

HIGHLIGHTS OF THE 2025-2026 EDITION

•Nonexoneration: Court of Appeals of Virginia, *Davis v. Goforth, Et Al.*, Record No. 1764-23-3, 909 S.E.2d 15, 82 Va.App. 720 (2024). Decedent died testate in 2013, devising certain real property to his spouse. His spouse brought this action in the circuit court claiming that the Executor of the decedent’s estate, erred by not exonerating the real estate before it passed to the spouse. The circuit court held that, under Code § 64.2-531(A), the decedent’s will did not set out the requisite “contrary intent” to the statutory presumption of nonexoneration for the property to pass free and clear of any encumbrances (In an explanatory footnote to its opinion, dated December 10, 2024, the Court of Appeals stated: “Code § 64.2-531 was amended by the General Assembly in 2024. Code § 64.2-531(A) was in effect at the time this case was decided by the trial court, but this provision is now codified as Code § 64.2-531(B). This Court will refer to Code § 64.2-531(A) for consistency with the trial court’s decision, although this provision is now codified at Code § 64.2-531(B).”) In this case, the Court of Appeals indicated that this appeal presented a question of first impression for the Court of Appeals. The Court of Appeals upheld the decision of the circuit court because the result was correct, even though the circuit court judge misinterpreted the meaning of the word “clearly” in the statute. In its conclusion, the Court of Appeals stated: “Code § 64.2-531(A)’s requirement that a contrary intent be “clearly” set out in a will does not necessitate an express, explicit, or “actually said” statement of intent for a testator to overcome the presumption of nonexoneration. It does require, however, more than a general directive to “pay all debts and obligations.” Because Dickey’s will merely contains general directives to pay debts, the Executor’s decision to not exonerate Armentrout Farm was not in error, and the decision of the circuit court stands. Affirmed.”

Interestingly, on April 5, 2024, the Governor signed into law SB 102, as (2024 Acts of Assembly CHAP0576), which amended and reenacted § 64.2-531(A) as § 64.2-531(B), which reads as follows:

“B. Unless a contrary intent is clearly set out in the will, the trust instrument, or in a transfer on death deed, (i) real or personal property that is the subject of a specific devise or bequest in the will or the trust instrument that was revocable immediately before the settlor’s death or (ii) real property subject to a transfer on death deed passes, subject to any mortgage, pledge, security interest, or other lien existing at

the date of death of the testator or settlor, without the right of exoneration. A general directive in the will or trust instrument to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated prior to passing to the legatee.”

- After whirlwind back and forth between the House and Senate, and after having been stripped of its official title somewhere in the process, H.R. 1, the budget reconciliation bill passed by the 119th United States Congress (2025-2026), was signed into law by the President of the United States on July 4, 2025, and became Public Law 119-21. In common parlance, it is often referred to by its various slang titles (such as “OBBBA”, or “BBB”, “the Big Beautiful Tax Law”, or the “One Big Beautiful Bill Act”, depending upon the speaker’s or writer’s perspective or area of interest), but they are not included within the enactment itself. The Act is just under 900 pages long, and its myriad provisions deal with a wide variety of policy matters, including, without limitation: Medicaid; Health Care; National Defense; Border Security; Immigration Enforcement; Spending Cuts; Tax Cuts and Other Tax-related Matters. Of particular interest are the provisions making “permanent” increases in the United States Estate, Gift, and Generation-skipping transfer tax “exemptions” in 2026, increasing them to \$15,000,000 per individual (to be adjusted for inflation in the future). This \$15,000,000 amount is about \$720,000 more than the exclusion amount would have been if the current law had been merely extended. Permanent, of course, means, until they are changed in the future (i.e., for better or for worse). As a matter of historical perspective, in 1968 (before the estate and gift tax schedules were unified), the Estate Tax Exemption was \$60,000, and the Lifetime Gift Tax Exemption was \$30,000 (with a \$3,000 per donee Annual Exclusion from Gift Tax). \$60,000 in 1968 (adjusted for inflation) would be the equivalent of \$558,592.92 in 2025; \$30,000.00 in 1968 (adjusted for inflation) would be the equivalent of \$279,296.46 in 2025; and \$3,000.00 in 1968 (adjusted for inflation) would be the equivalent of \$27,929.65 in 2025.

