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## WILLS, TRUSTS, AND ESTATES

*J. William Gray, Jr.* \*  
*Katherine E. Ramsey* \*\*

### INTRODUCTION

The 2018 Virginia General Assembly enacted legislation to conform the interpretation of wills with trusts, revised the recent trust decanting and augmented estate statutes, and provided a procedure for resolving doctor/patient disputes over appropriate medical care. It also confirmed the creditor protection available for life insurance and annuities, and addressed certain entities' eligibility for real and personal property tax exemptions, annual disclosures of charitable organizations' administrative and charitable service expenses, virtual nonstock corporation member meetings, bank directors' stock holdings, the disposition of unused tax credits at the taxpayer's death, and fiduciary qualification without surety.<sup>1</sup> The Supreme Court of Virginia handed down eight recent decisions addressing the presumption of undue influence, requirements for estoppel and preclusion, the signature requirement for a proper codicil, trust governing law and interpretation, the fiduciary duties of agents, the jurisdiction of Commissioners of Accounts, and appraisal requirements for state tax credits.

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1. Except where specifically noted, all 2018 legislation summarized in this article became effective July 1, 2018.

## I. LEGISLATION

A. *Conforming Rules Governing Estates and Trusts*

The law in Virginia governing trusts has developed somewhat independently from the law of wills. This has led to certain inconsistencies, some of which the General Assembly addressed in 2018.

## 1. Judicial Reformation of Wills

Under Virginia's Uniform Trust Code,<sup>2</sup> an unambiguous trust may be reformed as needed to correct mistakes or to achieve the settlor's probable tax objectives.<sup>3</sup> However, as was illustrated in *Thorsen v. Richmond Society for the Prevention of Cruelty to Animals*, similar tools have not been available for wills.<sup>4</sup>

To address this inconsistency, the 2018 General Assembly enacted new Virginia Code section 64.2-404.1, which allows the judicial reformation of a decedent's will or codicil, even if unambiguous, to conform its terms to the decedent's probable intention or tax objectives, as shown by clear and convincing evidence.<sup>5</sup> In the case of a reformation to correct a mistake, both the decedent's intent and the document terms must have been affected by a mistake of fact or law, whether in expression or inducement.<sup>6</sup> The statute is modeled closely on the corresponding trust statutes.<sup>7</sup>

Relief is available only if a proceeding is brought in a circuit court within one year after the decedent's death and all interested persons are made parties.<sup>8</sup> The applicable notice and virtual representation rules are the same as those that apply to trust reformations.<sup>9</sup>

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2. VA. CODE ANN. §§ 64.2-700 to -808 (Repl. Vol. 2017 & Cum. Supp. 2018).

3. *Id.* §§ 64.2-733 to -734 (Repl. Vol. 2017).

4. 292 Va. 257, 276, 786 S.E.2d 453, 464 (2016). For a discussion of the *Thorsen* case, see J. William Gray, Jr. & Katherine E. Ramsey, *Annual Survey of Virginia Law: Wills, Trusts, and Estates*, 52 U. RICH. L. REV. 115, 139-42 (2017).

5. Act of Feb. 26, 2018, ch. 44, 2018 Va. Acts \_\_, \_\_ (codified at VA. CODE ANN. § 64.2-404.1 (Cum. Supp. 2018)).

6. VA. CODE ANN. § 64.2-404.1(A) (Cum. Supp. 2018).

7. *See id.* § 64.2-733 to -734 (Repl. Vol. 2017).

8. *Id.* § 64.2-404.1(D) (Cum. Supp. 2018).

9. *Id.* § 64.2-404.1(C) (Cum. Supp. 2018); *see also id.* §§ 64.2-733 to -734 (Repl. Vol. 2017).

The new reformation rules apply to all wills and codicils regardless of the date of their execution and to all judicial proceedings regardless of when commenced, other than a suit brought before July 1, 2018, in which the court finds their application would substantially interfere with the effective conduct of the suit or prejudice the parties' rights.<sup>10</sup>

## 2. Effect of Divorce on Trusts

If a testator divorces after making a will, any disposition or appointment of property to the former spouse is revoked and the property passes as if the former spouse did not survive the testator.<sup>11</sup> Unless the will expressly provides otherwise, any provision granting the former spouse a power of appointment or nominating the former spouse as a fiduciary is also revoked and the property passes as if the former spouse did not survive.<sup>12</sup> If the testator later remarries the former spouse, the provisions are revived unless the testator executed an intervening will or codicil.<sup>13</sup>

These same rules are now applicable to revocable trust agreements if the settlor divorces the spouse on or after July 1, 2018, or, in the case of a provision granting a power of appointment or nominating the spouse as a fiduciary, an action is filed for divorce, annulment, legal separation or separate maintenance on or after that date.<sup>14</sup> The default rules do not apply to any revocable trust agreement that expressly provides otherwise; they do not prevent an individual from subsequently transferring property to, conferring a beneficial interest or power on, or naming as a fiduciary a spouse or former spouse.<sup>15</sup>

Any provisions for the former spouse in the settlor's trust agreement revoked by these rules will be revived upon the parties' remarriage, if there has not been a subsequent trust revocation by other means or an inconsistent amendment.<sup>16</sup>

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10. *Id.* § 64.2-404.1(E) (Cum. Supp. 2018).

11. *Id.* § 64.2-412(B)–(C) (Cum. Supp. 2018).

12. *Id.*

13. *Id.* § 64.2-412(E) (Cum. Supp. 2018).

14. Act of Feb. 26, 2018, ch. 44, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 64.2-412(A), (D)–(G) (Cum. Supp. 2018)).

15. VA. CODE ANN. § 64.2-412(D)–(E) (Cum. Supp. 2018).

16. *Id.* § 64.2-412(E) (Cum. Supp. 2018).

