

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 253

*An Act to amend and reenact §§ 32.1-325.02, 37.1-137.5, 55-286.1, 64.1-57 and 64.1-65.1 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 16 of Title 55 a section numbered 55-286.2 and by adding in Title 64.1 a chapter numbered 8.1, consisting of sections numbered 64.1-196.1 through 64.1-196.15, and to repeal Chapter 8 (§§ 64.1-188 through 64.1-196) of Title 64.1 of the Code of Virginia, relating to disclaiming succession of property.*

[H 1976]

Approved March 16, 2003

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

**1. That §§ 32.1-325.02, 37.1-137.5, 55-286.1, 64.1-57 and 64.1-65.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 16 of Title 55 a section numbered 55-286.2, and by adding in Title 64.1 a chapter numbered 8.1, consisting of sections numbered 64.1-196.1 through 64.1-196.15, as follows:**

§ 32.1-325.02. Determinations of assets; disclaimers of interests to be considered uncompensated transfers of assets for Medicaid eligibility purposes under certain circumstances.

A. When determining eligibility for medical assistance services, "assets" means, in regard to an individual, all income and resources of the individual and the individual's spouse, including, but not limited to, any income or resources which the individual or such individual's spouse is or becomes entitled to, but does not receive, because of any action by such individual or such individual's spouse, or by a person, including a court or administrative body, with legal authority to act in the place of or on behalf of the individual or such individual's spouse, or by any person, including any court or administrative body, acting at the direction of or upon the request of the individual or such individual's spouse.

B. For the sole purpose of determining eligibility for medical assistance services as provided in this title, Chapter 6 (§ 63.2-505 et seq.) of Title 63.1, and the regulations of the Department of Medical Assistance Services, any disclaimer of succession pursuant to Chapter 8 8.1 (§ ~~64.1-188~~ 64.1-196.1 et seq.) of Title 64.1 shall be considered an uncompensated transfer of assets equal to the value of any interest disclaimed by any person who would, by reason of the disclaimer of succession, retain Medicaid eligibility or become eligible for medical assistance within (i) ~~thirty-six~~ 36 months of the date that the disclaimer instrument is filed with a court of competent jurisdiction when the disclaimer instrument relates to any property other than property passed through a trust or (ii) ~~sixty~~ 60 months of the date that the disclaimer instrument is filed with a court of competent jurisdiction when the disclaimer instrument relates to payments from a trust or portions of a trust.

§ 37.1-137.5. Estate planning.

A. In the order appointing a conservator entered pursuant to § 37.1-134.14 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind; or (ii) disclaim property as provided in Chapter 8 8.1 (§ ~~64.1-188~~ 64.1-196.1 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person, the court in its discretion may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of such gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) such other factors as the court may deem relevant.

B. The conservator may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the requirement of a court-appointed guardian ad litem, without the requirement of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person if he or she were dead or a beneficiary under any known will of the incapacitated person and without requiring a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth

in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where such transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325 and may also contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

§ 55-286.1. Release as disclaimer.

A release made ~~before any property has been distributed to the donee in accordance with Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1~~ shall be effective as a disclaimer; ~~and a release made after any property has been distributed to the donee shall be effective as a renunciation if, in either such case, the action of the donee in disclaiming or renouncing the power is taken within nine months from the effective date of the instrument creating the power or within nine months from the date on which the donee reaches the age of twenty-one years, whichever is later.~~

§ 55-286.2. Interaction with disclaimer rules.

*Nothing in this chapter shall operate as a limitation on the provisions of Chapter 8.1 (§§ 64.1-196.1 et seq.) of Title 64.1.*

§ 64.1-57. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.

(1) The following powers, in addition to all other powers granted by law, may be incorporated in whole or in part in any will or trust instrument by reference to this section:

(a) To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary institution, if the same be a corporation, as they may be at the time they come into the custody of said fiduciary, regardless of the character of same or whether they are such as then would be authorized by law for investment by fiduciaries or whether a disproportionately large part of the trust or estate remains invested in one or more types of property, for such time as the fiduciary shall deem best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary shall deem advisable.

