

INSTRUCTIONS TO EXECUTORS AND ADMINISTRATORS

(Revised October 2012)

A personal representative (Executor, Administrator, Administrator, c.t.a.) has a duty to administer the probate estate on which he has qualified in accordance with the laws of the Commonwealth of Virginia. Most of the sections of the Virginia Code dealing with probate matters can be found in Titles 64.2.

Although a personal representative is not required to retain an attorney to assist him in administering an estate, he should keep in mind that there are many rules and regulations by which he must abide, and the Court and Commissioner of Accounts' office cannot provide legal advice to any personal representative. Consulting with an attorney proficient in Virginia probate matters can avoid many problems inexperienced personal representatives face, and it is generally less expensive to do things correctly the first time.

The following is a very general, and by no means complete, outline of matters of which you as a personal representative will need to be aware to properly administer an estate.

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OFFICE OF THE COMMISSIONER OF ACCOUNTS

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Hours: 8:30 - 12:00 and 1:00 - 4:30 BY APPOINTMENT ONLY

I. NOTICE AND AFFIDAVIT OF NOTICE REGARDING ESTATE

A. You must provide written notice of your qualification as Executor or Administrator to all persons required under Virginia Code Section 64.2-508.

B. The notice must be given within 30 days from the date you qualified, and you must file with the Probate Clerk the **Affidavit of Notice** within four months from qualification to certify that you complied with that Code Section.

C. The Commissioner of Accounts cannot approve your Inventory until the Affidavit of Notice is filed with the Probate Clerk.

II. COPIES OF INVENTORIES AND ACCOUNTS TO BENEFICIARIES

You are required to send copies of Inventories and Accounts to certain heirs or beneficiaries who send you a written request. Carefully read the Instructions for Inventories and Instructions for Accounts given to you at time of qualification.

III. INVENTORY

A. Virginia Code Section 64.2-1300 requires every personal representative to file an inventory of the assets of the estate within four months from the date of his qualification, using date of death values.

B. The Clerk will have given you an Inventory form and instructions at the time of your qualification. You may also download forms and instructions from the Virginia Supreme Court website (www.courts.state.va.us). Review the instructions for detailed information about listing the assets. Use exact amounts for asset valuations, do not round to the nearest dollar.

C. Inventories must be printed legibly in black or blue pen or typed, and signed by each personal representative who qualified.

D. You should submit the fully executed Inventory form, **in duplicate**, with the appropriate filing fee to the Commissioner of Accounts' office. The Clerk will have given you a filing fee schedule when you qualified.

E. If additional assets are discovered after you have filed the Inventory, you should, within four months of the discovery, either file an Amended Inventory showing all assets of the estate; or file a Supplemental Inventory showing only the after-discovered assets; or seek the permission of the Commissioner of Accounts to show the after-discovered assets on the First Account. If additional assets are discovered after the First Account has been approved, then show them on the next account rather than filing another Inventory.

F. Should you discover the Inventory you filed contained erroneous information, you should file an Amended Inventory. If the error is of a small consequence, you may wait and show the adjustment on your First Account.

G. Inventories may be filed by mail or in person at the Commissioner of Accounts office. You may come in to deliver an Inventory anytime during office hours, but if you need to talk to an auditor you should call for an appointment first. An appointment can usually be made with as little as one day's notice.

H. Each personal representative must supply the Commissioner of Accounts with his complete, current street address and telephone number. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each personal representative to keep the Commissioner of Accounts informed of your current street address and telephone number.

IV. PAYMENT OF DEBTS

A. Determine whether the estate is solvent. The estate is insolvent if the debts exceed the value of the assets under your control.

1. If the estate is insolvent, **do not** pay any funeral expenses, debts, or taxes, and **do not** make any distributions to the beneficiaries. Seek the assistance of a probate attorney who can guide you through Virginia Code Section 64.2-528. Handling an insolvent estate is very complex, and if you do it incorrectly you will be personally liable for amounts misspent. Remember that costs of administration receive first priority under the insolvent statute. Attorneys' fees, therefore, will be paid prior to the payment of any debts or taxes.