### 3. Construction of Certain Trust Provisions; Nonademption

Unless a contrary intention appears in the will, a bequest of specific securities includes as much of the bequeathed securities as the testator owned at death, together with any additional or other securities owned by the testator by reason of any action initiated by the entity, e.g., stock splits or stock dividends, and securities resulting from any merger, consolidation, reorganization or similar action initiated by the entity.<sup>17</sup> A bequest or devise of specific property also includes any unpaid condemnation award or insurance proceeds on the property.<sup>18</sup> These same rules now apply to revocable trust agreements, unless the agreement expressly provides otherwise.<sup>19</sup>

The nonademption rules also now apply to both wills and trusts in the same manner, unless the will or trust provides otherwise.<sup>20</sup> Like a specific bequest or devise, a required distribution of specific trust property by reason of the settlor's death must include the net sale price or insurance proceeds if the trustee sold the property or received insurance proceeds while the settlor was incapacitated, unless the settlor later regained capacity and ratified the transaction.<sup>21</sup>

The new default trust rules apply only if the trust provisions were revocable immediately before the settlor's death on or after July 1, 2018.<sup>22</sup>

### 4. Antilapse Rules for Trusts

To avoid intestacy, the rules governing wills in Virginia have long provided that, unless the will directs otherwise, a specific devise or bequest that fails becomes part of the residuary estate and the share of any residuary beneficiary that fails passes to the other residuary beneficiaries in proportion to their interests.<sup>23</sup> Similarly, unless the will provides otherwise, if the named taker

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17. *Id.* § 64.2-415(B)(1) (Cum. Supp. 2018).

18. *Id.* § 64.2-415(B)(2) (Cum. Supp. 2018).

19. Act of Feb. 26, 2018, ch. 44, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 64.2-415(B) (Cum. Supp. 2018)).

20. *Id.* ch. 44, 2018 Va. Acts at \_\_ (codified as amended at VA. CODE ANN. § 64.2-415(E) (Cum. Supp. 2018)); *see also* VA. CODE ANN. § 64.2-415(C) (Cum. Supp. 2018).

21. VA. CODE ANN. § 64.2-415(C), (E) (Cum. Supp. 2018).

22. *Id.* § 64.2-415(F) (Cum. Supp. 2018).

23. *Id.* § 64.2-416(B)(1)–(2) (Cum. Supp. 2018).

of a specific bequest or devise predeceases the testator and was the testator's grandparent or a descendant of the testator's grandparent, his or her surviving descendants will divide the gift on a *per stirpital* basis, with the stocks determined at the first generation in which at least one descendant is living at the testator's death.<sup>24</sup>

Identical rules now apply to trust provisions that are revocable immediately before the settlor's death on or after July 1, 2018, unless the trust instrument expressly provides otherwise.<sup>25</sup>

### B. *Limit on Trust Decanting Power*

Before Virginia adopted the Uniform Trust Decanting Act ("UTDA") in 2017, a decanting power could be exercised only by a disinterested trustee, i.e., a trustee who was not a current beneficiary or a potential distributee if the trust were then terminated, who could not be replaced by an interested beneficiary and whose legal obligation to support a beneficiary could not be satisfied from the trust.<sup>26</sup> Limiting the decanting power to a disinterested trustee avoided the possibility that the trustee would be considered to hold a general power of appointment over the trust assets for federal transfer tax purposes, which would cause the value of those assets to be included in the trustee's gross estate.<sup>27</sup> However, when the Virginia UTDA was enacted, it prohibited only a trustee who was also the trust settlor from participating in any decanting decision.<sup>28</sup>

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24. See *id.* § 64.2-418(B) (Cum. Supp. 2018).

25. Act of Feb. 26, 2018, ch. 44, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. §§ 64.2-416, -418 (Cum. Supp. 2018)).

26. See VA. CODE ANN. § 64.2-778.1(D) (Cum. Supp. 2016), *repealed by* Act of Mar. 16, 2017, ch. 592, 2017 Va. Acts 992, 1001 (codified at VA. CODE ANN. §§ 64.2-779.1 to -779.25 (Repl. Vol. 2017)).

27. See 26 U.S.C. § 2041(a)(2), (3)(A)–(B) (2012).

28. VA. CODE ANN. § 64.2-701 (Repl. Vol. 2017) (defining "authorized fiduciary"). The National Conference of Commissioners on Uniform State Laws reasoned that a broader prohibition was not necessary because trust settlors were not likely to give other types of interested trustees the expanded distributive discretion necessary to conduct a decanting that affected beneficial interests, and if such discretion were given, it would be sufficient on its own to cause the trust assets to be included in the trustees' gross estates whether or not they also held a decanting power. See UNIF. TR. DECANTING ACT § 2 cmt. (UNIF. LAW COMM'N 2015), [http://uniformlaws.org/shared/docs/trustdecanting/UTDA\\_Final%20Act\\_2018May17.pdf](http://uniformlaws.org/shared/docs/trustdecanting/UTDA_Final%20Act_2018May17.pdf) (last visited on Oct. 1, 2018).

To avoid potential problems from the change in the definition of “authorized fiduciary,” the 2018 General Assembly amended it to exclude once again those trustees who are current trust beneficiaries or potential recipients of trust income or principal on dissolution, those who could be removed by an interested beneficiary, and those who could satisfy their legal obligations to support a beneficiary from the trust.<sup>29</sup> It also authorized the court to appoint a special fiduciary with authority to exercise the decanting power if there are no disinterested trustees or if any trustee so requests.<sup>30</sup>

An emergency clause makes these changes effective as of March 23, 2018, the day the Governor signed the legislation.<sup>31</sup> They apply to all trusts, regardless of when created; but they do not affect the validity of any prior decanting by a fiduciary who was authorized to act under the law in effect at the time.<sup>32</sup>

### C. Calculation of Augmented Estate Share

Following the introduction of Virginia’s new augmented estate system in 2017, practitioners realized that a literal reading of the revised rules would not allow the executor to reduce the surviving spouse’s elective-share amount by the value of assets the decedent had maintained as separate property and transferred to the spouse by non-probate means.<sup>33</sup>

As originally enacted, Virginia Code section 64.2-308.10(A)(1) purported to permit a decedent to satisfy the elective-share amount with transfers of separate property to the surviving spouse, thereby reducing the need for contributions from the decedent’s probate estate or from recipients of the decedent’s non-probate transfers to others.<sup>34</sup> However, two drafting errors pre-

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29. Act of Mar. 23, 2018, ch. 476, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 64.2-701 (Cum. Supp. 2018)).

30. *Id.* ch. 476, 2018 Va. Acts at \_\_ (codified at VA. CODE ANN. § 64.2-779.5(I) (Cum. Supp. 2018)).

31. *Id.* ch. 476, 2018 Va. Acts at \_\_.

32. *Id.* ch. 476, 2018 Va. Acts at \_\_.

33. See VA. CODE ANN. §§ 64.2-308.9 to -308.10 (Repl. Vol. 2017). For a full discussion of the changes to Virginia’s augmented estate rules, see J. William Gray, Jr. & Katherine E. Ramsey, *Annual Survey of Virginia Law: Wills, Trusts, and Estates*, 51 U. RICH. L. REV. 125, 125–30 (2016).

