTY CONVEYANCES.

Drafting note: Proposed Subtitle I is created to logically reorganize all provisions relating to real and personal property conveyances. Proposed Subtitle I contains five chapters: Chapter XX [1] Creation and Limitation of Estates; Chapter XX [2] Property Rights of Married Women; Chapter XX [3] Form and Effect of Deeds and Covenants; Liens; Chapter XX [4] Fraudulent and Voluntary Conveyances; Writings Necessary to Be Recorded; and Chapter XX [5] Commutation and Valuation of Certain Estates and Interests.

~~CHAPTER 4~~ XX [1].

~~CREATION AND LIMITATION OF ESTATES; THEIR QUALITIES.~~

Drafting note: Proposed Chapter XX [1], Creation and Limitation of Estates, contains sections from existing Chapter 1, Creation and Limitation of Estates; Their Qualities, and Chapter 20, Virginia Solar Easements Act. It is reorganized into four articles: Article 1, Creation and Transfer of Estates; Article 2, Rule Against Perpetuities; Article 3, Joint Ownership of Real or Personal Property; and Article 4, Virginia Solar Easements Act. Existing § 55-153, related to removal of a cloud on title, is relocated to proposed Article 1; the remaining sections in existing Chapter 8, Clouds on Title, concerning mineral rights, are logically relocated to Title 45.1, Mines and Mining. Existing § 55-19.5, related to certain types of trusts and Medicaid planning, is relocated to Article 2 (§ 64.1-102 et seq.) of Chapter 1 of Title 64.2.

Article 1.

Creation and Transfer of Estates.

Drafting note: Proposed Article 1, Creation and Limitation of Estates, contains sections from existing Chapter 1, Creation and Limitation of Estates; Their Qualities. These sections encompass laws governing an individual's rights in holding and transferring both personal and real property. Additionally, existing § 55-153, relating to removal of a cloud on title, is relocated to this proposed article.

§ ~~55-1~~ 55.1-xxx. Aliens may acquire, hold, and transmit real estate; when reciprocity required.

Any alien, not an enemy, may acquire by purchase or descent and hold real estate in ~~this~~ the Commonwealth, and ~~the same such real estate~~ shall be transmitted in the same manner as real estate held by citizens. However, ~~whenever it appears to~~ if, at the time of the transfer, a court of ~~this the~~ this the Commonwealth determines that the laws of a foreign country or sovereignty effectively deny a Virginia resident, legatee, or distributee ~~of~~ the benefit, use, or control of money or other property held in ~~that jurisdiction~~ such foreign country or sovereignty, a judgment, order, or decree issued in the Commonwealth concerning the rights of a resident of that foreign country or sovereignty to the benefit, use, or control of money or property held in the Commonwealth, may direct that the money or property be paid into the court for the benefit of the alien. The money or property paid into court shall be paid out only upon order of the court or pursuant to the order or judgment of a court of competent jurisdiction. Any of the money or property remaining with the court upon expiration of three years from the decedent's death shall be paid out by the court as if the alien had predeceased the decedent.

Drafting note: Language is updated for modern usage. The phrase "at the time of transfer" is added to clarify at what point the court may make its determination. Technical changes are made.

§ ~~55-2~~ 55.1-xxx. When deed or will necessary to convey estate; no parol partition or gift valid.

No estate of inheritance or freehold or for a term of more than five years in lands shall be conveyed unless by deed or will, ~~nor shall any and no~~ voluntary partition of lands by coparceners, having such an estate ~~therein in such land,~~ shall be made, except by deed, ~~nor shall any.~~ In addition, no right to a conveyance of any such estate or term in land shall accrue to the donee of the land or those claiming under him, under a gift or promise of gift of ~~the same such estate or term in land~~ not in writing, ~~although even if~~ such gift or promise ~~be is~~ followed by possession ~~thereunder~~ and improvement of the land by the donee or those claiming under him.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ ~~55-3~~ 55.1-xxx. When gift of ~~goods or chattels~~ personal property invalid.

No gift of any ~~goods or chattels shall be~~ personal property is valid (i) unless conveyed by deed or will, or (ii) unless the donee or a person claiming under the donee has and remains in actual possession ~~shall have come to and remained with the donee or some person claiming under him of~~ such personal property. If the donor and donee reside together at the time of the gift, possession at the place of their residence ~~shall not be~~ is not a sufficient possession within the meaning of this section. This section shall not apply to personal paraphernalia used exclusively by the donee.

Drafting note: The phrase "goods or chattels" is replaced with the modern term "personal property" throughout the chapter. Technical changes are made.

§ ~~55-4~~ 55.1-xxx. Suicide or attainder of felony.

~~No~~ Neither suicide, nor attainder of felony, shall ~~work~~ cause a corruption of blood or forfeiture of estate.

Drafting note: Attainder of felony means conviction of a capital crime. Language is clarified and technical changes are made.

§ ~~55-5~~ 55.1-xxx. Estates to lie in grant as well as in livery.

All real estate shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

Drafting note: No change.

§ ~~55-6~~ 55.1-xxx. Same estates may be created by deed as by will.

Any interest in or claim to real estate, including easements in gross, may be ~~disposed of~~ transferred by deed or will. Any estate may be made to commence ~~in future~~ at a future date, by deed, in like manner as by will; and any estate ~~which that~~ would be ~~good~~ valid as an executory devise or bequest ~~shall be good~~ is valid if created by deed.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ ~~55-7~~ 55.1-xxx. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.

If any interest in or claim to real estate or personal property ~~be is~~ disposed of by deed or will for life, with a limitation in remainder over, and ~~in~~ the same instrument ~~there be conferred~~ confers expressly or by implication a power upon the life tenant in his lifetime or by will to dispose absolutely of such property, the limitation in remainder over shall not fail, or be defeated, except to the extent that the life tenant ~~shall have~~ lawfully exercised such power of disposal. A deed of trust or mortgage executed by the life tenant shall not be construed to be an absolute disposition of the estate ~~thereby conveyed~~, unless ~~there be a sale thereunder~~ such estate is sold under the deed of trust or mortgage. A power of disposal held by any person in a fiduciary capacity under an express trust in writing shall not be deemed to be held by such fiduciary in a beneficial capacity and shall not be construed in any manner to enlarge the beneficial interest otherwise given to him under such trust.

Drafting note: Technical changes.

~~§§ 55-7.1, 55-7.2.~~

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

~~§ 55-8 55.1-xxx.~~ Default or surrender of tenant for life not to prejudice remainderman, ~~etc.~~

If any tenant for life of land make default, or surrender, the heirs, or those entitled to the remainder, may, before judgment, be admitted to defend their right, or, after judgment, may assert their right without prejudice from such default or surrender.

Drafting note: Technical changes.

~~§ 55-9 55.1-xxx.~~ Conveyance of estate or interest in property by grantor to himself and another.

Any person having an estate or interest in real or personal property may convey ~~the same~~ such estate or interest to himself or to himself and another or others, including to himself and his spouse as tenants by the ~~entireties~~ entirety or otherwise, and the fact that one or more persons are both grantor or grantee or grantors and grantees in the same conveyance shall be no objection to the conveyance. The grantee or grantees in any such conveyance shall take title in like manner.

and the estate vested in them shall be the same as if the conveyance had been made by one or more persons who are not also grantee or grantees ~~therein~~.

All such conveyances made prior to July 1, 1986, are validated notwithstanding defects in the form thereof ~~which~~ that do not affect vested rights.

Drafting note: The phrase "tenants by the entirety" is used throughout the title for consistency. Technical changes are made.

§ ~~55-10~~ 55.1-xxx. Deed ~~good~~ valid for grantor's right; operation of warranty.

A writing ~~which~~ that purports to pass or assure a greater right or interest in real estate than the person making it may lawfully pass or assure shall operate as an alienation of such right or interest in such real estate as such person might lawfully convey or assure; and when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred for the value of what is so descended or liable for such value.

Drafting note: Technical changes.

§ ~~55-11~~ 55.1-xxx. ~~Grant, etc.,~~ Conveyance, devise, or grant without words of limitation.

When any real estate is conveyed, devised, or granted to any person without any words of limitation, such conveyance, devise, ~~conveyance~~ or grant shall be construed to pass the fee simple or other whole estate or interest ~~which~~ that the testator or grantor has power to dispose of in such real estate, unless a contrary intention ~~shall appear by~~ is apparent in the will, conveyance, or grant.

Drafting note: Language is reorganized for consistency. Technical changes are made.

§ ~~55-12~~ 55.1-xxx. Fee tail converted into fee simple.

Every estate in lands so limited that, as the law was on October 7, 1776, such estate would have been an estate tail shall be deemed an estate in fee simple₂, and every limitation upon such an estate shall be held valid₂ if the same would be valid when limited upon an estate in fee simple created by technical language.

Drafting note: Technical changes.

§ ~~55-14~~ 55.1-xxx. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's Case abolished.

Wherever any person by deed, will, or other writing takes an estate of freehold in land, or takes such an ~~estate interest~~ in personal property as would be an estate of freehold if it were an estate in land, and in the same deed, will, or writing an estate is afterwards limited by way of remainder, ~~either mediately or immediately~~, to his heirs, or the heirs of his body, or his issue, the words "heirs," "heirs of his body," and "issue," or other words of like import used in the deed, will, or writing in the limitation therein by way of remainder shall not be construed as words of limitation carrying to such person the inheritance as to the land, or the absolute estate as to the personal property, but they shall be construed as words of purchase, creating a remainder in the heirs, heirs of the body, or issue.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ ~~55-14.1~~ 55.1-xxx. Doctrine of worthier title abolished.

The doctrine of worthier title is abolished in ~~this~~ the Commonwealth as a rule of law and as a rule of construction.

Drafting note: Technical change.

§ ~~55-15~~ 55.1-xxx. When contingent remainder not to fail.

A contingent remainder shall ~~in no case~~ not fail for want of a particular estate to support it.

Drafting note: Technical change.

§ ~~55-16~~ 55.1-xxx. When remainders not defeated.

The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not operate, by merger or otherwise, to defeat, impair, or otherwise affect such remainder.

Drafting note: Technical change.

§ ~~55-17~~ 55.1-xxx. In what conveyances possession transferred to the use.

By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use, or deed operating by way of covenant to stand seized to the use, the possession of the

~~bargainor, releasor or covenantor~~ grantor shall be deemed transferred to the ~~bargainee, releasee~~ grantee or other person entitled to the use, for the estate or interest ~~which~~ that such person has in the use, as perfectly as if the ~~bargainee, releasee~~ grantee or other person entitled to the use had been enfeoffed with livery of seisin of the land intended to be conveyed by such deed or covenant.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ ~~55-17.1~~ 55.1-xxx. Land trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

No trust relating to real estate shall fail nor shall any use relating to real estate be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber, or otherwise dispose of property ~~therein~~ described in such instrument shall be effective, and no person dealing with such a trustee shall be required to make further inquiry as to the right of such trustee to act, nor shall he be required to inquire as to the disposition of any proceeds.

In any case under this section, where there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the county or city ~~or county~~ where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

In any case under this section where there is a recorded deed of conveyance to a trustee and the trustee named in the deed declines to serve, resigns, is disqualified or removed, or is adjudicated incapacitated and there is (a) no successor trustee named in the deed, (b) no successor trustee designated by the terms of the trust instrument, or (c) no procedure set forth in the deed or trust instrument to designate a successor trustee, the beneficiaries of the trust, by majority decision, shall name a successor trustee. However, if the identities of the beneficiaries of the trust cannot be identified from the recorded deed of conveyance or a majority of the beneficiaries are unable to

agree upon a successor trustee, the circuit court of the county or city in which the deed was recorded, upon the motion of any party interested in the administration of the trust, shall appoint a successor trustee whenever the court considers the appointment necessary for the administration of the trust. The name and address of any successor trustee so named or appointed shall be recorded with the clerk of the circuit court of the county or city in which the deed was recorded, and such successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee unless the deed of conveyance expressly provides to the contrary.

Nothing in this section shall be construed to (1) affect any right that a creditor may otherwise have against a trustee or beneficiary except as provided ~~above in this section~~, (2) enlarge upon the power of a corporation to act as trustee under § 6.2-1001, or (3) affect the rule against perpetuities.

Drafting note: Technical changes.

~~§ 55-18~~ § 55.1-xxx. Deed of release effectual.

Every deed of release of any estate or interest capable of passing by ~~deeds~~ deed of lease or release shall be as effectual for the purposes ~~therein~~ expressed in such deed of release, without the execution of a lease, as if the same had been executed.

Drafting note: Technical changes.

~~§ 55-19.~~

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

~~§ 55-19.1.~~

Drafting note: Repealed by Acts 1990, c. 927.

~~§ 55-19.2.~~

Drafting note: Repealed by Acts 1991, c. 415.

~~§§ 55-19.3, 55-19.4.~~

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

~~§ 55-22~~ § 55.1-xxx. When person not a party, etc., may take or sue under instrument.

215 An immediate estate or interest in or the benefit of a condition respecting any estate may
216 be taken by a person under an instrument, although he ~~be is~~ not a party ~~thereto~~ to such instrument;
217 and if a covenant or promise ~~be is~~ made for the benefit, in whole or in part, of a person with whom
218 it is not made, or with whom it is made jointly with others, such person, whether named in the
219 instrument or not, may maintain in his own name any action thereon ~~which~~ that he might maintain
220 ~~in case as though~~ it had been made with him only and the consideration had moved from him to
221 the party making such covenant or promise. In such action, the covenantor or promisor shall be
222 permitted to make all defenses he may have, not only against the covenantee or promisee, but also
223 against such beneficiary ~~as well~~.

224 **Drafting note: Language is updated for modern usage. Technical changes are made.**

225 § ~~55-23~~ 55.1-xxx. Informalities in deeds made by attorneys-in-fact.

226 If, in a deed made by one as attorney-in-fact for another, the words of conveyance or the
227 signature ~~be is~~ in the name of the attorney, it ~~shall be is~~ as much the principal's deed as if the words
228 of conveyance or the signature were in the name of the principal by the attorney, if it ~~be is~~ manifest
229 on the face of the deed that it should be construed to be that of the principal to give effect to its
230 intent.

231 **Drafting note: Technical changes.**

232 § ~~55-24~~ 55.1-xxx. Time for objections to irregularities in advertising sales made by
233 trustees.

234 All deeds made and executed prior to January 1, 1940, by trustees conveying property sold
235 under deeds of trust in which default was made in the debt secured and as to which irregularities
236 in advertising such sales have occurred shall be held and the same are hereby declared valid in all
237 respects, if otherwise valid according to law then in force, after the expiration of ~~fifteen~~ 15 years
238 from the date on which such sale was made by such trustees.

239 **Drafting note: Technical change.**

240 § ~~55-25~~ 55.1-xxx. Recovery at death of life tenant of taxes paid on life estate.

241 When any person dies possessed of a life estate in real estate ~~which~~ that was assessed with
242 taxes in the name of such life tenant for the year in which such life tenant dies and such taxes are
243 paid for that year by any person other than the remainderman entitled to such real estate, such
244 person or his estate so paying such taxes shall be entitled to recover from such remainderman such
245 proportionate part of the sum so paid as that part of the year following the death of the life tenant
246 bears to the entire year; ~~2~~ provided, however, that if upon the death of the life tenant the real estate
247 shall come into the possession of another life tenant, such recovery shall be had from the
248 subsequent life tenant and not from the remainderman.

249 **Drafting note: Technical changes.**

250 ~~§ 55-25.1.~~

251 **Drafting note: Repealed by Acts 2016, ch. 266, cl. 2.**

252 ~~§ 55-153 55.1-xxx.~~ Removal of a cloud on title; nature of plaintiff's title.

253 When a ~~bill in equity~~ petition is filed to remove a cloud on the title to real estate, relief
254 shall not be denied the complainant because he has only an equitable title ~~thereto~~ to such real estate
255 and is out of possession, but the court shall grant to the complainant such relief as he would be
256 entitled to if he held the legal title and was in possession. If an issue of fact ~~be is~~ raised which but
257 for this section would entitle either party to a trial by jury, the court shall, upon the request of the
258 party so entitled, order such issue to be tried by a jury ~~at its bar and the verdict of the jury shall~~
259 ~~have the like effect as if it had been rendered in an action at law.~~

260 **Drafting note: This section is relocated from existing Chapter 8 because the majority**
261 **of that chapter is relocated to Title 45.1 but this section is more appropriately retained in**
262 **Title 55. Language is updated to reflect the merger of law and equity pleading in Virginia.**
263 **Technical changes are made.**

264 ~~§ 55-154.1.~~

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

266 Article 2.

267 Rule Against Perpetuities.

Drafting note: Proposed Article 2 contains sections related to the Rule Against Perpetuities, including the Uniform Statutory Rule Against Perpetuities.

§ ~~55-12.1~~ 55.1-xxx. Uniform Statutory Rule Against Perpetuities.

A. A nonvested property interest is invalid unless:

1. When the interest is created, it is certain to vest or terminate no later than ~~twenty-one~~ 21 years after the death of an individual then alive; or

2. The interest either vests or terminates within ~~ninety~~ 90 years after its creation.

B. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than ~~twenty-one~~ 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within ~~ninety~~ 90 years after its creation.

C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than ~~twenty-one~~ 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within ~~ninety~~ 90 years after its creation.

D. In determining whether a nonvested property interest or a power of appointment is valid under subdivision A 1, B 1, or C 1, the possibility that a child will be born to an individual after the individual's death is disregarded.

E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond ~~2 1/2~~ (ii) seeks to postpone the vesting or termination of any interest or trust until ~~2 1/2~~ or (iii) seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period

of time not exceeding ~~twenty-one~~ 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed ~~twenty-one~~ 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds ~~twenty-one~~ 21 years after the death of the survivor of the specified lives.

Drafting note: Technical changes.

§ ~~55-12.2~~ 55.1-xxx. When nonvested property interest or power of appointment created.

A. Except as provided in subsections B and C and in § ~~55-12.5~~ 55.1-xxx, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

B. For the purposes of §§ ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsection B or C in § ~~55-12.1~~ 55.1-xxx, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

C. For the purposes of §§ ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Drafting note: Technical changes.

§ ~~55-12.3~~ 55.1-xxx. Reformation.

Upon the petition of an interested person, a circuit court ~~of equity~~ in the county or city wherein in which the affected property or the greater part ~~thereof of such property~~ is located shall reform a disposition in the manner that most closely approximates the transferor's manifested plan

of distribution and is within the ~~ninety~~ 90 years allowed by subdivision A 2, B 2, or C 2 of § ~~55-12.1~~ 55.1-xxx if:

1. A nonvested property interest or a power of appointment becomes invalid under § ~~55-12.1~~ 55.1-xxx;
2. A class gift is not but might become invalid under § ~~55-12.1~~ 55.1-xxx and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
3. A nonvested property interest that is not validated by subdivision A 1 of § ~~55-12.1~~ 55.1-xxx can vest but not within 90 years after its creation.

