

property. The phrase "including an interest in land" is proposed for deletion because the definition of "property" in §1-101(k) provides that "property" means "real property or any interest therein....".

In subsection (a), the Commission added new language suggested by the Code Revision Committee to resolve the conflicting priorities created by this provision and §14-112. Art. 21, §5-116, from which §2-116 is derived, provided that when property is conveyed under a passive trust it is deemed a direct conveyance to the beneficiary. Section 14-112, on the other hand, provided that if a trustee or fiduciary takes title to property without limitation expressed in the grant to him, he may convey the property except to the extent limited by the grant to him or in a previously recorded instrument. A conflict between the two provisions arose in a situation where a beneficiary under a passive trust attempted to convey title to his property and, at the same time, the trustee was executing a deed which is accepted on the basis of §14-112. On the recommendation of the Code Revision Committee of the State Bar Association, the Commission added new language to §14-112 to indicate that a trustee who takes title may grant the property if a beneficiary is not designated in the instrument by which the trustee takes title or in another previously recorded instrument signed by the grantor, or if an instrument signed by the trustee designating a beneficiary is not recorded prior to the disposition by the trustee. The new language enables title examiners to rely on §14-112 and eliminates the necessity of having them require presentation of a trust instrument to determine whether a passive trust is created. The only other changes are in style.

2-117. PRESUMPTION AGAINST JOINT TENANCY.

NO DEED, WILL, OR OTHER WRITTEN INSTRUMENT WHICH AFFECTS ~~[[REAL]]~~ LAND OR PERSONAL PROPERTY, CREATES AN ESTATE IN JOINT TENANCY, UNLESS THE DEED, WILL, OR OTHER WRITTEN INSTRUMENT EXPRESSLY PROVIDES THAT THE PROPERTY GRANTED IS TO BE HELD IN JOINT TENANCY.

REVISOR'S NOTE: This section presently appears as Art. 21, §5-117 of the Code. The only changes are in style.