

Virginia's New Disclaimer Act



by John H. Turner III

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Many Virginia lawyers have advised clients on the use of disclaimers as a "polite no thank you" to unwanted bequests or other interest in decedents' property. In addition to its more common uses, disclaimers can be an extremely powerful post-mortem planning tool. Disclaimers have been used in my own limited practice to pass assets to younger generations, to remedy drafting errors, to qualify trusts for QTIP and CRUT treatment, and to qualify estates for the tax on prior transfers credit and other tax elections.¹

Put simply, a disclaimer is a beneficiary's unqualified refusal of a power or interest in property. The full potential of the disclaimer power, long available to clients of savvy planning professionals, is expanding even more. On July 1, 2003, Virginia joined a handful² of other states in adopting the Uniform Disclaimer of Property Interest Acts (1999) (the Uniform Act)³. While Virginia's previous disclaimer legislation had been in effect since 1972, the

state's adoption of the Uniform Act expands the potential applications of disclaimers and liberalizes the qualifying standards for making a valid disclaimer under state law. Virginia's new disclaimer act will undoubtedly provide practitioners with additional planning opportunities. However, with additional flexibility comes additional responsibility for the Virginia practitioner.

Who May Disclaim in Virginia

Any person⁴ may disclaim any interest in or power over property.⁵ This is true even if the document creating the property interest contains a spendthrift or other similar restriction, or even an express restriction on a beneficiary's right to disclaim. Unless limited by law or the document creating the fiduciary relationship, a fiduciary may also disclaim any interest in or power over property.⁶ This remains true even if the document creating the

fiduciary relationship contains a spendthrift or other similar restriction or an express restriction on a beneficiary's right to disclaim. While the document creating the fiduciary relationship can restrict the fiduciary's power to disclaim, the restrictions must be clearly expressed within the document.

A custodial parent of a minor for whom no guardian of the property has been appointed may also disclaim on behalf of the minor child only over property that would have passed to the minor as the result of another disclaimer. The custodial parent may make a disclaimer even where a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim is present.⁷

Making a Valid Disclaimer in Virginia

To be effective, a Virginia disclaimer must:

- Be in writing or other record,⁸
- Declare the disclaimer,
- Describe the interest or power disclaimed,
- Be signed by the person making the disclaimer, and
- Be delivered or filed in the manner provided in § 64.1-196.11.⁹ (This section sets forth the delivery requirements for various powers and interests in property.)

What is conspicuously missing from Virginia's new act is a time limitation on making a disclaimer.¹⁰ Virginia's prior disclaimer statute contained a nine-month time limitation that mirrored the limitation found under § 2518 of the Internal Revenue Code.¹¹ Under the new act, where a disclaimer is filed for tax purposes (or where adverse tax consequences may arise if the disclaimer is not recognized for tax purposes), the disclaimer must still be made within the nine-month time limitation set forth under § 2518 (even though the dis-

claimer would be valid under Virginia law if filed later than the nine-month period). Moreover, in making a tax-sensitive disclaimer, the disclaimer must be in writing, despite the ability of using some "other record" in Virginia.¹²

Under Virginia's new act, a disclaimer will be barred under the following circumstances:¹³

- Where the disclaimant makes a written waiver of the right to disclaim; or
- Where the disclaimer is barred or limited by other law in Virginia;¹⁴ or
- Where any of the following events occur before the disclaimer becomes effective: the disclaimant accepts the interest sought to be disclaimed; the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or a judicial sale of the interest sought to be disclaimed occurs.

Both Virginia and the federal tax laws bar a disclaimer where the disclaimant has accepted the interest to be disclaimed.¹⁵ The term "accepts" is not defined under Virginia's new statute. The *Comments to the Uniform Act* suggests that "acceptance" should be based on a facts-and-circumstances test to be determined under state law. Under federal treasury regulations, acceptance is defined as "an affirmative act which is consistent with ownership of the interest in property."¹⁶ The regulations provide further that "acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in property." For tax purposes, "acceptance" also includes the receipt of consideration in exchange for making the disclaimer.¹⁷

A disclaimer that is barred under state law is ineffective and the interest or property disclaimed passes to the persons who would have taken the interest or property had the disclaimer not been barred. If the disclaimer is valid under state law, but

invalid for tax purposes, the disclaimer is ignored for tax purposes and the person making the disclaimer will be treated as if he or she received the property being disclaimed (and then made a subsequent gift).¹⁸

