

1968

## Recent Legislation

Follow this and additional works at: <http://scholarship.richmond.edu/lawreview>

 Part of the [Business Organizations Law Commons](#), [Evidence Commons](#), and the [Torts Commons](#)

---

### Recommended Citation

*Recent Legislation*, 3 U. Rich. L. Rev. 197 (1968).

Available at: <http://scholarship.richmond.edu/lawreview/vol3/iss1/7>

This Article is brought to you for free and open access by UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized administrator of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

## RECENT LEGISLATION

**AGENCY**—WHEN CERTAIN POWERS OF ATTORNEY NOT PRESUMED TO BE REVOKED. *Va. Code Ann. § 11-9.3 (tentative designation)*. [*New statute*]

The Assembly has provided that a power of attorney is not automatically revoked if the principal is in military service and classified "missing in action." It is open, however, to the principal to specify that the power will terminate should the principal acquire the aforementioned classification.

**CORPORATIONS**—NEED FOR ACKNOWLEDGING ARTICLES OF INCORPORATION ELIMINATED. *Va. Code Ann. §§ 13.1-48 and 13.1-230*. [*Amendment*]

The 1968 Assembly has omitted one of the duties of incorporators of Virginia corporations. The incorporators now need only sign the articles and deliver them to the State Corporation Commission. The former requirement that the signatures be notarized has been eliminated.

**CRIMINAL LAW**—CREDIT FOR TIME IN CONFINEMENT PRIOR TO SENTENCING. *Va. Code Ann. § 53-208*. [*Amendment*]

A credit will be granted to convicted criminals for time they may have served in a mental institution prior to trial whether such period of confinement was for observation or for treatment. This credit also applies to those individuals now serving sentences who also may have spent time in a mental hospital prior to the commencement of their prison terms.

**DISCOVERY**—MEDICAL EXAMINATIONS. *Va. Code Ann. § 8-4.3 (tentative designation)*. [*New statute*]

Any medical examination ordered by the court pursuant to Rule 4:10 (a) of the Rules of the Supreme Court of Appeals of Virginia must be made by a physician who resides in or who has an office in the state.

**HABEAS CORPUS**—NEW SHORTHAND FORM FOR PETITION. *Va. Code Ann. § 8-596.1*. [*New statute*]

A shorthand form for the petition for a writ of Habeas Corpus is now provided. In form it is similar to that now used in the federal courts. A

failure to adhere substantially to the statutory requirements either as to form or substance shall be ground for refusal by the court to entertain the cause.

**HABEAS CORPUS—VENUE AND BASIS OF PETITION—SENTENCE NOT BEING SERVED MAY BE ATTACKED.** *Va. Code Ann. § 8-596. [Amendment]*

This provision makes some significant changes in the procedure for filing Habeas Corpus petitions. The proper courts are:

1. The circuit or corporation court where the petitioner is detained; or
2. The court where the trial was held, and
3. The Supreme Court.

The categories are absolute, except that in no case shall the judge who entered the original order of conviction be qualified to consider the petition. The petition itself must be stated with some degree of particularity. All previous applications of like nature and their disposition must be stated. It is important that all allegations of which the petitioner is aware be included in the original petition. If such allegations are known and are not included, they cannot be considered on a later petition. A radical departure from traditional habeas corpus procedure is now provided: sentences not being served may be attacked. The previous law allowed use of the writ of habeas corpus only if immediate release of the petitioner was possible; hence, attacking future or suspended sentences was impossible.

**MECHANICS' LIENS—AUTHORIZATION BY OWNER AS TO EXISTING STRUCTURES.** *Va. Code Ann. § 43-3. [Amendment]*

Title 43 dealing with mechanics' liens has been extensively revamped, but few substantive changes resulted. In § 43-3, if an improvement or a repair is made to existing structures, the mechanic has no lien unless he had authorization from the owner to do the work. There seems to be an inference that if no existing structure is involved, repairs or improvements may be made upon the property without the owner's authority.<sup>1</sup>

<sup>1</sup> § 43-3. Lien for work done and materials furnished.—All persons performing labor or furnishing materials of the value of \* fifty dollars or more, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials finished. But when the claim is for repairs or improvements

**MECHANICS' LIENS—SUBJECTING OWNER OR GENERAL CONTRACTOR TO PERSONAL LIABILITY—NOTICE REQUIRED.** *Va. Code Ann. § 43-11.* [*Amendment*]

To render the owner or the general contractor personally liable to the materialman or subcontractor, the latter is required to give notice of his intention to claim personal liability. The change in the present procedure is that the notice must be served as would a motion for judgment, or sent by certified or registered mail.

**MECHANICS' LIENS—SERVICE OF NOTICES UNDER TITLE 43.** *Va. Code Ann. § 43-14.1.* [*New statute*]

All notices required to be given relating to mechanics' liens shall be as prescribed in Va. Code § 8-52, i.e., by sheriff, sergeant, etc., or in the alternative by registered or certified mail. Prima facie evidence of receipt is established by proof of a return receipt.

