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HOUSE BILL NO. 410

Offered January 10, 2018

Prefiled January 5, 2018

A BILL to amend and reenact §§ 55-20, 55-20.2, 55-35, 55-36, 55-38, 55-39, 55-41, 55-42.1, 55-43, 55-46, 55-106.1, and 55-131 of the Code of Virginia, relating to property rights of married women; gender-neutral terms.

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-20, 55-20.2, 55-35, 55-36, 55-38, 55-39, 55-41, 55-42.1, 55-43, 55-46, 55-106.1, and 55-131 of the Code of Virginia are amended and reenacted as follows:

§ 55-20. Survivorship between joint tenants abolished.

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 persons married to each other, 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.

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

A. Any husband and wife persons married to each other may own real or personal property as tenants by the entireties for as long as they are married. 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 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 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 persons married to each other that is held by them as tenants by the entireties 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 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.

§ 55-35. How married persons may acquire and dispose of property.

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

§ 55-36. Contracts of, and suits by and against, married persons.

A married woman person may contract and be contracted with and sue and be sued in the same manner and with the same consequences as if she he were unmarried, whether 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 the husband spouse may be entitled to the benefit of her his

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59 services about domestic affairs and consortium, and any sum recovered therein shall be chargeable with
 60 expenses arising out of the injury, including hospital, medical and funeral expenses, and any person,
 61 including the ~~husband~~ spouse, partially or completely discharging such debts shall be reimbursed out of
 62 the sum recovered in the action, whensoever paid, to the extent to which such payment was justified by
 63 services rendered or expenses incurred by the obligee, provided, however, that written notice of such
 64 claim for reimbursement, and the amount and items thereof, shall have been served on such married
 65 ~~woman~~ person and on the defendant prior to any settlement of the sum recovered by ~~her~~ him; and no
 66 action for such injury, expenses or loss of services or consortium shall be maintained by ~~the husband~~ his
 67 spouse.

68 **§ 55-38. Spouse's right of entry into land not barred by certain judgments; when a spouse may**
 69 **defend his right in lands that are his inheritance.**

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

76 **§ 55-39. Rights of spouse, etc., not affected by other spouse's acts only.**

77 No conveyance or other act suffered or done by ~~the husband~~ one spouse only of any land ~~which~~ that
 78 is the inheritance of ~~his wife~~ the other spouse shall be or make any discontinuance thereof, or be
 79 prejudicial to the ~~wife~~ other spouse or ~~her~~ the other spouse's heirs, or to any having right or title to the
 80 same by ~~her~~ the other spouse's death, but they may respectively enter into such land, according to their
 81 right and title therein, as if no such act had been done.

82 **§ 55-41. Conveyance from married persons; effect on right of either spouse.**

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

95 **§ 55-42.1. How infant spouse may release interests in spouse's property.**

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

101 **§ 55-43. Appointment of attorney in fact by married person; effect of writing executed by such**
 102 **attorney.**

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

110 **§ 55-46. How estate of a married person to pass at death.**

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

114 **§ 55-106.1. Recording and indexing of certain documents showing changes of names.**

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

120 **§ 55-131. Acknowledgments taken by officer who was spouse of grantee.**

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

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