Where to Deliver or File the Disclaimer

Under Virginia's new disclaimer act, the disclaimer must be delivered or filed in order to be effective.¹⁹ Delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.²⁰ A disclaimer becomes irrevocable when it is delivered or filed as set forth in *Virginia Code* § 64.1-196.11 or when it becomes otherwise effective as provided in the statute, whichever occurs later.²¹

Intestate Estate/Will—In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a disclaimer shall be delivered to the personal representative of the decedent's estate or, if no personal representative is then serving, it shall be filed with a court having jurisdiction to appoint the personal representative.²²

Testamentary Trust—In the case of an interest in a testamentary trust, a disclaimer shall be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate or, if no personal representative is then serving, it shall be filed with a court having jurisdiction to enforce the trust.²³

Inter Vivos Trust—In the case of an interest in an inter vivos trust, a disclaimer shall be delivered to the trustee then serving, or if no trustee is then serving, it shall be filed with a court having jurisdiction to enforce the trust. If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it shall be delivered to the settlor of a revocable trust or the transferor of the interest.²⁴

Beneficiary Designation-Revocable—In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer shall be delivered to the person making the beneficiary designation.²⁵

Beneficiary Designation-Irrevocable—In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer shall be delivered to the person obligated to distribute the interest.²⁶

Joint Property—In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer shall be delivered to the person to whom the disclaimed interest passes.²⁷

Powers of Appointment

Object of Power or Default Beneficiary. In the case of a disclaimer by an object (permissible beneficiary) or taker in default of an exercise of a power of appointment at any time after the power was created, the disclaimer shall be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving, with the court having authority to appoint the fiduciary.²⁸

Appointee of Power. In the case of a disclaimer by an appointee of a power of appointment, the disclaimer shall be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power or, if no fiduciary is then serving, it shall be filed with a court having authority to appoint the fiduciary.²⁹

Fiduciary Disclaimer. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer shall be delivered in the same manner as provided for interests created in intestate estates or wills, in testamentary trusts and in inter vivos trusts discussed above, as if the power disclaimed were an interest in property.³⁰

Agent. In the case of a disclaimer of a power of appointment by an agent, the disclaimer shall be delivered to the principal or the principal's representative.³¹

Real Property—In addition to the applicable delivery requirements listed above, if an instrument transferring title to real property is disclaimed, a copy of the disclaimer shall be recorded in the office of the clerk of the circuit court for the jurisdiction where the real property is located. If any other interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.³²

For federal tax purposes, a disclaimer must be “delivered to the transferor of the interest, the transferor's legal representative, the holder of the legal title to the property to which the interest relates or the person in possession of such property.”³³ It does appear that the delivery requirements under Virginia's statute would comply with the delivery requirements under federal tax law.

Effect of a Disclaimer in Virginia

Except for disclaimers of joint property or of an interest in a trust by a trustee (discussed below), the following rules apply to a disclaimer of an interest in property:³⁴

- The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.
- The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of disclaimed interests, or in the absence of such instructions:

- If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if by law or under the terms of the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.
- If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.³⁵

The best way to illustrate these rules is by way of examples:

Example 1. Ted's will bequeathed ten thousand dollars to his brother, Ben. Ben disclaims the entire bequest. Ben is deemed to have predeceased Ted and, therefore, Ben's gift lapses. Unless otherwise provided in Ted's will, Virginia's antilapse statute³⁶ would apply and would direct the passing of the disclaimed interest.³⁷

Example 2. Ted dies intestate. Ted had two children, Debbie and Sam. Ted is survived by his son, Sam, and Sam's two children. Ted was predeceased in death by his daughter, Debbie, but is survived by Debbie's child, Amy. Sam disclaims his interest in the estate. The disclaimed interest is one-half of the estate and it passes as if Sam had predeceased Ted. However, had Sam actually predeceased Ted, the three grandchildren of Ted would have shared equally in Ted's estate because

they are all in the same generation.³⁸ Were the three grandchildren to share equally in the disclaimed interest, Sam's two children would each receive one-third of the one-half disclaimed while Debbie's child would receive one-third of the one-half in addition to the one-half of the estate received as the representative of her late parent. Virginia's statute states, "If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution."³⁹ Therefore, Sam's children receive one-half of the residue, exactly the interest Sam would have received but for the disclaimer.⁴⁰

Example 3. The father's will creates a testamentary trust for the mother who is to receive all the income for life. At her death, the trust is to be distributed to the father's surviving descendants, *per stirpes*. The father dies and is survived by son, Sam, and daughter, Debbie (both over age twenty-one). Sam has two living children and Debbie has one. Sam decides that he would prefer his share of the trust to pass to his children and disclaims his interest. The disclaimer must be made within nine months of the father's death if it is to be a qualified disclaimer for tax purposes.⁴¹ An issue can arise however, where one or more of Sam's children are born *after* the father's death.