2. If there are sufficient assets to pay all creditors, but not enough to

honor all bequests, you will need to abate the bequests and the residue of the estate. You should consult a probate attorney for guidance as this is a very complex procedure.

3. If the estate is clearly solvent, you should pay all legal debts as soon as possible.

B. Virginia Code Section 64.2-1415(B) sets out the liability of a personal representative regarding improper payment of debts.

C. Claims of Creditors

1. Claims of creditors are preferred over the rights of beneficiaries under a Will or of intestate heirs.

2. The personal representative has the duty to pay all legal debts unless the Will or a statute directs otherwise and the responsibility to determine what claims are just.

a. Should a fiduciary decline to pay a claimant for cause, the claimant has at least two options:

1) File suit against the estate; or

2) File his claim against the estate with the Commissioner of Accounts and request a hearing for proof of debts and demands. See Section VII hereafter for more specific instructions.

b. If you are unsure whether a claim is proper, you may request the Commissioner of Accounts to rule on the disputed claim by asking for a hearing for proof of debts and demands. See Section VII hereafter for more specific instructions.

D. Vouchers Required

All disbursements must be verified. We will accept bank photocopies of cancelled checks. When you set up your bank accounts make sure you use a bank that will give you copies of the cancelled checks with your monthly statement. A bank statement or brokerage statement showing the date, the check number, the payee, and the amount will also be accepted. Statements are required to document

bank fees and electronic debits. For distributions to beneficiaries we do require the front and the back of the check with the beneficiary's endorsement on the back or a signed receipt from each beneficiary.

V. ACCOUNTS

A. Virginia Code Section 64.2-1206 requires every personal representative to file accounts of the assets for which he is responsible and the disbursements and distributions which have been made.

B. At the time of qualification, the Probate Clerk will have given you an Account form which must be used and instructions on completing the form. You may also get these forms and instructions from the Virginia State Supreme Court website (www.courts.state.va.us).

C. The first estate account must cover the period from date of qualification through the next 12 months, although you may choose a convenient ending date such as the last day of the twelfth month or the day in the twelfth month that the estate checking account statement ends. If you are making this a first and final account, your period covered may be less than 12 months but not less than 6 months. Since the Inventory uses date of death values, you will need to include activity from the date of death to the date of qualification.

D. The first estate account or the first and final estate account, must be filed within 16 months from the date of qualification.

E. Second and subsequent accounts for estates are due within 16 months from the ending date of the prior report, and should cover 12 months. A final account may cover less than 12 months.

F. Every account filed must be accompanied by the following:

1. Original and one copy of the account signed by each personal representative that qualified.

2. A check payable to the Commissioner of Accounts in the appropriate amount for the filing fee. The Clerk will have given you the filing fee schedule at the time you qualified.

3. All disbursements must be verified. We will accept bank photocopies of cancelled checks. When you set up your bank accounts make sure you use a bank that will give you copies of the cancelled checks with your monthly statement. A bank statement or brokerage statement showing the date, the check number, the payee, and the amount will also be accepted. Statements are required to document bank fees and electronic debits. For distributions to beneficiaries we do require the front and the back of the check with the beneficiary's endorsement on the back or a signed receipt from each beneficiary. **Vouchers must be submitted in the same order as the disbursements that are shown on the Account. Vouchers do not need to be submitted in duplicate.**

4. Signed receipts for any distribution of assets delivered in kind, e.g. cars, stock, jewelry, household furnishings, shown on the account.

a. The receipt should name the asset received (including the number of shares, if applicable), its value, and the paragraph of the Will it satisfies, where appropriate.

b. Distributions due minors of cash or assets valued at \$25,000 or more may require a receipt from a legal guardian who has qualified with the Court (not merely a parent). Check with your attorney if this situation exists before making the distribution.

5. Copy of signed settlement sheet for any sale of real estate and broker's statement to support any sale of stocks or other securities.

