

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 475

An Act to amend and reenact § 55-415 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 4 of Title 64.1 sections numbered 64.1-104.1 through 64.1-104.9, and to repeal §§ 64.1-97 through 64.1-104 of the Code of Virginia, relating to the Uniform Simultaneous Death Act.

[H 811]

Approved April 8, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 55-415 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 64.1 sections numbered 64.1-104.1 through 64.1-104.9 as follows:

§ 55-415. Uniform Simultaneous Death Act not applicable.

The Uniform Simultaneous Death Act (§ ~~§ 64.1-97 through 64.1-104~~ 64.1-104.1 *et seq.*) shall not apply to cases governed by this chapter.

§ 64.1-104.1. *Definitions.*

As used in this article:

"Co-owners with right of survivorship" includes parties to a joint account, joint tenants, tenants by the entireties, and other co-owners of property held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

"Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or a donative, appointive, or nominative instrument of any other type.

"Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

§ 64.1-104.2. *Requirement of survival by 120 hours for statutory rights.*

Except as provided in § 64.1-104.6, if the (i) title to property, (ii) devolution of property, or (iii) right to elect an interest in property, an augmented estate share or exempt property, homestead or family allowance depends upon an individual surviving another, an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other. However, this section does not apply if its application would result in a taking of an intestate estate by the Commonwealth.

§ 64.1-104.3. *Requirement of survival by 120 hours under donative dispositions in governing instruments.*

Except as provided in § 64.1-104.6 for purposes of a donative provision of a governing instrument, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

§ 64.1-104.4. *Co-owners with right of survivorship; requirement of survival by 120 hours.*

Except as provided in § 64.1-104.6, if (i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours and (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

§ 64.1-104.5. *Evidence of death or status.*

In addition to otherwise applicable rules of evidence, the following rules relating to a determination of death and status shall apply:

1. Death occurs when an individual is determined to be dead in accordance with the provisions of § 54.1-2972 or Chapter 5 (§ 64.1-105 *et seq.*) of this title.

2. A certified or authenticated copy of a death certificate purporting to be issued by a governmental official or agency, domestic or foreign, of the place where the death purportedly occurred is *prima facie* evidence of the fact, place, date, and time of death and the identity of the decedent.

3. A certified or authenticated copy of any record or report purporting to be issued by a governmental official or agency, domestic or foreign, that an individual is missing, detained, dead, or alive is *prima facie* evidence of the status of the individual and of the dates, times, identities, circumstances, and places disclosed by the record or report.

4. In the absence of *prima facie* evidence of death under subdivision 2 or 3, the facts of death may be established by clear and convincing evidence, including circumstantial evidence.

5. In the absence of evidence disputing the time of death stated on a document described in subdivision 2 or 3, such a document that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

§ 64.1-104.6. Exceptions.

Survival by 120 hours is not required if:

1. The governing instrument contains language dealing explicitly with (i) simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case, (ii) deaths under circumstances where the order of death cannot be established by proof, or (iii) the marital deduction, or contains a provision to or for the benefit of the decedent's spouse where it is the decedent's intent, as manifested from the governing instrument or external evidence, that the decedent's estate receive the benefit of the federal estate tax marital deduction;

2. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event, including the death of another individual, for a specified period; but survival of the event, another individual or the specified period must be established by clear and convincing evidence;

3. The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under the Rule Against Perpetuities; but survival must be established by clear and convincing evidence; or

4. The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.

§ 64.1-104.7. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

A. Protection of payors and other third parties. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this article, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this article. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this article.

Written notice of a claimed lack of entitlement shall be mailed to the main office or home of the payor or other third party, or to the registered agent of either, by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as process in a civil action. Upon receipt of the written notice of a claimed lack of entitlement, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates as provided in § 64.1-75 or § 64.1-118. The court shall hold the funds or item of property and, upon its determination under this article, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

B. Protection of bona fide purchasers; personal liability of recipient. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this article to return the payment, item of property, or benefit, nor liable under this article for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this article, is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this article.

If this article or any part of this article is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this article, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled, is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this article or part of this article not preempted.

§ 64.1-104.8. Uniformity of application and construction; short title.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it. This article may be cited as the Uniform Simultaneous Death Act (1991).

§ 64.1-104.9. Effective date.

An act done before July 1, 1994, in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 1, 1994, the provisions remain in force with respect to that right.

Any rule of construction or presumption provided in this Act applies to instruments executed and multiple-party accounts opened before July 1, 1994, unless there is a clear indication of a contrary intent.

2. That §§ 64.1-97 through 64.1-104 of the Code of Virginia are repealed.