If Sam had truly predeceased his father, his children born after the father's death would not exist and only Debbie and Sam's two other children (living at the time of the father's death) should be entitled to the trust property. This problem is solved by the language found in the first sentence of § 64.1-196.5(B)(3). The statute states that Sam is deemed to have died immediately before the mother's death even though the disclaimer is effective as of the father's death. There is no doubt, therefore, that Sam's children living at the distribution date, whenever born, are entitled to the share of the trust property he would have received and they will take exactly

what Sam would have received but for the disclaimer. Had Sam actually died before his mother, he would have received nothing from the trust at his mother's death (whether or not the disclaimer had been made). Sam's children would then take as representatives of Sam under the distribution scheme in effect.⁴²

Example 4. The mother's will creates a testamentary trust to pay the income to her daughter, Debbie, until she reaches age thirty-five, at which time the trust is to terminate and the trust property distributed in equal shares to Debbie and her three siblings. Debbie disclaims her income interest. The remainder interests in her three siblings accelerate and they each receive one-fourth of the trust property. However, pursuant to *Virginia Code* § 64.1-196.5(B)(4), Debbie's remainder interest does not accelerate as a result of the disclaimer, and she must wait until she is thirty-five to receive her fourth of the trust property.⁴³

Disclaimer of Joint Property

Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the *greater* of a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.⁴⁴ An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

For tax purposes, the holder of a joint interest in property may disclaim the survivorship interest the survivor would otherwise receive upon the death of the joint tenant (i.e., of the property where there are two joint tenants).⁴⁵ A qualified tax disclaimer can be made, regardless of whether state law would permit a joint tenant from unilaterally severing the ten-

ancy and regardless of the amount of consideration provided proportionately for the property by the disclaimant.⁴⁶

The Treasury Regulations provide a special rule for joint bank, brokerage and other investment accounts. For federal tax purposes, if one of the co-owners could unilaterally regain that person's contribution to the joint account without the other co-owner's consent, at the death of one of the owners, the other can disclaim any amount up to the amount of the contribution made to the account by the decedent.⁴⁷ Note that this is not a greater of one-half of the account or the amount contributed by the decedent rule, but one that limits the disclaimer to the amount contributed by the deceased co-owner.⁴⁸ Therefore, you could have a disclaimer of joint property that would be valid under Virginia law, but invalid in whole or in part under federal tax law.

Example 1. Alice contributes all of the money to a joint bank account held with her spouse, Fred. Either spouse can withdraw the assets without the other's permission. Fred dies and Alice disclaims one-half of the bank account. Alice's disclaimer is valid under Virginia law but is not a valid tax disclaimer because she provided all of the assets in the account.⁴⁹

Example 2. Alice purchased the primary residence she and Fred now own as tenants by the entirety. Both Alice and Fred are U.S. citizens. Alice dies and Fred disclaims 100 percent of the residence. The disclaimer is valid under Virginia law but only one-half of the property could be disclaimed as a valid tax disclaimer.

If a disclaimer is valid under state law, but not qualified for federal tax purposes (in whole or part), the unqualified portion is treated as having been gifted from the disclaimant to the beneficiary.

Disclaimer by a Fiduciary

A fiduciary can disclaim both property interests and fiduciary powers. For example, if a trustee disclaims an interest in

property, the property does not become trust property.⁵¹ If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.⁵² If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of that power.⁵²

A disclaimer by one fiduciary is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting.⁵³ Generally, where there are two fiduciaries, they would have to act in unison (unless the document creating the fiduciary relationship provides otherwise). Where there are more than two fiduciaries, this would require a majority of the fiduciaries to act (again, absent contrary language in the document creating the fiduciary relationship).⁵⁴

The power of a fiduciary to make a disclaimer can be very powerful and especially useful in situations where disclaimers from the individual beneficiaries themselves are impossible or impracticable or would otherwise result in the vesting of the disclaimed property in an undesired manner. It is important to note that Virginia's disclaimer statute only sets forth the manner in which disclaimers should be made. The statute does not provide guidance to fiduciaries in determining whether a disclaimer *should* be made by a fiduciary. The *Comment to Section 8 of the Uniform Act* states "(e)very disclaimer by a trustee must be compatible with the trustee's fiduciary obligations." Therefore, the fiduciary must be satisfied that a disclaimer does not violate any of the fiduciary's duties to the beneficiaries.