6. Back-up verification for all reimbursements, i.e., cancelled checks or paid receipts.

7. Verification of each asset remaining on hand. All accounts, other than the final account, must contain an itemized list of the assets remaining in the hands of the personal representative as of the ending date of the account.

a. For bank accounts, a bank statement, reconciled to agree with your account, must be provided.

b. Brokerage account statements should be supplied to verify stocks, bonds and other securities or funds held. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or

provide a statement from a bank officer certifying the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the account.

c. Titles for cars, boats, etc., should be exhibited. Jewelry and furnishings can be supported by a statement from a disinterested third party certifying the existence and the location of said assets. The statement by the third party should include his printed name, address and daytime phone number.

d. Original Notes must be exhibited.

e. Copies of K-1 forms from the tax returns may be used to verify any partnership interests.

f. Where the market value of the asset is not equal to the carrying value, show the market value in parentheses within the asset description or in a separate column.

8. With every final account a proper tax certificate must be signed by each personal representative. The required tax certificate form was given to you at qualification but you may obtain one from the Commissioner of Accounts' office. See Virginia Code Section 58.1-22.

9. A final account must show ZERO assets on hand. No assets may be held in escrow by the personal representative for any reason whatsoever.

G. All original vouchers will be returned to the personal representative or his attorney/accountant after the completion of the Commissioner's audit.

H. Accounts must be printed legibly in black or blue pen or typed.

I. Accounts may be filed by mail or in person at the Commissioner of Accounts' office. You may come in to deliver an account anytime during office hours, but if you need to talk with an auditor you should call for an appointment ahead of time. An appointment can usually be made with as little as one day's notice.

J. Each personal representative must supply the Commissioner of Accounts with his complete and current street address and telephone number. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of

each personal representative to keep the Commissioner of Accounts informed of your current address and telephone number.

K. If the Will leaves any of the estate to a revocable living trust, the Executor will receive from the Probate Clerk or the Commissioner of Accounts an Affidavit of Living Trust form, which the Executor must forward to the Trustee(s). All current Trustees must complete this Affidavit and return to the Commissioner of Accounts, along with a copy of the first page of the Trust document (to show that it is the Trust mentioned in the Will), and a copy of the page of the Trust document appointing them as Trustees.

1. The Executor is required to send the Notice of Probate to at least one of the Trustees, as the Trust is a beneficiary.

2. If none of the Trustees is a resident of Virginia, then the Executor cannot make any distributions to the Trust until each of the Trustees has filed with the Probate Clerk a consent for service of process on a Virginia resident agent (Section 64.2-427).

3. The Estate accounting must show the distribution to the Trustee of the Trust, not the Trust beneficiary. A receipt from the Trustee for all distributions will be required.

L. Filing for a deceased personal representative. The personal representative of a deceased personal representative's estate must file accounts on behalf of that personal representative through the date of his death unless a successor personal representative makes the requisite filing pursuant to Virginia Code Section 64.2-1312.

VI. STATEMENT IN LIEU OF ACCOUNT

A. Virginia Code Section 64.2-1314 permits certain personal representatives to file a statement in lieu of a detailed account. **This may be done if each of the residual beneficiaries or intestate heirs is also a personal representative.** A Statement in Lieu of Account is not permitted when the residual assets pass to a Trust. The Statement in Lieu of Account may be filed as early as 6 months from date of qualification if all debts, bequests, and taxes have been satisfied and the residue has been delivered to the residual beneficiaries or intestate heirs.

1. This statement is due on the same schedule as a detailed account. By statute, it cannot be filed earlier than 6 months from date of qualification.

2. If, after 16 months, the administration of the estate has not been completed, the personal representative(s) may file a **Notice of Intent** with the Commissioner of Accounts. This document should state that the personal representative(s) meet the requirements of Virginia Code Section 64.2-1314 and they intend to file a Statement in Lieu of Account when administration is complete. As with interim accounts, a Notice of Intent must be filed annually until the Statement in Lieu of Account is submitted to close the estate. The Notice of Intent form may be obtained from the Commissioner of Accounts' office.