Drafting note: Technical changes.

§ ~~55-12.4~~ 55.1-xxx. Exclusions from statutory rule against perpetuities.

A. Section ~~55-12.1~~ 55.1-xxx does not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement; (ii) a separation or divorce settlement; (iii) a spouse's election; (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; (v) a contract to make or not to revoke a will or trust; (vi) a contract to exercise or not to exercise a power of appointment; (vii) a transfer in satisfaction of a duty of support; or (viii) a reciprocal transfer;
2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
3. A power to appoint a fiduciary;
4. A discretionary power of trustee to distribute principal before termination of a trust to a beneficiary having an indefensibly vested interest in the income and principal;
5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

7. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the Commonwealth; or

8. A nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, if the trust instrument, by its terms, provides that § ~~55-12.1~~ 55.1-xxx shall not apply.

B. The exception to the Uniform Statutory Rule Against Perpetuities under subdivision A 8 shall not extend to real property held in trust. For purposes of this subsection, real property ~~shall~~ does not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property.

Drafting note: Technical changes.

§ ~~55-12.5~~ 55.1-xxx. Prospective application.

Sections ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx apply to a nonvested property interest or a power of appointment that is created on or after July 1, 2000. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

Drafting note: Technical changes.

§ ~~55-12.6~~ 55.1-xxx. Uniformity of application and construction.

Sections ~~55-12.1~~ 55.1-xxx through ~~55-12.6~~ 55.1-xxx shall be applied and construed to effectuate their general purpose to make the law uniform with respect to the rule against perpetuities among states enacting it.

Drafting note: Technical changes.

§ ~~55-13~~ 55.1-xxx. Certain limitations construed.

Every limitation in any deed or will contingent upon the dying of any person without heirs, heirs of the body, issue, issue of the body, children, offspring ~~or descendant~~ or descendants, or other ~~relative~~, relatives shall be construed a limitation to take effect when such person ~~shall die~~ dies not having such heir, issue, child, offspring, descendant, or other relative, as the case may be, living at the time of his death, or born to him within ~~ten~~ 10 months ~~thereafter~~ after his death, unless the intention of such limitation be otherwise plainly declared on the face of the deed or will creating it.

Drafting note: Technical changes.

§ ~~55-13.1~~ 55.1-xxx. Employee trusts.

Pension, profit sharing, stock bonus, annuity, or other employee trusts ~~heretofore or hereafter~~ established by employers for the purpose of distributing the income and principal ~~thereof~~ of such trust to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities or restraints on the power of alienation of title to property; but such trusts may continue for such period of time as may be required by ~~the~~ their provisions ~~thereof~~ to accomplish the purposes for which they are established.

Drafting note: Technical changes.

§ ~~55-13.2~~ 55.1-xxx. Determination of "lives in being" for purpose of rule against perpetuities.

A. For the purpose of determining whether the terms of an "inter vivos" trust provide for a duration in excess of that allowed under the rule against perpetuities, the determination of "lives in being" shall be made as of the death of the settlor, if the settlor has at his death the unrestricted right, acting alone, to revoke the trust or to have transferred to himself the entire legal and

beneficial interest in all property, both principal and income, held in the trust. In the event that the settlor surrenders both such rights at any time prior to his death, the determination of "lives in being" shall be made as of the time that the settlor, upon establishment of the trust or otherwise, surrenders the unrestricted right acting alone to revoke the trust and the unrestricted right acting alone to have transferred to himself the entire legal and beneficial interest in all property, both principal and income, held in the trust.

B. This section shall ~~only~~ apply only to a nonvested property interest in an "inter vivos" trust created before July 1, 2000.

Drafting note: Technical changes.

~~§ 55-13.3~~ § 55.1-xxx. Application of the rule against perpetuities to nondonative transfers.

A. Except for the transactions set forth in ~~§ 55-12.4~~ § 55.1-xxx, which are governed by the provisions of ~~§§ 55-12.1~~ § 55.1-xxx through ~~55-12.6~~ § 55.1-xxx, a nondonative transfer of an interest in property fails, if the interest does not vest, if it ever vests, within the period of the common-law rule against perpetuities.

B. The provisions of this section (i) in force on June 30, 2000, shall apply to all donative interests created on or after July 1, 1982, and before July 1, 2000, and (ii) in force on July 1, 2000, shall apply to all nondonative interests created on or after July 1, 1982.

Drafting note: Technical changes.

Article 3.

Joint Ownership of Real or Personal Property.

Drafting note: Proposed Article 3 contains sections related to joint tenancies, including tenancies by the entirety.

~~§ 55-20~~ § 55.1-xxx. Survivorship between joint tenants abolished.

A. When any joint tenant dies, before or after the vesting of the estate, whether the estate is real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, ~~or~~ pass by devise, or go to his personal representative, subject to debts or distribution, as if he had been a tenant in common. ~~And if hereafter any estate, real or personal, is conveyed or~~

~~devised to a husband and his wife, they shall take and hold the same by moieties in like manner as if a distinct moiety had been given to each by a separate conveyance.~~

~~§ 55-21. Exceptions to § 55-20.~~

~~Section 55-20-B. This section~~ shall not apply to any estate ~~which~~ that joint tenants have as fiduciaries, ~~nor or~~ to any real or personal property transferred to persons in their own right when it manifestly appears from the tenor of the instrument transferring such property or memorializing the existence of a chose in action, ~~that it was intended the part of the one dying should then belong to the others.~~ This section does not affect the mode of proceeding on any joint judgment or decree in favor of or on any contract with two or more one of whom dies.

Drafting note: Existing §§ 55-20, Survivorship between joint tenants abolished, and 55-21, Exemptions to § 55-20, are combined. The last sentence in existing § 55-20 is relocated to proposed § 55.1-xxx [§ 55-20.1] because it is more logically located with other provisions regarding joint ownership. Technical changes are made.

~~§ 55-20.1~~ 55.1-xxx. Joint ownership in real and personal property.

Any persons may own real or personal property as joint tenants with or without a right of survivorship. When any person causes any real or personal property, or any written memorial of a chose in action, to be titled, registered, or endorsed in the name of two or more persons "jointly," as "joint tenants," in a "joint tenancy," or other similar language, such persons shall own the property in a joint tenancy without survivorship as provided in ~~§ 55-20~~ 55.1-xxx. If, in addition, the expression "with survivorship," or any equivalent language, is employed in such titling, registering, or endorsing, it shall be presumed that such persons are intended to own the property as joint tenants with the right of survivorship as at common law. This section is not applicable to multiple party accounts under Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2, or to any other matter specifically governed by another provision of ~~this code~~ the Code.

If any real or personal property is conveyed or devised to spouses, they shall take and hold such property by moieties in the same manner as if a distinct moiety had been given to each spouse by a separate conveyance, unless language as provided in this section or in § 55.1-xxx [55-20.2]

is used that designates the tenancy as a joint tenancy or a tenancy by the entirety and all requirements for holding property by such tenancy are met.

Drafting note: The last sentence is relocated from proposed § 55.1-xxx [§ 55-20] because it is more logically located with other provisions regarding joint ownership. The term "a husband and his wife" are replaced with "spouses" to reflect changes in the law. Technical changes are made.

§ ~~55-20.2~~ 55.1-xxx. Tenants by the ~~entireties~~ entirety in real and personal property; certain trusts.

A. ~~Any husband and wife~~ Spouses may own real or personal property as tenants by the ~~entireties~~ entirety for as long as they are married. Personal property may be owned as tenants by the ~~entireties~~ entirety whether or not the personal property represents the proceeds of the sale of real property. An intent that the part of the one dying should belong to the other shall be manifest from a designation of ~~a husband and wife~~ the spouses as "tenants by the entireties" or "tenants by the entirety."

B. Except as otherwise provided by statute, no interest in real property held as tenants by the ~~entireties~~ entirety shall be severed by written instrument unless the instrument is a deed signed by both spouses as grantors.

C. Notwithstanding any contrary provision of § 64.2-747, any property of ~~a husband and wife~~ spouses that is held by them as tenants by the ~~entireties~~ entirety and conveyed to their joint revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, and any proceeds of the sale or disposition of such property, shall have the same immunity from the claims of their separate creditors as it would if it had remained a tenancy by the entirety, so long as (i) they remain ~~husband and wife~~ married to each other, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their property, including where both spouses are current beneficiaries of one trust that holds the entire property or each spouse is a current beneficiary of a separate trust and the two separate trusts together hold the entire property, whether or not other persons are also current or future beneficiaries of the trust or trusts. The immunity from the claims of separate

creditors under this subsection may be waived as to any specific creditor, including any separate creditor of either spouse, or any specifically described property, including any former tenancy by the ~~entireties~~ entirety property conveyed into trust, by the trustee acting under the express provision of a trust instrument or with the written consent of both ~~the husband and the wife~~ spouses.

Drafting note: The term "entireties" is replaced with "entirety" for consistency throughout the title. "Husband and wife" is replaced with "spouse" or "spouses" for consistency throughout the section.

~~CHAPTER 20.~~

~~VIRGINIA SOLAR EASEMENTS ACT.~~

Article 4.

Virginia Solar Easements Act.

Drafting note: Proposed Article 4 contains sections from existing Chapter 20, the Virginia Solar Easements Act.

~~§ 55-352. Short title.~~

~~This chapter may be cited as the "Virginia Solar Easements Act."~~

Drafting note: This section is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of proposed Article 4.

~~§ 55-353~~ 55.1-xxx. Creation of solar easements.

Any easement obtained for the purpose of exposure of solar energy equipment, facilities, or devices shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

Drafting note: Technical change.

~~§ 55-354~~ 55.1-xxx. Contents of solar easement agreements.

Any instrument creating a solar easement shall include, ~~but the contents shall not be limited to~~ at a minimum:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement~~;~~_;

2. Any terms or conditions~~or both~~ under which the solar easement is granted or will be terminated~~;~~_; and

3. Any provisions for compensation of the owner of the property subject to the solar easement.

Drafting note: Technical changes.

~~§§ 55-355 through 55-359. Reserved.~~

Drafting note: These sections are removed because they are carried as reserved in the existing title.

#

1 CHAPTER ~~3~~ XX [2].2 PROPERTY RIGHTS OF MARRIED ~~WOMEN PERSONS~~.

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

9 § ~~55-35~~ 55.1-xxx. How married ~~women persons~~ may acquire and dispose of property.

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

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

24 § ~~55-36~~ 55.1-xxx. Contracts of, and suits by and against, married ~~women persons~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~§ 55-40. Repealed.~~

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

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

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

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

~~§ 55-42. Repealed.~~

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

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

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

116 **Drafting note: Technical change.**

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

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

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

133 §§ ~~55-44, 55-45~~. Repealed.

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

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

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

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

~~§ 55-47. Repealed.~~

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

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

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

Drafting note: Technical change.

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

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

Drafting note: No change.

Subtitle II: List of Technical Changes

- Striking out the words/phrases: "thereof," "the same," "therein," "herein," "wherein," "thereto," "said," "whereby," "thereafter," "therefrom," "hereof," "hereunder," "thereunder" and replacing such words with clearer, more explanatory language.
- Striking plural words used after identical singular words on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural.
- Replacing the phrase "county, city, or town" with the word "locality" on the basis of § 1-221, which states that throughout the Code, "locality" means a county, city, or town."
- Striking the phrase "but not limited to" following the term "including" on the basis of § 1-218 which states that, throughout the Code, "Includes" means includes, but not limited to."
- Replacing the word "must" with the word "shall" as necessary.
- Replacing the phrase "shall be" with the word "is" or "does" as necessary.
- Replacement of the phrase "shall have the authority to" with the word "may."
- Spelling out the numbers one through nine.
- Using numerals for the numbers 10 or more, except when the numbers begins a sentence or subdivision.
- Replacing the word "which" with the word "that" as necessary.
- Language is updated to reflect the merger of law and equity in Virginia (replacing "bill in equity" with "petition," replacing "bill of complaint" with "complaint," replacing "suit" with "action," removal of the phrase "of equity" after "circuit court," replacing "decree" and "personal decree" with "order," strike reference to "corporation court" and replace "corporation" with the term "city")
- Replacement of the phrase "husband and wife" with "spouse" or "spouses" for consistency in accordance with title-wide conventions.
- Replacing the phrases "admitted to record" and "spread" with the word "recorded."
- Replacing the word "Virginia" with the phrase "the Commonwealth," and striking the words "of Virginia" after the word "Commonwealth;" updating the phrase "State of Virginia" to "Commonwealth of Virginia" where appropriate

SUBTITLE II.

REAL ESTATE SETTLEMENTS AND RECORDATION.

Drafting note: Proposed Subtitle II is created to logically reorganize all provisions relating to real estate settlements and recordation. Proposed Subtitle II contains six chapters: (1) Recordation of Documents; (2) Virginia Residential Property Disclosure Act; (3) Exchange Facilitators Act; (4) Real Estate Settlements; (5) Real Estate Settlement Agents; and (6) Commercial Real Estate Broker's Lien Act.

CHAPTER ~~6~~ XX [1].

RECORDATION OF DOCUMENTS.

Drafting note: Existing Chapter 6, Recordation of Documents, is retained as proposed Chapter XX [1].

Article 1.

~~In~~ General Provisions.

Drafting note: Existing Article 1, containing general provisions for the recordation of documents, is retained as proposed Article 1.

§ ~~55-106~~ 55.1-xxx. When and where writings ~~admitted to record~~ recorded.

Except when it is otherwise provided, the circuit court of any county or city, or the clerk of any such court, or his duly qualified deputy, in his office, shall ~~admit to~~ record any such writing as to any person whose name is signed thereto with an original signature, when it shall have been acknowledged by him, or proved by two witnesses as to him in such court, or before such clerk, or his duly qualified deputy, in his office, or the manner prescribed in Articles 2 (§ ~~55-113~~ 55.1-xxx et seq.), ~~2-1~~ 3 (§ ~~55-118-1~~ 55.1-xxx et seq.), and ~~3-4~~ (§ ~~55-119~~ 55.1-xxx et seq.) ~~of this chapter~~. When such writing is signed by a person acting on behalf of another, or in any representative capacity, the signature of such representative may be acknowledged or proved in the same manner.

Drafting note: Technical changes.

27 § ~~55-106.1~~ 55.1-xxx. Recording and indexing of certain documents showing changes of
28 names.

29 A duly authenticated copy of a marriage license with the certificate of the person
30 celebrating the marriage or a duly authenticated copy of a final ~~decree~~ order of divorce showing
31 a change of name of a woman shall be entitled to be ~~admitted to record~~ recorded in the clerk's
32 office ~~wherein in which~~ deeds are recorded of the county or city ~~wherein in which~~ any land
33 ~~which~~, or an interest in ~~which any land~~, that is owned by such woman lies; and shall be indexed
34 by such clerk in the grantor and grantee indices in his office.

35 **Drafting note: Technical changes.**

36 § ~~55-106.2~~ 55.1-xxx. Presumption that recorded writings ~~admitted to record~~ are in proper
37 form.

38 A writing that is not properly notarized in accordance with the laws of the
39 Commonwealth shall not invalidate the underlying document_; however, any such writing shall
40 not be in proper form for recordation. All recorded writings ~~admitted to record~~ shall be presumed
41 to be in proper form for recording after having been recorded, and conclusively presumed to be
42 in proper form for recording after having been recorded for a period of three years, except in
43 cases of fraud.

44 **Drafting note: Technical changes.**

45 § ~~55-106.3~~. Repealed.

46 **Drafting note: Repealed by Acts 1992, c. 532.**

47 § ~~55-106.4~~ 55.1-xxx. Deed of real estate investment trust.

48 Every deed that is to be recorded conveying property to or from a trust qualifying as a
49 real estate investment trust shall include the complete address of the principal office of the trust.
50 Failure to comply with the provisions of this section shall not invalidate any such deed.

51 **Drafting note: No change.**

52 § ~~55-106.5~~ 55.1-xxx. When clerk may refuse document to be recorded.

53 A clerk may refuse any document for recording in which the name ~~or names~~ of the person
54 under which the document is to be indexed does not legibly appear or is not otherwise furnished.

55 **Drafting note: The plural "persons" is stricken on the basis of § 1-227, which states**
56 **that throughout the Code any word used in the singular includes the plural and vice versa.**

57 § ~~55-107~~ 55.1-xxx. Power of attorney; ~~;~~ where recorded.

58 A power of attorney may be ~~admitted to record~~ recorded in any county or ~~corporation~~
59 city.

60 **Drafting note: Technical changes.**

61 § ~~55-108~~ 55.1-xxx. Standards for writings to be docketed or recorded.

62 Except as provided in Article 4.1 (§ 17.1-258.2 et seq.) of Title 17.1, all writings ~~which~~
63 that are to be recorded or docketed in the clerk's office of courts of record ~~in the Commonwealth~~
64 shall be an original or first generation printed form, or legible copy thereof, pen and ink or typed
65 ribbon copy, and shall meet the standards for instruments as adopted under §§ 17.1-227 and 42.1-
66 82 of the Virginia Public Records Act (§ 42.1-76 et seq.).

67 If a writing ~~which~~ that does not conform to the requirements of this ~~statute~~ section or the
68 standards for instruments adopted under §§ 17.1-227 and under § 42.1-82 of the Virginia Public
69 Records Act (§ 42.1-76 et seq.) is accepted for recordation, it shall be deemed validly recorded
70 and the clerk shall have no liability for accepting such a writing ~~which~~ that does not meet the
71 enumerated criteria in all the particulars.

72 **Drafting note: Technical changes.**

73 § ~~55-109~~ 55.1-xxx. When original of writing once recorded is lost, how copy ~~admitted to~~
74 record recorded elsewhere.

75 If it ~~be is~~ proper for any writing, ~~which~~ that has been ~~admitted to record~~ recorded in a
76 court of any county or ~~corporation~~ city to be ~~admitted to record~~ recorded in the court of another
77 county or ~~corporation~~ city and ~~the same~~ such writing, before being so ~~admitted to record~~ recorded
78 in ~~the~~ such other court ~~last mentioned~~ , be is lost or mislaid, on affidavit of this fact, such court,
79 or the clerk ~~thereof of such court~~ , may admit to record record a copy of such writing from the

records of another court, certified by its clerk², and the copy so ~~admitted~~ recorded shall have the same effect as if the original had been ~~admitted to record~~ recorded at the time the copy was ~~admitted~~ recorded.

Drafting note: Language is updated for modern usage. Technical changes are made.