34. Act of Mar. 7, 2016, ch. 269, 2016 Va. Acts 440, 445 (codified at VA. CODE ANN. § 64.2-308.10(A)(1) (Cum. Supp. 2016)); Act of Mar. 1, 2016, ch. 187, 2016 Va. Acts 315, 319 (codified at VA. CODE ANN. § 64.2-308.10(A)(1) (Cum. Supp. 2016)).

vented the estate from claiming augmented estate credit for such transfers.<sup>35</sup>

The 2018 General Assembly corrected both errors.<sup>36</sup> It also amended Virginia Code section 64.2-308.10(A)(1) to credit against the elective share any assets that pass to the spouse at the decedent's death due to the decedent's exercise of a power of appointment over property not included in the augmented estate.<sup>37</sup>

#### D. *Creditor Protection for Insurance Proceeds*

In 2016, the General Assembly substantially expanded the protection afforded life insurance proceeds and annuity contracts from creditor claims.<sup>38</sup> However, Virginia Code section 38.2-3123 was not amended, and so continued to deny that protection to the cash surrender or loan value of a policy if the owner reserved the right to change the beneficiary. Thus, it conflicted with the 2016 amendment, which expressly protected all cash value and other policy benefits regardless of whether the right to change the beneficiary was reserved.<sup>39</sup>

This conflict has been resolved with the repeal of section 38.2-3123.<sup>40</sup>

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35. The statute mistakenly referred to Virginia Code section 64.2-308.9(A), which excludes property transferred by the decedent in exchange for adequate and full consideration in money or money's worth or with the surviving spouse's written joinder or written consent, neither of which fits the context of section 64.2-308.10(A). The correct cross-reference is to Virginia Code section 64.2-308.9(B)(1), which purports to exclude from the augmented estate the value of all property originally received by the decedent by gift or other gratuitous transfer from someone other than the surviving spouse, provided the decedent maintained the property as separate property. However, as originally enacted, that section also contained an error in that it did not include a cross-reference to the decedent's non-probate transfers of separate property to the surviving spouse under Virginia Code section 64.2-308.7. See ch. 269, 2016 Va. Acts at 445 (codified at VA. CODE ANN. § 64.2-308.10(A)(1) (Cum. Supp. 2016)); ch. 187, 2016 Va. Acts at 319 (codified at VA. CODE ANN. § 64.2-308.10(A)(1) (Cum. Supp. 2016)).

36. Act of Mar. 19, 2018, ch. 301, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. §§ 64.2-308.9(B)(1), -308.10(A)(1) (Cum. Supp. 2018)).

37. *Id.* ch. 301, 2018 Va. Acts at \_\_ (codified as amended at VA. CODE ANN. § 64.2-308.10(A)(1) (Cum. Supp. 2018)).

38. Act of Mar. 7, 2016, ch. 274, 2016 Va. Acts 456, 456–57 (codified as amended at VA. CODE ANN. § 38.2-3122 (Cum. Supp. 2016)); see also Gray & Ramsey, *supra* note 33, at 134–35.

39. See VA. CODE ANN. § 38.2-3122(A), (F) (Cum. Supp. 2016).

40. *Id.* § 38.2-3122 (Cum. Supp. 2016), repealed by Act of Mar. 19, 2018, ch. 304, 2018 Va. Acts \_\_, \_\_.



### E. *Medically or Ethically Inappropriate Care*

There are times when a physician may believe the treatment being furnished to a patient or requested by the patient or the patient's agent is medically or ethically inappropriate, but is unable to convince the patient or agent of that fact. In such circumstances, the physician's only recourse is to transfer the patient to another physician or facility willing to comply with the treatment request.<sup>41</sup> However, little guidance existed as to how this process was to be handled or what was to be done if another physician or facility could not be found.

The General Assembly has filled much of this gap by requiring every hospital equipped to provide life-sustaining treatment to develop a policy for determining the medical and ethical appropriateness of proposed medical care.<sup>42</sup> The hospital must also provide a reasonable opportunity for the patient or the patient's agent to participate in the determination and to challenge a finding of inappropriateness.<sup>43</sup> The hospital's determination must "be based solely on the patient's medical condition and not on the patient's age or other demographic status, disability, or diagnosis of persistent vegetative state."<sup>44</sup>

A physician who deems treatment inappropriate must make a reasonable effort to transfer the patient to another physician or facility and must continue to provide the treatment in the meantime.<sup>45</sup> If no such substitute physician or facility is identified within fourteen days after the treatment decision is entered in the patient's medical records, the physician may cease to provide the treatment; but artificial nutrition and hydration must continue unless the physician reasonably believes they would hasten the patient's death, be medically ineffective to prolong life, or be contrary to the patient's wishes or the agent's directions.<sup>46</sup>

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41. See VA. CODE ANN. § 54.1-2990(B) (Cum. Supp. 2018).

42. Act of Mar. 19, 2018, ch. 368, 2018 Va. Acts \_\_, \_\_ (codified at VA. CODE ANN. § 32.1-127(B)(21) (Cum. Supp. 2018)).

43. VA. CODE ANN. § 32.1-127(B)(21) (Cum. Supp. 2018).

44. *Id.* § 54.1-2990(B) (Cum. Supp. 2018).

45. *Id.*

46. *Id.*

#### F. *Property Tax Exemption for Single-Member LLCs*

Localities may now grant real or personal property tax exemption to qualifying property owned by a single-member limited liability company whose sole member is a nonprofit organization that qualifies for exemption.<sup>47</sup> As with current exemptions, the property must be used for “religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.”<sup>48</sup>

#### G. *Disclosure of Charity Expenses*

Charitable organizations required to register annually under Virginia Code section 57-49 to solicit contributions from the public must now disclose, in percentage and dollar terms, their administrative expenses and their charitable service expenses in their annual registration statements.<sup>49</sup>

#### H. *Nonstock Corporation Members’ Meetings*

The board of directors of a nonstock corporation may now hold any meeting of members solely by means of remote communication unless the articles of incorporation or bylaws require it to be held at a place.<sup>50</sup> As under prior law, the corporation must implement reasonable measures to confirm the identity of each participant and must offer participants a reasonable opportunity to participate in the meeting and to vote, including an opportunity to read or hear the proceedings substantially concurrently.<sup>51</sup>

#### I. *Bank Directors’ Required Stock Holdings*

Every director of a Virginia bank must be the sole owner of, and have in his personal possession or control, a certain amount

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47. Act of Feb. 26, 2018, ch. 29, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 58.1-3651(A) (Cum. Supp. 2018)).