3. Receipts showing satisfaction of any specific bequests should be attached to the Statement in Lieu of Account.

4. Both the Notice of Intent and the Statement in Lieu of Account must be signed by each qualified personal representative before a notary public and filed in duplicate. Check the current Fee Schedule for filing fees for each of these forms.

5. A Tax Certificate form must be signed by each personal representative and submitted with the Statement in Lieu of Account. The required Tax Certificate form was given to you at time of qualification, but you can obtain one from the Commissioner of Accounts' Office. See Virginia Code Section 58.1-22.

VII. HEARING FOR PROOF OF DEBTS AND DEMANDS

A. Publishing notice to creditors is not required by law in Virginia; however, if you, as a personal representative, wish to fully protect yourself from personal liability to unknown creditors or others who may have a claim against the estate, you may chose to request the Commissioner of Accounts to hold a Hearing for Proof of Debts and Demands (Virginia Code Section 64.2-550) and then proceed to obtain an Order of Distribution from the Court in accordance with Virginia Code Section 64.2-556.

B. The following steps are involved in obtaining an Order of Distribution:

1. Make a written request to the Commissioner of Accounts to schedule a Hearing for Proof of Debts and Demands. Enclose a check for the hearing

fee, which fee includes the cost of the newspaper publication.

2. You will receive a packet from the Commissioner of Accounts after a date has been set for the hearing. Give written notice to creditors and claimants as required by Virginia Code Section 64.2-550. Return your completed Certificate of Notice form and copies of the notices which you mailed to each creditor to the Commissioner of Accounts.

3. Unless you anticipate someone presenting a disputed claim at the hearing, you do not need to appear at the scheduled time. Should a creditor or claimant of a disputed claim appear, the Commissioner will contact you and continue the hearing to a mutually agreed upon time for all concerned parties in order to resolve the dispute.

4. After the hearing is concluded, file an interim account through a current date, which contains, after the "Assets on Hand" section, a "Proposed Schedule of Disbursements and Distributions" section. This schedule should begin with the ending balance on the account to which it is attached and should set out anticipated receipts and anticipated costs of administration and debts to be paid. Then show how you propose to distribute the residue of the estate. These amounts are necessarily just estimates.

5. When you are notified by the Commissioner of Accounts that your interim account has been approved and filed with the Court, you may begin show cause proceedings. Prepare an Order to Show Cause and file it with the Clerk of the Circuit Court. The Clerk will arrange publication of the Order in a local newspaper. This publication will be made twice and will advise parties who have an interest in the subject estate and wish to take exceptions to the proposed disbursements or distributions to appear at the Circuit Court on a specified day and time (the return date set by the Clerk).

6. If no exceptions are presented in Court on the return date, the Judge will sign your Order of Distribution. You or your attorney must prepare the Order of Distribution and be present in Court on the return date.

7. You are then ready to proceed to close the estate and file the final account with the Commissioner of Accounts.

NOTE: The personal representative should seriously consider the assistance of an attorney to prepare the Show Cause Order, to prepare the Order of Distribution, and to make the Court appearance.

VIII. COMPENSATION FOR ADMINISTRATION OF ESTATE

A. Virginia Code Section 64.2-1208 allows a “reasonable compensation” to an Executor or Administrator for services rendered in the administration of an estate. There is no specific definition of “reasonable compensation”, but, absent unusual circumstances, the Commissioner would expect to allow a fee based upon the following guidelines:

1. Income - 5% of all income receipts (interest, dividends, rents, etc.) realized during each accounting period, excluding capital gains and gains on sales.

