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# Harrison on Wills and Administration for Virginia and West Virginia

Publication 62781

Release 11EX

June 2018

## HIGHLIGHTS

### Statutory and Case Updates

- This release contains updates for both Virginia and West Virginia cases and statutes.

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### 2018 Highlights Include:

**In addition to other changes made to reflect new cases and laws, highlights for this release include:**

**Trustee Liability.** In a recent case, the West Virginia courts considered the circumstances under which a trust may be held liable for a tort committed by a trustee in light of the provisions of the Uniform

Trust Code. The court noted that the test is no longer dependent on the degree of control a beneficiary exercises over the trustee at the time the tort occurred; rather, the test is whether the trustee committed the tort in the course of administering a trust. The court held that, based on the undisputed facts, the trust could not be held liable for the trustee's tort because the trustee was not "in the course of administering" the trust at the time the accident occurred. [See § 21.21.]

**Statutes of Limitations.** In a case in which a beneficiary brought a claim against a personal representative for waste and breach of fiduciary duty, the West Virginia Court rejected the argument that the statute of limitations should be tolled by the extension of the "continuous representation doctrine," which is applicable in an attorney malpractice action and tolls the limitation period until the professional relationship terminates with respect to the matter underlying the malpractice action. The

Court refused to toll a cause of action against a personal representative until such time as he is relieved of his appointment. [See § 25.35.]

**Powers of Attorney.** The Virginia Supreme Court has held that an agent who was liable to a principal's successors in interests for other breaches of fiduciary duty was not liable for improper withdrawals undertaken by his wife from a joint account held with the principal, the agent

and the agent's wife. There was no finding that the agent directed or participated in the withdrawal by his wife, even if he benefited from it, and Virginia Code § 64.2-1612(B) imposes no duty for him to supervise the wife's actions. The agency relationship between the agent's wife and principal is separate from, and forecloses the agent's liability under, the agency relationship between the principal and the agent. [See § 33.05.]

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