48. VA. CODE ANN. § 58.1-3651(A) (Cum. Supp. 2018).

49. Act of Mar. 9, 2018, ch. 268, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 57-49(A)(7)–(8) (Cum. Supp. 2018)).

50. Act of Mar. 9, 2018, ch. 265, 2018 Va. Acts \_\_, \_\_ (codified at VA. CODE ANN. § 13.1-844.2(C) (Cum. Supp. 2018)).

51. VA. CODE ANN. § 13.1-844.2(B) (Cum. Supp. 2018).

of stock in the bank.<sup>52</sup> Stock held in a revocable living trust will count toward this mandated minimum stock ownership, provided the director is a trustee and retains an absolute revocation power.<sup>53</sup> Under prior law, the shares were counted only if the director were the sole trustee.<sup>54</sup>

#### J. *Disposition of Unused Land Preservation Tax Credits*

For decedents dying on or after July 1, 2018, unused land preservation tax credits, regardless of when earned, may be transferred to a designated beneficiary at death.<sup>55</sup> Under prior law, any unused credits could be transferred only while the owner was alive.<sup>56</sup>

To be eligible to transfer the unused credits, the decedent must be the taxpayer who originally earned them.<sup>57</sup> The credits may be transferred to a single beneficiary designated via a “will, bequest, or other instrument of transfer.”<sup>58</sup> If the individual “dies without a will,” the credits pass by intestacy to the next person who is eligible to receive them.<sup>59</sup> If there is more than one heir entitled to the credits, the estate administrator must designate one of them as the recipient.<sup>60</sup>

The transfer of unused land preservation tax credits to a beneficiary at a taxpayer’s death will not be subject to the two percent transfer fee that would otherwise be applicable.<sup>61</sup> However, the period in which the transferred credits may be used will not be extended; instead, the credits will remain subject to the decedent’s carryover period.<sup>62</sup>

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52. *Id.* § 6.2-862(B) (Cum. Supp. 2018).

53. Act of Mar. 2, 2018, ch. 76, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 6.2-862(B)(3) (Cum. Supp. 2018)).

54. VA. CODE ANN. § 6.2-862(B)(3) (Repl. Vol. 2016).

55. Act of Mar. 30, 2018, ch. 560, 2018 Va. Acts \_\_, \_\_ (codified at VA. CODE ANN. § 58.1-513(C)(3) (Cum. Supp. 2018)).

56. *See* VA. CODE ANN. § 58.1-513(C)(1) (Repl. Vol. 2017).

57. *Id.* § 58.1-513(C)(3) (Cum. Supp. 2018).

58. *Id.*

59. *Id.*

60. *Id.* Presumably, the rules governing the distribution of unused credits from an intestate estate would not apply if the owner designated a beneficiary in a non-testamentary “instrument of transfer,” but the statute is not clear on that point. *Cf. id.*

61. *Id.* § 58.1-513(C)(3) (Cum. Supp. 2018); *see also id.* § 58.1-513(C)(2) (Cum. Supp. 2018).

62. *See id.* § 58.1-512(C)(1) (Repl. Vol. 2017); *id.* § 58.1-513(C)(3) (Cum. Supp. 2018).

### K. *Fiduciary Qualification Without Security*

Although one questions why legislative action was necessary, it is now enshrined in Virginia law that the court or clerk may allow a fiduciary to qualify by giving bond without surety if there are no assets.<sup>63</sup>

## II. CASES

### A. *Presumption of Undue Influence*

In *Kim v. Kim*, Lili Kim sued to invalidate her husband's will and trust due to presumed undue influence by his brother Brian Kim ("Brian"), a lawyer, who drafted the documents.<sup>64</sup> The documents were signed eight days before Mr. Kim's death from end-stage cancer, and named Brian as executor and trustee.<sup>65</sup> The trust agreement directed that certain real estate and business interests be distributed to Mrs. Kim and other relatives.<sup>66</sup> It also gave Brian complete discretion to distribute Mr. Kim's tangible personal property in his sole discretion and to distribute sixty percent of another business to designated family members, who included two of Brian's children, and forty percent to whomever Brian selected, provided he could not make any distributions to himself.<sup>67</sup>

Mrs. Kim argued that undue influence should be presumed because her husband was "enfeebled in mind and body" and "entirely dependent on others" at the time of execution due to the cancer treatment and palliative care measures, and because Brian stood in a "fiduciary and confidential relationship" with her husband due to the business and legal advice he provided his brother in the past.<sup>68</sup> The circuit court, however, dismissed Mrs. Kim's complaint with prejudice and granted summary judgment to Brian because Brian was not named as a beneficiary under the docu-

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63. Act of Mar. 30, 2018, ch. 575, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 64.2-1411(A) (Cum. Supp. 2018)).

64. 294 Va. 433, 433, 807 S.E.2d 216, 217 (2017).

65. *Id.* at 433, 807 S.E.2d at 217.

66. *Id.* at 433-34 n.2, 807 S.E.2d at 217 n.2.

67. *Id.* at 433-34 n.2, 807 S.E.2d at 217 n.2.

68. *Id.* at 434, 807 S.E.2d at 217.

ments and because “amendment of her pleadings would be futile” since she could not change the will or trust agreement.<sup>69</sup>

On appeal, the Supreme Court of Virginia noted that Mrs. Kim’s claims were premised on a theory of presumed undue influence, which arises only when a testator who was enfeebled of mind names a beneficiary who stood in a relationship of confidence or dependence after having expressed an intention to make a contrary disposition.<sup>70</sup> It rejected her argument that Brian should be treated as a beneficiary because of the compensation he was entitled to receive as executor and trustee and the discretion he was given to distribute trust property to beneficiaries including his children.<sup>71</sup> It held that neither an entitlement to fiduciary fees nor a power as trustee to choose beneficiaries made Brian a beneficiary of the will or trust.<sup>72</sup> It found that the uncertain and contingent possibility that Brian might receive some future benefit was insufficient to raise a presumption of undue influence.<sup>73</sup>

The court observed in a footnote that a party who is unable to invoke a presumption of undue influence may nevertheless assert a claim of actual undue influence without the benefit of a presumption.<sup>74</sup> However, Mrs. Kim chose to base her entire complaint on presumed undue influence and did not request leave to amend the complaint or assign error to the lower court’s ruling that amending her pleadings would be futile.<sup>75</sup>

#### B. *Res Judicata in Will Contests*

*D’Ambrosio v. Wolf* considered whether a challenge to the validity of a will was barred by claim preclusion, issue preclusion, or judicial estoppel.<sup>76</sup>

During their mother’s lifetime, James D’Ambrosio and his sisters engaged in protracted litigation over her capacity to execute financial and medical powers of attorney in his favor and a will

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69. *Id.* at 435, 807 S.E.2d at 218.