§ ~~55-109.1~~ 55.1-xxx. Certifications of recordation upon ~~counterparts~~ copies of certain instruments and subsequent recordation in other ~~cities and counties~~ county or city.

Whenever a mortgage or deed of trust instrument upon real or personal property located in more than one county or city ~~or county~~ is ~~presented to and accepted for initial recordation~~ recorded in one such county or city ~~or county~~, the party by whom it is so presented may deliver to the clerk of such court any number of executed and acknowledged ~~counterparts~~ copies of such instrument. The clerk shall ~~thereupon~~ fix to each such ~~counterpart~~ copy his ~~usual~~ certificate of recordation, certifying thereby the payment of the recordation tax levied by the Commonwealth, and shall return to the party presenting ~~the same~~ all such instruments all such ~~counterparts~~ copies except one², which shall be retained by the clerk for ~~spreading upon the records of recordation in~~ his office. Such certificate shall be conclusive evidence of the payment of the recordation tax indicated thereby, and the clerk in any other recording office in any other county or city ~~or county~~ shall accept for recordation in his office any such ~~counterpart~~ copy so certified.

Drafting note: The word "counterpart" is replaced with the more modern term, "copy." Technical changes are made.

§ ~~55-109.2~~ 55.1-xxx. Correcting errors in deeds, deeds of trust, and mortgages; affidavit.

A. As used in this section, unless the context requires a different meaning:

"Attorney" means any person licensed as an attorney in Virginia by the Virginia State Bar.

"Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

"Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where (i) such parcel is identified and shown as a

107 separate parcel on a recorded subdivision plat; (ii) such error is apparent by reference to other
108 information on the face of such deed, deed of trust, or mortgage or on an attachment to such
109 deed, deed of trust, or mortgage or by reference to other instruments in the chain of title for the
110 property conveyed thereby; and (iii) such deed, deed of trust, or mortgage recites elsewhere the
111 parcel's correct address or tax map identification number. An "obvious description error"
112 includes (a) an error transcribing courses and distances, including the omission of one or more
113 lines of courses and distances or the omission of angles and compass directions; (b) an error
114 incorporating an incorrect recorded plat or a deed reference; (c) an error in a lot number or
115 designation; or (d) an omitted exhibit supplying the legal description of the real property thereby
116 conveyed. An "obvious description error" does not include (1) missing or improper signatures or
117 acknowledgments or (2) any designation of the type of tenancy by which the property is owned
118 or whether or not a right of survivorship exists.

119 "Recorded subdivision plat" means a plat that has been prepared by a land surveyor
120 licensed pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 and recorded in the
121 clerk's office of the circuit court for the jurisdiction where the property is located.

122 "Title insurance company" has the same meaning as set forth in § 38.2-4601, provided
123 that the title insurance company issued a policy of title insurance for the transaction in which the
124 deed, deed of trust, or mortgage needing correction was recorded.

125 B. Obvious description errors in a recorded deed, deed of trust, or mortgage purporting
126 to convey or transfer an interest in real property may be corrected by recording an affidavit in
127 the land records of the circuit court for the jurisdiction where the property is located or where
128 the deed, deed of trust, or mortgage needing correction was recorded. No correction of an obvious
129 description error shall be inconsistent with the description of the property in any recorded
130 subdivision plat.

131 C. Prior to recording a corrective affidavit, the attorney seeking to record the affidavit
132 shall deliver a copy of the affidavit to all parties to the deed, deed of trust, or mortgage, including
133 the current owner of the property; to the attorney who prepared the deed, deed of trust, or

134 mortgage, if known and if possible; and to the title insurance company, if known, and give notice
135 of the intent to record the affidavit and of each party's right to object to the affidavit. For an
136 affidavit to correct an obvious description error in a deed as described in clause (a) of the
137 definition of "obvious description error" in subsection A, notice and a copy of the affidavit shall
138 also be provided to any owner of property adjoining a line to be corrected. The notice and a copy
139 of the affidavit shall be delivered by personal service~~or~~, sent by certified mail, return receipt
140 requested, or delivered by a commercial overnight delivery service or the United States Postal
141 Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust,
142 or mortgage to be corrected that (i) is contained in the land book maintained pursuant to § 58.1-
143 3301 by the jurisdiction where the property is located and where the deed, deed of trust, or
144 mortgage needing correction was recorded²; (ii) is contained in the deed, deed of trust, or
145 mortgage needing correction²; (iii) has been provided to the attorney as a forwarding address²; or
146 (iv) has been established with reasonable certainty by other means, and to all other persons and
147 entities to whom notice is required to be given. The notice and a copy of the affidavit shall be
148 sent to the property address for the real property conveyed by the deed, deed of trust, or mortgage
149 needing correction. If a locality is a party to the deed, deed of trust, or mortgage, the notice and
150 a copy of the affidavit required by this subsection shall be sent to the county, city, or town
151 attorney for the locality, if any, and if there is no such attorney, then to the chief executive for
152 the locality. For the purposes of this section, the term "party" ~~shall also include~~ includes any
153 locality that is a signatory. If the Commonwealth is a party to the deed, deed of trust, or mortgage,
154 the notice and a copy of the affidavit required by this subsection shall be sent to the Attorney
155 General and to the director, chief executive officer, or head of the state agency or chairman of
156 the board of the state entity in possession or that had possession of the property.

157 D. If, within 30 days after personal service or receiving confirmation of delivery of the
158 notice and a copy of the affidavit (i) to all parties to the deed, deed of trust, or mortgage, including
159 the current owner of the property; (ii) to the attorney who prepared the deed, deed of trust, or
160 mortgage, if known and if possible; (iii) to the title insurance company, if known; and (iv) to the

adjoining property owners, if necessary, pursuant to subsection C, no written objection is received from any party disputing the facts recited in the affidavit or objecting to its recordation, the corrective affidavit may be recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound by the terms of the affidavit. The corrective affidavit shall contain ~~(i)~~ (a) a statement that no objection was received from any party within the period and ~~(ii)~~ (b) a copy of the notice sent to the parties. The notice shall contain the attorney's Virginia State Bar number. The corrective affidavit shall be notarized.

E. A corrective affidavit that is recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded. A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

F. The clerk shall record the corrective affidavit in the deed book and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the affidavit. The costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit. An affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated ~~therein~~ in such affidavit. Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to such recordation, including reasonable attorney fees and costs.

G. The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the Commonwealth other than this section.

H. An affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

188 This Affidavit, prepared pursuant to Virginia Code § ~~55-109.2~~ 55.1-xxx, shall be indexed
189 in the names of _____ (grantor) and _____ (grantee), whose addresses
190 are _____. The undersigned affiant, being first duly sworn, deposes and states as
191 follows:

192 1. That the affiant is a Virginia attorney.

193 2. That the deed, deed of trust, or mortgage needing correction was made in connection
194 with a real estate transaction in which _____ purchased real estate from
195 _____, as shown in a deed recorded in the Clerk's Office of the Circuit Court of
196 _____, in Deed Book _____, Page _____, or as Instrument Number _____; or in
197 which real estate was encumbered, as shown in a deed recorded in the Clerk's Office of the
198 Circuit Court of _____, in Deed Book _____, Page _____, or as Instrument Number
199 _____.

200 3. That the property description in the aforementioned deed, deed of trust, or mortgage
201 contains an obvious description error.

202 4. That the property description containing the obvious description error reads:

203 _____
204 _____.

205 5. That the correct property description should read:

206 _____
207 _____.

208 6. That this affidavit is given pursuant to § ~~55-109.2~~ 55.1-xxx of the Code of Virginia to
209 correct the property description in the aforementioned deed, deed of trust, or mortgage and such
210 description shall be as stated in paragraph 5 above upon recordation of this affidavit in the Circuit
211 Court of _____.

212 7. That notice of the intent to record this corrective affidavit and a copy of this affidavit
213 was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to §
214 ~~55-109.2~~ 55.1-xxx of the Code of Virginia and that no objection to the recordation of this

215 affidavit was received within the applicable period of time as set forth in § ~~55-109.2~~ 55.1-xxx of
216 the Code of Virginia.

217 _____

218 (Name of attorney)

219 _____

220 (Signature of attorney)

221 _____

222 (Address of attorney)

223 _____

224 (Telephone number of attorney)

225 _____

226 (Bar number of attorney)

227 The foregoing affidavit was acknowledged before me

228 This _____ day of _____, 20____, by

229 _____

230 Notary Public

231 My Commission expires _____.

232 Notary Registration Number: _____.

233 I. Notice under this section may be made in the following form, or to the same effect:

234 Notice of Intent to Correct an Obvious Description Error

235 Notice is hereby given to you concerning the deed, deed of trust, or mortgage described
236 in the corrective affidavit, a copy of which is attached to this notice, as follows:

237 1. The attorney identified below has discovered or has been advised of an obvious
238 description error in the deed, deed of trust, or mortgage recorded as part of your real estate
239 settlement. The error is described in the attached affidavit.

240 2. The undersigned will record an affidavit to correct such error unless the undersigned
241 receives a written objection disputing the facts recited in the affidavit or objecting to the

recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

(Address)

(Name of attorney)

(Signature of attorney)

(Address of attorney)

(Telephone number of attorney)

(Bar number of attorney)

Drafting note: In subsection C, the methods of delivery are updated to conform with other delivery methods used throughout the title. "Notary Registration Number" is added to the signature line of the certificate because it is a requirement of notarization. Technical changes are made.

§ ~~55-110~~ 55.1-xxx. Recordation of copy of lost deed previously recorded in what is now West Virginia.

In any case when any ~~such writing shall have been~~ deed was duly ~~admitted to record~~ recorded before the formation of the state of West Virginia in any county or ~~corporation city~~ now within the limits of ~~that state~~ West Virginia and such ~~writing deed~~, after diligent search ~~therefor~~, cannot be found, upon affidavit of that fact by any party in interest, his agent, or his attorney, any court of ~~this the~~ Commonwealth in which, or the clerk's office of which, the original might be recorded, or the clerk of any such court, may ~~admit to record~~ record a copy of such ~~writing deed~~ deed from the records of the court of West Virginia, or the clerk's office of such court ~~wherein~~

269 ~~the same in which such deed~~ is recorded, duly certified by the clerk ~~thereof of such court~~, under
270 the seal of the court; and the ~~admission to record~~ recordation of such copy shall have the same
271 effect as the ~~admission to record~~ recordation of the original.

272 **Drafting note: Technical changes.**

273 § ~~55-111~~ 55.1-xxx. Writings not duly acknowledged copied for preservation.

274 If any writing ~~which it is lawful for~~ that may be lawfully recorded by a clerk ~~to admit to~~
275 ~~record~~ on proper acknowledgment or proof ~~has been or shall be lodged~~ is located in his office
276 and has remained or ~~shall remain therein~~ remains in his office for a period of six months without
277 being acknowledged or proved; so that it can be duly ~~admitted to record~~ recorded, the clerk shall,
278 for the preservation ~~thereof of such writing~~, when required by any interested person ~~interested~~,
279 copy ~~the same~~ such writing in a book separate from those in which such writings ~~so admitted~~ are
280 recorded and keep an index to such book as in the case of writings duly ~~admitted to record~~
281 recorded.

282 **Drafting note: Language is rewritten for clarity. Technical changes are made.**

283 § ~~55-112~~ 55.1-xxx. Continuing in force acts establishing Torrens system.

284 The act entitled "An act to provide for the settlement, registration, transfer, and assurance
285 of titles to land, and to establish courts of land registration, with jurisdiction for ~~said~~ such
286 purposes, and to make uniform the laws of the State enacting the same," approved February 24,
287 1916, as amended by an act approved March 20, 1916, and last amended by Chapter 227 of the
288 Acts of 1948, approved March 13, 1948, is continued in force.

289 **Drafting note: Technical change.**

290 Article 2.

291 Acknowledgements Generally.

292 **Drafting note: Existing Article 2, containing general provisions for**
293 **acknowledgements, is retained as proposed Article 2.**

294 § ~~55-113~~ 55.1-xxx. Acknowledgment within the United States or its dependencies.

295 ~~Such A circuit~~ court of any county or city, or ~~the~~ clerk ~~as is mentioned in § 55-106 of any~~
296 such court, shall ~~admit record~~ any ~~such~~ writing ~~to record as is described in § 55.1-xxx [§ 55-106]~~
297 as to any person whose name is signed ~~thereto~~ to such writing, except that acknowledgment of
298 contracts for the sale of real property shall require the seller or grantor of such real property to
299 acknowledge his signature as ~~herein~~ provided in this section, except for contracts recorded after
300 the death of the seller pursuant to § 64.2-523.

301 ~~(1)-1.~~ Upon the certificate of such clerk or his deputy, a notary public, a commissioner in
302 chancery, or a clerk of any court of record within the United States or in Puerto Rico, or any
303 territory or other dependency or possession of the United States that such writing had been
304 acknowledged before him by such person. Such certificate shall be written upon or ~~annexed~~
305 attached to such writing and shall be substantially to the following effect, ~~to wit~~:

306 I, _____, clerk (or deputy clerk, or a commissioner in chancery) of the
307 _____ court, (or a notary public) for the county (or ~~corporation~~ city) aforesaid, in
308 the ~~State~~ state (or territory, or district) of _____, do certify that E.F., or E.F. and
309 G.H., and so forth, whose name (or names) is (or are) signed to the writing above (or hereto
310 ~~annexed~~ attached) bearing date on the _____ day of _____, has (or have)
311 acknowledged the same before me in my county (or ~~corporation~~ city) aforesaid.

312 Given under my hand this _____ day of _____.

313 ~~(2)-2.~~ Upon the certificate of acknowledgment of such person before any commissioner
314 appointed by the Governor, within the United States, so written or ~~annexed~~ attached,
315 substantially to the following effect, ~~to wit~~:

316 State (or territory, or district) of _____ ~~to wit~~:

317 I, _____, a commissioner appointed by the Governor of the ~~State~~
318 Commonwealth of Virginia, for ~~said State~~ such state (or territory or district) of
319 _____, do certify that E.F. (or E.F. and G.H., and so forth) whose name (or names)
320 is (or are) signed to the writing above (or hereto ~~annexed~~ attached) bearing date on the

321 _____ day of _____ has (or have) acknowledged the same before me in my ~~State~~
322 state (or territory or district) aforesaid.

323 Given under my hand this _____ day of _____.

324 ~~(3)-3.~~ Or upon the certificate of such clerk or his deputy, a notary public, a commissioner
325 in chancery, or a clerk of any court of record within the United States, or in Puerto Rico, or any
326 territory or other possession or dependency of the United States, or of a commissioner appointed
327 by the Governor, within the United States, that such writing was proved as to such person, before
328 him, by two subscribing witnesses thereto. Such certificate shall be written upon or ~~annexed~~
329 attached to such writing and shall be substantially to the following effect, ~~to-wit:~~

330 State (or territory, or district) of _____; county (or ~~corporation~~ city) of
331 _____, ~~to-wit:~~ I, _____, clerk (or deputy clerk, or a commissioner in
332 chancery) of the _____ court, (or a notary public) for the county (or ~~corporation~~
333 city) aforesaid, in the ~~State~~ state (or territory or district) of _____ (or a commissioner
334 appointed by the Governor of the ~~State~~ Commonwealth of Virginia for ~~said State~~, such state (or
335 territory, or district) of _____), do certify that the execution of the writing above (or
336 hereto ~~annexed~~ attached) bearing date on the _____ day of _____, by A.B. (or A.B.
337 and C.D., and so forth), whose name (or names) is (or are) signed thereto, was proved before me
338 in my county (or ~~corporation~~, city or ~~State~~ or state, territory, or district) aforesaid, by the evidence
339 on oath of E.F. and G.H., subscribing witnesses to ~~said~~ such writing.

340 Given under my hand this _____ day of _____.

341 When authority is given in § ~~55-106~~ 55.1-xxx or in this section to the clerk of a court in
342 or ~~out~~ outside of ~~this~~ the Commonwealth, but within the United States, such authority may be
343 exercised by his duly qualified deputy.

344 **Drafting note: Language is updated for clarity. Technical changes are made.**

345 § ~~55-114~~ 55.1-xxx. Acknowledgments outside of the United States and its dependencies.
346 ~~Such~~ A circuit court of any county or city, or the clerk of such court, shall also ~~admit~~
347 record any ~~such~~ writing ~~to record as is described in § 55.1-xxx [§ 55-106]~~ as to any person whose

name is signed thereto upon the certificate under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of record of such country or of the mayor or other chief magistrate of any city, town, or corporation therein, that such writing was acknowledged by such person or proved as to him by two witnesses before any person having such appointment or before such court, mayor, or chief magistrate.

Drafting note: Language is updated for clarity. Technical changes are made.

§ ~~55-114.1~~ 55.1-xxx. Acknowledgments by persons subject to Uniform Code of Military Justice; validation of certain acknowledgments.

~~Such a circuit court of any county or city, or the clerk of such court,~~ shall also ~~admit~~ record any ~~such~~ writing ~~to record as is described in § 55.1-xxx [§ 55-106]~~ as to any person whose name is signed thereto and who at the time of such acknowledgment:

~~(1) 1.~~ 1. Was a member of any of the armed forces of the United States, wherever they may have been, ~~or~~;

~~(2) 2.~~ 2. Was employed by, or accompanying such armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands; ~~or~~

~~(3) 3.~~ 3. Was subject to the Uniform Code of Military Justice of the United States outside of the United States, upon the certificate of any person authorized to take acknowledgments under ~~§ 936 (a) of Title 10 of United States Code Annotated~~ 10 U.S.C. § 936(a), as amended.

Such certification shall be in substantially the same form as required by § ~~55-115~~ 55.1-xxx.

Any acknowledgment taken before July 1, 1995, ~~which that~~ is in substantial conformity with this section is hereby ratified, validated, and confirmed.

Drafting note: Language is updated for clarity. Technical changes are made.

§ ~~55-115~~ 55.1-xxx. Acknowledgments taken before commissioned officers in military service.

375 ~~Such~~ A circuit court of any county or city, or clerk of such court, shall also ~~admit~~ record
376 any ~~such~~ writing ~~to record~~ as is described in § 55.1-xxx [§ 55-106] as to any person whose name
377 is signed thereto who at the time of such acknowledgment was in active service in the ~~armed~~
378 ~~forces~~ Armed Forces of the United States, or as to the consort of such person, upon the certificate
379 of any commissioned officer of the army, navy, marine corps, air force, coast guard, any state
380 national guard that is federally recognized, or other branch of the service of which such person
381 is a member, that such writing had been acknowledged before him by such person. Such
382 certificate shall be written upon or ~~annexed~~ attached to such writing and shall be substantially to
383 the following effect:

384 In the army (or navy, etc.) of the United States.

385 I, _____, a commissioned officer of the army (or navy, marine corps, air
386 force, coast guard, or other branch of service) of the United States with the rank of lieutenant (or
387 ensign or other appropriate rank) whose home address is _____, do certify that E.F.
388 (or E.F. and G.H., and so forth), whose name (or names) is (or are) signed to the writing above
389 (or hereto ~~annexed~~ attached), bearing date on the _____ day of _____, _____, and
390 who, or whose consort, is a private (corporal, seaman, captain, or other grade or rank) in the
391 army (or navy, etc.) of the United States, and whose home address is _____, has (or
392 have) acknowledged the same before me.