2. Principal - A fee based upon the date of death gross values of the decedent’s probate assets (Inventory and Amended Inventory values) in accordance with the following schedule:

First \$400,000	5%
Next \$300,000	4%
Next \$300,000	3%
Balance over \$1,000,000	2%
Balance over \$10,000,000	Prior consultation with Commissioner required

3. Special Rules

a. If the Executor or Administrator has the power to sell real estate, but does not do so, the principal fee on the gross value of real estate shall not exceed 1%, except under exceptional circumstances. If the Executor or Administrator does sell real estate, then the value of the real estate will only be included as property in the decedent’s probate estate for fee purposes if the personal representative either (i) is instructed to sell real estate in the Will, or (ii) is requested to sell real estate by all affected beneficiaries or devisees, or (iii) is required to sell real estate to pay taxes or other charges against the estate, or if (iv) the Commissioner determines that such sale is clearly in the best interests of the estate and the devisees or beneficiaries as a whole.

b. Where the Executor or Administrator hires an attorney or accountant to perform the duties of the Executor or Administrator, those fees shall be deducted from the compensation due the Executor or Administrator. Note this does not apply to fees paid to attorneys or accountants for tax work or litigation or other legal services necessary for the orderly administration of the estate.

c. If the Executor or Administrator employs an investment advisor, the advisor's fee, if reasonable, should generally not be deducted from the personal representative's compensation.

d. Where the Executor or Administrator has duties with regard to non-probate assets, the Commissioner may allow a fee up to 1% of the value of those assets.

e. The Commissioner may reduce the allowable fee in exceptional circumstances. The Commissioner may also increase the allowable fee in exceptional circumstances, upon the request of the Executor or Administrator. Factors to be considered would be the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, and the results obtained.

f. Where the fee is set forth specifically in the Will, the Commissioner will allow the specified fee.

B. Since the fees of an Executor or Administrator are subject to approval by the Commissioner of Accounts, it would be prudent not to take a fee until the administration is complete. However, the fiduciary will generally be allowed to withdraw partial fees on an interim basis as the administration of the estate progresses. If the Executor or Administrator is not able to complete the administration of the estate and must be replaced by a successor personal representative, then he will not be allowed the full fee.

IX. DISTRIBUTIONS

A. Distribution by a personal representative cannot be compelled until six months after the date of appointment of the personal representative and then only if the legatee or distributee first posts a refunding bond with sufficient surety with the Clerk of the Court. See Virginia Code Section 64.2-554.

B. Distributions to heirs at law or beneficiaries under a Will may be affected by any of the following:

1. Filing of any exemptions and allowances under Virginia Code Sections 64.2-309 to 64.2-313.

- a. Family Allowance 64.2-309
- b. Exempt Property 64.2-310
- c. Homestead Allowance 64.2-311

2. Marriage or Divorce of testator
 - a. Marriage after date of Will execution (pretermitted spouse) - Virginia Code Section 64.2-422
 - b. Divorce or annulment - Virginia Code Section 64.2-412
3. Augmented estate election by spouse - Virginia Code Section 64.2-302
4. Disclaimers - Virginia Code Sections 64.2-2600-2614
5. New, more current Will discovered
6. Suit for aid and direction or Will interpretation
7. Illegitimate children - Virginia Code Section 64.2-102 and 64.2-103
8. Death of certain beneficiaries prior to death of decedent- Anti-lapse statute - Virginia Code Section 64.2-418
9. Death of an heir or beneficiary subsequent to death of decedent but prior to distribution; **distribution must be made to the qualified personal representative of the deceased heir's or beneficiary's estate**
10. Pretermitted children - Virginia Code Section 64.2-419 and 64.2-420
11. Ademption - object of bequest no longer in existence - Virginia Code Section 64.2-415
12. Advancements - Virginia Code Sections 64.2-206 and 64.2-417
13. Abatement - insufficient assets to fund all bequests

C. Virginia Code Section 64.2-425 provides that interest on pecuniary legacies shall begin to run at the expiration of one year from the date of death of the decedent.

X. SURETY BOND COVERAGE

A. The Court must determine the penalty of the personal bond on every estate and whether surety on the personal bond is required. Virginia Code Sections 64.2-503 and 504 and 64.2-1410 and 1411.

B. If a personal representative is required to be bonded with surety, then he will pay an insurance company a premium to insure that he will properly discharge his duties. The surety bond is set at an amount sufficient to cover the assets in the hands of the personal representative as of a specified date, plus 12 months worth of anticipated income.

