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HOUSE BILL NO. 2329

Offered January 21, 1999

A BILL to amend and reenact §§ 6.1-125.4, 20-107.3, 20-111, 55-20, 55-21, 55-37 and 64.1-197 of the Code of Virginia and to amend the Code of Virginia by adding in Title 20 a chapter numbered 10, consisting of sections numbered 20-166 through 20-183, relating to the creation of the Virginia Community Property Act.

Patron—McClure

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-125.4, 20-107.3, 20-111, 55-20, 55-21, 55-37 and 64.1-197 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 20 a chapter numbered 10, consisting of sections numbered 20-166 through 20-183 as follows:

§ 6.1-125.4. Effect of divorce.

Upon the entry of a decree of divorce, either a mensa et thoro or a vinculo matrimonii, all rights of either consort in any multiple-party account then existing between them, including the right of survivorship, shall be extinguished; and any joint account then existing between the consorts shall thereupon be converted into a tenancy in common, in the proportions provided in subsection A of § 6.1-125.3 A or pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20, unless otherwise ordered by the court.

§ 20-107.3. Court may decree as to property of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final divorce decree obtained without the Commonwealth, the court, upon request of either party, shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, of the parties and shall consider which of such property is separate property, which is marital property, which is community property under Chapter 10 (§ 20-166 et seq.) of Title 20, and which is part separate and part marital property in accordance with subdivision A 3. The court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. Upon motion of either party made no less than twenty-one days before the evidentiary hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section when the court determines that such action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

1. Separate property is (i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; and (iv) that part of any property classified as separate pursuant to subdivision A 3. Income received from separate property during the marriage is separate property if not attributable to the personal effort of either party. The increase in value of separate property during the marriage is separate property, unless marital property or the personal efforts of either party have contributed to such increases and then only to the extent of the increases in value attributable to such contributions. The personal efforts of either party must be significant and result in substantial appreciation of the separate property if any increase in value attributable thereto is to be considered marital property.

2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety or otherwise, except as provided by subdivision A 3, (ii) that part of any property classified as marital pursuant to subdivision A 3, or (iii) all other property acquired by each party during the marriage which is not separate property as defined above. All property including that portion of pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by either spouse during the marriage, and before the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital property in the absence of satisfactory evidence that it is separate property. For purposes of this section marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it is not jointly owned.

3. The court shall classify property as part marital property and part separate property as follows:

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60 a. In the case of income received from separate property during the marriage, such income shall be
61 marital property only to the extent it is attributable to the personal efforts of either party. In the case of
62 the increase in value of separate property during the marriage, such increase in value shall be marital
63 property only to the extent that marital property or the personal efforts of either party have contributed
64 to such increases, provided that any such personal efforts must be significant and result in substantial
65 appreciation of the separate property.

66 For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i)
67 contributions of marital property or personal effort were made and (ii) the separate property increased in
68 value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the
69 increase in value or some portion thereof was not caused by contributions of marital property or
70 personal effort.

71 "Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual
72 skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property
73 of either party.

74 b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the
75 marital share as defined in subsection G shall be marital property.

76 c. In the case of any personal injury or workers' compensation recovery of either party, the marital
77 share as defined in subsection H of this section shall be marital property.

78 d. When marital property and separate property are commingled by contributing one category of
79 property to another, resulting in the loss of identity of the contributed property, the classification of the
80 contributed property shall be transmuted to the category of property receiving the contribution. However,
81 to the extent the contributed property is retraceable by a preponderance of the evidence and was not a
82 gift, such contributed property shall retain its original classification.

83 e. When marital property and separate property are commingled into newly acquired property
84 resulting in the loss of identity of the contributing properties, the commingled property shall be deemed
85 transmuted to marital property. However, to the extent the contributed property is retraceable by a
86 preponderance of the evidence and was not a gift, the contributed property shall retain its original
87 classification.

88 f. When separate property is retitled in the joint names of the parties, the retitled property shall be
89 deemed transmuted to marital property. However, to the extent the property is retraceable by a
90 preponderance of the evidence and was not a gift, the retitled property shall retain its original
91 classification.

92 g. Subdivisions A 3 d, e and f of this section shall apply to jointly owned property. No presumption
93 of gift shall arise under this section where (i) separate property is commingled with jointly owned
94 property; (ii) newly acquired property is conveyed into joint ownership; or (iii) existing property is
95 conveyed or retitled into joint ownership. For purposes of this subdivision A 3, property is jointly
96 owned when it is titled in the name of both parties, whether as joint tenants, tenants by the entireties, or
97 otherwise.