As there is potential liability in making a disclaimer, a prudent fiduciary might seek an indemnity/release agreement with the beneficiaries insulating the fiduciary from liability in making the disclaimer. However, this raises the issue of whether a fiduciary who disclaims but who requires an indemnity/release from the beneficiaries has made a valid disclaimer

for tax purposes. The Internal Revenue Service could take the position that the receipt of the release/indemnity was "consideration" and thus the disclaimer is invalid. Fiduciary disclaimers of property could be a very useful tool, but one that should be used only after careful consideration by the fiduciary. Undoubtedly, this will be an area that will see future litigation in Virginia.

Effective Date

The new Virginia disclaimer act applies to all interests in or power over property existing on July 1, 2003, for which the time for making a valid disclaimer under prior law had not expired (or otherwise become barred under Virginia law).⁵⁵

Conclusion

Virginia's new disclaimer act broadens the availability and applicability of disclaimer planning. Virginia practitioners should familiarize themselves with the nuances of the new act and should pay particular attention when making tax-qualified disclaimers. We must be prepared to advise clients on the tax and non-tax effects of disclaimers, including advising fiduciaries on their duties and potential liabilities in making disclaimers.

As stated by William P. LaPiana, a noted expert on disclaimer planning, "[d]isclaimer statutes are permissive; they set forth what may be done and prescribe in greater or lesser detail the procedures

for accomplishing those ends, but they do not provide guidance on deciding whether what they authorize should be done. Those decisions can only be made by the persons involved and almost always require the advice of a professional."⁵⁶

Endnotes:

- 1 While an in-depth review of disclaimer planning is beyond the scope of this article, we are fortunate to have several excellent articles written by Virginia practitioners on this topic. In particular, E. Diane Thompson has written a masterful compilation on disclaimer planning entitled, "Disclaimers: When, Why and How to Say No to an Inheritance." (Presented at the Twentieth Annual Advanced Estate Planning and Administration Seminar, Irvington, Virginia, April 23-27, 1999.)
- 2 Virginia joins Arkansas, Hawaii, Indiana, New Mexico, North Dakota, Oregon and West Virginia as states that have adopted some form of the Uniform Disclaimer of Property Interest Act.
- 3 Virginia's version of the Uniform Act is codified at § 64.1-196.1, *et seq.*, of the *Virginia Code* (1950).
- 4 Under *Va. Code* § 64.1-196.1, a "person" is defined as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity."
- 5 *Va. Code* § 64.1-196.4(A). A disclaimer may be partial and may be expressed as a fraction, percentage, monetary amount, term of years, limitation of power, or any other interest or estate in the property. *Va. Code* § 64.1-196.4(E).
- 6 *Va. Code* § 64.1-196.4(B). Note that a person who serves in the joint capacity of fiduciary and ben-