70. *Id.* at 435–36, 807 S.E.2d at 218.

71. *Id.* at 435–36, 807 S.E.2d at 218–19.

72. *Id.* at 436, 807 S.E.2d at 218.

73. *Id.* at 436, 807 S.E.2d at 219.

74. *Id.* at 436–37 n.8, 807 S.E.2d at 219 n.8.

75. *Id.* at 436–37 n.8, 807 S.E.2d at 219 n.8.

76. 295 Va. 48, 51, 809 S.E.2d 625, 627 (2018).

the sisters had procured.<sup>77</sup> Ultimately, the circuit court entered a consent order that voided the powers of attorney and declared the mother incapacitated.<sup>78</sup> The mother died a few months later, and Mr. D'Ambrosio sought to impeach her will on the grounds of undue influence and lack of testamentary capacity.<sup>79</sup> His sisters argued that his claim was barred by claim preclusion, issue preclusion, and judicial estoppel.<sup>80</sup> The circuit court agreed with the sisters, holding that Mr. D'Ambrosio, as his mother's attorney-in-fact, could have challenged the will during her lifetime through a declaratory judgment action (claim preclusion), that the prior litigation necessarily concluded that there was no undue influence (issue preclusion), and that he had previously argued that she had the required capacity (judicial estoppel).<sup>81</sup>

On appeal, the Supreme Court of Virginia found that claim preclusion did not apply to bar Mr. D'Ambrosio's suit, as it prevents relitigation of only those claims that were, or could have been, decided in the previous action.<sup>82</sup> Because Mr. D'Ambrosio's interest under his mother's will was a mere expectancy during her lifetime, no cause of action accrued until her death.<sup>83</sup> Since his claim could not have been decided in the earlier litigation, claim preclusion did not bar his challenge to the will.<sup>84</sup>

Issue preclusion bars the relitigation of factual issues that were actually litigated and essential to the disposition of the claims in the first action.<sup>85</sup> The supreme court noted that the consent order issued in the earlier litigation did not mention the mother's will, the circumstances surrounding its execution, or her mental capacity.<sup>86</sup> Although the lower court found that the mother lacked capacity to execute the powers of attorney and declared her to be incapacitated, it did not address whether she had capacity when she signed the will or whether the will was a product of

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77. *Id.* at 52, 809 S.E.2d at 627.

78. *Id.* at 52, 809 S.E.2d at 627.

79. *Id.* at 52, 809 S.E.2d at 627.

80. *See id.* at 52–53, 809 S.E.2d at 627–28.

81. *Id.* at 53, 809 S.E.2d at 627–28.

82. *Id.* at 54–56, 809 S.E.2d at 629.

83. *Id.* at 55, 809 S.E.2d at 629.

84. *Id.* at 55–56, 809 S.E.2d at 629.

85. *Id.* at 56, 809 S.E.2d at 630.

86. *Id.* at 57, 809 S.E.2d at 630.

undue influence.<sup>87</sup> Therefore, Mr. D'Ambrosio's claims were not barred by issue preclusion.<sup>88</sup>

Finally, the supreme court explained that judicial estoppel is intended to prevent parties from making inconsistent factual arguments.<sup>89</sup> If the inconsistent positions involve different proceedings, the parties in both must be the same and the court must have relied on the inconsistent position in rendering its decision.<sup>90</sup> The court noted that Mr. D'Ambrosio's former argument that his mother was capable of executing the powers of attorney was not necessarily inconsistent with his current argument that she lacked capacity to execute a will at a different time.<sup>91</sup> Even if an inconsistency existed, the circuit court did not rely on the son's assertions in disposing of the claims before it, but rather necessarily rejected them when it held the powers of attorney to be void.<sup>92</sup> Accordingly judicial estoppel also did not apply to bar his current claims, so the court reversed the circuit court ruling and remanded the case for further action.<sup>93</sup>

### C. *Liability of Agent under Power of Attorney*

*Mangrum v. Chavis* addressed the liability of an attorney-in-fact for funds withdrawn from the principal's assets and for the plaintiffs' attorney fees.<sup>94</sup>

The defendant, Mr. Mangrum, served as agent under a durable general power of attorney for three years, until the principal's death.<sup>95</sup> At that time, the principal's stepchildren, who were also the beneficiaries under her will, obtained a court-ordered accounting from Mr. Mangrum and subsequently initiated proceedings against him to recover funds lost in two transactions.<sup>96</sup>

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87. *Id.* at 57, 809 S.E.2d at 630.

88. *Id.* at 58, 809 S.E.2d at 630.

89. *Id.* at 58, 809 S.E.2d at 630–31.

90. *Id.* at 58, 809 S.E.2d at 631.

91. *Id.* at 59, 809 S.E.2d at 631.

92. *Id.* at 59, 809 S.E.2d at 631.

93. *Id.* at 59, 809 S.E.2d at 631.

94. No. 160782, 2018 Va. Unpub. LEXIS 4, at \*1–2 (Mar. 1, 2018) (unpublished decision).

95. *Id.* at \*1.

96. *Id.* at \*1–2.

In one of those transactions, Mr. Mangrum had surrendered an annuity owned by the principal and ultimately deposited the proceeds into his own account.<sup>97</sup> In the other transaction, Mr. Mangrum's wife had withdrawn funds from a savings account that she, the principal, and one of the plaintiffs held jointly with rights of survivorship.<sup>98</sup> The circuit court found both of these transactions to be improper and ordered Mr. Mangrum to restore the funds to the principal's estate and to pay the plaintiffs' attorney fees.<sup>99</sup>

On appeal, the Supreme Court of Virginia rejected two technical challenges and upheld the circuit court's order requiring the agent to restore the annuity proceeds;<sup>100</sup> but it reversed the order requiring him to restore the funds his wife had withdrawn from the savings account.<sup>101</sup> The supreme court reasoned that Mr. Mangrum's fiduciary duty arose from the power of attorney, while his wife owed the principal a separate fiduciary duty as joint owner of the account.<sup>102</sup> Though each owed a fiduciary duty to the same principal, their duties arose under separate instruments and were not joint.<sup>103</sup> Accordingly Mr. Mangrum could not be held liable for his wife's acts since there was no finding that he directed or participated in her withdrawal of funds from the joint account or that he had any statutory duty to act affirmatively to recover property misused by another.<sup>104</sup> Specifically, the court found that Mr. Mangrum had no affirmative duty under the Virginia Uniform Power of Attorney Act to supervise a third party, including another agent over whom he had no express authority, or to seek to recover misappropriated property.<sup>105</sup>

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97. *Id.*

98. *Id.* at \*1.