- Virginia SB 1270, On March 21, 2025, the Governor signed this legislation (2025 Acts of Assembly CHAP0282), An Act to direct the Virginia Housing Development Authority to convene a technical advisory group to evaluate the prevalence of deed fraud, develop recommendations for the prevention of deed fraud, and develop measures to enhance protections for property owners from such crimes. The Act provides that the Virginia Housing Development Authority shall convene a technical advisory group to evaluate the prevalence of deed fraud, including notary fraud, seller impersonation, owner impersonation, and fraudulent lien filing; develop recommendations for the prevention of deed fraud; and develop measures to enhance protections for property owners

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from such crimes. The Department of Housing and Community Development shall provide administrative or technical support to the technical advisory group as necessary. The technical advisory group shall identify any vulnerabilities or deficiencies that exist throughout the real estate transaction process and recommend policy changes to address such vulnerabilities. The technical advisory group shall give consideration to policy proposals, including (i) requiring identity verification processes by notaries, (ii) strengthening safeguards to prevent fraudulent notaries, (iii) enhancing security for public access to land records, (iv) providing consumer and professional education and awareness training, (v) granting local governments and circuit clerks authority with respect to suspected fraudulent documents, (vi) establishing free property alert notification systems within local land record offices, and (vii) establishing an alert notification system to inform notaries when documents containing a notary's name or registration number are submitted for recording. The technical advisory group shall consist of representatives from (a) the Virginia Bankers Association, (b) the Virginia Court Clerks Association, (c) the Community Associations Institute, (d) the Virginia Association for Commercial Real Estate, (e) the Home Builders Association of Virginia, (f) the Virginia Municipal League, (g) a public notary or representative from the Virginia Association of Notaries, (h) the Virginia Land Title Association, (i) the Virginia Mortgage Bankers Association, (j) Virginia Realtors, and (k) the Virginia Bar Association Real Estate Council. The technical advisory group shall report its findings and recommendations, including any legislative recommendations, to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology no later than November 1, 2025.

Some Circuit Court Clerks have already implemented free alert notification systems which are available to land owners in their respective jurisdictions. Fiduciaries should be aware of these systems where available, and register for them where applicable. In addition, attention should be paid to the results of the technical advisory group referenced above.

- Virginia HB 2246, On March 21, 2025, the Governor signed this legislation (2025 Acts of Assembly CHAP0253), an Act to amend and reenact § 54.1-2807.01, relating to funerals, and disagreements among next of kin. The Act amends subsection C, so that it now reads as follows: "C. When there is a disagreement among a decedent's next of kin concerning the arrangements for his funeral or the disposition of his remains, at least one of the next of kin shall, within 48 hours of the funeral service establishment receiving the decedent's remains, notify such funeral service establishment of the dispute, at which time the funeral service establishment shall immediately stop making arrangements

for the decedent's funeral or for the disposition of the decedent's remains until such time as an agreement is reached by the disputing next of kin or a court of appropriate jurisdiction has ruled on any petition filed by such disputing next of kin. If, after 30 days of learning of a dispute, the funeral service establishment has not received written notice of agreement among the next of kin or a court order resolving the dispute, the funeral service establishment may proceed with the funeral and disposition arrangements upon authorization from any next of kin or in accordance with § 54.1-2807.02. The funeral service establishment shall not be liable for complying with the provisions of this subsection."

- Virginia HB 1871, On March 18, 2025, the Governor signed this legislation (2025 Acts of Assembly CHAP0085), an Act to amend and reenact §§ 64.2-630 and 64.2-635 of the Code of Virginia, relating to transfer on death deeds; inter vivos deed conveying real property to another; and emergency. This Act declares that it is an emergency, and is therefore effective on the date of enactment. After the amendment, §§ 64.2-630 and 64.2-635 read as follows:

“§ 64.2-630. Revocation by instrument authorized; revocation by act not permitted.

A. Subject to subsection B, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

1. Is one of the following:

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

b. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a prior transfer on death deed;

c. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed; or

d. An inter vivos deed that conveys real property to another so the transferor is no longer the owner at the time of the transferor's death.

2. Is acknowledged by the transferor after the acknowledgment of the transfer on death deed being revoked and recorded before the transferor's death in the land records of the clerk's office of the circuit court where the deed is recorded.

B. If a transfer on death deed is made by more than one transferor:

1. Revocation by a transferor does not affect the transfer on death deed as to the interest of another transferor; and

2. A transfer on death deed of joint owners is revoked only if it is revoked by all of the living joint owners.

C. After a transfer on death deed is recorded, it can be revoked only by an effective revocatory instrument recorded prior to the death of the transferor and may not be revoked

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by a revocatory act taken against or on the original or a copy of the recorded transfer on death deed.

D. This section does not limit the effect of an inter vivos transfer of the property.

§ 64.2-635. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of this article govern the effect of this or any other instrument used to create a transfer on death deed:

THIS DEED MUST BE RECORDED BEFORE THE DEATH OF THE OWNER(S), OR IT WILL NOT BE EFFECTIVE.

THIS DEED IS EXEMPT FROM RECORDATION TAXES UNDER § 58.1-811(J) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED.

REVOCABLE TRANSFER ON DEATH DEED

THIS REVOCABLE TRANSFER ON DEATH DEED, dated as of the _____ day of _____, is made by TRANSFEROR or TRANSFERORS (the Grantor(s)), whose address is _____.

This Revocable Transfer on Death Deed is made pursuant to the provisions of the Uniform Real Property Transfer on Death Act, Virginia Code § 64.2-621 et seq. In accordance with the provisions of the Uniform Real Property Transfer on Death Act, at my death, I transfer and convey my interest in the below described property to my designated beneficiaries as follows:

PRIMARY BENEFICIARY

I designate _____ as the designated beneficiary of the property if _____ survives me.

