VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 718

An Act to amend and reenact §§ 55-20.1 and 55-21 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-20.2, relating to clarifying joint tenancy and abolishing the presumption of convenience.

[H 1731]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:
1. That §§ 55-20.1 and 55-21 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-20.2 as follows:

§ 55-20.1. 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 ~~or as tenants in common or, if husband and wife, as tenants by the entireties. Personal property may be owned as tenants by the entireties whether or not the personal property represents the proceeds of the sale of real property. The principal family residence of a husband and wife that is held by them as tenants by the entireties and conveyed to their joint revocable or irrevocable trust, or in equal shares to their separate revocable or irrevocable trusts, 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, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their principal family residence~~. *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. 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 §§ 6.1-125.1 through 6.1-125.16, or to any other matter specifically governed by another provision of this code.*

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

A. Any husband and wife may own real or personal property as tenants by the entireties. Personal property may be owned as tenants by the entireties 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 as "tenants by the entireties" or "tenants by the entirety."

B. The principal family residence of a husband and wife that is held by them as tenants by the entireties and conveyed to their joint revocable or irrevocable trust, or in equal shares to their separate revocable or irrevocable trusts, 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, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their principal family residence.

§ 55-21. Exceptions to § 55-20.

Section 55-20 shall not apply to any estate which joint tenants have as ~~executors or trustees~~ *fiduciaries*, nor to ~~an estate~~ ~~conveyed or~~ ~~devised~~ *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. Neither shall it 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. ~~An intent that the part of the one dying should belong to the other shall be manifest from a designation of a husband and his wife as "tenants by the entireties" or "tenants by the entirety."~~