(a1) At the discretion of the fiduciary, to receive additions to the estate from any source, in cash or in kind, and to hold, administer and distribute such additions as a part of and under the same terms and conditions as the estate then currently held.

(b) To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, which may be included in, or may at any time become part of the trust or estate upon such terms and conditions as the fiduciary, in his absolute discretion, may deem advisable, at either public or private sale, either for cash or deferred payments or other consideration, as such fiduciary may determine; and for the purpose of selling, assigning, exchanging, transferring or conveying the same, to make, execute, acknowledge and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as such fiduciary may deem expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the trust or estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith.

(b1) To grant, sell, transfer, exchange, purchase or acquire options of any kind on property held by such trust or estate or acquired or to be acquired by such trust or estate or held or owned by any other person.

(c), (c1) [Repealed.]

(d) To lease any or all of the real estate, which may be included in or at any time become a part of the trust or estate, upon such terms and conditions as said fiduciary, in his sole judgment and discretion, may deem advisable, and any lease or leases made by such fiduciary may extend beyond the term of the trust or administration of the estate and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments, in such form and with such covenants and warranties as such fiduciary may deem expedient and proper.

(e) To vote any stocks, bonds, or other securities held by such fiduciary at any meeting of stockholders, bondholders, or other security holders, and to delegate the power to so vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted.

(f) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as to such fiduciary shall seem advisable, including the power to borrow from the fiduciary, if the fiduciary be a bank, for the purpose of paying debts, taxes or other charges against the trust or estate or any part thereof, and with prior approval of the court for any proper purpose of the trust or estate, and to mortgage or pledge such portion of the trust or estate as may be required to secure such loan or loans; and as maker or endorser to renew existing loans.

(f1) To make loans or advancements to the executor or other representative of the grantor's estate in case such executor or other representative is in need of cash with which to pay taxes, claims or other

indebtedness of the grantor's estate; but no assets acquired from a qualified retirement benefit plan under § 2039 (c) of the Internal Revenue Code shall be so used, and such assets shall be segregated and held separately until all claims against the estate for debts of the decedent or claims of administration have been satisfied. Such loans or advancements may be secured or unsecured, and the trustee shall not be liable in any way for any loss resulting to the trust or estate by reason of the exercise of this authority.

(g) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust or estate as the fiduciary shall deem best, and his decision shall be conclusive.

(h) To make distributions in cash or in kind or partly in each at valuations to be determined by the fiduciary, whose decision as to values shall be conclusive.

(i), (il) [Repealed.]

(j) To repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by such fiduciary and to construct such buildings and improvements thereon as such fiduciary may, in his discretion, deem advisable.

(k) To employ and compensate, out of the principal or the income or both as to the fiduciary shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, licensed real estate brokers, licensed salesmen and other assistants and advisors deemed by the fiduciary needful for the proper administration of the trust or estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

(l) To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by such fiduciary to be genuine and upon any other evidence believed by such fiduciary to be sufficient, and to be protected and saved harmless in all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

(m) To retain any interest held by such fiduciary in any business, whether as a stockholder or security holder of a corporation, a partner, a sole proprietor, or otherwise, for any length of time, without limitations, solely at the risk of the trust or estate and without liability on the part of the fiduciary for any losses resulting therefrom; to participate in the conduct of such business and take or delegate to others discretionary power to take any action with respect to its management and affairs which an individual could take as the owner of such business, including the voting of stock, and the determination of any or all questions of policy; to participate in any incorporation, reorganization, merger, consolidation, recapitalization or liquidation thereof; to invest additional capital in, subscribe to additional stock or securities of, and loan money or credit with or without security to, such business out of the trust or estate property; to elect or employ as directors, officers, employees or agents of such business, and compensate, any persons, including the fiduciary or a director, officer, or agent of the fiduciary; to accept as correct financial or other statements rendered by the business from time to time as to his conditions and operations except when having actual notice to the contrary; to regard the business as an entity separate from the trust or estate with no duty to account to any court as to his operations; to deal with and act for the business in any capacity, including any banking or trust capacity and the loaning of money out of the fiduciary's own funds, and to be compensated therefor; and to sell or liquidate such interest or any part thereof at any time. If any business shall be unincorporated, contractual and tort liabilities arising out of such business shall be satisfied, first, out of the business, and second, out of the trust or estate; but it is intended that in no event shall there be a liability of the fiduciary, and if the fiduciary shall be held liable, such fiduciary shall be entitled to indemnification from the business and the trust or estate in the order named. Such fiduciary shall be entitled to such additional compensation as is commensurate with the time, effort, and responsibility involved in his performance of services with respect to such business. Such compensation for services rendered to the business may be paid by such fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, may determine to be advisable; the amount of such additional compensation, however, shall be subject to the final approval of the court.