98 4. *When distributing property identified as community property under a community property*
99 *agreement or trust under Chapter 10 (§ 20-166 et seq.) of Title 20, unless the parties have provided in*
100 *the agreement or trust for another disposition of the community property, the court shall make such*
101 *disposition of the community property as shall appear just and equitable after considering all relevant*
102 *factors, including: (i) the nature and extent of the community property; (ii) the nature and extent of the*
103 *separate property; (iii) the duration of the marriage; and (iv) the economic circumstances of each*
104 *spouse at the time the division of the property is to become effective, including the desirability of*
105 *awarding the family home or right to live in the family home for reasonable periods to a spouse with*
106 *whom the children reside the majority of the time.*

107 B. For the purposes of this section only, both parties shall be deemed to have rights and interests in
108 the marital property. However, such interests and rights shall not attach to the legal title of such
109 property and are only to be used as a consideration in determining a monetary award, if any, as
110 provided in this section.

111 C. Except as provided in subsection G, the court shall have no authority to order the division or
112 transfer of separate property or marital property which is not jointly owned. The court may, based upon
113 the factors listed in subsection E, divide or transfer or order the division or transfer, or both, of jointly
114 owned marital property, or any part thereof. The court shall also have the authority to apportion and
115 order the payment of the debts of the parties, or either of them, that are incurred prior to the dissolution
116 of the marriage, based upon the factors listed in subsection E.

117 As a means of dividing or transferring the jointly owned marital property, the court may transfer or
118 order the transfer of real or personal property or any interest therein to one of the parties, permit either
119 party to purchase the interest of the other and direct the allocation of the proceeds, provided the party
120 purchasing the interest of the other agrees to assume any indebtedness secured by the property, or order
121 its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as

the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which are final and not subject to further proceedings on appeal as of that date, which divide or transfer or order the division or transfer of property directly between the parties are hereby validated and deemed self-executing. All orders or decrees which divide or transfer or order division or transfer of real property between the parties shall be recorded and indexed in the names of the parties in the appropriate grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or city in which the property is located.

D. In addition, based upon (i) the equities and the rights and interests of each party in the marital property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts, to either party. The party against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court. An award entered pursuant to this subsection shall constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk unless the decree so directs. The provisions of § 8.01-382, relating to interest on judgments, shall apply unless the court orders otherwise.

Any marital property, which has been considered or ordered transferred in granting the monetary award under this section, shall not thereafter be the subject of a suit between the same parties to transfer title or possession of such property.

E. The amount of any division or transfer of jointly owned marital property, and the amount of any monetary award, the apportionment of marital debts, and the method of payment shall be determined by the court after consideration of the following factors:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;
3. The duration of the marriage;
4. The ages and physical and mental condition of the parties;
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of § 20-91 or § 20-95;
6. How and when specific items of such marital property were acquired;
7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;
8. The liquid or nonliquid character of all marital property;
9. The tax consequences to each party; and
10. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

F. The court shall determine the amount of any such monetary award without regard to maintenance and support awarded for either party or support for the minor children of both parties and shall, after or at the time of such determination and upon motion of either party, consider whether an order for support and maintenance of a spouse or children shall be entered or, if previously entered, whether such order shall be modified or vacated.

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E:

1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing or deferred compensation plan or retirement benefits, whether vested or nonvested, which constitutes marital property and whether payable in a lump sum or over a period of time. The court may order direct payment of such percentage of the marital share by direct assignment to a party from the employer trustee, plan administrator or other holder of the benefits. However, the court shall only direct that payment be made as such benefits are payable. No such payment shall exceed fifty percent of the marital share of the cash benefits actually received by the party against whom such award is made. "Marital share" means that portion of the total interest, the right to which was earned during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

2. To the extent permitted by federal or other applicable law, the court may order a party to designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life insurance policy. The court, in its discretion, shall determine as between the parties, who shall bear the costs of maintaining such plan.

H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E, the court may direct payment of a percentage of the marital share of any personal injury or workers' compensation recovery of either party, whether such recovery is payable

183 in a lump sum or over a period of time. However, the court shall only direct that payment be made as
184 such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share"
185 means that part of the total personal injury or workers' compensation recovery attributable to lost wages
186 or medical expenses to the extent not covered by health insurance accruing during the marriage and
187 before the last separation of the parties, if at such time or thereafter at least one of the parties intended
188 that the separation be permanent.

189 I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation
190 in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements,
191 otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and
192 enforceable.