393 Given under my hand this _____ day of _____.

394 Such acknowledgment may be taken at any place where the officer taking the
395 acknowledgment and the person whose name is signed to the writing may be. Such
396 commissioned officer may take the acknowledgment of any person in any branch of the armed
397 forces of the United States, or the consort of such person.

398 Every acknowledgment executed prior to July 1, 1995, in substantial compliance with
399 the provisions of this section is hereby validated, ratified, and confirmed, notwithstanding any
400 error or omission with respect to any address, grade, or rank.

401 **Drafting note: Language is updated for clarity. Technical changes are made.**

~~§ 55-116. Repealed.~~

Drafting note: Repealed by Acts 1980, c. 580.

Article ~~2.1~~ 3.

Uniform Recognition of Acknowledgements Act.

Drafting note: Existing Article 2.1, relating to the Uniform Recognition of Acknowledgements Act, is retained as proposed Article 3.

~~§ 55-118.1~~ § 55.1-xxx. "Notarial acts" defined; who may perform notarial acts outside the Commonwealth for use in the Commonwealth.

A. For the purposes of this article, "notarial acts" means acts ~~which~~ that the laws and regulations of ~~this~~ the Commonwealth authorize notaries public of ~~this~~ the Commonwealth to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

B. Notarial acts may be performed outside ~~this~~ the Commonwealth for use in ~~this~~ the Commonwealth with the same effect as if performed by a notary public of ~~this~~ the Commonwealth by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of ~~this~~ the Commonwealth:

~~(1)~~ 1. A notary public authorized to perform notarial acts in the place in which the notarial act is performed;

~~(2)~~ 2. A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

~~(3)~~ 3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the ~~United States~~ U.S. Department of State to perform notarial acts in the place in which the notarial act is performed;

~~(4)~~ 4. A commissioned officer in active service with the ~~armed forces~~ Armed Forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant

seaman of the United States, a member of the ~~armed forces~~ Armed Forces of the United States, or any other person serving with or accompanying a member of the ~~armed forces~~ Armed Forces of the United States; or

~~(5)~~ 5. Any other person authorized to perform notarial acts in the place in which the notarial act is performed.

Drafting note: Technical changes.

§ ~~55-118.2~~ 55.1-xxx. Proof of authority of person performing notarial act.

~~(a)~~ A. If the notarial act is performed by any of the persons described in ~~paragraphs (1) through (4)~~ subdivisions B 1 through 4 of § ~~55-118.1, 55.1-xxx~~ other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the notarial act. Further proof of his authority is not required.

~~(b)~~ B. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the notarial act, there is sufficient proof of the authority of that person to act if:

~~(1)~~ 1. Either a foreign service officer of the United States resident in the country in which the notarial act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the notarial act;

~~(2)~~ 2. The official seal of the person performing the notarial act is affixed to the document; or

~~(3)~~ 3. The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

~~(c)~~ C. If the notarial act is performed by a person other than one described in subsections ~~(a)~~ A and ~~(b)~~ B, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

~~(d)~~D. The signature and title of the person performing the notarial act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

Drafting note: Technical changes.

~~§ 55-118.3~~ 55.1-xxx. What person taking acknowledgment shall certify.

The person taking an acknowledgment shall certify that:

~~(1)~~1. The person acknowledging appeared before him and acknowledged he executed the instrument; and

~~(2)~~2. The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Drafting note: Technical changes.

~~§ 55-118.4~~ 55.1-xxx. When form of certificate of acknowledgment accepted.

The form of a certificate of acknowledgment used by a person whose authority is recognized under ~~§ 55-118.1~~ 55.1-xxx shall be accepted in ~~this~~ the Commonwealth if:

~~(1)~~1. The certificate is in a form prescribed by the laws or regulations of ~~this~~ the Commonwealth;

~~(2)~~2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

~~(3)~~3. The certificate contains the words "acknowledged before me;" or their substantial equivalent.

Drafting note: Technical changes.

~~§ 55-118.5~~ 55.1-xxx. Meaning of "acknowledged before me."

~~The words~~ For the purposes of this article, "acknowledged before me" ~~mean~~ means:

~~(1)~~1. That the person acknowledging appeared before the person taking the acknowledgment;:

~~(2)~~2. That ~~he~~ the person acknowledging acknowledged he executed the instrument;:

~~(3)~~3. That, in the case of:

(i)-a. A natural person acknowledging, he executed the instrument for the purposes ~~therein~~ stated in the instrument;

(ii)-b. A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose ~~therein~~ stated in the instrument;

(iii)-c. A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes ~~therein~~ stated in the instrument;

(iv)-d. A person acknowledging as principal by an ~~attorney-in-fact~~ attorney-in-fact, he executed the instrument by proper authority as the act of the principal for the purposes ~~therein~~ stated in the instrument; or

(v)-e. A person acknowledging as a public officer, trustee, administrator, guardian, conservator, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes ~~therein~~ stated, in the instrument; and

(4)-4. That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Drafting note: Technical changes.

§ ~~55-118.6~~ 55.1-xxx. Statutory short forms of acknowledgment.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of ~~this~~ the Commonwealth. The following forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1)-1. For an individual acting in his own right:

State of _____

County or city of _____

510 The foregoing instrument was acknowledged before me this (date) by (name of person
511 acknowledged).

512 (Signature of Person Taking Acknowledgment)

513 (Title or Rank)

514 (Serial Number, if any)

515 ~~(2)~~ 2. For a corporation:

516 State of _____

517 County or city of _____

518 The foregoing instrument was acknowledged before me this (date) by (name of officer
519 or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of
520 incorporation) corporation, on behalf of the corporation.

521 (Signature of Person Taking Acknowledgment)

522 (Title or Rank)

523 (Serial Number, if any)

524 ~~(3)~~ 3. For a partnership:

525 State of _____

526 County or city of _____

527 The foregoing instrument was acknowledged before me this (date) by (name of
528 acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a
529 partnership.

530 (Signature of Person Taking Acknowledgment)

531 (Title or Rank)

532 (Serial Number, if any)

533 ~~(4)~~ 4. For an individual acting as principal by an attorney-in-fact:

534 State of _____

535 County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

~~(5)~~ 5. By any public officer, trustee, or personal representative:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Drafting note: Technical changes.

§ ~~55-118.7~~ 55.1-xxx. Application of article; article cumulative.

A notarial act performed prior to June 26, 1970, is not affected by this article. This article provides an additional method of proving notarial acts. Nothing in this article diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of ~~this~~ the Commonwealth.

Drafting note: Technical change.

§ ~~55-118.8~~ 55.1-xxx. Uniform interpretation.

This article shall be so interpreted as to make uniform the laws of those states ~~which~~ that enact it.

Drafting note: Technical change.

§ ~~55-118.9~~ Short title.

~~This article may be cited as the Uniform Recognition of Acknowledgments Act.~~

Drafting note: Existing § 55-118.9 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of the article.

Article ~~3~~ 4.

Deeds and Acknowledgements of Corporations.

Drafting note: Existing Article 3, relating to deeds and acknowledgements of corporations, is retained as proposed Article 4.

§ ~~55-119~~ 55.1-xxx. Deeds of corporations; how to be executed and acknowledged.

All deeds made by corporations shall be signed in the name of the corporation by the president or acting president, or any vice-president, or by such other person as may be authorized ~~thereunto to do so~~ by the board of directors of such corporation, and, if such deed is to be recorded, the person signing the name of the corporation shall acknowledge ~~the same~~ such authority in the manner provided by § ~~55-120~~ 55.1-xxx.

Drafting note: Technical change.

§ ~~55-120~~ 55.1-xxx. Acknowledgments on behalf of corporations and others.

When any writing purports to have been signed ~~in on~~ on behalf or by authority of any person or corporation, or in any representative capacity whatsoever, the certificate of the acknowledgment by the person so signing the writing shall be sufficient for the purposes of this and §§ ~~55-106~~ 55.1-xxx, ~~55-113~~ 55.1-xxx, ~~55-114~~ 55.1-xxx, and ~~55-115~~ 55.1-xxx, and for the admission recordation of such writing ~~to record~~ as to the person or corporation on whose behalf it is signed, or as to the representative character of the person so signing the ~~same~~ writing, as the case may be, without expressing that such acknowledgment was ~~in on~~ on behalf or by authority of such other person or corporation or was in a representative capacity. In the case of a writing signed ~~in on~~ on behalf or by authority of any person or corporation or in any representative capacity, a certificate to the following effect shall be sufficient:

State (or territory or district) of _____, county (or ~~corporation~~ city) of _____, ~~to-wit~~: I, _____, a _____ (here insert the official

589 title of the person certifying the acknowledgment) in and for the ~~State~~ state (or territory or
590 district) and county (or ~~corporation~~ city) aforesaid, do certify that _____ (here insert
591 the name or names of the persons signing the writing on behalf of the person or corporation, or
592 the name of the person signing the writing in a representative capacity), whose name (or names)
593 is (or are) signed to the writing above, bearing date on the _____ day of _____, has
594 (or have) acknowledged the same before me in my county (or ~~corporation~~ city) aforesaid. Given
595 under my hand this _____ day of _____.

596 **Drafting note: Technical changes.**

597 § ~~55-121~~ 55.1-xxx. Corporate acknowledgment taken before officer or stockholder.

598 Any notary or other officer duly authorized to take acknowledgments may take the
599 acknowledgment to any deed or other writing_; executed by a company_; or to a company or for
600 the benefit of a company, although he may be a stockholder, an officer, or both, in such
601 company_; provided that he is not otherwise interested in the property conveyed or disposed of
602 by such deed or other writing_; and nothing herein shall be construed to authorize any officer to
603 take an acknowledgment to any deed or other writing executed by such company by and through
604 him as an officer or stockholder ~~thereof~~ of such company, or to him for the benefit of such
605 company.

606 **Drafting note: Technical changes.**

607 Article ~~4~~ 5.

608 Validating Certain Acts, Deeds_; and Acknowledgements.

609 **Drafting note: Existing Article 4, relating to the validation of certain acts, deeds,**
610 **and acknowledgements, is retained as proposed Article 5.**

611 § ~~55-122~~ 55.1-xxx. Acts of notaries public, etc., who have held certain other offices.

612 All certificates of acknowledgment to deeds and other writings, taken and certified by
613 notaries public and commissioners in chancery, and all depositions taken, accounts and reports
614 made, and decrees executed by any notary public, commissioner in chancery_; or commissioner
615 of accounts, who, since January 1, 1989, may have held the office of county treasurer, sheriff,

attorney for the Commonwealth, county clerk, commissioner of the revenue, superintendent of the poor, county surveyor, or supervisor shall be held and ~~the same~~ are hereby declared valid and effective in all respects, if otherwise valid and effective according to the law then in force.

Drafting note: Technical changes.

~~§ 55-123~~ § 55.1-xxx. Validation of acknowledgments when seal not affixed.

When a certificate of acknowledgment was made prior to July 1, 1995, to any instrument in writing required by this chapter to be acknowledged and the notary or other official whether of this or some other state taking ~~same~~ such acknowledgment failed to affix his official seal to such certificate of acknowledgment when a seal was necessary, the certificate of acknowledgment shall be as valid for all purposes as if such seal had been affixed, and the deed shall be, and shall since such date have been, notice to all persons as effectually as if such seal had been affixed, provided that such acknowledgment was in other respects sufficient.

Drafting note: Technical change.

~~§ 55-124~~ § 55.1-xxx. Acknowledgment taken by trustee in deed of trust.

All certificates of acknowledgment to deeds of trust made and certified prior to March 23, 1936, by persons being trustees in such deeds shall be held and ~~the same~~ are hereby declared valid and effective in all respects, if otherwise valid according to the law then in force, and each such deed of trust ~~which that~~ has been ~~admitted to record~~ recorded in any clerk's office in the State Commonwealth upon such a certificate shall be held to be duly and regularly recorded if such recordation ~~be is~~ otherwise valid according to the law then in force.

~~Provided however that nothing~~ Nothing in this section shall affect or diminish the rights or remedies of any person ~~which~~ who intervened after the ~~spreading recordation~~ of any such deed of trust ~~on the record~~ but prior to ~~the date aforesaid~~ March 23, 1936.

Drafting note: Technical changes.

~~§ 55-125~~ § 55.1-xxx. Acknowledgment taken by trustee in deed of trust; later date.

Any certificate of acknowledgment of any deed of trust, taken and certified prior to July 1, 1995, by a person named as trustee therein who was, at the time of taking the acknowledgment,

an officer authorized by law to take acknowledgments of deeds, is declared to be as valid and of the same force and effect as if such person had not been a trustee in the deed of trust. Subject to the provisions of § ~~55-106.2~~ 55.1-xxx, however, this section shall not affect any right or remedy of any third party, ~~which~~ that accrued after the recordation of the deed of trust and before July 1, 1995.

Drafting note: Technical changes.

§ ~~55-125.1~~ 55.1-xxx. Certain acknowledgments taken and certified before July 1, 1995.

All certificates of acknowledgments to deeds and other writings, taken and certified prior to July 1, 1995, by commissioners of deeds of states other than ~~Virginia~~ the Commonwealth, appointed or commissioned by the governor of such state, and by notaries public appointed or commissioned by the Governor of ~~Virginia~~ the Commonwealth, or appointed or commissioned under the laws of any state other than ~~this~~ the Commonwealth, or any other officer authorized under this chapter to take and certify acknowledgments of deeds and other writings, ~~which~~ that omit the citation of the date of the deed or certificate where it is clear from the content of the entire certificate and the instrument ~~which~~ that has been acknowledged that the identity of the instrument or the certificate is the same, or if it can reasonably be inferred from the certificate of the person recording the instrument or other writing that the certificate refers to the same instrument, shall be held and ~~the same are~~ hereby declared valid and effective in all respects, if otherwise valid according to the law then in force, or otherwise appear valid upon their face, and all such deeds and other writings ~~which~~ that have been ~~admitted to record~~ recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation ~~be is~~ otherwise valid according to the law then in force.

Drafting note: Technical changes.

§ ~~55-126~~ 55.1-xxx. Acknowledgments taken by certain justices of the peace, mayors, etc.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by justices of the peace, mayors of cities or towns ~~and~~, police justices, and civil and police justices who by virtue of their offices had the powers and authority of justices of the

670 peace, when such justices of the peace, mayors, police justices, or civil and police justices are
671 designated in the certificates of acknowledgments as mayors, police justices, or civil and police
672 justices shall be held, and ~~the same~~ are hereby declared, valid and effective in all respects, if
673 otherwise valid according to the law then in force.

674 **Drafting note: Technical change.**

675 § ~~55-127~~ 55.1-xxx. Acknowledgments taken by officers after expiration of terms.

676 All certificates of acknowledgment to deeds and other writings taken and certified prior
677 to July 1, 1995, by commissioners of deeds of states other than ~~Virginia~~ the Commonwealth,
678 appointed or commissioned by the governor of such state, and by notaries public appointed or
679 commissioned by the Governor of ~~Virginia~~ the Commonwealth, or appointed or commissioned
680 under the laws of any state other than ~~this~~ the Commonwealth, or any other officer authorized
681 under this chapter to take and certify acknowledgments to deeds and other writings who took
682 and certified such acknowledgments after their term of office had expired, shall be held and ~~the~~
683 same are hereby declared valid and effective in all respects, if otherwise valid according to the
684 law then in force or appear to be valid upon their face, and all such deeds and other writings
685 ~~which that~~ have been ~~admitted to record~~ recorded in any clerk's office in the Commonwealth
686 upon such certificates shall be held to be duly and regularly recorded if such recordation ~~be is~~
687 otherwise valid according to the law then in force.

688 **Drafting note: Technical changes are made.**

689 § ~~55-128~~ 55.1-xxx. Acknowledgments taken by notaries in service during World War I.

690 All certificates of acknowledgment to deeds and other writings taken and certified in ~~this~~
691 the Commonwealth prior to June 18, 1920, by notaries public who served in the army, navy, or
692 marine corps of the United States during World War I shall be held, and ~~the same~~ are hereby
693 declared, valid and effective in all respects, if otherwise valid according to the law then in force.

694 **Drafting note: Technical changes are made.**

695 § ~~55-129~~ 55.1-xxx. Acknowledgments before foreign officials who failed to affix seals.

696 All certificates of acknowledgment to deeds and other writings made and certified prior
697 to July 1, 1995, before officials in any foreign country authorized by law to take and certify such
698 acknowledgments, to which such officials failed to affix their official seals, shall be held, and
699 ~~the same~~ are hereby declared, valid and effective in all respects if otherwise valid according to
700 the law then in force.

701 **Drafting note: Technical change.**

702 § ~~55-130~~ 55.1-xxx. Acknowledgments taken by notaries in foreign countries.

703 All certificates of acknowledgment to deeds and other writings taken and certified prior
704 to July 1, 1995, by notaries public residing in foreign countries shall be held, and ~~the same~~ are
705 hereby declared, valid and effective in all respects, if otherwise valid according to the law then
706 in force.

707 **Drafting note: Technical change.**

708 § ~~55-131~~ 55.1-xxx. Acknowledgments taken by officer who was ~~husband or wife~~ spouse
709 of grantee.

710 Any certificate of acknowledgment to a deed or other writings taken prior to July 1, 1995,
711 by a notary public or other officer duly authorized to take acknowledgments, who at the time of
712 taking such acknowledgment was the ~~husband or wife~~ spouse of the grantee in the deed or other
713 instrument, shall be held, and ~~the same~~ is hereby declared, valid and effective in all respects, if
714 otherwise valid according to the law then in force. All acknowledgments of conveyances to a
715 fiduciary taken before an officer, who is the husband or wife of ~~the same~~ such officer and who
716 has no beneficial or monetary interest other than possible commissions or legal fees shall be
717 conclusively presumed valid.

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

720 § ~~55-132~~ 55.1-xxx. Acknowledgment when notary certifies erroneously as to expiration
721 of commission.

