

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 254

An Act to amend and reenact § 64.1-105 of the Code of Virginia, relating to wills and decedents' estates; presumption of death.

[H 1978]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-105 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-105. Presumption of death from absence or disappearance; in cause wherein death comes in question.

A. 1. Any person who has resided in this Commonwealth who (i) leaves, does not return to the Commonwealth for seven years successively and is not heard from; (ii) disappears for seven years successively and is not heard from; or (iii) disappears in a foreign country, whose body has not been found and who is not known to be alive, upon issuance of a report of presumptive death by the Department of State of the United States following an investigation by a competent local authority, shall be presumed to be dead. Any person not residing in this Commonwealth, but owning real or personal property herein, who disappears for seven years successively from the place of his residence outside of this Commonwealth and is not heard from, shall be presumed to be dead.

2. The presumption created by this ~~section~~ subsection shall arise in any cause wherein the person's death is in question, unless proof is offered that he was alive within the time specified or, in the case of a presumed death in a foreign country, at any time before or after the report of presumptive death was issued.

B. *The fact that any person was exposed to a specific peril of death may be a sufficient basis for determining at any time after the exposure that the person is presumed to have died less than seven years after the person was last heard from.*

C. Before any final order or decree is entered in ~~the~~ a cause under subsection A or B in favor of the alleged heirs, devisees ~~or~~, legatees, *beneficiaries, or other successors in interest* of the presumed decedent, or persons claiming by, through or under them, or any of them, proceedings shall be held in conformity with §§ 64.1-107 through 64.1-112.

D. The person presumed to be dead under subsection A or B, his heirs at law, devisees, next of kin ~~and~~, legatees, *beneficiaries, or other successors in interest* may be made parties defendant to proceedings in respect to real or personal property in which the person presumed dead may have an undivided interest, by order of publication or other process as provided by law. The proceedings, whether in the nature of partition, eminent domain or otherwise, shall not be stayed in respect to the division, sale or other disposition of the entire property. The ~~sections above mentioned~~ provisions of subsection C shall be applicable only to the portion of the property set apart or to the share of the proceeds to which such person would be entitled.