193 J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section
194 after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond
195 of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign
196 proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party
197 domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of
198 the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal
199 jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner
200 permitted by law.

201 K. The court shall have the continuing authority and jurisdiction to make any additional orders
202 necessary to effectuate and enforce any order entered pursuant to this section, including the authority to:

203 1. Order a date certain for transfer or division of any jointly owned property under subsection C or
204 payment of any monetary award under subsection D;

205 2. Punish as contempt of court any willful failure of a party to comply with the provisions of any
206 order made by the court under this section;

207 3. Appoint a special commissioner to transfer any property under subsection C where a party refuses
208 to comply with the order of the court to transfer such property; and

209 4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any
210 pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States
211 Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or
212 maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to
213 effectuate the expressed intent of the order.

214 § 20-111. Decree of divorce from bond of matrimony extinguishes contingent property rights.

215 Upon the entry of a decree of divorce from the bond of matrimony, all contingent rights of either
216 consort in the real and personal property of the other then existing, or thereafter acquired, including the
217 right of survivorship in real or personal property title to which is vested in the parties as joint tenants or
218 as tenants by the entirety, with survivorship as at common law, shall be extinguished, and such estate by
219 the entirety shall thereupon be converted into a tenancy in common or as provided in an agreement or
220 trust made under Chapter 10 (§ 20-166 et seq.) of Title 20.

221 CHAPTER 10.

222 COMMUNITY PROPERTY ACT.

223 § 20-166. Short title.

224 This chapter may be cited as the Community Property Act.

225 § 20-167. Definitions.

226 In this chapter:

227 "Acquire" in relation to property includes obtaining reductions of indebtedness on encumbered
228 property and obtaining a lien on or a security interest in property.

229 "Appreciation" means a realized or unrealized increase in the value of property.

230 "Community property" means property owned jointly by both spouses under a community property
231 agreement or a community property trust.

232 "Community property agreement" means an agreement that complies with § 20-176.

233 "Community property trust" means an express trust that complies with § 20-177.

234 "Decree" means a judgment or other order of a court.

235 "Determination date" means the later of: (i) marriage, (ii) the effective date of a community property
236 agreement or a community property trust, or (iii) the effective date of this chapter.

237 "Disposition at death" means the transfer of property by will, intestate succession, nontestamentary
238 transfer, or other means that take effect at the transferor's death.

239 "Dissolution" means: (i) termination of a marriage by a decree of dissolution, divorce, annulment, or
240 declaration of invalidity, or (ii) entry of a decree of legal separation or separate maintenance.

241 "During marriage" means a period that begins at marriage and ends at divorce, dissolution, or the
242 death of a spouse.

243 "Held" means the registration, recordation, or filing by a person in a public office in the name of
244 the person of a document of title to property, or the issuance in the person's name of a writing that

customarily operates as a document of title to the property.

"Income" means dividends, interest, and net rents and other net returns attributable to investment, rental, licensing, or other use of property unless attributable to a return of capital or to appreciation.

"Management and control" means the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, institute or defend a civil action regarding, or otherwise deal with property as if the property is the property of an unmarried person.

"Notice" of a fact means a knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known to the person.

"Presume" or a "presumption" means the imposition on the person against whom the presumption or presumed fact is directed of the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property.

"Written waiver" means a document signed by a person against whose interests it is sought to be enforced.

§ 20-168. Good faith requirement.

A spouse shall act in good faith with respect to the other spouse in matters involving community property. The obligation under this section may not be varied by a community property agreement or a community property trust.

§ 20-169. Variation by marital property agreement

Except as provided in §§ 20-168, subsection H of § 20-174, subsection B of 20-175, and subsection C of § 20-176, a community property agreement or a community property trust may vary the effect of this chapter.

§ 20-170. Classification of property of spouses.

A. Except for property that is classified otherwise in this chapter, property of spouses is community property under this chapter only to the extent provided in a community property agreement or a community property trust.

B. If a community property agreement provides that all property acquired by either or both spouses during the marriage is community property, the property of the spouses acquired during the marriage and after the determination date is presumed to be community property.

C. A spouse has a present undivided one-half interest in community property.

D. If the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, income earned or accrued by a spouse or attributable to property of a spouse during marriage and after the determination date is community property.

E. Community property transferred to a trust remains community property.

F. Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, property that is owned by a spouse at the time of a marriage but before the determination date is not community property except to the extent otherwise expressly provided in the community property agreement.