722 All certificates of acknowledgment to deeds and other writings taken and certified prior
723 to July 1, 1995, by a notary public appointed or commissioned by the Governor, or appointed or
724 commissioned under the laws of any state other than the Commonwealth ~~of Virginia~~, who
725 mistakenly or by error certified that his commission had expired at the time he made such
726 certificate, when in fact his commission had not at that time expired, shall be held; and ~~the same~~
727 are hereby declared; valid and effective in all respects if otherwise valid according to the law of
728 the Commonwealth then in force, and the date and life of the notary's commission may be proved
729 aliunde his certificate in any proceeding in which the capacity or authority of such notary is or
730 shall be questioned; and all such deeds and other writings ~~which that~~ have been ~~admitted to~~
731 ~~record~~ recorded in any clerk's office in the Commonwealth; upon such certificates; shall be held
732 to be duly and regularly recorded if such recordation ~~be is~~ otherwise valid according to the law
733 then in force.

734 **Drafting note: Technical changes.**

735 § ~~55-132.1~~ 55.1-xxx. Acknowledgments before officer of city or county consolidating,
736 etc., prior to expiration date of commission.

737 All certificates of acknowledgment to deeds and other writings taken and certified by a
738 notary public or other officer originally duly authorized to take acknowledgments in any city or
739 county ~~which that~~ consolidated with other political subdivisions or became a city, as the case
740 may be, prior to the normal expiration date of the commission of such notary public or other
741 officer; are hereby declared to be valid to the same extent they would have been valid as if such
742 notary public or other officer had been commissioned for such consolidated political subdivision
743 or city to which any such county was transformed.

744 **Drafting note: Technical changes.**

745 § ~~55-133~~ 55.1-xxx. Acknowledgments taken before notary whose commission has
746 expired.

747 All certificates of acknowledgment to deeds and other writings taken and certified prior
748 to March 22, 1930, by notaries public appointed or commissioned by the Governor; who took

749 and certified such acknowledgments after their term of office had expired, shall be held, and ~~the~~
750 ~~same~~ are hereby declared, valid and effective in all respects, if otherwise valid according to the
751 law then in force, and all such deeds and other writings ~~which that~~ have been ~~admitted to record~~
752 ~~recorded~~ in any clerk's office in the ~~State Commonwealth~~ upon such certificates shall be held to
753 be duly and regularly recorded if such recordation ~~be is~~ otherwise valid according to the law then
754 in force.

755 **Drafting note: Technical changes.**

756 § ~~55-134~~ 55.1-xxx. Acknowledgments taken before notary whose commission has
757 expired; later date; intervening vested rights saved.

758 All certificates of acknowledgment to deeds and other writings taken and certified prior
759 to July 1, 1995, by notaries public appointed or commissioned by the Governor, who took and
760 certified such acknowledgments after their term of office had expired, shall be held, and ~~the same~~
761 are hereby declared, valid and effective in all respects, if otherwise valid according to the law
762 then in force, and all such deeds and other writings ~~which that~~ have been ~~admitted to record~~
763 ~~recorded~~ in any clerk's office in the Commonwealth upon such certificates shall be held to be
764 duly and regularly recorded, if such recordation ~~be is~~ otherwise valid according to the law then
765 in force; however, nothing in this section shall be so construed as to affect any intervening vested
766 rights.

767 **Drafting note: Technical changes.**

768 § ~~55-134.1~~ 55.1-xxx. Acknowledgments taken before notary who was appointed but
769 failed to qualify; vested rights saved.

770 All certificates of acknowledgment to deeds and other writings taken and certified prior
771 to July 1, 1995, by a person who was appointed as a notary public by the Governor but who
772 failed to qualify as provided by law shall be held, and ~~the same~~ are hereby declared valid and
773 effective in all respects, if otherwise valid, and all such deeds and other writings ~~which that~~ have
774 been ~~admitted to record~~ ~~recorded~~ in any clerk's office in the Commonwealth upon such
775 certificates shall be held to be duly and regularly recorded, if such recordation ~~be is~~ otherwise

valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

Drafting note: Technical changes.

§ ~~55-134.2~~ 55.1-xxx. Acknowledgments taken before a notary at large who failed to cite the jurisdiction in which the acknowledgment was taken; vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by a person who was appointed a notary public for the Commonwealth at large by the Governor, but who failed to include in such certificates of acknowledgment the county or city-or-county in which the notarial act was performed, shall be held, and ~~the same~~ are hereby declared, valid and effective in all respects, if otherwise valid, and all such deeds and other writings ~~which~~ that have been ~~admitted to record~~ recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded, if such recordation ~~be is~~ otherwise valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

Drafting note: Technical changes.

§ ~~55-135~~ 55.1-xxx. Deeds defectively executed by corporation.

Any deed of conveyance of real estate executed in ~~Virginia~~ the Commonwealth prior to July 1, 1995, by a corporation of ~~this~~ the Commonwealth, when the certificate of acknowledgment of such deed fails to state the representative capacity of the party signing ~~the same~~ such deed for the corporation, shall be held and ~~the same~~ is hereby declared a valid and effective conveyance in every respect, if otherwise valid according to the law in force at the time the deed was executed, if such corporation, since making such conveyance, has been dissolved or otherwise gone out of existence.

Drafting note: Technical changes.

§ ~~55-136~~ 55.1-xxx. Deeds to which corporate seal not affixed or not attested.

Any deed of conveyance of real estate executed within or ~~without this~~ outside of the Commonwealth by a corporation of ~~this~~ the Commonwealth or any other state to which deed the

803 seal of the corporation was not affixed, or to which the seal was affixed but was not attested by
804 the secretary or by some other authorized officer of the corporation, shall be held to be valid and
805 is hereby declared a valid and effective conveyance in every respect, if otherwise valid according
806 to the law then in force ~~at the time of execution thereof~~.

807 **Drafting note: Technical changes.**

808 § ~~55-137.1~~ 55.1-xxx. Acknowledgments of corporations taken by officers or stockholders.

809 No acknowledgment heretofore taken to any deed or any writing executed by a company,
810 or for the benefit of a company, shall be held to be invalid by reason of the acknowledgment
811 having been taken by a notary or other officer duly authorized to take acknowledgments who, at
812 the time of taking the acknowledgment, was a stockholder, an officer, or both, in the company
813 ~~which that~~ executed the deed or writing, or for the benefit of which the deed or writing was
814 executed, but who was not otherwise interested in the property conveyed or disposed of by such
815 deed or writing; and such deed or other writing, and the recordation thereof of such deed or other
816 writing, shall be valid in all respects as if this section had been in force when it was executed.

817 **Drafting note: Technical changes.**

818 § ~~55-137.1~~ 55.1-xxx. Recordation certificate not signed by clerk.

819 A. All deeds, orders of probate, fiduciary accounts, and all other papers and writings
820 received prior to July 1, 1995, by any clerk of any court of ~~this the~~ Commonwealth and
821 transcribed, or purported to be transcribed, in the proper book ~~or books~~ in such clerk's office
822 provided by law for the transcribing and recordation of such deeds, orders of probate, fiduciary
823 accounts, or other papers and writings, the certificate of receipt and of recordation of which had
824 not received the attesting signature of such clerk on the date aforesaid, and which had not on
825 such date been verified as required by law, shall prima facie be, and be deemed to be, as truly
826 received, recorded, and verified as if the same had been so attested by the signature of such clerk.

827 B. Every clerk of any court of ~~this the~~ Commonwealth, in whose office any such deed,
828 order of probate, fiduciary account, or other paper or writing as is mentioned in ~~the preceding~~
829 paragraph subsection A has been transcribed upon the proper book ~~or books~~ in such office,

provided by law therefor, and which transcription has not received the attesting signature of the clerk who recorded the same, upon production before such clerk of the original of such deed, order of probate, fiduciary account, or paper or writing shall verify the accuracy of such transcription by a careful examination and comparison of such transcription with the original paper so recorded, and thereupon the clerk shall attest such transcription by signing thereto the name of the clerk who received the original paper for record and his own name as follows:

"Teste _____, former clerk per
_____, his successor."

C. For such service the clerk shall receive a fee of ~~twenty-five~~ 25 cents (\$0.25), to be paid by the person for whose benefit the service was performed, and the record, so certified and verified, shall have the same effect as if it had been properly certified and verified by the clerk who received the same and who should have so certified and verified the same.

D. This section shall have a retroactive effect.

Drafting note: The plural "books" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

Technical changes.

§ ~~55-137.2~~ 55.1-xxx. ~~Same~~ Recordation certificate not signed by clerk; when clerk has died.

Any deed or other instrument or writing ~~spread~~ recorded before July 1, 1995, upon the proper deed book in the clerk's office of the circuit court of any county or any court of record of any city, when the clerk of such court failed to sign the certificate of recordation thereof and afterwards died, and any will or other instrument or writing ~~spread~~ recorded before July 1, 1995, upon the proper will book in any such clerk's office, when such clerk failed to sign the certificate of probate and recordation thereof and afterwards died, shall be as valid, and of the same force and effect, as if such certificate of recordation, or certificate of probate and recordation, had been signed by such clerk at the time such deed, will, or other instrument or writing was so ~~spread of~~ record recorded.

Drafting note: Technical change.

Article ~~5~~ 6.

~~Decrees~~, United States Judgments, etc.

Drafting note: Existing Article 5, relating to United States judgments, is retained as proposed Article 6. The term "decrees" is deleted from the article title as obsolete.

§ ~~55-138~~ 55.1-xxx. Recordation of ~~decrees~~ judgments affecting title to land.

The clerk of the court ~~wherein~~ of any county or city in which there is any partition of land under any order ~~or decree~~, or any recovery of land under judgment ~~or decree~~, shall transmit to the clerk of the court of each county or city in whose office deeds to such land or any part thereof are recorded, a copy of such order, or judgment, ~~or decree~~, and of such partition or assignment, and of the order confirming the same, ~~and~~ along ~~therewith~~ with such description of the land as may appear in the papers of the cause. ~~And the~~ The clerk of the court of such county or city shall record the same in his deed book, and index it in the name of the person who had the land before, and also in the name of the person who became entitled under such partition, assignment, or recovery.

Drafting note: Language used in the old equitable pleading practice, including "decree," is deleted. Technical changes are made.

~~§ 55-139. Repealed.~~

Drafting note: Repealed by Acts 1970, c. 76.

§ ~~55-140~~ 55.1-xxx. Judgments of United States courts affecting realty.

A copy of any judgment, or order ~~or decree~~ of any United States court affecting the title to, boundary or possession of, or any interest in and to, any real estate lying wholly or partly within ~~this~~ the Commonwealth, when duly certified by the proper officer of any such court, may be filed with the clerk of the court in whose office deeds are recorded, of the county or city ~~wherein~~ in which the real estate so affected, or any part ~~thereof~~ of such real estate, is situated, and when so filed shall be recorded by such clerk in the current deed book in his office and indexed in the names of the persons whose interests appear to be affected thereby, upon the

payment of the same fee prescribed by law to be paid for the recordation of similar judgments,
or orders ~~or decrees~~ of state courts.

**Drafting note: Language used in the old equitable pleading practice, including
"decree," is deleted. Technical changes are made.**

~~§ 55-141.55.1-xxx. Decrees and orders~~ Orders in bankruptcy.

Certified copies of orders ~~or decrees~~ of adjudication of bankruptcy, made pursuant to the
acts of Congress relating to bankruptcy, certified copies of orders of sale, orders confirming
sales, and such other orders entered in bankruptcy proceedings as any party in interest may wish
to have recorded in the appropriate clerk's office, or such orders as the referee or the judge having
jurisdiction directs to be recorded, may be filed with the clerk of the court authorized to record
deeds for the county or city ~~wherein~~ in which any real estate owned by the bankrupt is situated.
Such ~~decrees~~ orders shall be recorded in the deed books and indexed in the name of the bankrupt.
For each such recordation, the clerk shall be paid a fee as prescribed in subdivision A 2 of § 17.1-
275.

**Drafting note: Language used in the old equitable pleading practice, including
"decrees," is deleted. Technical changes are made.**

~~§ 55-142. Repealed.~~

Drafting note: Repealed by Acts 1988, c. 100.

~~§ 55-142.01~~ 55.1-xxx. Certificates of commencement of case in bankruptcy.

Certificates of commencement of case, signed by clerks of bankruptcy courts or clerks of
United States district courts, issued pursuant to the acts of Congress relating to bankruptcy, may
be filed with the clerk of the court authorized to record deeds for the county or city in which the
property of the debtor, for which such certificate has been issued, is located. Such certificate
shall be recorded in the deed books and properly indexed in the name of the trustee in bankruptcy
in the grantee index and the debtor in the grantor index. For such recordation, the clerk shall
receive a fee as prescribed in subdivision A 2 of § 17.1-275.

Drafting note: Technical changes.

Article ~~6~~ 7.

Uniform Federal Lien Registration Act.

Drafting note: Existing Article 6, relating to the Uniform Federal Lien Registration Act, is retained as proposed Article 7.

§ ~~55-142.1~~ 55.1-xxx. Where notices and certificates affecting liens to be filed.

A. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens shall be filed in accordance with this article.

B. Notices of liens upon real property for obligations payable to the United States, and certificates and notices affecting the liens, including certificates of redemption, shall be filed in the office of the clerk of the circuit court of the county or city in which the real property subject to the lien is situated.

C. Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

1. If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in ~~this~~ the Commonwealth, as these entities are defined in the internal revenue laws of the United States, in the office of the clerk of the State Corporation Commission.

2. In all other cases, in the office of the clerk of the circuit court of the county or city (i) where the person against whose interest the lien applies resides or (ii) in the case of a trust or a decedent's estate, having jurisdiction over the qualification of the trustee or probate of the will, at the time of filing of the notice of lien.

Drafting note: Technical changes.

§ ~~55-142.2~~ 55.1-xxx. Certification of notices and certificates.

Certification of notices of tax liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate or by any official or entity

of the United States responsible for filing or certifying notice of any lien other than a tax lien, entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

Drafting note: Technical changes.

~~§ 55-142.3~~ 55.1-xxx. Duties of filing officers.

A. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection B is presented to the filing officer and:

1. He is the clerk of the State Corporation Commission, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of § 8.9A-519 as if the notice were a financing statement ~~within the meaning of that Code~~ as defined in § 8.9A-102; or

2. He is any other officer described in ~~§ 55-142.1~~ 55.1-xxx, he shall endorse thereon his identification and the date and time of receipt and ~~forthwith~~ file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director in the case of tax liens, and the total amount appearing on the notice of lien, and he shall index and record the same where judgments are indexed and recorded.

B. If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the clerk of the State Corporation Commission for filing, he shall:

1. Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of § 8.9A-513, except that the notice of lien to which the certificate relates shall not be removed from the files; and

2. Cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of § 8.9A-512.

C. If a refiled notice of federal lien referred to in subsection A or any of the certificates or notices referred to in subsection B is presented for filing to any other filing officer specified in ~~§ 55-142.1~~ 55.1-xxx, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

D. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is ~~one dollar~~ \$1. Upon request, the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal lien for a fee of ~~fifty 50~~ cents (\$0.50) per page.

Drafting note: In subdivision A 1, the specific section in which the term "financing statement" is defined is cross-referenced. Technical changes are made.

§ ~~55-142.4~~ 55.1-xxx. Fees of filing officers other than clerk of State Corporation Commission.

The fee to be paid to any officer other than the clerk of the State Corporation Commission for filing and indexing each notice of lien or certificate or notice affecting the lien or providing a copy of such notice or certificate of such notice is ~~five dollars~~ \$5.

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

Drafting note: Technical change.

§ ~~55-142.5~~ 55.1-xxx. Fees of clerk of State Corporation Commission.

Notwithstanding any other provisions hereof of this article, the fees for filing, indexing, searching, or amending or for certificates of discharge or subordination, or any other fee ~~which~~ that may be chargeable, by the clerk of the State Corporation Commission shall be the same as those permitted to be charged according to the schedule of fees maintained by the clerk of the State Corporation Commission.

Drafting note: Technical changes.

§ ~~55-142.6~~ 55.1-xxx. Construction of article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states ~~which~~ that enact it.

Drafting note: Technical change.

~~§ 55-142.7. Short title.~~

~~This article may be cited as the Uniform Federal Lien Registration Act.~~

Drafting note: Existing § 55-142.7 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the name of the proposed article.

~~§ 55-142.8~~ § 55.1-xxx. Certificates and notices affecting liens filed on or before July 1, 1970.

If a notice of lien was filed on or before July 1, 1970, any certificate or notice affecting the lien shall be filed in the same office.

Drafting note: No change.

~~§ 55-142.9~~ § 55.1-xxx. No action to be brought against the State Corporation Commission or its staff.

No action shall be brought against the State Corporation Commission or any member of the staff ~~thereof~~ of the State Corporation Commission claiming damage for alleged errors or omissions in the performance of the duties ~~herein~~ imposed by this article on the ~~said~~ State Corporation Commission.

Drafting note: Technical changes.

Article ~~7~~ 8.

Uniform Real Property Electronic Recording Act.

Drafting note: Existing Article 7, relating to the Uniform Real Property Electronic Recording Act, is retained as proposed Article 8.

~~§ 55-142.10~~ § 55.1-xxx. Definitions.

As used in this article, ~~terms shall have the meanings as defined below~~ unless the context requires a different meaning:

"Clerk" means a clerk of the circuit court.

"Document" means information that is:

(i) ~~inscribed~~ 1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(ii) ~~eligible~~ 2. Eligible to be recorded in the land records maintained by the clerk.

"Electronic," as defined in Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic document" means a document received by the clerk in electronic form.

"Electronic notarization" means an official act by a notary public in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) and § ~~55-118.3~~ 55.1-xxx with respect to an electronic document.

"Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"eRecording System" is the automated electronic recording system implemented by the clerk for the recordation of electronic documents among the land records maintained by the clerk.

"Filer" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity ~~who~~ that files an electronic document among the land records maintained by the clerk.

"Land records document" means any writing authorized by law to be recorded, whether made on paper or in electronic format, ~~which~~ that the clerk records affecting title to real property.

Drafting note: Technical changes.

§ ~~55-142.11~~ 55.1-xxx. Validity of electronically filed and recorded land records.

A. If a law requires, as a condition for recording, that a land records document be an original, be on paper or another tangible medium, or be in writing, an electronic land records document satisfying this ~~Act~~ article satisfies the law.

1044 B. If a law requires, as a condition for recording, that a land records document be signed,
1045 an electronic signature satisfies the law.

1046 C. A requirement that a land records document or a signature associated with a land
1047 records document be notarized, acknowledged, verified, witnessed, or made under oath is
1048 satisfied if the electronic notarization of the person authorized to perform that act, and all other
1049 information required to be included, is attached to or logically associated with the land records
1050 document or signature. A physical or electronic image of a stamp, impression, or seal of the
1051 notary is not required to accompany an electronic signature.