**MECHANICS' LIENS—EFFECT OF SUBORDINATION AGREEMENT GIVEN BY PRIOR LIENOR.** *Va. Code Ann. § 43-21.* [*Amendment*]

If a prior lienor subordinates to a construction money deed of trust, such agreement shall subordinate the prior lien only to the extent of the construction money deed of trust. The subordination agreement shall not extend to the value of the land itself. However, by agreement of the parties, the agreement can be drafted to include the value of the land.

**MECHANICS' LIENS—FORFEITURE OF LIEN.** *Va. Code Ann. § 43-23.1.* [*New statute*]

If any person knowingly includes in his memorandum work not done or materials not furnished, he shall forfeit any right to a lien under this chapter.

**TORTS—VIRGINIA'S HEART BALM ACTION ABOLISHED.** *Senate Bill 193, Chapter 716.* [*New statute*]

Virginia, following the modern trend, has abolished as causes of action alienation of affection, breach of promise to marry, and criminal conversa-

---

*to existing structures* only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent (amending language italicized).

tion. The statute does not allow one to indulge in adulterous conducts with impunity. It provides that anyone who "knowingly causes or contributes to the disruption of a marital relationship shall be guilty of a misdemeanor." What the legislature meant by "disruption of a marital relationship" is not clarified by the statute nor committee records and will be left to the courts to interpret.

**TORTS**—DEATH BY WRONGFUL ACT. *Va. Code Ann. § 8-636. [Amendment]*

This amendment has produced an important change in the law. The total amount recoverable is increased from \$40,000 to \$75,500, plus actual medical expenses incurred. The distribution of such recovery is different from the former scheme; \$25,000 is the maximum recovery for solace, *i.e.*, the sense of loss occasioned by the wrongful act prompting death. The surviving spouse, children or grandchildren have a claim superior to that of the parents or brothers and sisters as to the recovery on this ground. The funeral expenses, with a maximum of \$500, may now be recovered in addition to all medical expenses incurred. Prior law required that this be taken from the total recovery. Pecuniary losses to a maximum of \$50,000 are recoverable by any dependent, and shall be distributed according to the loss regardless of family relationship.

**TRUSTS**—QUALIFICATION OF TRUSTEES. *Va. Code Ann. §§ 26.1.1, 26-1.2. [New statutes]*

§ 26-1.1 (a) requires that all trustees appointed by a "deed or other writing," if required by the instrument, must qualify with the clerk or the court by giving bond and taking oath that he will perform his duties.

(b) If the instrument does not require such qualification, the trustee may be required to qualify with the clerk upon the request of any party in interest. Not included in this statute are testamentary trustees.

§ 26-1.2 requires that in the case of a trustee named in a will probated after July one, nineteen hundred sixty-eight, he must qualify with the clerk and give bond. This section, unlike § 26-1.1, does not require that the trustee under a will take an oath that he will perform his duties. However, unless waived by the will, the trustee shall be required to give surety.

**WILLS**—CHANGE IN UNIFORM SIMULTANEOUS DEATH ACT. *Va. Code Ann. § 64.1-102. [Amendment]*

Where there has been a simultaneous death, the Uniform Act provides

that "the property of each will be disposed of as if he had survived." An exception had been where a person's will, trust, deeds, or contracts of insurance provide for a different distribution in this situation. The new amendment limits the effect a deed will have on the disposition of property in a simultaneous death situation. The law now provides that only where a deed creates a joint tenancy or tenancy by the entirety and the will makes a specific provision for the distribution of the property in favor of another cotenant will there not be the presumption of survivorship of the person whose property is being disposed of. A further provision eliminates the hazards incurred by insurance companies in paying the proceeds to a named beneficiary where they have made payment in accordance with the contract of insurance and the presumption of survivorship under § 64.1-100. The new provision in § 64.1-102 would allow the decedent, by his will, to make a contrary provision. If the decedent so provided and the insurance company without knowledge of this provision paid pursuant to § 64.1-100, it would not be liable to the person named by the will. However, the personal representative can sue the payee of the policy for the full amount paid by the company and pay it over to the person named in the will.

**WILLS**—PARTIAL REVOCATION BY DIVORCE. *Va. Code Ann. § 64.1-59.*  
[*New statute*]

This provision is taken in essence from the Model Probate Code § 53. It provides that if, after making a will, the testator obtains a divorce a vinculo matrimonii, "provisions in the will in favor of the divorced spouse are thereby revoked."

**WILLS**—PRESUMPTION OF SATISFACTION OF BEQUEST OR DEVISE. *Va. Code Ann. § 64.1-63.* [*Amendment*]

The presumption that an advancement to a child of the testator was intended to be in satisfaction of a devise or bequest has been eliminated. Children of the testator are now placed on the same footing with others and an intention of satisfaction of a devise or bequest must be proved by other evidence.