G. Whether or not the community property agreement provides that all property acquired by either or both spouses during the marriage is community property, and except to the extent otherwise expressly provided in the community property agreement, property acquired by a spouse during marriage and after the determination date is individual property if acquired:

1. By gift or a disposition at death made by a third person to the spouse and not to both spouses;

2. In exchange for or with the proceeds of other individual property of the spouse;

3. From appreciation or income of the spouse's individual property except to the extent that the income or appreciation is classified as community property under § 20-180;

4. By a decree, community property agreement written consent, or reclassification under subsection B of § 20-173 designating it as the individual property of the spouse;

5. As a recovery for damage to property under § 20-181, except as specifically provided otherwise in a decree, community property agreement, or written consent; or

6. As a recovery for personal injury, except for the amount of the recovery attributable to expenses paid or otherwise satisfied from community property.

H. Appreciation and income of property transferred to a community property trust is community property if declared in the trust to be community property.

I. Community property held by a community property trust or another trust remains community property of the spouses if distributed to the spouses.

J. Except as provided otherwise in this chapter, this chapter does not alter the classification and ownership rights of property acquired before or during the marriage.

306 § 20-171. *Management and control of property of spouses.*

307 A. *A spouse acting alone may manage and control:*

308 1. *That spouse's property that is not community property;*

309 2. *Except as provided in subsection C, community property held in that spouse's name alone or not*
310 *held in the name of either spouse;*

311 3. *A policy of insurance if that spouse is designated as the owner on the records of the issuer of the*
312 *policy;*

313 4. *The rights of an employee under an arrangement for deferred employment benefits that accrue as*
314 *a result of that spouse's employment;*

315 5. *A claim for relief vested in that spouse by other law; or*

316 6. *Community property held in the names of both spouses in the alternative, including using the*
317 *names of both spouses with the word "or."*

318 B. *Spouses may not manage and control community property held in the names of both spouses other*
319 *than in the alternative unless they act together.*

320 C. *The right to manage and control community property that is transferred to a trust, including*
321 *property that is community property under the trust, is determined by the terms of the trust.*

322 D. *The right to manage and control community property does not determine the classification of*
323 *property of the spouses and does not rebut the presumption of subsection B of § 20-170.*

324 E. *The right to manage and control community property does not permit gifts of the property, except*
325 *to the extent provided in § 20-172.*

326 F. *Except to the extent otherwise expressly provided in a community property agreement or a*
327 *community property trust, the right to manage and control the property of spouses is not affected by this*
328 *chapter if the property is acquired before the determination date.*

329 G. *A court may appoint a conservator or guardian to exercise a disabled spouse's right to manage*
330 *and control community property.*

331 § 20-172. *Gifts of community property to third persons.*

332 A. *A spouse acting alone may not give to a third person community property that the spouse has the*
333 *right to manage and control unless the value of the community property given to the third person does*
334 *not aggregate more than \$1,000 in a calendar year, or a larger amount if, when made, the gift is*
335 *reasonable in amount considering the economic position of the spouses.*

336 B. *A gift of community property to a third person that is not allowed under subsection A is subject*
337 *to subsection D unless both spouses act together in making the gift or the other spouse ratifies the gift.*

338 C. *Reporting any part of a gift made by the other spouse on a United States gift tax return under 26*
339 *U.S.C. 2501, § 2524 or consenting to the treatment of a gift under 26 U.S.C. § 2513 by signing the*
340 *consent on the other spouse's United States gift tax return is treated as the spouses acting together in*
341 *making the gift.*

342 D. *If a gift of community property by a spouse does not comply with subsection A, the other spouse*
343 *may bring the action against the donating spouse, the recipient of the gift, or both. The action shall be*
344 *commenced within the earlier of one year after the other spouse has notice of the gift or three years*
345 *after the gift. If the recovery occurs during marriage, it is community property. If the recovery occurs*
346 *after a dissolution or the death of either spouse, the recovery may not exceed one-half of the value of*
347 *the gift and is individual property.*

348 § 20-173. *Certain property transactions between spouses.*

349 A. *While both spouses are domiciled in this Commonwealth, spouses may classify any or all of their*
350 *property as community property in a community property agreement.*

351 B. *Whether or not both, one, or neither is domiciled in this Commonwealth, spouses may classify any*
352 *or all of their property as community property by transferring property to a community property trust*
353 *and providing in the trust that the property is community property.*

354 § 20-174. *Obligations of spouses.*

355 A. *An obligation incurred by a spouse during marriage, including an obligation attributable to an*
356 *act or omission during marriage, is presumed to be incurred in the interest of the marriage or the*
357 *family.*

358 B. *After the determination date, a spouse's obligation to satisfy a duty of support owed to the other*
359 *spouse or to a child of the marriage may be satisfied only from community property and the other*
360 *property of the obligated spouse that is not community property.*

361 C. *After the determination date, an obligation incurred by a spouse in the interest of: the marriage*
362 *or the family may be satisfied only from community property and the other property of that spouse that*
363 *is not community property.*

364 D. *After the determination date, an obligation incurred by a spouse before or during marriage that*
365 *is attributable to an obligation arising before marriage or to an act or omission occurring before*
366 *marriage may be satisfied only from property of that spouse that is not community property and from*
367 *that part of community property that would have been the property of that spouse but for the marriage*

and the classification of the property as community property under this chapter.