99. *Id.* at \*2.

100. *Id.* at \*6–8, \*12. Mr. Mangrum argued that the circuit court acted improperly in ordering him to return the annuity proceeds to the estate when the annuity would have been paid directly to only one of the plaintiffs. *Id.* In finding no error, the court inferred that the individual beneficiary had assigned his claim to the estate. *Id.* The agent also argued that the circuit court had impermissibly ordered restoration of specific property (the annuity proceeds), when an adequate remedy (monetary damages) was available at law. *Id.* While agreeing with this interpretation of the statute, the supreme court interpreted the circuit court order as merely awarding a money judgment against the agent rather than decreeing an equitable remedy of specific performance. *See id.*

101. *Id.* at \*5–6, \*12.

102. *Id.* at \*5.

103. *Id.*

104. *Id.* at \*5–6.

105. *Id.* The court does not address an agent's nonwaivable duties under Virginia Code



The court also reversed the plaintiff's award of attorney fees, noting that the statute allows plaintiffs to recover any amounts paid by the agent from the principal's property for his own legal costs, but not fees that the plaintiffs have paid in their own recovery efforts.<sup>106</sup>

#### *D. Effect of Creditor Lien on Beneficiary's Future Interest*

In 2007, Smith Mountain Building Supply, LLC ("SMBS") obtained a judgment against a debtor.<sup>107</sup> Then, in 2008, it obtained a lien against any future distributions the debtor stood to receive when an irrevocable trust created by his father was to be divided after the debtor's mother's death.<sup>108</sup> The trust instrument directed the trustees to offset a beneficiary's share by any "disproportionate distribution" previously made to him from the trust and any debt owed by the beneficiary to the father's estate or to the trust.<sup>109</sup>

The debtor had previously borrowed a substantial sum from his father, which was evidenced by a promissory note that remained unpaid at the father's death.<sup>110</sup> The note was eventually assigned to the debtor's mother for estate planning purposes, before ultimately being discharged in a bankruptcy proceeding.<sup>111</sup>

In preparing to divide the irrevocable trust following the mother's death, the trustees took the position that the unpaid debt more than offset the debtor beneficiary's right to any distribution.<sup>112</sup> The trial court found the offset language in the trust agreement to be clear and unambiguous and accordingly dis-

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section 64.2-1612(A), which includes the duty to "[a]ct in accordance with the principal's reasonable expectations . . . and, otherwise, in the principal's best interests." VA. CODE ANN. § 64.2-1612(A) (Repl. Vol. 2017). Of course, an agent must also "act only within the scope of authority granted in the power of attorney." *Id.* So, it may be that the power of attorney did not grant Mr. Mangrum the necessary authority to pursue a claim against his wife. However, any power of attorney that includes a "do all acts" clause gives the agent the authority under Virginia Code section 64.2-1633(1) to bring an action to recover damages sustained by the principal. *See id.* §§ 64.2-1622(C), -1624 (Repl. Vol. 2017).

106. 2018 Va. LEXIS 4, at \*10–12 (citing VA. CODE ANN. § 64.2-1615 (Repl. Vol. 2017)).

107. *Smith Mt. Bldg. Supply, LLC v. Craven*, No. 160949, 2017 Va. Unpub. LEXIS 14, at \*1 (June 1, 2017) (unpublished decision).

108. *Id.* at \*2.

109. *Id.*

110. *Id.*

111. *Id.* at \*2–3.

112. *Id.* at \*2.

charged the company's lien, finding the note's subsequent assignment to the mother and the debtor's bankruptcy to be irrelevant.<sup>113</sup>

On appeal, the Supreme Court of Virginia agreed that the trust language was clear and unambiguous.<sup>114</sup> However, it reasoned that because the debtor's trust share was not determined until after his mother's death, her date of death was the correct time to determine whether a specific obligation qualified for offset treatment.<sup>115</sup> Because the note had been previously assigned to the mother and then discharged in bankruptcy, the court held that the loan did not qualify as a "disproportionate distribution," and therefore did not affect the value of the debtor's share of the trust or the amount of SMBS's lien on it.<sup>116</sup>

#### E. *Jurisdiction of Commissioners of Accounts*

It is commonly known that Commissioners of Accounts may hear and determine any matter concerning the settlement of a fiduciary's accounts.<sup>117</sup> However, less clear is whether a commissioner may handle other related matters that do not directly involve the fiduciary's accounts without a referral from the circuit court.

In *Gray v. Binder*, the decedent left a forty-six-year-old will, which included a bequest to his stepdaughter, with the "desire that she use it for the education of my step-grandson."<sup>118</sup> The stepdaughter and all other beneficiaries under the will predeceased the decedent, who was survived by the step-grandson and a number of intestate heirs.<sup>119</sup>

The estate administrator petitioned the Commissioner of Accounts for aid and direction in construing the will and determining the proper estate beneficiaries and their respective shares.<sup>120</sup> The step-grandson subsequently challenged the commissioner's conclusion that the will provision regarding him had lapsed, leav-

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113. *Id.* at \*3–4.

114. *Id.* at \*4.

115. *Id.* at \*4–5.

116. *Id.* at \*5–6.

117. See VA. CODE ANN. § 64.2-1209 (Repl. Vol. 2017).

118. 294 Va. 268, 271, 805 S.E.2d 768, 769 (2017).

119. *Id.* at 271, 805 S.E.2d at 769.