(n) To do all other acts and things not inconsistent with the provisions of the will or trust in which these powers are incorporated which such fiduciary may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his own property.

(o) To hold property in his name or in the name of nominees.

(p) During the minority, incapacity or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: (1) directly to said beneficiary; (2) to a relative, friend, guardian, conservator or committee, to be expended by such person for the education, maintenance, support or benefit of said beneficiary; (3) by himself expending the same for the education, maintenance, support or benefit of said beneficiary; (4) to an adult person or bank authorized to exercise trust powers as custodian for a minor beneficiary under the Uniform Transfers to Minors Act (§ 31-37 et seq.) to be held by such custodian under the terms of such

act; or (5) to an adult person or bank authorized to exercise trust powers as custodial trustee for a beneficiary who is incapacitated as defined in § 55-34.1, under the Uniform Custodial Trust Act (§ 55-34.1 et seq.) to be held as custodial trustee under the terms of such act.

(q) To continue and carry on any farming operation transferred to him and to operate such farms and any other farm which may be acquired and, in so doing, by way of illustration and not in limitation of his powers, to operate the farm with hired labor, tenants or sharecroppers; to hire a farm manager or a professional farm management service to supervise the farming operations; to lease or rent the farm for cash or for a share of the crops; to purchase or otherwise acquire farm machinery and equipment and livestock; to construct, repair and improve farm buildings of all sorts needed, in its judgment, for the operation of the farm; to make loans or advances or to obtain such from any source, including the fiduciary at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock; to employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil; to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate or trust; to ditch and drain damp or wet fields and areas of the farm when and where needed; to engage in livestock production, if it is deemed advisable, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such a livestock program; to execute contracts, notes and chattel mortgages relating to agriculture with the Commodity Credit Corporation, the United States Secretary of Agriculture or any other officer or agency of the federal or state governments, to enter into acreage reduction agreements, to make soil conservation commitments, and to do all acts necessary to cooperate with any governmental agricultural program; and in general, to employ the methods of carrying on the farming operation that are in common use by the community in which the farm is located, inasmuch as the duties the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase his usual responsibility and work as fiduciary, it is agreed that the fiduciary shall be entitled to such additional reasonable compensation as is commensurate with the time, effort and responsibility involved in his performance of such services.

(r) To purchase and hold policies of life insurance on the life of any beneficiary, or any person in whom the beneficiary has an insurable interest, and pay the premiums thereon out of income or principal as he deems appropriate; provided, however, that the decision of the beneficiary of any trust otherwise meeting the requirements of § 2056 (b) (5) of the Internal Revenue Code of 1954, as amended, shall control in respect to the purchase or holding of a policy of life insurance by the trustee of such trust.

(s) To make any election authorized under any law requiring, or relating to the requirement for, payment of any taxes or assessments on assets or income of the estate or in connection with any fiduciary capacity, regardless of whether any property or income is received by or is under the control of the fiduciary, including, but not limited to, elections concerning the timing of payment of any such tax or assessment, the valuation of any property subject to any such tax or assessment, the alternative use of items of deduction in computing any tax or assessment and including specifically elections permitted by statutes enacted after the date of execution of the will or trust instrument.