E. After the determination date, an obligation, except an obligation covered by subsections B through D, that is incurred by a spouse during marriage, including an obligation attributable to an act or omission during marriage, may be satisfied only from property of that spouse that is not community property and from that spouse's interest in community property.

F. This chapter shall not alter the relationship between spouses and their creditors with respect to property or an obligation in existence before the determination date.

G. A writing that is signed by a creditor and that reduces a creditor's rights under this section is binding on the creditor.

H. A provision of a community property agreement or a community property trust shall not adversely affect the interest of a creditor unless the creditor has actual knowledge of the provision when the obligation to the creditor is incurred. The effect of this subsection may not be varied by a community property agreement or a community property trust.

I. This chapter does not affect an exemption provided under other law for the property of spouses.

§ 20-175. Protection of bona fide purchasers dealing with spouses.

A. Notice of the existence of a community property agreement, a community property trust, a marriage, or the termination of a marriage does not affect the status of a purchaser as a bona fide purchaser.

B. Community property purchased by a bona fide purchaser from a spouse having the right to manage and control the property under § 20-171 is acquired free of any claim of the other spouse. The effect of this subsection may not be varied by a community property agreement or a community property trust.

C. In this section:

1. "Bona fide purchaser" means a purchaser of property for value who has not knowingly been a party to fraud or illegality affecting the interest of the spouses or other parties to the transaction, does not have notice of an adverse claim by a spouse, and has acted in the transaction in good faith; in this section, a purchaser gives "value" for property if the property is acquired:

- a. In return for a binding commitment to extend credit;
- b. As security for or in total or partial satisfaction of a preexisting claim;
- c. By accepting delivery under a preexisting contract for purchase; or
- d. In return for other consideration sufficient to support a contract.

2. "Purchaser" means a person who acquires property by sale, lease, discount, negotiation, mortgage, pledge, or lien, or otherwise deals with property in a voluntary transaction other than making a gift.

§ 20-176. Community property agreement.

A. A community property agreement shall be contained in a written document signed by both spouses and classify some or all of the property of the spouses as community property. It is enforceable without consideration.

B. A community property agreement shall contain the following language in capital letters at the beginning of the agreement:

THE CONSEQUENCES OF THIS AGREEMENT MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

C. A community property agreement shall not adversely affect the right of a child to support.

D. Except as provided in § 20-169, subsection H of § 20-174, subsection B of § 20-175, and in subsection C of this section, in a community property agreement, spouses may agree:

1. On the rights and obligations in the property, notwithstanding when and where the property is acquired and located;
2. On the management and control of their property;
3. On the disposition of their property on dissolution, death, or the occurrence or nonoccurrence of another event;
4. On making a will, trust, or other arrangement to carry out the agreement;
5. That, upon the death of either of them, any of their property, including after-acquired property, passes without probate to a designated person, trust, or other entity by nontestamentary disposition;
6. On the choice of law governing the interpretation of the agreement; and
7. On any other matter that affects their property and does not violate public policy or a statute imposing a criminal penalty.

E. A community property agreement shall not be amended or revoked unless the agreement itself

429 provides for revocation on a particular date or on the occurrence of a particular event, or unless the
430 agreement is amended or revoked by a later community property agreement. To amend or revoke the
431 agreement, the later community property agreement is not required to declare any property of the
432 spouses as community property. The amended agreement or the revocation is enforceable without
433 consideration.

434 F. Persons intending to marry each other may enter into a community property agreement as if
435 married, but the agreement shall not become effective until the persons are married.

436 G. A community property agreement executed during marriage is not enforceable if the spouse
437 against whom enforcement is sought proves that:

438 1. The agreement was unconscionable when made;

439 2. The spouse against whom enforcement is sought did not execute the agreement voluntarily; or

440 3. Before execution of the agreement, the spouse against whom enforcement is sought:

441 a. Was not given a fair and reasonable disclosure of the property and financial obligations of the
442 other spouse;

443 b. Did not voluntarily sign a written consent expressly waiving the right to disclosure of the property
444 and financial obligations of the other spouse beyond the disclosure provided; and

445 c. Did not have notice of the property or financial obligations of the other spouse.