1052 **Drafting note: Technical change.**

1053 § ~~55-142.12~~ [55.1-xxx](#). Recording of electronic documents among the land records.

1054 A. A clerk of a circuit court who implements an eRecording System shall do so in
1055 compliance with standards established by the Virginia Information Technologies Agency.

1056 B. A clerk of a circuit court may receive, index, store, archive, and transmit electronic
1057 land records.

1058 C. A clerk of a circuit court may provide for access to, and for search and retrieval of,
1059 land records by electronic means.

1060 D. A clerk of a circuit court who accepts electronic documents for recording among the
1061 land records shall continue to accept paper land records and shall place entries for both types of
1062 land records in the same indices.

1063 E. A clerk of a circuit court may convert paper records accepted for recording into
1064 electronic form. The clerk of circuit court may convert into electronic form land records
1065 documents recorded before the clerk of circuit court began to record electronic records.

1066 F. Any fee or tax that a clerk of circuit court is authorized to collect may be collected
1067 electronically.

1068 **Drafting note: No change.**

1069 § ~~55-142.13~~ [55.1-xxx](#). Uniform standards.

1070 In consultation with the circuit court clerks, the Executive Secretary of the Supreme
1071 Court, and interested citizens and businesses, the Virginia Information Technologies Agency
1072 shall develop standards to implement electronic recording of real property documents. The
1073 [Virginia Information Technologies](#) Agency shall consider standards and practices of other
1074 jurisdictions; the most recent standards promulgated by national standard-setting bodies, such
1075 as the Real Property Records Industry Association, [the](#) views of interested persons and other
1076 governmental entities; and [the](#) needs of localities of varying sizes, population, and resources.

1077 **Drafting note: Technical changes.**

1078 § ~~55-142.14~~ [55.1-xxx](#). Uniformity of application and construction.

1079 In applying and construing this ~~Act~~ [article](#), consideration shall be given to the need to
1080 promote uniformity of the law with respect to its subject matter among states that enact it.

1081 **Drafting note: Technical change.**

1082 #

CHAPTER ~~27~~ XX [2].

VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT.

Drafting note: Existing Chapter 27, Virginia Residential Property Disclosure Act, is retained as proposed Chapter XX [2].

§ ~~55-517.1~~ 55.1-xxx. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Electronic delivery," for purposes of delivery of the disclosures required by this chapter, means sending the required disclosures via the Internet, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

"Notification" means a statement of the availability of any disclosures required by this chapter on the Real Estate Board's website or delivery of any such disclosures to the purchaser.

"Ratification" means the full execution of a real estate purchase contract by all parties.

"Real estate contract" means a contract for the sale, exchange, or lease with the option to buy of residential real estate subject to this chapter.

Drafting note: Technical change.

§ ~~55-517~~ 55.1-xxx. Applicability.

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

Drafting note: Technical change.

§ ~~55-518~~ 55.1-xxx. Exemptions.

A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, ~~but not limited to,~~ transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by

foreclosure sale or by a deed in lieu of a foreclosure, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance. Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ ~~55-156~~ 55.1-xxx et seq.) and transfers pursuant to escheats pursuant to Chapter 9 (~~§ 55-156 et seq.~~).

2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers from one or more co-owners solely to one or more other co-owners.

5. Transfers made solely to any combination of a spouse or ~~a person or~~ one or more persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling~~;~~, provided~~;~~ that this exemption shall not apply to the disclosures required by § ~~55-519.1~~ 55.1-xxx.

B. Notwithstanding the provisions of subdivision A 9, the builder of a new dwelling shall disclose in writing to the purchaser ~~thereof~~ all known material defects ~~which that~~ would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the

property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner ~~(i)~~ (a) when selling a completed dwelling, before ratification of the real estate purchase contract or ~~(ii)~~ (b) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § ~~55-519~~ 55.1-xxx. If no defects are known by the builder to exist, no written disclosure is required by this subsection.

Drafting note: In subdivision A 1, "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made.

§ ~~55-519~~ 55.1-xxx. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be on a form provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

81 2. The owner makes no representations with respect to any matters that may pertain to
82 parcels adjacent to the subject parcel, including zoning classification or permitted uses of
83 adjacent parcels, and ~~that~~ purchasers are advised to exercise whatever due diligence a particular
84 purchaser deems necessary with respect to adjacent parcels in accordance with terms and
85 conditions as may be contained in the real estate purchase contract, but in any event, prior to
86 settlement pursuant to such contract;

87 3. The owner makes no representations to any matters that pertain to whether the
88 provisions of any historic district ordinance affect the property, and purchasers are advised to
89 exercise whatever due diligence a particular purchaser deems necessary with respect to any
90 historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any
91 local ordinance creating such district, (ii) any official map adopted by the locality depicting
92 historic districts, and (iii) any materials available from the locality that explain (a) any
93 requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local
94 historic district and (b) the necessity of any local review board or governing body approvals prior
95 to doing any work on a property located in a local historic district, in accordance with terms and
96 conditions as may be contained in the real estate purchase contract, but in any event, prior to
97 settlement pursuant to such contract;

98 4. The owner makes no representations with respect to whether the property contains any
99 resource protection areas established in an ordinance implementing the Chesapeake Bay
100 Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located
101 pursuant to § 62.1-44.15:74, and ~~that~~ purchasers are advised to exercise whatever due diligence
102 a particular purchaser deems necessary to determine whether the provisions of any such
103 ordinance affect the property, including review of any official map adopted by the locality
104 depicting resource protection areas, in accordance with terms and conditions as may be contained
105 in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

106 5. The owner makes no representations with respect to information on any sexual
107 offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and ~~that~~ purchasers are

108 advised to exercise whatever due diligence they deem necessary with respect to such
109 information, in accordance with terms and conditions as may be contained in the real estate
110 purchase contract, but in any event, prior to settlement pursuant to such contract;

111 6. The owner makes no representations with respect to whether the property is within a
112 dam break inundation zone. Such disclosure statement shall advise purchasers to exercise
113 whatever due diligence they deem necessary with respect to whether the property resides within
114 a dam break inundation zone, including a review of any map adopted by the locality depicting
115 dam break inundation zones;

116 7. The owner makes no representations with respect to the presence of any stormwater
117 detention facilities located on the property, or any maintenance agreement for such facilities, and
118 purchasers are advised to exercise whatever due diligence they deem necessary to determine the
119 presence of any stormwater detention facilities on the property, or any maintenance agreement
120 for such facilities, in accordance with terms and conditions as may be contained in the real estate
121 purchase contract, but in any event, prior to settlement pursuant to such contract;

122 8. The owner makes no representations with respect to the presence of any wastewater
123 system, including the type or size ~~thereof~~ of the wastewater system or associated maintenance
124 responsibilities related ~~thereto~~ to the wastewater system, located on the property, and purchasers
125 are advised to exercise whatever due diligence they deem necessary to determine the presence
126 of any wastewater system on the property and the costs associated with maintaining, repairing,
127 or inspecting any wastewater system, including any costs or requirements related to the pump-
128 out of septic tanks, in accordance with terms and conditions as may be contained in the real estate
129 purchase contract, but in any event, prior to settlement pursuant to such contract;

130 9. The owner makes no representations with respect to any right to install or use solar
131 energy collection devices on the property;

132 10. The owner makes no representations with respect to whether the property is located
133 in one or more special flood hazard areas, and purchasers are advised to exercise whatever due
134 diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender

determination of whether the property is located in one or more special flood hazard areas, (ii) ~~review of~~ reviewing any map depicting special flood hazard areas, and (iii) determining whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements, and ~~that~~ purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract; and

12. The owner makes no representations with respect to whether the property is subject to a community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and ~~that~~ purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in the land records of the circuit court for the locality in which the community development authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any event, prior to settlement pursuant to such contract.

C. The residential property disclosure statement shall be delivered in accordance with § ~~55-520~~ 55.1-xxx.

Drafting note: Technical changes.

§ ~~55-519.1~~ 55.1-xxx. Required disclosures pertaining to a military air installation.

The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website. Such disclosure shall state the specific

noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

Drafting note: No change.

§ ~~55-519.2~~ 55.1-xxx. Required disclosures; defective drywall.

Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

Drafting note: No change.

§ ~~55-519.2:1~~ 55.1-xxx. Required disclosures; pending building or zoning violations.

Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential dwelling unit has actual knowledge of any pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, or any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

Drafting note: No change.

§ ~~55-519.3~~ 55.1-xxx. Permissive disclosure; tourism activity zone.

An owner of residential property located partially or wholly within a designated tourism activity zone established pursuant to § 15.2-982 may disclose in writing to any prospective purchaser or lessee of the property that the subject property is located within a tourism activity

189 zone, with a description of potential impacts associated with the parcel's location in a tourism
190 activity zone, including impacts caused by special events, parades, temporary street closures, and
191 indoor and outdoor entertainment activities.

192 **Drafting note: No change.**

193 § ~~55-519.4~~ 55.1-xxx. Required disclosures; property previously used to manufacture
194 methamphetamine.

195 Notwithstanding the exemptions in § ~~55-518~~ 55.1-xxx, if the owner of a residential
196 dwelling unit has actual knowledge that such residential property was previously used to
197 manufacture methamphetamine and has not been cleaned up in accordance with the guidelines
198 established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-
199 1100 et seq.) of Title 54.1, the owner shall provide to a prospective purchaser a written disclosure
200 that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real
201 Estate Board on its website and otherwise in accordance with this chapter.

202 **Drafting note: No change.**

203 § ~~55-520~~ 55.1-xxx. Time for disclosure; termination of contract.

204 A. The owner of residential real property subject to this chapter shall provide notification
205 to the purchaser of any disclosures required by this chapter prior to the ratification of a real estate
206 purchase contract or otherwise be subject to the provisions of subsection B. The disclosures
207 required by this chapter shall be on forms provided by the Real Estate Board on its website.

208 B. If the disclosures required by this chapter are delivered to the purchaser after
209 ratification of the real estate purchase contract, the purchaser's sole remedy shall be to terminate
210 the real estate purchase contract ~~at~~ upon or prior to the earliest of (i) three days after delivery of
211 the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if
212 the disclosure statement is deposited in the United States mail, postage prepaid, and properly
213 addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the
214 property by the purchaser; (v) the ~~purchaser~~ purchaser's making written application to a lender
215 for a mortgage loan where such application contains a disclosure that the right of termination

shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be a certificate of service prepared by the sender confirming such mailing;

3. Electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

C. Notwithstanding the provisions of subsection B of § ~~55-524~~ 55.1-xxx, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by this chapter.

Drafting note: No change.

§ ~~55-521~~ 55.1-xxx. Owner liability.

A. Except with respect to the disclosures required by § ~~55-519.1~~ 55.1-xxx, the owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this chapter if: (i) the error, inaccuracy, or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining

the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § ~~55-519.1~~ 55.1-xxx if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.

B. The delivery by a public agency or other person, as described in subsection C ~~below~~, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor, or home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of this chapter if the information is provided to the prospective purchaser pursuant to a request ~~therefor~~ for such information, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required disclosures, or portions ~~thereof~~ of such required disclosures, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or, portions ~~thereof~~ of items of information, other than those expressly set forth in the statement.

Drafting note: Technical changes.

§ ~~55-522~~ 55.1-xxx. Change in circumstances.

If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to the property. If, at the time the disclosures are required to be made, an item of

information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided [that](#) the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter.

Drafting note: Technical change.

§ ~~55-523~~ [55.1-xxx](#). Duties of real estate licensees.

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided [that](#) a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter, and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter.

Drafting note: Technical changes.

§ ~~55-524~~ [55.1-xxx](#). Actions under this chapter.

A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that the real property was the site of:

1. An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or
2. A homicide, felony, or suicide.

B. The purchaser's remedies ~~hereunder~~ for failure of an owner to comply with the provisions of this chapter are as follows:

296 1. If the owner fails to provide any of the applicable disclosures required by this chapter,
297 the contract may be terminated subject to the provisions of subsection B of § ~~55-520~~ 55.1-xxx.

298 2. In the event that the owner fails to provide any of the applicable disclosures required
299 by this chapter, or the owner misrepresents, willfully or otherwise, the information required in
300 such disclosure, except as result of information provided by an officer or employee of the locality
301 in which the property is located, the purchaser may maintain an action to recover his actual
302 damages suffered as the result of such violation. Notwithstanding the provisions of this
303 subdivision, no purchaser of residential real property located in a noise zone designated on the
304 official zoning map of the locality as having a day-night average sound level of less than 65
305 decibels shall have a right to maintain an action for damages pursuant to this section.

306 C. Any action brought under this section shall be commenced within one year of the date
307 the purchaser received the applicable disclosures required by this chapter. If the disclosures
308 required by this chapter were not delivered to the purchaser, an action shall be commenced within
309 one year of the date of settlement, if by sale, or occupancy, if by lease with an option to purchase.

310 Nothing contained ~~herein~~ in this chapter shall prevent a purchaser from pursuing any
311 remedies at law or equity otherwise available against an owner in the event of an owner's
312 intentional or willful misrepresentation of the condition of the subject property.

313 **Drafting note: Technical changes.**

314 § ~~55-525~~ 55.1-xxx. Real Estate Board to develop form; when effective.

315 An owner shall be required to make disclosures required by this chapter for real property
316 subject to a real estate purchase contract ~~which~~ that is fully executed by all parties thereto on and
317 after January 1, 2008. ~~On or before January 1, 2008,~~ The Real Estate Board shall develop and
318 maintain the form for the residential property disclosure statement in accordance with § 54.1-
319 2105.1. The Board may at any time amend the form as the Board deems necessary and
320 appropriate.

321 **Drafting note: The word "maintain" is added because, pursuant to this section, the**
322 **form was developed as of January 1, 2008. A technical change is made.**

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1 CHAPTER ~~27.1~~ XX [3].

2 EXCHANGE FACILITATORS ACT.

3 **Drafting note: Existing Chapter 27.1, Exchange Facilitators Act, is retained as**
4 **proposed Chapter XX [3].**

5 § ~~55-525.1~~ 55.1-xxx. Definitions.

6 As used in this chapter, unless the context requires a different meaning:

7 "Affiliated with" means that a person directly, or indirectly through one or more
8 intermediaries, controls, or is controlled by, or is under common control with, the other specified
9 person.

10 "Change in control" means any transfer within 12 months of more than 50 percent of the
11 assets or ownership interests, direct or indirect, of the exchange facilitator.

12 "Commingle" means to mix together exchange funds with operating and other
13 nonexchange funds belonging to or under control of the exchange facilitator in such a manner
14 that a client's exchange funds cannot be distinguished from operating or other nonexchange funds
15 belonging to or under control of the exchange facilitator.

16 "Deposit account" means a demand, time, savings, passbook, money market, certificate
17 of deposit, or similar account maintained with a financial institution.

18 "Exchange Accommodation Titleholder" or "EAT" has the same meaning ascribed
19 thereto in IRS Revenue Procedure 2000-37.

20 "Exchange client" means the taxpayer with whom the exchange facilitator enters into an
21 agreement described in subdivision 1 of the definition of "exchange facilitator."

22 "Exchange facilitator" means a person that:

23 1. For a fee facilitates an exchange of like-kind property by entering into an agreement
24 with a taxpayer:

25 a. By which the exchange facilitator acquires from ~~said~~ such taxpayer the contractual
26 rights to sell ~~said~~ such taxpayer's relinquished property located in the Commonwealth and

transfer a replacement property to ~~said~~ such taxpayer as a qualified intermediary as that term is defined under Treasury Regulation § 1.1031(k)-1(g)(4);

b. To take title to a property located in the Commonwealth as an Exchange Accommodation Titleholder; or

c. To act as a qualified trustee or qualified escrow holder as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3), except as otherwise provided in this definition; or

2. Maintains an office in the Commonwealth for the purpose of soliciting business as an exchange facilitator.

"Exchange facilitator" ~~shall~~ does not include (i) the taxpayer or disqualified person as that term is defined under Treasury Regulation § 1.1031(k)-1(k) seeking to qualify for the nonrecognition provisions of Internal Revenue Code § 1031; (ii) any financial institution ~~as defined herein~~ or any title insurance company, underwritten title company, or escrow company that is merely acting as a depository for exchange funds or that is acting solely as a qualified escrow holder or qualified trustee as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3), and is not otherwise facilitating exchanges ~~as defined herein~~; (iii) a person who advertises for and teaches seminars or classes or otherwise gives presentations to attorneys, accountants, real estate professionals, tax professionals, or other professionals where the primary purpose is to teach the professionals about tax deferred exchanges or train them to act as exchange facilitators; or (iv) an entity that is wholly owned by an exchange facilitator or that is wholly owned by the same person as the exchange facilitator and is used by such entity to facilitate exchanges or to take title to property in the Commonwealth as an EAT.

"Exchange funds" means the funds received by the exchange facilitator from or on behalf of the exchange client for the purpose of facilitating an exchange of like-kind property.

"Fee" means, for purposes of subdivision 1 of the definition of "exchange facilitator," compensation of any nature, direct or indirect, monetary or in-kind, that is received by a person or a related person as described in Internal Revenue Code § 267(b) or 707(b) for any services

relating to or incidental to the exchange of like-kind property under Internal Revenue Code § 1031.

"Financial institution" means any bank, credit union, savings and loan association, savings bank, or trust company chartered under the laws of the Commonwealth or the United States whose accounts are insured by the full faith and credit of the United States of America, the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or other similar or successor programs and any direct or indirect subsidiary of such bank, credit union, savings and loan association, savings bank, or trust company.

"Person" means, in addition to the singular, persons, groups of persons, cooperative associations, limited liability companies, firms, partnerships, corporations, or other legal entities and includes the agents and employees of any such person.

"Transferee" means the party or parties to whom the ownership or control of the exchange facilitator has been transferred.

Drafting note: The definitions for the terms "change in control" and "transferee" are relocated from existing § 55-525.2, and the definition for the term "deposit account" is relocated from existing § 55-525.3 to this chapter-wide definitions section. Technical changes are made.

§ ~~55-525.2~~ 55.1-xxx. Change in control.