(t) To comply with environmental law:

1. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to a change in, or any actual or threatened violation of, any environmental law affecting property held by the fiduciary;

2. To take, on behalf of the estate or trust, any action necessary to respond to a change in, or prevent, abate, or otherwise remedy any actual or threatened violation of, any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

3. To refuse to accept property in trust if the fiduciary determines that any property to be transferred to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;

4. To disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law;

5. To charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate;

6. For purposes of this subdivision, "environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health and "hazardous substances" means any substances defined as hazardous or toxic or otherwise regulated by any environmental law.

(u) To resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or

liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(2) As used in the section, the term "fiduciary" shall mean and include one or more individuals or corporations having trust powers and the use of the male gender shall include the female; and any substitute, added or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument. The provisions of this section may by reference hereto be made applicable to a fiduciary of the estate of a decedent as well as to the trustee of an inter vivos or testamentary trust.

(3) ~~Any fiduciary upon whom a document confers any or all of the powers set forth in subsection (1) may irrevocably disclaim the right to exercise any or all of the powers conferred by filing a suitable written disclaimer with the clerk of court where the document is recorded or probated or, if the document is not recorded, by sending a written disclaimer by registered or certified mail to the last known address of all persons then living entitled to receive the principal or income. Such disclaimer shall relate back to the time when the disclaiming fiduciary originally assumed such fiduciary capacity and shall be binding upon any successor fiduciary. For the purpose of this subsection, a fiduciary shall not be deemed to have assumed a fiduciary capacity under a revocable document until the same becomes irrevocable.~~

(4) For the purposes of this section, unless the will or trust instrument expresses a contrary intention, the incorporation by reference of powers enumerated by this statute shall refer to those powers existing at the time of death and reference to powers under the Uniform Gifts to Minors Act in an instrument executed prior to July 1, 1989, shall be construed to refer to the Uniform Transfers to Minors Act (§ 31-37 et seq.).

(5) This section is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in Article 2 (§ 26-45.3 et seq.) of Chapter 3 of Title 26.

(6) In the event that the will or trust instrument shall contain a provision in favor of a surviving spouse of the testator or grantor, the powers above enumerated shall in no way be construed or interpreted in any fashion which might cause the bequest to fail to qualify for the marital deduction permitted under the federal estate tax law, unless the will or trust instrument shall specifically provide to the contrary. A fiduciary acting under a construction or interpretation of a power, which action is otherwise reasonable under the circumstances, shall incur no responsibility for acts taken in good faith which are otherwise thereafter contended to be in a fashion which might cause disqualification for the marital deduction. The provision of this subsection shall apply without regard to the time the will or trust was executed or probated or the testator died in relation to the effective date of this section or amendments thereto.

§ 64.1-65.1. How devises and bequests that fail, etc., to pass.

A. Unless a contrary intention appears by the will, and except as provided in § 64.1-64.1, if a devise or bequest other than a residuary devise or bequest fails for any reason, it shall become a part of the residue.

B. Unless a contrary intention appears by the will and except as provided in § 64.1-64.1, if the residue is devised or bequeathed to two or more persons and the share of one fails for any reason, such share shall pass to the other residuary devisees or legatees in proportion to their interests in the residue.

C. Notwithstanding the provisions of §§ ~~64.1-190~~ 64.1-196.5 and 64.1-196.6 and unless a contrary intention shall appear in a will, if a testator makes a bequest, not exceeding the value of ~~twenty-five dollars~~ \$25, to a legatee and such legatee refuses to take possession of such bequest then the bequest shall fail and becomes a part of the residue of the testator's estate.

#### CHAPTER 8.1.

#### UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§ 64.1-196.1. Definitions.

In this chapter:

A. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

B. "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

C. "Disclaimer" means the refusal to accept an interest in or power over property.

D. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

E. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property and includes, without limitation, property held as tenants by the entirety.

F. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

G. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United

*States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.*

*H. "Trust" means (i) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and (ii) a trust created pursuant to a statute, judgment, or decree, which requires the trust to be administered in the manner of an express trust.*

*§ 64.1-196.2. Scope.*

*This chapter applies to disclaimers of any interest in or power over property, whenever created.*

*§ 64.1-196.3. Chapter supplemented by other law.*

*A. Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.*

*B. This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.*

*§ 64.1-196.4. Power to disclaim; general requirements; when irrevocable.*

*A. A person may disclaim in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.*

*B. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.*

*C. A custodial parent of a minor for whom no guardian of the property has been appointed may disclaim, in whole or in part, an interest in or power over property, including a power of appointment, that (but for the custodial parent's disclaimer) would have passed to the minor as the result of another disclaimer. The custodial parent may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.*

*D. To be effective, a disclaimer must be in writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in § 64.1-196.11. In this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

*E. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of power, or any other interest or estate in the property.*

*F. A disclaimer becomes irrevocable when it is delivered or filed pursuant to § 64.1-196.11 or when it becomes effective as provided in §§ 64.1-196.5 through 64.1-196.10, whichever occurs later.*

*G. A disclaimer made under this chapter is not a transfer, assignment, or release.*

*§ 64.1-196.5. Disclaimer of interest in property.*

*A. In this section (i) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment, and (ii) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.*

*B. Except for a disclaimer governed by § 64.1-196.6 or § 64.1-196.7, the following rules apply to a disclaimer of an interest in property:*

*1. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.*

*2. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.*

*3. If the instrument does not contain a provision described in subdivision 2, the following rules apply:*

*a. If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.*

*b. If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.*

*4. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.*

*§ 64.1-196.6. Disclaimer of rights of survivorship in jointly held property.*

A. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the greater of (i) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or (ii) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

B. A disclaimer under subsection A takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

C. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

*§ 64.1-196.7. Disclaimer of interest by trustee.*

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

*§ 64.1-196.8. Disclaimer of power of appointment or other power not held in a fiduciary capacity.*

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

*§ 64.1-196.9. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.*

A. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

B. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

*§ 64.1-196.10. Disclaimer of power held in fiduciary capacity.*

A. If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

B. If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

C. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

*§ 64.1-196.11. Delivery or filing.*

A. In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of (i) an annuity or insurance policy; (ii) an account with a designation for payment on death; (iii) a security registered in beneficiary form; (iv) a pension, profit-sharing, retirement, or other employment-related benefit plan; or (v) any other nonprobate transfer at death.

B. Subject to subsections C through L, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

C. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust (i) a disclaimer must be delivered to the personal representative of the decedent's estate or (ii) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

D. In the case of an interest in a testamentary trust (i) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate or (ii) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

E. In the case of an interest in an inter vivos trust (i) a disclaimer must be delivered to the trustee then serving; (ii) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or (iii) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

F. In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

G. In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

H. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

I. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment

at any time after the power was created (i) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power or (ii) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

J. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment (i) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power or (ii) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

K. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection C, D, or E, as if the power disclaimed were an interest in property.

L. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

**§ 64.1-196.12. When disclaimer barred or limited.**

A. A disclaimer is barred by a written waiver of the right to disclaim.

B. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective: (i) the disclaimant accepts the interest sought to be disclaimed; (ii) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or (iii) a judicial sale of the interest sought to be disclaimed occurs.

C. A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

D. A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

E. A disclaimer is barred or limited if so provided by law other than this chapter.

F. A disclaimer of a power over property, which is barred by this section, is ineffective. A disclaimer of an interest in property, which is barred by this section, takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

**§ 64.1-196.13. Tax qualified disclaimer.**

Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

**§ 64.1-196.14. Recording of disclaimer.**

If an instrument transferring title to real property is disclaimed, a copy of the disclaimer shall be recorded in the office of the clerk of the circuit court for the jurisdiction where the real property is located. If any other interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

**§ 64.1-196.15. Application to existing relationships.**

Except as otherwise provided in § 64.1-196.12, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

**2. That Chapter 8 (§§ 64.1-188 through 64.1-196) of Title 64.1 of the Code of Virginia is repealed.**