446 H. A community property agreement executed before marriage is not enforceable if the spouse
447 against whom enforcement is sought proves that:

448 1. The spouse against whom enforcement is sought did not execute the agreement voluntarily; or

449 2. The agreement was unconscionable when made and before execution of the agreement, the spouse
450 against whom enforcement is sought:

451 a. Was not given a fair and reasonable disclosure of the financial obligations of the other spouse;

452 b. Did not voluntarily sign a written consent expressly waiving the right to disclosure of the property
453 and financial obligations of the other spouse beyond the disclosure provided; and

454 c. Did not have notice of the property or financial obligations of the other spouse.

455 I. Whether or not a community property agreement is unconscionable is determined by a court as a
456 matter of law.

457 § 20-177. Community property trust.

458 A. An arrangement is a community property trust if one or both spouses transfer property to a trust,
459 the trust expressly declares that some or all the property transferred is community property under this
460 chapter, and at least one trustee is a qualified person whose powers include or are limited to
461 maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging
462 for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that shall be
463 filed by the trust. A community property trust is enforceable without consideration. Both spouses or
464 either spouse may be a trustee. The trust shall be signed by both spouses. In this subsection, "qualified
465 person" means:

466 1. An individual:

467 a. Who, except for brief intervals, military service, attendance at an educational or training
468 institution, or absences for good cause shown, resides in this Commonwealth;

469 b. Whose true and permanent home is in this Commonwealth;

470 c. Who does not have a present intention of moving from this property and
471 Commonwealth;

472 d. Who intends to return to this Commonwealth when away;

473 2. A trust company that is organized under Chapter 2 (§ 6.1-3 et seq.) of Title 6.1 and that has its
474 principal place of business in this Commonwealth; or

475 3. A bank that is organized under Title 6.1 (§ 6.1-1 et seq.) or a national banking association that is
476 organized under 12 U.S.C. §§ 21 et seq. if the bank or national banking association possesses and
477 exercises trust powers and has its principal place of business in this Commonwealth.

478 B. A community property trust shall contain the following language in capital letters at the beginning
479 of the trust:

480 THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT
481 LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND
482 YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT
483 THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED
484 AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT,
485 YOU SHOULD SEEK COMPETENT ADVICE.

486 C. A community property trust shall not adversely affect the right of a child to support.

487 D. Except as provided in § 20-168, subsection B of § 20-174, subsection B of § 20-175, and in
488 subsection C of this section, in a community property trust spouses may agree on:

489 1. The rights and obligations in the property transferred to the trust, notwithstanding when and
490 where the property is acquired or located;

2. The management and control of the property transferred to the trust;
 3. The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;
 4. The choice of law governing the interpretation of the trust; and
 5. Any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.
 E. A community property trust shall not be amended or revoked unless the agreement itself provides for revocation on a particular date or on the occurrence of a particular event or unless the agreement is amended or revoked by a later community property trust. To amend or revoke the trust, the later community property trust is not required to declare any property held by the trustee as community property. The amended trust or the revocation is enforceable without consideration.
 F. A community property trust executed during marriage is not enforceable if the spouse against whom enforcement is sought proves that:
 1. Trust was unconscionable when made; or
 2. The spouse against whom enforcement is sought did not execute the community property trust agreement voluntarily; or
 3. Before execution of the community property trust agreement, the spouse against whom enforcement is sought:
 a. Was not given a fair and reasonable disclosure of the property and financial obligations of the other spouse;
 b. Did not voluntarily sign a written waiver expressly waiving right to disclosure of the property and financial obligations of the other spouse beyond the disclosure provided; and
 c. Did not have notice of the property or financial obligations of the other spouse.
 G. Whether or not a community property trust is unconscionable is determined by a court as a matter of law.
 H. The trustee of a community property trust shall maintain records that identify which property held by the trust is community property and which property held by the trust is not community property.
 § 20-178. Forms of holding property.
 A. Spouses may hold community property in a form that designates the holders of it by the words "(name of one spouse) or (name of other spouse) as community property." Community property held in this form is subject to subdivision A 6 of § 20-171.
 B. Spouses may hold community property in a form that designates the holder of it by the words "(name of one spouse) and (name of other spouse) as community property." Community property held in this form is subject to subsection B of § 20-171.
 C. A spouse may hold individual property in a form that designates the holder of it by the words "(name of spouse) as individual property." Individual property held in this form is subject to subdivision A 1 of § 20-171.
 D. Spouses may hold property in any other form permitted by law, including a concurrent form or a form that provides for survivorship ownership.
 E. If the words "survivorship community property" are used instead of the words "community property" in the form described in subsection A or B, the community property is survivorship community property. On the death of a spouse, the ownership rights of that spouse in survivorship community property vest solely in the surviving spouse by nontestamentary disposition at death. The first deceased spouse does not have a right of disposition at death of any interest in survivorship community property. Holding community property in a form described in subsection A or B does not by itself establish survivorship ownership between the spouses for the property held in that form.
 § 20-179. Classification of life insurance policies and proceeds.
 A. If a policy issuer makes payments or takes actions in accordance with the policy and the issuer's records, the issuer is not liable because of the payments or actions unless, at the time of the payments or actions, the issuer had actual knowledge of (i) inconsistent provisions of a community property agreement, a community property trust, a decree relating to a community property agreement or a community property trust, or (ii) an adverse claim that is brought by a spouse, former spouse, surviving spouse, or persons claiming under a deceased spouse's disposition at death and that relates to a community property agreement or a community property trust.
 B. Except as provided in subsections C through E:
 1. The ownership interest in and proceeds of a policy that insures the life of one of the spouses and that has been classified by a community property agreement or a community property trust as community property are community property without regard to the classification of property used to pay premiums on the policy;
 2. The ownership interest in and proceeds of a policy that is owned by one spouse and that has not been classified by a community property agreement or a community property trust as community