An exchange facilitator shall notify all existing exchange clients whose relinquished property is located in the Commonwealth, or whose replacement property held under a Qualified Exchange Accommodation Agreement is located in the Commonwealth, of any change in control of the exchange facilitator. Such notification shall be made to the exchange facilitator's clients within 10 business days following the effective date of such change in control either by facsimile or email transmission, or by first class mail, and by posting such notice of change in control on the exchange facilitator's website, if any, for a period ending not sooner than 90 days after the change in control. Such notification shall set forth the name, address, and other contact information of the transferees. ~~For purposes of this chapter, "transferee" means the party or~~

~~parties to whom the ownership or control of the exchange facilitator has been transferred.~~

Notwithstanding the above, if the exchange facilitator is a publicly traded company and remains a publicly traded company after a change in control, the publicly traded company shall not be required to notify its existing clients of such change in control. ~~For purposes of this section, "change in control" means any transfer within 12 months of more than 50 percent of the assets or ownership interests, direct or indirect, of the exchange facilitator.~~

Drafting note: The definitions of the terms "change in control" and "transferee" are relocated to proposed § 55.1-xxx, the chapter-wide definitions section.

§ ~~55-525.3~~ 55.1-xxx. Separately identified accounts, or qualified escrows or qualified trusts.

A. An exchange facilitator at all times shall:

1. Deposit the exchange funds in a deposit account that is a separately identified account, as defined in Treasury Regulation § 1.468B-6(c)(ii), and provide that any withdrawals from such separately identified account require the written authorization of the exchange client and written acknowledgment of the exchange facilitator. Authorization for withdrawals may be delivered by any commercially reasonable means, including (i) the exchange client's delivery to the exchange facilitator of the exchange client's authorization to disburse exchange funds and the exchange facilitator's delivery to the financial institution of the exchange facilitator's authorization to disburse exchange funds or (ii) delivery to the financial institution of both the exchange client's and the exchange facilitator's authorizations to disburse exchange funds. ~~For purposes of this chapter, a "deposit account" means a demand, time, savings, passbook, money market, certificate of deposit, or similar account maintained with a financial institution;~~ or

2. Deposit the exchange funds in a deposit account that is a qualified escrow or qualified trust as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3).

B. The deposit account shall be with a financial institution, and the interest earned on such account shall accrue to the parties as provided in a written agreement between the exchange facilitator and the exchange client. However, the exchange client may expressly direct the

exchange facilitator in writing to invest the exchange proceeds in an investment of the exchange client's choice, provided that the exchange facilitator provides written acknowledgment back to the exchange client that includes a confirmation of how the exchange proceeds will be invested.

Drafting note: The definition of the term "deposit account" is relocated to proposed § 55.1-xxx, the chapter-wide definitions section.

~~§ 55-525.4~~ § 55.1-xxx. Errors and omissions insurance; cash or letters of credit.

A. An exchange facilitator at all times shall:

1. Maintain a policy of errors and omissions insurance in an amount not less than \$250,000 executed by an insurer authorized to do business in the Commonwealth; or

2. Deposit an amount of cash or provide irrevocable letters of credit equivalent to the sum of not less than \$250,000.

B. The exchange facilitator may maintain errors and omissions insurance, cash, or irrevocable letters of credit in excess of the amounts required in this section.

Drafting note: No change.

~~§ 55-525.5~~ § 55.1-xxx. Accounting for moneys and property.

A. Every exchange facilitator shall hold all property related to the exchange client, including the exchange funds, other property, and other consideration or instruments received by the exchange facilitator, on behalf of the client, except funds received as the exchange facilitator's compensation. Exchange funds shall be held in accordance with the requirements of ~~§ 55-525.3~~ § 55.1-xxx.

B. An exchange facilitator shall not:

1. Commingle exchange funds with the operating accounts of the exchange facilitator; or

2. Lend or otherwise transfer exchange funds to any person or entity affiliated with or related (as described in Internal Revenue Code § 267(b) or 707(b)-) to the exchange facilitator, except that this subsection shall not apply to a transfer or loan made to a financial institution that is the parent of or related to the exchange facilitator or to a transfer from an exchange facilitator to an EAT as required under the exchange contract.

C. Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. An exchange facilitator shall not keep or cause to be kept any money in any financial institution under any name designating the money as belonging to an exchange client of the exchange facilitator unless the money equitably belongs to the exchange client and was actually entrusted to the exchange facilitator by the exchange client.

Drafting note: No change.

§ ~~55-525.6~~ 55.1-xxx. Prohibited acts.

A. A person who engages in the business of an exchange facilitator is prohibited from:

1. Making any material misrepresentations concerning any exchange facilitator transaction that are intended to mislead another;
2. Pursuing a continued course of misrepresentation or making false statements through advertising or otherwise;
3. Failing, within a reasonable time, to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;
4. Engaging in any conduct constituting fraudulent or dishonest dealings;
5. Committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;
6. Materially failing to fulfill its contractual duties to the exchange client to deliver property or funds to the exchange client unless such failure is due to circumstances beyond the control of the exchange facilitator; or
7. Materially violating any of the provisions of this chapter.

B. A person who is an owner, officer, director, or employee of an exchange facilitator is prohibited from committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property; however, the commission of such crime by an officer, director, or employee of an exchange facilitator shall not be considered a violation of this chapter if the employment or appointment of such officer,

director, or employee has been terminated and no clients of the exchange facilitator were harmed or full restitution has been made to all harmed clients within a reasonable period of time.

Drafting note: No change.

§ ~~55-525.7~~ 55.1-xxx. Penalty; attorney fees.

A. In any action brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in violation of this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

B. In any action brought under this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the ~~county, city, or town~~ locality may recover costs and reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorney fees.

Drafting note: In subsection B, "county, city, or town" is replaced with "locality" on the basis of § 1-221, which states that throughout the Code "locality" means a county, city, or town."

#

1 CHAPTER ~~27.2~~ XX [4].

2 REAL ESTATE SETTLEMENTS.

3 **Drafting note: Existing Chapter 27.2, Real Estate Settlements, is retained as**
4 **proposed Chapter XX [4].**

5 § ~~55-525.8~~ 55.1-xxx. Definitions.

6 As used in this chapter, unless the context requires a different meaning:

7 "Disbursement of loan funds" means the delivery of the loan funds by the lender to the
8 settlement agent in one or more of the following forms:

- 9 1. Cash;
- 10 2. Wired funds;
- 11 3. Certified check;
- 12 4. Checks issued by the Commonwealth or a political subdivision of the Commonwealth;
- 13 5. Cashier's check, or teller's check with equivalent funds availability in conformity with
14 the federal Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.);
- 15 6. Checks issued by a financial institution, the accounts of which are insured by an agency
16 of the federal or state government, which checks are drawn on a financial institution located
17 within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the
18 federal or state government;
- 19 7. Drafts issued by a state chartered or federally chartered credit union, ~~which drafts are~~
20 ~~drawn on the United States Central Credit Union~~;
- 21 8. Checks issued by an insurance company licensed and regulated by the State
22 Corporation Commission, which checks are drawn on a financial institution located within the
23 Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal
24 government; or
- 25 9. Checks issued by a state or federal savings and loan association or savings bank
26 operating in the Commonwealth, which checks are drawn on the Federal Home Loan Bank of
27 Atlanta.

"Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled ~~thereto~~ to such proceeds.

"Lender" means any person regularly engaged in making loans secured by mortgages or deeds of trust on real estate.

"Loan closing" means the time agreed upon by the borrower and lender, when the execution of the loan documents by the borrower occurs.

"Loan documents" means the note evidencing the debt due the lender, the deed of trust, or the mortgage securing the debt due the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction.

"Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at loan closing.

"Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents, and other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that prerecordation conditions of such contracts have been satisfied. A determination by a settlement agent that prerecordation conditions have been satisfied shall not control the rights and obligations of the parties under the contract, including whether settlement has occurred under the terms and conditions of the contract. "Parties," as used in this definition, means the seller, purchaser, borrower, lender, and ~~the~~ settlement agent.

"Settlement agent" means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of loan proceeds.

"Settlement service provider" means any person providing settlement services, as that term is defined under the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).

"Thing of value" means any payment, advance, funds, loan, service, or other consideration.

Drafting note: In subdivision 7 of the definition of "disbursement of loan funds," the reference to the United States Central Credit Union is deleted because as of 2012 it no longer exists and has not been replaced with another entity. Technical changes.

~~§ 55-525.9~~ § 55.1-xxx. Applicability; effect of noncompliance.

A. This chapter applies only to transactions involving loans that (i) are made by lenders and (ii) will be secured by first deeds of trust or mortgages on real estate containing not more than four residential dwelling units.

B. Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

Drafting note: No change.

~~§ 55-525.10~~ § 55.1-xxx. Duty of lender.

The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent. In the case of a refinancing or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.), cause disbursement of loan funds to the settlement agent. The lender shall not be entitled to receive or charge any interest on the loan until disbursement of loan funds and loan closing has occurred.

Drafting note: No change.

~~§ 55-525.11~~ § 55.1-xxx. Duty of settlement agent.

The settlement agent shall cause recordation of the deed, the deed of trust, or the mortgage, or other documents required to be recorded and shall cause disbursement of settlement proceeds within two business days of settlement. A settlement agent may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument except (i) funds received that are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds that the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real

property, the settlement agent shall provide notification to the purchaser of the availability of owner's title insurance as required under § 38.2-4616.

Drafting note: Technical changes.

§ ~~55-525.12~~ 55.1-xxx. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions, and other payments; penalty.

A. No person selling real property, or performing services as a real estate agent, attorney, lay settlement agent, or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person.

B. Nothing in this section shall be construed to prohibit:

1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the provisions of the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);

2. The provision of educational materials or classes, if such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort;

3. The payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement service provider; or

4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance business. An employer's payment to its own employees for the referral of insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

C. No person shall be in violation of this section solely by reason of ownership in a settlement service provider, where such person receives returns on investments arising from the ownership interest, provided that such person discloses in writing to the consumer an ownership interest in those settlement services, including ~~their~~ such person's ownership percentage in the settlement service provider pursuant to the requirements of § ~~55-525.13~~ 55.1-xxx.

D. Any person who knowingly and willfully violates this section is guilty of a Class 3 misdemeanor. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

Drafting note: Technical changes.

§ ~~55-525.13~~ 55.1-xxx. Disclosure of affiliated business by settlement service providers.

Any person making a referral to an affiliated settlement service provider shall disclose the affiliation in accordance with the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.). Such disclosure shall be provided regardless of the amount of the person's actual ownership interest in the affiliated provider. However, if the person's ownership interest is one percent or less of the capital stock of a corporation or entity with a class of securities registered under the federal Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), the disclosure shall not be required. If the person's ownership interest is greater than one percent, then the disclosure shall include the percentage of ownership, or, if the person making the referral owns more than 50 percent of the affiliated business, the disclosure ~~must~~ shall state that the settlement service provider is a subsidiary of the person making the referral.

Drafting note: Technical changes.

§ ~~55-525.14~~ 55.1-xxx. Disclosure of charges for appraisal or valuation using automated or other valuation mechanism.

Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing not more than four residential dwelling units shall disclose on the settlement statement or closing disclosure, as those terms are defined in § ~~55-525.16~~ 55.1-xxx, any fee charged to the borrower for an appraisal, as that term is defined in § 54.1-2009, and any fee charged to the borrower for a valuation or opinion of value of the property prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

Drafting note: Technical change.

§ ~~55-525.15~~ 55.1-xxx. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to cause disbursement as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of § ~~55-525.10~~ 55.1-xxx plus reasonable attorney fees incurred in the collection ~~thereof~~ of such damages and interest.

Drafting note: Technical changes.

#

1 CHAPTER ~~27.3~~ XX [5].

2 REAL ESTATE SETTLEMENT AGENTS.

3 **Drafting note: Existing Chapter 27.3, Real Estate Settlement Agents, is retained as**
4 **proposed Chapter XX [5].**

5 § ~~55-525.16~~ 55.1-xxx. Definitions.

6 As used in this chapter, unless the context requires a different meaning:

7 "Association" means the National Association of Insurance Commissioners.

8 "Closing disclosure" means the combined mortgage loan disclosure statement of final
9 loan terms and closing costs prescribed under the Real Estate Settlement Procedures Act of 1974
10 (RESPA) (12 U.S.C. § 2601 et seq.) and Consumer Financial Protection Bureau Regulation X
11 (12 C.F.R. Part 1024) and Regulation Z (12 C.F.R. Part 1026).

12 "Commission" means the State Corporation Commission.

13 "Escrow" means written instruments, money, or other items deposited by a party with a
14 settlement agent for delivery to other persons upon the performance of specified conditions or
15 the happening of a certain event.

16 "Escrow, closing, or settlement services" means the administrative and clerical services
17 required to carry out the terms of contracts affecting real estate. These services include placing
18 orders for title insurance, receiving and issuing receipts for money received from the parties,
19 ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement
20 statements or closing disclosures, determining that all closing documents conform to the parties'
21 contract requirements, setting the closing appointment, following up with the parties to ensure
22 that the transaction progresses to closing, ascertaining that the lenders' instructions have been
23 satisfied, conducting a closing conference at which the documents are executed, receiving and
24 disbursing funds, completing form documents and instruments selected by and in accordance
25 with instructions of the parties to the transaction, handling or arranging for the recording of
26 documents, sending recorded documents to the lender, sending the recorded deed and the title

policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; (ii) is not a party to the real estate transaction; (iii) provides escrow, closing, or settlement services in connection with a transaction related to any real estate in the Commonwealth; and (iv) is listed as the settlement agent on the settlement statement or closing disclosure for such transaction.

"Licensing authority" ~~shall mean~~ means the (i) Commission acting pursuant to this chapter, Title 6.2, Title 12.1, or Title 38.2; (ii) the Virginia State Bar acting pursuant to this chapter or Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this chapter or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Party to the real estate transaction" means, with respect to that real estate transaction, a lender, seller, purchaser, or borrower; and, with respect to a corporate purchaser, any entity that is a subsidiary of or under common ownership with that corporate purchaser.

"Settlement agent" means a person, other than a party to the real estate transaction, who provides escrow, closing, or settlement services in connection with a transaction related to real estate in the Commonwealth and who is listed as the settlement agent on the settlement statement or closing disclosure for such transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of this chapter.

"Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.), as amended, and the regulations thereunder.

Drafting note: Technical changes.

§ ~~55-525.17~~ 55.1-xxx. Limitation on applicability of chapter.

Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from performing escrow, closing, or settlement services to facilitate the settlement of a transaction in which the licensee is involved without complying with the provisions of this chapter, so long as the licensee, the licensee's employees, or independent contractors are not named as the settlement agent on the settlement statement or closing disclosure and the licensee is otherwise not prohibited from performing such services by law or regulation.

Drafting note: No change.

§ ~~55-525.18~~ 55.1-xxx. Scope of chapter; lay real estate settlement agents.

A. Except as provided in subsection B, this chapter applies only to transactions involving the purchase of or lending on the security of real estate located in the Commonwealth containing not more than four residential dwelling units.

B. Notwithstanding any rule of court or other provision of this chapter to the contrary:

1. A lay real estate settlement agent may provide escrow, closing, and settlement services for any real property located within the Commonwealth, and receive compensation for such services, provided he is registered pursuant to and is in compliance with the provisions of this chapter with the exception of subsection A; and

2. A party to a real estate transaction involving the purchase of or lending on the security of real estate located in the Commonwealth containing more than four residential dwelling units shall have the same authority as a party to a real estate transaction as is provided pursuant to subsection B of § ~~55-525.19~~ 55.1-xxx.

Drafting note: Technical change.

§ ~~55-525.19~~ 55.1-xxx. Persons who may act as a settlement agent.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent, with respect to real estate settlements in the Commonwealth unless the person has not

79 been convicted of a felony, unless such person has had his civil rights restored by the Governor
80 or been granted a writ of actual innocence, and is either:

- 81 1. Licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1;
- 82 2. Licensed as a title insurance company under Title 38.2;
- 83 3. Licensed as a title insurance agent under Title 38.2 and is appointed by a title insurance
84 company licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title
85 38.2;
- 86 4. Licensed as a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;
- 87 5. A financial institution authorized to do business in the Commonwealth under any of
88 the provisions of Title 6.2 or under federal law; or
- 89 6. A subsidiary or affiliate of a financial institution described in subdivision 5.

90 Any person described in subdivisions 1 through 6, not acting in the capacity of a
91 settlement agent, shall not be subject to the provisions of this chapter.

92 B. Notwithstanding any rule of court to the contrary, a settlement agent operating in
93 compliance with the requirements of this chapter or a party to the real estate transaction may
94 provide escrow, closing, or settlement services and receive compensation for such services.

95 **Drafting note: Technical changes.**

96 § ~~55-525.20~~ 55.1-xxx. Duties of settlement agents.

97 A. A settlement agent shall exercise reasonable care and comply with all applicable
98 requirements of this chapter and its licensing authority regarding licensing, financial
99 responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee
100 dishonesty insurance policies, audits, escrow account analyses, and record retention.

101 B. A settlement agent who is not (i) a person described in subdivision A 5 of § ~~55-525.19~~
102 55.1-xxx or (ii) a title insurance company as defined in § 38.2-4601 shall maintain the following
103 to the satisfaction of the appropriate licensing authority:

- 104 1. An errors and omissions or malpractice insurance policy providing a minimum of
105 \$250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders, or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than \$200,000.

C. A settlement agent, other than an attorney or a title insurance company if such company's financial statements are audited annually by an independent certified public accountant, shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority no later than 60 days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company that it represents. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations adopted by the Commission or guidelines issued by the Bureau of Insurance of the Commission, as appropriate, at least once each consecutive 12-month period, and each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

Drafting note: Technical changes.

§ ~~55-525.21~~ 55.1-xxx. Persons prohibited from assisting or being employed by settlement agents.

A. A person who has been convicted of a felony involving fraud, deceit, or misrepresentation shall not assist a settlement agent in the performance of escrow, closing, or settlement services involving the receipt or disbursement of funds from real estate settlements in the Commonwealth.

B. A settlement agent shall not employ a person who has been convicted of a felony involving fraud, deceit, or misrepresentation in an administrative or clerical capacity that involves the receipt or disbursement of funds from real estate settlements in the Commonwealth.

Drafting note: No change.

§ ~~55-525.22~~ 55.1-xxx. Choice of settlement agent.

A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent to provide escrow, closing, or settlement services in connection with the transaction. The seller in such a transaction may not require the use of a particular settlement agent as a condition of the sale of the property.

Drafting note: No change.

§ ~~55-525.23~~ 55.1-xxx. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include, ~~in bold face, and~~ in at least 10-point boldface type, the following language:

"Choice of Settlement Agent: Chapter ~~27.3~~ XX (§ ~~55-525.16~~ 55.1-xxx et seq.) of Title 55.55.1 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price

is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

"Variation by agreement: The provisions of Chapter ~~27.3~~ XX (§ ~~55-525.16~~ 55.1-xxx et seq.) of Title ~~55~~ 55.1 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

"Escrow, closing, and settlement ~~service~~ services guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement, or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of Chapter ~~27.3~~ XX (§ ~~55-525.16~~ 55.1-xxx et seq.) of Title ~~55~~ 55.1 of the Code of Virginia."