120. *Id.* at 271–72, 805 S.E.2d at 769–70.

ing the heirs to take the entire estate.<sup>121</sup> This challenge was rejected by both the circuit court and the supreme court.<sup>122</sup>

The step-grandson then brought another action alleging that the commissioner lacked subject matter jurisdiction to hear the initial petition for aid and direction.<sup>123</sup> The circuit court held that a commissioner can hear directly and determine any matter that a party to a suit in circuit court for settlement of the fiduciary's account could raise in that action.<sup>124</sup> Not one to be deterred easily, the plaintiff then appealed this decision to the Supreme Court of Virginia.<sup>125</sup>

On appeal, the supreme court noted that it reviews only decisions of the circuit court, not decisions of the Commissioners of Accounts.<sup>126</sup> The supreme court also observed that commissioners are circuit court appointees and "not lower tribunals from which appeals are taken," and therefore their authority to settle estates "is simply an extension of the circuit court's subject matter jurisdiction."<sup>127</sup> Since the circuit court clearly had subject matter jurisdiction over the case, the supreme court found that it did not err in concluding that the Commissioner of Accounts had jurisdiction to hear the administrator's original petition for aid and direction.<sup>128</sup>

A concurring opinion observed that the relevant statutory language could support either a broad or narrow view of the commissioner's authority to hear matters without a referral from the circuit court.<sup>129</sup> But since the plaintiff did not raise that particular question in a timely manner, it invited the General Assembly to provide clarification.<sup>130</sup>

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121. *Id.* at 273, 805 S.E.2d at 770.

122. *Id.* at 273, 805 S.E.2d at 770.

123. *Id.* at 274, 805 S.E.2d at 771.

124. *Id.* at 274, 805 S.E.2d at 771 (citing VA. CODE ANN. § 64.2-1209 (Repl. Vol. 2017)).

125. *See id.* at 274, 805 S.E.2d at 771.

126. *Id.* at 278, 805 S.E.2d at 773.

127. *Id.* at 277-78, 805 S.E.2d at 773.

128. *Id.* at 279, 805 S.E.2d at 774.

129. *Id.* at 279-81, 805 S.E.2d at 774-75.

130. *Id.* at 281-82, 805 S.E.2d at 775.

### F. *Intent to Make a Will*

In a binder containing a copy of his will and other estate planning documents, the testator in *Irving v. Divito* handwrote, dated, and initialed a notation that he wished to remove an individual, who may or may not have been his child, as a beneficiary under the will.<sup>131</sup> Following the testator's death, his executor submitted both the will and the writing for probate, but the circuit court concluded that the writing was not a validly executed codicil because it was not manifest that the initials were intended to be a signature.<sup>132</sup> It noted that the decedent used his full signature on other "formal documents," such as his will and property settlement agreement, that another document in the binder advised the decedent not to make changes to his will without contacting an attorney, and that the decedent had left his executor two notes about his will but neither mentioned the purported codicil.<sup>133</sup> The circuit court concluded that the writing established only a "thought or plan" that was "precatory and tentative in nature."<sup>134</sup>

On appeal, the executor argued that the circuit court erred by requiring a "formal" signature when it had been established that the writing was made and initialed by the testator.<sup>135</sup> While agreeing that Virginia law does not define what constitutes a signature, the supreme court pointed out that the testator's intent to authenticate a document as his will must be evident on its face.<sup>136</sup> If there is no such intrinsic evidence, then the signature requirement cannot be satisfied.<sup>137</sup> However, if some intrinsic evidence can be found, then extrinsic evidence may be used to confirm or disprove the testator's intention to authenticate the document by his signature.<sup>138</sup> If there is any doubt as to whether the name was intended to authenticate the paper as a will, then it fails.<sup>139</sup>

Declaring that intent to sign "must largely depend [on] the circumstances of each particular case,"<sup>140</sup> the supreme court found

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131. 294 Va. 465, 469, 807 S.E.2d 741, 743 (2017).

132. *Id.* at 469–70, 807 S.E.2d at 743.

133. *Id.* at 470, 807 S.E.2d at 743.

134. *Id.* at 470, 807 S.E.2d at 743.

135. *Id.* at 471, 807 S.E.2d at 744.

136. *Id.* at 471–72, 807 S.E.2d at 744.

137. *Id.* at 472, 807 S.E.2d at 744–45.

138. *Id.* at 472–73, 807 S.E.2d at 745.

139. *Id.* at 473, 807 S.E.2d at 745.

140. *Id.* at 472, 807 S.E.2d at 744 (quoting *Pilcher v. Pilcher*, 117 Va. 356, 365, 84 S.E.

that the extrinsic evidence cited by the circuit court was sufficient to support its finding that the initials were not manifestly intended as a signature to authenticate the writing as a codicil.<sup>141</sup>

By the same analysis, the court also rejected the executor's argument that the writing should be admitted to probate under Virginia's dispensing statute.<sup>142</sup>

### G. "Qualified Appraiser" Requirements

In *Woolford v. Virginia Department of Taxation*, the Supreme Court of Virginia examined the "qualified appraiser" requirement for a gift of a conservation easement to qualify for state land preservation tax credits.<sup>143</sup> At issue were credits worth almost \$5,000,000 for placement of a conservation easement on property with significant unmined sand and gravel deposits.<sup>144</sup>

To substantiate the value of the easement, the taxpayers hired a professional, licensed real estate appraiser with twenty years of experience, who had previously valued close to 100 conservation easements and participated in the appraisal of four sand and gravel mines.<sup>145</sup> Although the appraiser had no formal coursework on the subject of mineral deposits, he had spent considerable time educating himself about the local sand and gravel market.<sup>146</sup> Nevertheless, the Department of Taxation denied the taxpayers' credits on the grounds that the appraiser did not meet the "qualified appraiser" requirements for substantiation under Virginia law.<sup>147</sup> The circuit court agreed.<sup>148</sup>

On appeal, the Supreme Court of Virginia noted that state law incorporates by reference the definition of "qualified appraiser"

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667, 670 (1915)).

141. 294 Va. at 473, 807 S.E.2d at 745. The supreme court noted that the decedent's initials were at the end of the document, as a signature would be, and that four witnesses had testified they had seen him use initials as a signature on other documents. Nevertheless, it concluded that the circuit court's finding was not "plainly wrong or without evidence to support it," which is the statutory standard for reversal. *Id.* at 469, 473, 807 S.E.2d at 743, 745 (quoting VA. CODE ANN. § 8.01-680 (Repl. Vol. 2015)).

142. *Irving*, 294 Va. at 474-75, 807 S.E.2d at 745-46; *see also* VA. CODE ANN. § 64.2-404 (Repl. Vol. 2017).

143. 294 Va. 377, 381-82, 806 S.E.2d 398, 400 (2017).

144. *Id.* at 381-82, 806 S.E.2d at 400.

145. *Id.* at 383, 806 S.E.2d at 401.

146. *Id.* at 383-84, 806 S.E.2d at 401.

147. *Id.* at 383, 806 S.E.2d at 401.