property are mixed property if all or part of a premium on the policy is paid from community property after the determination date. The community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

3. The ownership interest in and proceeds of a policy issued during marriage that designates the spouse of the insured as the owner are the individual property of the owner without regard to the classification of property used to pay premiums on the policy;

4. The ownership interest in and proceeds of a policy that designates a person other than either of the spouses as the owner are not affected by this chapter if a premium on the policy is not paid from community property after the determination date. If all or part of a premium on the policy is paid from community property after the determination date, the ownership interest and proceeds of the policy are in part property of the designated owner of the policy and in part community property of the spouses without regard to the classification of property used to pay premiums on the policy after the initial payment of a premium on the policy from community property. The community property component of the ownership interest and proceeds is the part resulting from multiplying the entire ownership interest and proceeds by a fraction that consists of a numerator that is the sum of the net premiums and portions of net premiums paid from community property and a denominator that is the sum of the net premiums paid;

5. Written consent by a spouse to the designation of another person as the beneficiary of the proceeds of a policy is effective to relinquish that spouse's interest in the ownership interest and proceeds of the policy without regard to the classification of property used by a spouse or another person to pay premiums on the policy. A designation by either spouse of a parent or child of either of the spouses as the beneficiary of the proceeds of a policy is presumed to have been made with the consent of the other spouse; and

6. Unless the spouses provide otherwise in a community property agreement or community property trust, designation of a trust as the beneficiary of the proceeds of a policy with a community property component does not reclassify the component.

C. This section does not affect a creditor's interest in the ownership interest or proceeds of a policy assigned or made payable to the creditor as security.

D. The interest of a person as owner or beneficiary of a policy acquired under a decree or property settlement agreement incident to a prior marriage or parenthood is not community property notwithstanding the classification of property used to pay premiums on the policy.

E. This section does not affect the ownership interest or proceeds of a policy unless a spouse is designated as an owner in the policy or on the records of the policy issuer and community property is used to pay a premium on the policy.

F. In this section:

1. "Owner" means a person appearing on the records of a policy issuer as the person having the ownership interest, or, if a person other than the insured does not appear on the records as a person having the interest, "owner" means the insured;

2. "Ownership interest" means the rights of an owner under a policy;

3. "Policy" means an insurance policy insuring the life of a spouse and providing for payment of death benefits at the spouse's death;

4. "Proceeds" means the death benefit from a policy and all other economic benefits from the policy, whether the economic benefits accrue or become payable as a result of the death of an insured person or upon the occurrence or nonoccurrence of another event.

§ 20-180. Mixed property.

A. Except as provided otherwise in § 20-178, mixing community property with property having another classification reclassifies the other property as community property unless the component of the mixed property that is not community property can be traced.

B. If a community property agreement provides that all property acquired by either or both spouses during marriage is community property, application by one spouse of substantial labor, effort, inventiveness, physical skill, intellectual skill, creativity, or managerial activity on individual property of the other spouse creates community property attributable to the application if:

1. Reasonable compensation is not received for the application; and

2. Substantial appreciation of the individual property of the other spouse results from the application.

§ 20-181. Interspousal remedies.

