

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 381

*An Act to amend and reenact § 64.1-62.3 of the Code of Virginia, relating to sale under a durable power of attorney; nonademption in certain cases.*

[H 1923]

Approved March 18, 1995

**Be it enacted by the General Assembly of Virginia:**

**1. That § 64.1-62.3 of the Code of Virginia is amended and reenacted as follows:**

§ 64.1-62.3. How certain legacies and devises to be construed; nonademption in certain cases.

Unless a contrary intention appears in the will:

1. A bequest of specific securities, whether or not expressed in number of shares, shall include as much of the bequeathed securities as is part of the estate at time of the testator's death, any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by the exercise of purchase options, and any securities of another entity acquired with respect to the specific securities mentioned in the bequest as a result of a merger, consolidation, reorganization or other similar action initiated by the entity;

2. A bequest or devise of specific property shall include the amount of any condemnation award for the taking of the property which remains unpaid at death and any proceeds unpaid at death on fire and casualty insurance on the property; and

3. A bequest or devise of specific property shall, in addition to such property as is part of the estate of the testator, be deemed to be a legacy of a pecuniary amount if such specific property shall, during the life of the testator and while he is under a disability, be sold by a conservator, guardian, or committee for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the fiduciary. For purposes of this subdivision, the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2. This subdivision shall not apply if, after the sale or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.

4. *Unless a contrary intention appears in a testator's will or durable power of attorney, a bequest or devise of specific property shall, in addition to such property as is part of the estate of the testator, be deemed to be a legacy of a pecuniary amount if such specific property shall, during the life of the testator and while he is incapacitated, be sold by an agent acting within the authority of a durable power of attorney for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the agent. For purposes of this subdivision, (i) the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2, (ii) no adjudication of testator's incapacity before death is necessary, (iii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iv) an "incapacitated" person is one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. This subdivision shall not apply (i) if the agent's sale of the specific property or receipt of the insurance proceeds is thereafter ratified by the testator or (ii) to a power of attorney limited to one or more specific purposes.*