148. *Id.* at 384, 806 S.E.2d at 402.

found in the charitable contribution provisions of the Internal Revenue Code.<sup>149</sup> The appraiser must demonstrate “verifiable education and experience in valuing the type of property subject to the appraisal.”<sup>150</sup> The court rejected the taxpayers’ argument that any licensed real estate appraiser meets the statutory definition, but it confirmed that experience in appraising identical property is not required if the appraiser’s education and experience are sufficient to enable him to make an “informed and accurate appraisal.”<sup>151</sup>

The court then examined the particular appraiser’s resume, found the appraiser to be qualified, and remanded the case for further proceedings.<sup>152</sup>

#### H. *Governing Law of Trust Holding Real Estate*

In *Molina-Ray v. King*, the Supreme Court of Virginia considered whether summary judgment was appropriate in a dispute over Virginia real estate held in a Texas joint trust.<sup>153</sup>

Mrs. Phillips owned her family’s historic farm in Virginia, but resided in Texas with her second husband.<sup>154</sup> As part of their estate planning, the couple conveyed the wife’s farm, along with their other property, to a joint trust governed by a Texas choice-of-law provision.<sup>155</sup> The terms of the trust directed the surviving spouse, as trustee, to divide the trust assets into two subtrusts at the first spouse’s death, with each spouse’s separate property and one-half interest in the couple’s joint and community property being allocated to his or her own subtrust.<sup>156</sup> Unfortunately, potential defects in titling and, ultimately, in the allocation of the farm between the two spouses’ shares led to litigation between Mrs. Phillips’ children and Mr. Phillips’ daughter.<sup>157</sup>

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149. *Id.* at 385, 806 S.E.2d at 402.

150. *Id.* (citing 26 U.S.C. § 170(f)(11)(E)(iii)(I) (2012)).

151. *Id.* at 386–87, 806 S.E.2d at 402–03.

152. *Id.* at 388–391, 806 S.E.2d at 404–05.

153. No. 161189, 2017 Va. Unpub. LEXIS 24, at \*1–2 (Sept. 21, 2017) (unpublished decision).

154. *Id.* at \*2.

155. *Id.* at \*2–3.

156. *Id.* at \*3.

157. *Id.* at \*1, \*4–5.

Rather than allocate the entire farm to Mrs. Phillips' subtrust at her death as her separate property, Mr. Phillips, as sole trustee following his wife's death, transferred a portion of the Virginia farm to his own subtrust over which he held an unlimited right of withdrawal.<sup>158</sup> He later exercised the right of withdrawal to transfer a sixteen percent interest from the subtrust to himself, individually, without notifying Mrs. Phillips' children, even when he was negotiating with them for a monthly support allowance in exchange for his agreement not to amend, alter, revoke, or terminate his subtrust.<sup>159</sup> When Mr. Phillips died, his daughter claimed to have inherited the sixteen percent he had held in his individual name.<sup>160</sup> She then filed a partition suit, which the parties followed with various claims and cross-claims alleging multiple breaches of fiduciary duty and other failures on all sides.<sup>161</sup>

In considering the parties' respective claims to the farm and other trust assets, the circuit court held that Virginia law governed questions of title to the Virginia real estate regardless of the Texas choice-of-law provision in the trust.<sup>162</sup> It found that the farm ceased to be the wife's separate property under Virginia law when she transferred it to the joint trust and later deeded a one-half interest to her husband in his capacity as co-trustee.<sup>163</sup> The lower court then decided the beneficiaries' interests on that basis.<sup>164</sup>

On appeal, the Supreme Court of Virginia held that the law of the property's situs governs questions of title, whereas the issues presented in the instant case involved the "administration and interpretation of a trust agreement governed by a Texas choice-of-law provision."<sup>165</sup> Here the circuit court should have applied Texas law to determine the character of the Virginia property as separate property or joint or community property.<sup>166</sup> It held further that the circuit court should have heard evidence about whether the trust provision for classifying property referred to its status in the hands of the trustees or to its status in the wife's

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158. *Id.* at \*6–7.

159. *Id.*

160. *Id.* at \*7.

161. *Id.* at \*7–8.

162. *Id.* at \*12–13.

163. *Id.*

164. *Id.* at \*10.

165. *Id.* at \*12–13.

166. *Id.* at \*13–14.

hands immediately before she conveyed it to the trustees.<sup>167</sup> It also held that Mrs. Phillips' transfer of a one-half interest in the farm to her husband, as trustee, did not necessarily support a finding of a gift to him personally as a matter of law.<sup>168</sup> Accordingly, the court reversed the grant of summary judgment and remanded the case for trial.<sup>169</sup>

### CONCLUSION

The 2018 session of the Virginia General Assembly achieved increased uniformity in the interpretation of wills and trusts in certain situations, such as divorce or a predeceased beneficiary; and it made technical corrections to the augmented estate rules and the trust decanting statute to give decedents more leeway in satisfying the elective share claims of surviving spouses and to restrict the decanting power of interested trustees. The General Assembly also corrected a previous oversight in the creditor protection afforded to life insurance and annuities, enacted new rules for resolving disputes over the appropriateness of medical care, allowed certain charity-affiliated limited liability companies to hold tax-exempt real estate and personal property, and provided a means to dispose of a decedent's unused state tax credits. Legislation also required most charities to disclose their administrative expenses and their charitable service expenses annually, allowed nonstock corporations to hold virtual meetings of members, and loosened the requirements for director-held stock in state banks.

The Supreme Court of Virginia issued a number of very fact-specific opinions in the past year, such as *Smith Mountain Building Supply* and *Molina-Ray*, which showed the importance of trust interpretation, and *Woolford*, which illustrated the need to determine an appraiser's qualifications broadly, based on all relevant circumstances. Similarly, the *Irving* case illustrated the difficulty of contesting a circuit court's ruling on a factual issue. Perhaps more notable for practitioners, however, were the *Kim* decision, in which the supreme court took a narrow view of the types of benefits that can raise a presumption of undue influence in a will contest; the *D'Ambrosio* decision, which offered a useful

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167. *Id.* at \*14–17.

168. *Id.* at \*18–19.

169. *Id.* at \*19.



summary of several procedural defenses in the context of a will contest; the *Mangrum* decision, which reminded practitioners of the limits of an agent's fiduciary duty under a power of attorney and the costs involved; and *Gray*, which confirmed the jurisdiction of the Commissioner of Accounts to settle any matter involving a fiduciary's accounts.