ALTERNATE BENEFICIARY -- Optional

If my primary designated beneficiary does not survive me, I designate _____ as my alternate designated beneficiary if my alternate designated beneficiary survives me.

PROPERTY:

The legal description of the real property that shall be transferred at my death pursuant to this Revocable Transfer on Death Deed is as follows:

RIGHT TO REVOKE AND METHOD TO REVOKE DEED:

Before my death, I have the right to revoke this deed.

1. Is one of the following:

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

a. A transfer on death deed that revokes the transfer on death deed or part of the transfer on death deed expressly;

b. A transfer on death deed that names a designated beneficiary that is inconsistent with the designated beneficiary in a prior transfer on death deed;

c. An instrument of revocation that expressly revokes the transfer on death deed or part of the transfer on death deed;

or

d. An inter vivos deed that conveys real property to another so the transferor is no longer the owner at the time of the transferor's death.

2. Is acknowledged by the transferor after the acknowledgment of the transfer on death deed being revoked and recorded before the transferor's death in the land records of the clerk's office of the circuit court where the deed is recorded.

After this transfer on death deed is recorded, it can be revoked only by an effective revocatory instrument recorded prior to the death of the transferor and may not be revoked by a revocatory act taken against or on the original or a copy of the recorded transfer on death deed.

The execution and recordation of this transfer on death deed does not limit the effect of an inter vivos transfer of the property.

At my death, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at my death.

Witness the following signature and seals:

_____ (SEAL) TRANSFEROR COMMON-WEALTH OF VIRGINIA CITY/COUNTY OF _____, to wit: The foregoing instrument was acknowledged before me in the City/County of _____, Virginia this _____ day of _____, by TRANSFEROR. _____ Notary Public My commission expires: _____ Registration number: _____

- Virginia HB1912, on March 19, 2025, the Governor signed this legislation (2025 Acts of Assembly CHAP0148). The Act amends and reenacts §§ 64.2-309, 64.2-310, 64.2-311, 64.2-508, 64.2-528, 64.2-600, 64.2-601, 64.2-602, 64.2-609, 64.2-732, 64.2-1104, 64.2-1302, 64.2-1313, 64.2-1411, 64.2-1502, 64.2-1802, 64.2-1905, 64.2-1906, 64.2-2017, 64.2-2020, 64.2-2023, and 64.2-2026 of the Code of Virginia, relating to wills, trusts, and fiduciaries; Consumer Price Index adjustments. This Act Increases various dollar amounts relating to wills, estates, trusts, fiduciaries, guardianships of minors, and guardianships of incapacitated persons to reflect the change in the Consumer Price Index for all urban consumers (CPI-U) as published by the Bureau of Labor Statistics of the U.S. Department of Labor. This bill incorporates HB 1644.

The following increases are made, with the old amount shown in parentheses:

§ 64.2-309 increases the Family Allowance to a lump sum of \$30,000 (from \$24,000), or \$2,500 (from \$2,000) per month for one year.

§ 64.2-310 increases the Exempt Property Allowance to \$25,000 (from \$20,000).

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§ 64.2-311 increases the Homestead Allowance to \$25,000 (from \$20,000).

- Virginia HB2174, on March 24, 2025, the Governor signed this legislation (2025 Acts of Assembly CHAP0450). The Act amends and reenacts § 64.2-520.1.

The Act provides that its provisions are declarative of existing law. The bill also repeals the provisions under current law that specify the statute of limitations for legal malpractice actions relating to contracts for legal services concerning estate planning and the tolling of such statute of limitations. This Act is a recommendation of the Boyd-Graves Conference and is identical to SB 1115. The Act now reads as follows: “1. § 64.2-520.1. Legal duty; action for damages from legal malpractice concerning estate planning; third parties.

A. Notwithstanding § 55.1-119, an attorney does not owe a legal duty to any person other than the client in any engagement for the purpose of the client’s estate planning, including the provision of legal advice or the preparation of legal documents, unless the client and attorney enter into a signed, written agreement that expressly provides that the client and attorney intend to confer a benefit upon a third party by specific reference to this subsection.

B. Notwithstanding the provisions of this section, no action shall be based upon damages that may reasonably be avoided or that result from a change of law subsequent to the representation upon which the action is based.

2. That the provisions of this act are declarative of existing law.”

- The Virginia Supreme Court’s Virginia WINGS (Working Interdisciplinary Network of Guardianship Stakeholders) continues its work as a court-stakeholder partnership that promotes improvements in adult guardianship and conservatorship practice and use of less restrictive decisional options. By coming together in a collaborative network, WINGS makes a positive impact on the lives of Virginians potentially affected by the guardianship/conservatorship processes. WINGS includes a wide range of stakeholders from the judicial, legal, aging, disability, healthcare, guardianship, and other areas. More about WINGS can be found on the Court’s webpage at <https://www.guardian.vacourts.gov/virginia-wings>