Drafting note: Technical changes.

§ ~~55-525.24~~ 55.1-xxx. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution authorized to do business in the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person ~~or persons~~ entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

187 2. The funds shall be applied only in accordance with the terms of the individual
188 instructions or agreements under which the funds were accepted.

189 B. Funds held in an escrow account shall be disbursed only pursuant to a written
190 instruction or agreement specifying how and to whom such funds may be disbursed. Funds
191 payable to persons other than the settlement agent shall be disbursed in accordance with § ~~55-~~
192 ~~525.11~~ 55.1-xxx, except:

193 1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title
194 insurance agents. Such title insurance premiums payable to title insurers and agents may be (i)
195 held in the settlement agent's settlement escrow account, identified and itemized by file name or
196 file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the
197 settlement escrow account payable to the title insurer or agent but maintained within the
198 settlement file of the settlement agent; or (iii) transferred within two business days into a separate
199 title insurance premium escrow account, which account shall be identified as such and be
200 separate from the business or personal funds of the settlement agent. These transferred title
201 insurance premium funds shall be itemized and identified within the separate title insurance
202 premium escrow account. All title insurance premiums payable to title insurers by title insurance
203 agents serving as settlement agents shall be paid in the ordinary course of business as required
204 by subsection A of § 38.2-1813; and

205 2. Escrows held by the settlement agent pursuant to written instruction or agreement. A
206 settlement statement or closing disclosure that has been signed by the seller and the purchaser or
207 borrower shall be deemed sufficient to satisfy the requirement of this subsection.

208 C. A settlement agent may not retain any interest received on funds deposited in
209 connection with any escrow, settlement, or closing. An attorney settlement agent shall maintain
210 escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme
211 Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements or closing disclosures for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter, or supersede other sections of this chapter, or the laws of the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

Drafting note: In subdivision A 1, the plural "persons" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Technical changes.

~~§ 55-525.25~~ [§ 55.1-xxx](#). Falsifying settlement statements prohibited.

No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement or closing disclosure. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement or closing disclosure, shall not be deemed to be a violation of this section.

Drafting note: No change.

~~§ 55-525.26~~ [§ 55.1-xxx](#). Separate charge for reporting transactions limited.

No settlement agent shall charge any party to a real estate transaction, as a separate item on a settlement statement or closing disclosure, a sum exceeding \$10 for complying with any requirement imposed on the settlement agent by § 58.1-316 or 58.1-317.

Drafting note: No change.

~~§ 55-525.27~~ [§ 55.1-xxx](#). Record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement

239 handled for a minimum of five years after the settlement is completed. The appropriate licensing
240 authority may prescribe the specific record entries and documents to be kept.

241 **Drafting note: No change.**

242 § ~~55-525.28~~ [55.1-xxx](#). Regulations and orders.

243 Except as provided in § ~~55-525.30~~ [55.1-xxx](#), the appropriate licensing authority may
244 issue summonses, subpoenas, rules, regulations, and orders, including educational requirements,
245 consistent with and necessary to carry out the provisions of this chapter.

246 **Drafting note: Technical change.**

247 § ~~55-525.29~~ [55.1-xxx](#). Accounting by title insurance companies.

248 A title insurance company domiciled in the Commonwealth or acting in the capacity of
249 a settlement agent pursuant to this chapter shall account for funds held and income derived from
250 escrow, closing, or settlement services in accordance with the applicable instructions of, and the
251 accounting practices and procedures manuals adopted by, the Association when filing the annual
252 statements and reports required under Chapter 13 (§ 38.2-1300 et seq.) of Title 38.2.

253 **Drafting note: No change.**

254 § ~~55-525.30~~ [55.1-xxx](#). Settlement agent registration requirements and compliance with
255 unauthorized practice of law guidelines; [civil penalty](#).

256 A. Every settlement agent subject to the provisions of this chapter shall be registered as
257 such with the appropriate licensing authority. In conjunction therewith, settlement agents shall
258 furnish (i) their names, business addresses, and telephone numbers and (ii) such other
259 information as may be required. Each such registration (a) shall be accompanied by a
260 nonrefundable fee not to exceed \$100; and (b) shall be renewed at least biennially thereafter.
261 When the registration of a settlement agent is renewed, the appropriate [licensing](#) authority shall
262 notify the registrant of the provisions of § 17.1-223.

263 B. The Virginia State Bar, in consultation with the Commission and the Virginia Real
264 Estate Board, shall adopt regulations establishing guidelines for settlement agents designed to
265 assist them in avoiding and preventing the unauthorized practice of law in conjunction with

providing escrow, closing, and settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing, or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate ~~the same~~ such complaints to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction, and (ii) refer all other matters or allegations to the appropriate licensing authority. The willful failure of any settlement agent to comply with the guidelines shall be considered a violation of this chapter, and such agent shall be subject to a civil penalty ~~of up to~~ not exceeding \$5,000 for each such failure as the Virginia State Bar may determine.

Drafting note: In subsection A, the word "licensing" is inserted prior to "authority" to use the defined term, "licensing authority" found in proposed § 55.1-xxx [§ 55-525.16]. In subsection C, the word "civil" is inserted prior to "penalty" for consistency throughout the Code and the phrase "of up to" is replaced with "not exceeding" for consistency with the civil penalty provisions found in proposed § 55.1-xxx [§ 55-525.31]. Technical changes.

~~§ 55-525.31~~ § 55.1-xxx. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent licensed by it or any of its other licensees has violated this chapter, or any regulation or order adopted thereunder, after notice and opportunity to be heard, the appropriate licensing authority may do one or more of the following:

1. Impose a civil penalty not exceeding \$5,000 for each violation;
2. Revoke or suspend the applicable licenses;

292 3. Issue a restraining order requiring such person to cease and desist from engaging in
293 such act or practice; or

294 4. Require restitution~~to~~ be made by the person violating this chapter in the amount of
295 any actual, direct financial loss.

296 B. The appropriate licensing authority may terminate administratively the registration of
297 any settlement agent if the settlement agent (i) no longer holds a license, (ii) fails to renew its
298 registration, or (iii) fails to comply with the financial responsibility requirements set forth in §
299 ~~55-525.20~~ 55.1-xxx.

300 C. In addition to the authority given in subsection A, and pursuant to § 12.1-13, the
301 Commission, after determining that any person who does not hold a license from the appropriate
302 licensing authority has violated this chapter or any regulation or order adopted thereunder, may
303 do one or more of the following:

304 1. Impose a civil penalty not exceeding \$5,000 for each violation;

305 2. Issue a temporary or permanent injunction, or restraining order requiring such person
306 to cease and desist from engaging in such act or practice; or

307 3. Require restitution to be made by the person violating this chapter in the amount of
308 any actual, direct financial loss.

309 D. Nothing in this section shall affect the right of the appropriate licensing authority to
310 impose any other penalties provided by law or regulation. Notwithstanding any provision
311 contained in this section to the contrary, as to that portion of any complaint by a party to the real
312 estate transaction arising under this chapter or any regulation or order adopted thereunder relating
313 to the unauthorized practice of law, the Virginia State Bar, after complying with applicable law
314 and regulation relating to unauthorized practice of law complaints and concluding the activity
315 was not authorized by statute or regulation, may refer that portion of such complaint to the
316 Attorney General or an ~~Attorney~~ attorney for the Commonwealth. The Attorney General or
317 ~~Attorney~~ attorney for the Commonwealth may, in addition to any other powers conferred on him

by law, seek the issuance of a temporary or permanent injunction or restraining order against any person so violating this chapter or any regulation or order adopted thereunder.

E. A final order of the licensing authority imposing a [civil](#) penalty or ordering restitution may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order by the licensing authority.

Drafting note: Throughout the section, the word "civil" is inserted prior to "penalty" for consistency throughout the Code. Technical changes.

§ ~~55-525.32~~ [55.1-xxx](#). Confidentiality of information obtained by the Commission.

A. Any documents, materials, or other information in the control or possession of the Commission that are furnished by a title insurance company or title insurance agent or an employee thereof acting on behalf of the title insurance company or title insurance agent, or obtained by the Commission in an investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

B. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A.

C. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

1. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to subsection A, with other state, federal, and international regulatory agencies~~;~~ with the Association~~;~~ [and](#) its affiliates ~~or~~ [and](#) subsidiaries~~;~~ and with local, state, federal, and international law-enforcement authorities, provided that the

345 recipient agrees to maintain the confidentiality and privileged status of the document, material,
346 or other information; and

347 2. May receive documents, materials, or information, including otherwise confidential
348 and privileged documents, materials, or information, from the Association, or its affiliates or
349 subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic
350 jurisdictions, and shall maintain as confidential or privileged any document, material, or
351 information received with notice or the understanding that it is confidential or privileged under
352 the laws of the jurisdiction that is the source of the document, material, or information.

353 D. No waiver of any applicable privilege or claim of confidentiality in the documents,
354 materials, or information shall occur as a result of disclosure to the Commission under this
355 section or as a result of sharing as authorized in subsection C.

356 E. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated
357 actions, including for-cause terminations that are open to public inspection pursuant to Chapter
358 4 (§ 12.1-18 et seq.) of Title 12.1, to a database or other clearinghouse service maintained by the
359 Association, or its affiliates, or subsidiaries.

360 **Drafting note: Technical changes.**

361 #

CHAPTER ~~28~~ XX [6].

COMMERCIAL REAL ESTATE BROKER'S LIEN ACT.

Drafting note: Existing Chapter 28, Commercial Real Estate Broker's Lien Act, is retained as proposed Chapter XX [6].

§ ~~55-526~~ 55.1-xxx. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under the provisions of Article 4 (§ 58.1-3230 et seq.) of Chapter 32 of Title 58.1. Commercial real estate ~~shall~~ does not include ~~single-family~~ single-family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a ~~unit-by-unit~~ unit-by-unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Principal broker" ~~shall have the same meaning as provided~~ means the same as that term is defined in ~~the~~ regulations promulgated by the Real Estate Board.

Drafting note: Technical changes.

§ ~~55-527~~ 55.1-xxx. Broker's lien.

A. Any principal broker who, either himself or through the principal broker's or associated broker's employees or independent contractors, has provided licensed services that result in the procuring of a tenant of commercial real estate upon the terms provided for in a written agreement signed by the owner ~~thereof of such commercial real estate~~, or ~~which that~~ are otherwise acceptable to the owner as evidenced by a written agreement signed by the owner, shall have a lien, in the amount of the compensation agreed upon by and between the principal broker and the owner, upon rent paid by the tenant of the commercial real estate, or by the successors or assigns of such tenant. The amount of the lien shall not exceed the lesser of (i) the amount of the rent to be paid during the term of the lease or (ii) the amount of the rent to be paid during the first ~~twenty~~ 20 years ~~thereof of such lease~~.

28 B. The lien provided by this chapter shall not attach or be perfected until a memorandum
29 of such lien signed under oath by the broker and meeting the requirements of this subsection has
30 been recorded in the clerk's office of the circuit court of the county or city where the commercial
31 real estate is located, from which date the lien shall have priority over all liens recorded
32 subsequent thereto. The memorandum of lien shall state the name of the claimant, the name of
33 the owner of the commercial real estate, a description of the commercial real estate, the name
34 and address of the person against whom the broker's claim for compensation is made, the name
35 and address of the tenant paying the rent against which the lien is being claimed, the amount for
36 which the lien is being claimed, and the real estate license number of the principal broker
37 claiming the lien. The lien provided by this chapter and the right to rents secured by such lien
38 shall be subordinate to all liens, deeds of trust, mortgages, or assignments of the leases, rents, or
39 profits recorded prior to the time the memorandum of lien is recorded and shall not affect a
40 purchaser for valuable consideration without constructive or actual notice of the recorded lien.

41 However, a purchaser acquiring fee simple title to commercial real estate and having
42 actual knowledge of terms of a lease agreement ~~which that~~ provide for the payment of brokerage
43 fees due and payable to a real estate broker shall be liable for payment ~~thereof of such brokerage~~
44 fees, unless otherwise agreed to in writing by the parties at or before the time of sale regardless
45 of whether the real estate broker has perfected the lien in accordance with this chapter. The term
46 "purchaser-shall" does not include a trustee under or a beneficiary of a deed of trust, a mortgagee
47 under a mortgage, a secured party or any other assignee under an assignment as security, ~~nor or~~
48 successors, assigns, transferees, or purchasers from such persons or entities.

49 C. Nothing in this section shall be construed to prevent a subsequent purchaser of
50 commercial real estate subject to a lien under this chapter from establishing an escrow fund at
51 settlement sufficient to satisfy the lien ~~which that~~ may otherwise affect transferability of title.

52 **Drafting note: Technical changes.**

2018 Session of the General Assembly
Legislation Recommended by the Virginia Code Commission

Subject	Description	Status	Patron
Title 23.1 cleanup bill - higher education; governing boards; appointment	Clarifies that nonlegislative citizen members of the State Council of Higher Education for Virginia and the Eastern Virginia Medical School Board of Visitors shall continue to hold office until their successors have been appointed and qualified. Under current law, such members continue to hold office until their successors have been appointed and confirmed.	Approved for introduction 10/16/2017	
Title 24.2 (Elections) obsolete laws review	Repeals and revises several obsolete elections-related statutes.	Pending final approval 11/20/2017	
Venue in criminal cases; concurrent jurisdiction; obsolete provisions	Provides that the courts of a locality have concurrent jurisdiction with the courts of any other adjoining locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department thereof that are located in the adjoining locality and repeals an existing statute that provides such concurrent jurisdiction for certain enumerated localities. The bill also deletes references to corporation courts, which no longer exist, and repeals several obsolete provisions involving courts not of record that ceased to be applicable in 1980.	Approved for introduction 8/14/2017	
Employment; notification of withholding order	Repeals the requirement, enacted in 1993, that an employer request that each new employee disclose whether the employee has an income withholding order. This requirement has been superseded in practice by requirements that an employer submit information about new hires to the Virginia New Hire Reporting Center within 20 days of the employee's hire date. Under the current system, relevant data in the State Directory of New Hires and the National Directory of New Hires is used by the Division of Child Support Enforcement to issue orders enforcing child support obligations.	Approved for introduction 8/14/2017	
Same-sex marriages; civil unions	Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions have been rendered obsolete by the United States Supreme Court decision in <u>Obergefell v. Hodges</u> , 576 U.S. ____ (June 26, 2015).	Pending final approval 11/20/2017	

DRAFT

2018 Code of Virginia Replacement Volume Candidates

Vol	Title	Subject	Edition	BV pp*	17 CS	%	Lexis*	Replacement Candidates
1	1-2.2	Gen. Prov., Adm. of Govt.	2017	1187	*	#####	1187	
1A	3.2	Agriculture	2016	550	33	6.0%	559	
1B	4.1-6.2	Alcoholic Bev. -- Financial Institutions	2016	747	106	14.2%	763	
2	8.01	Civil Remedies & Procedure	2015	1386	115	8.3%	1426	
2A	8.1-8.11	UCC	2015	1029	16	1.6%	1031	
2B	9-10.1	Commissions -- Conservation	2012	680	203	29.9%	686	
3	11-14.1	Contracts to Corporations	2016	677	27	4.0%	681	Split 3A and add part of 15.2 in 3
3A	15.2	Counties, Cities, and Towns	2012	1334	344	25.8%	1400	Remainder of 3A stays.
3B	16.1-17.1	Courts	2015	690	138	20.0%	722	
4	18.2	Crimes	2014	1197	214	17.9%	1287	
4A	19.2	Criminal Procedure	2015	796	137	17.2%	837	
4B	20, 21	Domestic Relations, Drainage	2016	722	47	6.5%	733	
5	22.1, 23	Education -- Eminent Domain	2016	780	150	19.2%	806	
5A	24.2-28.2	Elections - Fiduciaries	2016	737	54	7.3%	749	
5B	29.1-32.1	Game to Health	2015	886	297	33.5%	904	size of supp
6	33.2-37.2	Highways -- Institutions for the Mentally Ill	2014	866	190	21.9%	976	~
6A	38.2	Insurance	2014	1231	176	14.3%	1234	
6B	40.1-45.1	Labor & Employment -- Mines & Mining	2013	655	112	17.1%	672	
7	46.2	Motor Vehicles	2017	1177	*	#####	1177	
7A	47.1 - 53.1	Notaries to Prisons	2013	758	177	23.4%	787	
7B	54.1	Professions	2013	698	361	51.7%	818	Stand alone
8	55-57	Property -- Religious & Charitable Matters	2012	1203	359	29.8%	1319	Stand Alone - Recodification postponed to 2019
8A	58.1	Taxation	2017	1231	*	#####	1231	
9	59.1-62.1	Trade -- Waters	2014	1172	229	19.5%	1273	
9A	63.2-64.2	Welfare -- Wills Trusts & Estates	2017	911	*	#####	911	
9B	65.2-67	Workers' Compensation -- Energy	2017	784	*	#####	784	
10		Tables	2015	691	37	5.4%		
11		Rules	2017	n/a	n/a	n/a		
12		Index	2017	n/a	n/a	n/a		
13		Index	2017	n/a	n/a	n/a		
Const.		Consts.	2008	296	82	27.7%		
LEO1		LEO/UPL	2002	631	58	9.2%		
LEO2		LEO/UPL	2013	955	58	6.1%		

VIRGINIA CODE ANNOTATED

	2018 PRICES				2017 PRICES			
	STATE (6 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE	STATE (4 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE
SUPPLEMENT	\$190.90	\$246.75	\$200.55	\$ 260.15	\$219.45	\$292.50	\$191.00	\$247.75
INDEX	\$96.60	\$102.25	\$ 96.60	\$ 102.25	\$96.60	\$102.25	\$ 92.00	\$97.25
VOLUMES (EACH)	\$52.00	\$64.70	\$ 52.00	\$ 64.70	\$52.00	\$64.70	\$ 49.50	\$61.60
VOLUME 11	\$39.50	\$52.00	\$ 39.50	\$ 52.00	\$39.50	\$52.00	\$ 37.50	\$49.50
VOLUME 11 SUPP	\$13.25	\$13.25	\$ 13.25	\$ 13.25	\$13.25	\$13.25	\$ 12.50	\$12.50
ADVANCE CODE SERVICE		\$78.50		\$ 78.50		\$78.50		\$74.75
TOTAL	\$652.25	\$880.95	\$609.90	\$829.65	\$576.80	\$797.30	\$580.50	\$789.75

(STATE GOVERNMENT PRICING FOR PURCHASES OUTSIDE OF THE CODE COMMISSION PURCHASE)

PPI increase is 8%. The price increase above reflects a 5% increase.