CHAPTER ~~16~~ 27.

RELEASE OF POWERS OF APPOINTMENT.

Drafting note: Existing Chapter 16 of Title 55 has been relocated to proposed Subtitle V due to its applicability to both probate and nonprobate transfers.

§ ~~55-278~~ 64.2-2700. Definitions.

~~When~~ As used in this chapter ~~unless the context otherwise requires~~:

~~(1) "Power" includes any power to appoint or designate to whom property shall go, any power to invade property, any power to alter, amend or revoke any instrument under which an estate or trust is held or created or to terminate any right or interest thereunder, and any power remaining when one or more partial releases have heretofore or hereafter been made with respect to a power, whether heretofore or hereafter created or reserved, whether vested, contingent or conditional, and whether classified in law or known as a power in gross, a power appendant, a power appurtenant, a collateral power, a general, special or limited power, an exclusive or nonexclusive power, or otherwise, and irrespective of when, in what manner, or in whose favor, it may be exercised.~~

~~(2)~~ "Donee" means any person, whether a resident or nonresident of ~~this~~ the Commonwealth, who ~~, either alone or with another,~~ has the right to exercise a power either alone or with another.

~~(3) "Objects" when used in connection with a power~~ "Object" means the ~~persons~~ person in whose favor the power may be exercised.

"Power" includes (i) any power to appoint or designate to whom property shall go; (ii) any power to invade property; (iii) any power to alter, amend, or revoke any instrument under which an estate or trust is held or created or to terminate any right or interest thereunder; and (iv) any power remaining when one or more partial releases have been made with respect to a power, regardless of (a) whether the power is vested, contingent, or conditional; (b) whether the power is classified in law or known as a power in gross, a power appendant, a power appurtenant, a collateral power, a general, special or limited power, an exclusive or nonexclusive power, or otherwise; and (c) when, in what manner, or in whose favor, it may be exercised.

~~(4)~~ "Property" ~~when used in connection with a power~~ means any ~~and all property, whether~~ real or personal ~~,~~ property and any ~~and all~~ interest in ~~property, and any and all~~ or income from property ~~, which~~ that is subject to the power ~~, and includes any part of the property, any part of the interest in property, and any part of the income from property~~.

~~(5)~~ "Release" means renunciation, relinquishment, surrender, refusal to accept, extinguishment, ~~and~~ or any other form of release.

Drafting note: Technical changes to modernize language.

§ ~~55-279~~ 64.2-2701. Right to release.

Unless the instrument creating the power specifically provides to the contrary, the donee of a power ~~, whether now existing or hereafter created,~~ may:

~~(1) At any time completely~~ 1. Completely release ~~his~~ the power; and

~~(2) At any time or times release his~~2. Release the power ~~(a)~~ as to any property ~~which~~ that is subject ~~thereto~~ to the power; ~~(b)~~ as to any one or more of the objects ~~thereof~~ of the power; or ~~(c)~~ so as to limit in any other respect the extent to which ~~it~~ the power may be exercised.

Drafting note: Technical changes.

§ ~~55-280~~ 64.2-2702. Manner of effecting release.

A release of a power, whether partial or complete, shall be valid and effective, with or without a consideration, when the donee executes an instrument evidencing ~~an~~ his intent to make the release~~;~~ that is signed and acknowledged in the manner prescribed for the execution of deeds, and delivers the instrument or causes it to be delivered~~, either~~ as follows:

~~(1)~~ 1. To an adult person who may take any of the property ~~which~~ that is subject to the power in the event of its nonexercise or to one in whose favor it may be exercised after such partial release;

~~(2)~~ 2. To any trustee or any cotrustee of the property ~~which~~ that is subject to the power; or

~~(3)~~ 3. By ~~filing the same for recordation~~ recording the instrument in the clerk's office ~~which~~ that is designated for the recordation of deeds in the county or city in which any of the property is located ~~or~~, in which either the donee or the trustee in control of the property resides ~~or~~, in which the trustee has its principal office, or in which the instrument creating the power is probated or recorded.

Drafting note: Technical changes.

~~§ 55-281. Release heretofore made.~~

~~A release of a power executed prior to February 26, 1944, shall have the same effect as if this chapter had been in effect at the time the release was executed and delivered.~~

Drafting note: Deleted as unnecessary as section merely treats an old release as a current release.