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- eficiary may disclaim in either capacity.
- 7 *Va. Code* § 64.1-196.4(C).
- 8 Record is defined as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” *Va. Code* § 64.1-196.4(D). The definition of “record” is derived from the Uniform Electronic Transactions Act § 102. The definition recognizes that a disclaimer may be prepared in forms other than typewritten pages with handwritten signatures. See Comments to Section 5 of the Uniform Disclaimer of Property Interests Act (1999).
- 9 *Va. Code* § 64.1-196.4(D).
- 10 It is not clear whether the lack of an express time limitation can be interpreted to allow an *unlimited* time in which to make a disclaimer. One author suggests that in the absence of an express statutory time limitation, the common law disclaimer rules would impose a “reasonable time” limitation. See “The Uniform Disclaimer of Property Interests Act: Opportunities and Pitfalls,” Adam J. Hirsch, *Estate Planning Journal*, December 2001.
- 11 I.R.C. § 2518(b)(2). For federal tax purposes, a tax qualified disclaimer is an irrevocable and unqualified refusal that satisfies these requirements:
- (i) It is made in writing and describes the interest being disclaimed;
 - (ii) It is delivered to the executor no later than nine months after the decedent’s death;
 - (iii) The disclaimant has not accepted the interest to be disclaimed or any of its benefits prior to the disclaimer; and
 - (iv) The interest disclaimed passes without any direction on the part of the disclaimant to either (a) the decedent’s spouse, or (b) someone other than the disclaimant.
- 12 I.R.C. § 2518(b)(1).
- 13 *Va. Code* § 64.1-196.12.
- 14 However, please note that a valid disclaimer of assets is treated as an “uncompensated” transfer of the disclaimed assets for purposes of qualifying for medical assistance services in Virginia. *Va. Code* § 32.1-325.02(B) provides, in part, “any disclaimer of succession pursuant to Chapter 8.1 (*Va. Code* § 64.1-196.1 et seq.) of Title 64.1 shall be considered as uncompensated transfer of assets equal to the value of any interest disclaimed by any person who would, by reason of the disclaimer of succession, retain Medicaid eligibility or become eligible for medical assistance . . .”.
- 15 For an in-depth review of this issue, See “What Constitutes or Establishes Beneficiary Acceptance or Renunciation of Devise or Bequest,” 93 A.L.R.2d 8.
- 16 Treas. Reg. § 25.2518-2(d)(1).
- 17 *Id.* See *Estate of Monroe v. Commissioner* 124 F.3rd 699 (5th Cir. 1997) holding that the concept of “consideration” was limited to bargained-for consideration under contract law.
- 18 Treas. Reg. § 25.2518-1(b)
- 19 *Va. Code* § 64.1-196.4(D); See *Va. Code* § 64.1-196.11.
- 20 *Va. Code* § 64.1-196.11(B).
- 21 *Va. Code* § 64.1-196.4(F)
- 22 *Va. Code* § 64.1-196.11(C).
- 23 *Va. Code* § 64.1-196.11(D).
- 24 *Va. Code* § 64.1-196.11(E).
- 25 *Va. Code* § 64.1-196.11(F). “Beneficiary designation” means an instrument, other than an instrument creating a trust, naming the beneficiary of an annuity or insurance policy; an account with a designation for payment on death; (iii) a security registered in beneficiary form; a pension, profit-sharing, retirement, or other employment-related benefit plan; or any other nonprobate transfer at death. *Va. Code* § 64.1-196.11(A).
- 26 *Va. Code* § 64.1-196.11(G).
- 27 *Va. Code* § 64.1-196.11(H).
- 28 *Va. Code* § 64.1-196.11(I).
- 29 *Va. Code* § 64.1-196.11(J).
- 30 *Va. Code* § 64.1-196.11(K).
- 31 *Va. Code* § 64.1-196.11(L).
- 32 *Va. Code* § 64.1-196.14.
- 33 Treas. Reg. § 25.2518-2(b)(2).
- 34 *Va. Code* § 64.1-196.5. Under this section, “time of distribution” means the time when a disclaimed interest would have taken effect in possession or enjoyment, and “future interest” means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation. *Va. Code* § 64.1-196.5(A).
- 35 *Va. Code* § 64.1-196.5(B)(4).
- 36 *Va. Code* § 64.1-64.1.
- 37 See Example 1(a) of the *Comment to Section 6 of the Uniform Act*.
- 38 See *Va. Code* § 64.1-3.
- 39 *Va. Code* § 64.1-196.5(B).
- 40 See also Example 2(b) to *Comment of Section 6 of the Uniform Act*.
- 41 Treas. Reg. § 25.2518-2(a)(3).
- 42 See Example 3 to *Comment of Section 6 of the Uniform Act*.
- 43 See Example 5(b) to *Comment of Section 6 of the Uniform Act*.
- 44 *Va. Code* § 64.1-196.6.
- 45 Treas. Reg. § 25.2518-2(c)(4)(i). There is an exception for certain spousal joint tenancies created on or after July 14, 1988 where one spouse is a non-US citizen. See Treas. Reg. § 25.2518-2(c)(4)(ii).
- 46 Treas. Reg. § 25.2518-2(c)(4)(i).
- 47 Treas. Reg. § 25.2518-2(c)(4)(iii).
- 48 See Treas. Reg. § 25.2518-2(c)(5), Example 13.
- 49 See § 64.1-196.6(A).
- 50 *Va. Code* § 64.1-196.7.
- 51 *Va. Code* § 64.1-196.10(A).
- 52 *Va. Code* § 64.1-196.10(B).
- 53 *Va. Code* § 64.1-196.10(C).
- 54 *Va. Code* § 26-5.2(A). Under this section, assuming an act is not a “patent” breach of trust, a dissenting fiduciary is not liable for the consequences of an act in which he joins at the direction of a majority of the fiduciaries if he expressed his dissent in writing to any of the co-fiduciaries.
- 55 *Va. Code* § 64.1-196.15.
- 56 William P. LaPiana, “Some Property Law Issues In The Law of Disclaimers,” 38 Prop. Prob. & Tr. J. 207 pages 213-214 (2003).