1. The Commissioner of Accounts must report to the Court if the surety bond is insufficient. This is done after the filing of the Inventory and each Interim Account by a letter to the personal representative setting forth the amount of increase necessary to cover the existing assets and anticipated income. A copy of the letter is sent to the Clerk of the Court and to the insurance company.

2. Reduction of the amount of the surety bond may be requested by a personal representative when an Inventory or Account is filed which shows assets on hand plus anticipated income are substantially less than the current surety bond coverage.

C. In determining the amount of the surety bond, the Clerk of the Court and, thereafter, the Commissioner of Accounts do not take into consideration the decedent's real estate unless the personal representative has the power to sell the real estate.

D. Send a copy of your Final Account to the bondsman so that the company will stop billing you.

XI. INVESTMENT OF FUNDS

A. A personal representative is charged with the investment of funds under his control and must make such investments within four months from the time he collects such funds. Virginia Code Section 64.2-1501.

B. Virginia Code Section 64.2-1502 provides a listing of securities which are conclusively presumed to be prudent investments.

C. Other investments made in good faith using reasonable care, skill, and caution are acceptable. Virginia Code Section 64.2-1501 does not permit departure from the terms of the Will regarding investments.

D. It is recommended that a personal representative use Virginia banks for estate accounts. This is suggested in case the personal representative cannot complete the administration of the estate due to his death, removal, or other reason. A substituted personal representative would be less inconvenienced in recovering the assets in Virginia than from some other state or the District of Columbia, resulting in less disruption to the administration of the estate.

XII. TAXES

A. It is the duty of the personal representative to ascertain that any and all taxes due by the decedent and/or his estate are satisfied before closing the estate. This includes individual income taxes, personal property taxes, real estate taxes, business taxes, estate taxes, inheritance taxes and estate income taxes.

B. A statement certifying that all taxes have been paid or provided for is required to be filed with every final estate account. (Virginia Code Section 58.1-22). Tax certificate forms that are appropriate for Arlington County and the City of Falls Church are given to the personal representative at time of qualification and are available in the Commissioner of Accounts office.

C. Probate tax is assessed by the Clerk at the time of qualification based upon the personal representative's estimate of the value of the estate. Should the Inventory or an account reflect a larger value of probate assets, you will receive a billing from the Clerk for the additional probate tax due.

D. Virginia Code Sections 64.2-539 through 64.2-544 require a personal representative to apportion estate taxes among the recipients of assets from a decedent unless the will waives this requirement.

E. It is recommended that the personal representative consult with an attorney or accountant to determine the estate's liability for estate taxes, inheritance taxes and income taxes.

XIII. FAILURE TO PROPERLY FILE AFFIDAVIT OF NOTICE, INVENTORY OR ACCOUNTS

A. Should a personal representative fail to file the required Affidavit of Notice, Inventory or Account within the time required by law or within an approved extension period, the following actions may result:

1. A summons will be issued by the Commissioner of Accounts and served on the personal representative by the Sheriff. The summons gives the personal

representative 30 days from the date of service to file the required Affidavit of Notice, Inventory or Account with the Commissioner of Accounts.

2. If the summons deadline is not met, the Commissioner of Accounts will make his report to the Court and request the Judge to issue a Rule to Show Cause against the personal representative. Said Rule will be served by the Sheriff, and the personal representative will be required to appear in Court to explain to the Judge why he has not filed the required Affidavit, Inventory or Account and why he should not be removed as the personal representative.

B. Virginia Code Section 64.2-1217 provides that personal representatives who fail to settle their accounts as required by Section 64.2-1206 shall forfeit their commissions unless allowed by the Commissioner of Accounts for good cause shown.

C. Fees for the issuance of the summons and Rule, as well as any Court appearances by the Commissioner of Accounts, **are charged against the personal representative personally.**

D. Virginia Code Section 64.2-1216 requires the Commissioner of Accounts to send a copy of his report to the Court to the Virginia State Bar for any personal representative who is also an attorney.