A. A spouse has a claim against the other spouse for breach of the good faith requirement under § 20-168 resulting in damage to the claimant spouse's present undivided one-half interest in community property.

B. If the spouses have signed a community property agreement or a community property trust, a

614 court may order an accounting of the property and obligations of the spouses and may determine rights
 615 of ownership in, beneficial enjoyment of, or access to marital property and the classification of all
 616 property of the spouses.

617 C. A court may order that the name of a spouse be added to community property held in the name
 618 of the other spouse alone, except:

619 1. A partnership interest held by the other spouse as a general partner;

620 2. An interest in a professional corporation, professional association, or similar entity held by the
 621 other spouse as a stockholder or member;

622 3. An asset of an unincorporated business if the other spouse is the only spouse involved in
 623 operating or managing the business; or

624 4. Other property if the addition would adversely affect the rights of a third person.

625 D. Except as provided otherwise in subsection D of § 20-172, a spouse shall begin an action against
 626 the other spouse under subsection A within three years after acquiring actual knowledge of the facts
 627 giving rise to the claim.

628 § 20-182. Treatment of certain property at death of spouse.

629 If a community property agreement provides that all property acquired by either or both spouses
 630 during marriage is community property, at the death of a spouse domiciled in this Commonwealth,
 631 property of the spouse that can be traced to property received by the spouse after the determination
 632 date as a recovery for a loss of earning capacity during marriage shall be treated as if it were
 633 community property. Property treated as community property at the death of a spouse shall not be
 634 treated as property included under Chapter 9 (§ 64.1-197 et seq.) of Title 64.1.

635 § 20-183. Uniformity of application and construction.

636 This chapter shall be applied and construed to effectuate its general purpose and to make uniform
 637 the law with respect to the subject of this chapter among states enacting it.

638 § 55-20. Survivorship between joint tenants abolished.

639 When any joint tenant dies, before or after the vesting of the estate, whether the estate is real or
 640 personal, or whether partition could have been compelled or not, his part shall descend to his heirs, or
 641 pass by devise, or go to his personal representative, subject to debts or distribution, as if he had been a
 642 tenant in common. And if hereafter any estate, real or personal, is conveyed or devised to a husband and
 643 his wife, they shall take and hold the same by moieties in like manner as if a distinct moiety had been
 644 given to each by a separate conveyance or as provided in Chapter 10 (§ 20-166 et seq.) of Title 20.

645 § 55-21. Exceptions to § 55-20.

646 Section 55-20 shall not apply to any estate which joint tenants have as executors or trustees, nor to
 647 an estate conveyed or devised to persons in their own right when it manifestly appears from the tenor of
 648 the instrument that it was intended the part of the one dying should then belong to the others, *except as*
 649 *provided in Chapter 10 (§ 20-166 et seq.) of Title 20.* Neither shall it affect the mode of proceeding on
 650 any joint judgment or decree in favor of or on any contract with two or more one of whom dies.

651 § 55-37. Spouse not responsible for other spouse's contracts, etc.; mutual liability for necessities;
 652 responsibility of personal representative.

653 Except as otherwise provided in this section and Chapter 10 (§ 20-166 et seq.) of Title 20, a spouse
 654 shall not be responsible for the other spouse's contract or tort liability to a third party, whether such
 655 liability arose before or after the marriage. The doctrine of necessities as it existed at common law shall
 656 apply equally to both spouses, except where they are permanently living separate and apart, but shall in
 657 no event create any liability between such spouses as to each other. No lien arising out of a judgment
 658 under this section shall attach to the judgment debtors' principal residence held by them as tenants by
 659 the entireties.

660 § 64.1-197. Application; exceptions.

661 A. This chapter applies to the disposition at death of the following property acquired by a married
 662 person:

663 1. All personal property, wherever situated:

664 a. Which was acquired as or became, and remained, community property under the laws of another
 665 jurisdiction; or

666 b. All or the proportionate part of that property acquired with the rents, issues, or income of, or the
 667 proceeds from, or in exchange for, that community property; or

668 c. Traceable to that community property;

669 2. All or the proportionate part of any real property situated in the Commonwealth which was
 670 acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired
 671 as, or which became and remained, community property under the laws of another jurisdiction, or
 672 property traceable to that community property.

673 B. The value of community property under Chapter 10 (§ 20-166 et seq.) of Title 20 is not included
 674 in property under this chapter.