~~§ 55-282. Right of release not exclusive.~~

~~The rights and means provided for in this chapter for the release of a power are not exclusive, but are in addition to all other rights and means of a donee to release a power in whole or in part.~~

Drafting note: The provisions of existing § 55-282 have been relocated to subsection A of proposed § 64.2-2704.

§ ~~55-283~~ 64.2-2703. ~~Delivery~~ Notice of release ~~or copy to person in possession or control of property~~; recordation; fee.

~~No~~A. A fiduciary or other person, association, or corporation having ~~the~~ possession or control of any property subject to a power of appointment, ~~(~~other than the donee ~~or holder~~ of such power~~)~~, shall not be deemed to have notice of a release of the power ~~unless and~~ until the

original or a copy of the release is delivered to such fiduciary or other person, association, or corporation.

B. A purchaser or mortgagee of any real property subject to a power of appointment, without actual notice of the release, shall not be deemed to have notice of a release of the power until (i) the original or a copy of the release is recorded in the circuit court clerk's office in the county or city in which the real property is located, (ii) the deed, will, or other instrument creating the power, or a certified copy thereof, is recorded in the same clerk's office, and (iii) an appropriate notation is entered on the margin of the will or deed book where the instrument creating the power is recorded referring to the deed book and page where the release is recorded.

C. No release shall be invalid or ineffective for failing to comply with subsection A or B.

D. The clerk shall record a release of a power of appointment in the deed book and index the release in the daily and general indexes with the name of the donee being entered on the grantor index. For each such recordation, the clerk shall be paid a fee in the amount applicable to the recordation of deeds as set forth in subdivision A 2 of § 17.1-275 and an additional fee of $5.

Drafting note: Existing §§ 55-284, 55-285, and 55-286 have been relocated, respectively, to subsections B, D, and C of proposed § 64.2-2703 with technical changes to modernize language.

~~§ 55-284. Recordation, etc., as notice to purchaser or mortgagee of property.~~

~~No purchaser or mortgagee of real property subject to a power of appointment who is without actual notice shall be deemed to have notice of a release of the power unless and until the original or duplicate original is filed for record in the clerk's office which is designated for the recordation of deeds in the county or city in which the particular real property so purchased or mortgaged is located, and unless and until the deed, will or other instrument creating the power, or a duly attested copy thereof, is recorded in the same office, and unless and until an appropriate notation is entered on the margin of the will or deed book where the instrument creating the power is recorded referring to the deed book and page where the release is recorded.~~

Drafting note: The provisions of existing § 55-284 have been relocated to subsection B of proposed § 64.2-2703.

~~§ 55-285. Recordation in deed book; indexing; fee.~~

~~Clerks of courts shall record releases of powers of appointment in the books provided for the recordation of deeds and index the same in the current and general indexes, the name of the donee being entered on the grantor index, and shall charge therefor at the rate applicable to deeds. A flat tax of five dollars is hereby imposed on the recordation of each such release.~~

Drafting note: The provisions of existing § 55-285 have been relocated to subsection D of proposed § 64.2-2703.

~~§ 55-286. Release not invalid for failure to comply with either § 55-283 or § 55-284.~~

~~No release shall be invalid or ineffective because of failure to comply with either § 55-283 or § 55-284.~~

Drafting note: The provisions of existing § 55-286 have been relocated to subsection C of proposed § 64.2-2803.

§ ~~55-286.1~~ 64.2-2704. ~~Release as~~ Right of release not exclusive; interaction with disclaimer rules.

A. The provisions of this chapter for the release of a power are not exclusive, but are in addition to any other right or authority of a donee to release a power in whole or in part.

B. A release made in accordance with Chapter ~~8.1~~ 26 (§ ~~64.1-196.1~~ 64.2-2600 et seq.) ~~of Title 64.1 shall be~~ is effective as a disclaimer, and nothing in this chapter shall operate as a limitation on the provisions of Chapter 26.

Drafting note: Existing §§ 55-282 and 55-286.2 have been relocated, respectively, to subsections A and B of proposed § 64.2-2704 with technical changes.

~~§ 55-286.2. Interaction with disclaimer rules.~~

~~Nothing in this chapter shall operate as a limitation on the provisions of Chapter 8.1 (§§ 64.1-196.1 et seq.) of Title 64.1.~~

Drafting note: The provisions of existing § 55-286.2 have been relocated to subsection B of proposed § 64.2-2704.