

## **INSTRUCTIONS TO TRUSTEES**

(Revised October 2012)

A Trustee has a duty to administer the Trust on which he has qualified in accordance with the laws of the Commonwealth of Virginia. Most, but not all, of the sections of the Virginia Code dealing with testamentary trust matters can be found in Title 64.2.

Although a Trustee is not required to retain an attorney to assist him in administering a Trust, he should keep in mind that there are many rules and regulations to abide by, and the Court and Commissioner of Accounts' office cannot provide legal advice to any Trustee. Consulting with an attorney proficient in trust administration matters can prevent many problems inexperienced Trustees 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 Trustee will need to be aware to properly administer a Trust.

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## **I. WAIVER OF INVENTORY AND TRUST ACCOUNTS - Virginia Code Section 64.2-1307**

A. If the Will is probated after July 1, 2010, and if it does not specifically direct you to file an Inventory and Accounts, then, if you chose not to file an Inventory and Accounts, you must send the Notice of Waiver of Inventory and Annual Accounts form, the Consent of Beneficiary form, a copy of the Will, and a copy of Virginia Code Section 64.2-1307 to each adult beneficiary to whom income or principal from the trust could be currently distributed or to the representative of any incapacitated beneficiary. This must be done within 90 days of qualification.

You must then send the Commissioner of Accounts the signed Statement of Trustee Waiver of Trust Accounts form, a copy of the Notice of Waiver that was sent to the beneficiary, and the signed Consent of Beneficiary form. This must be submitted to the Commissioner of Accounts before the due date of the Inventory or annual account, otherwise the Inventory or the annual account **must** be filed.

The Probate Clerk will have given you these forms and instructions at the time of qualification. Contact the Commissioner of Accounts to verify the filing fee for these documents.

B. If the Will was probated between July 1, 1993 and July 1, 2010, you may file the Waiver of Inventory and Trust Accounts only if the Will specifically waives Trust Inventories and Accounts.

C. Trust accounts are also waived if the sole beneficiary of the Trust is also the Trustee. "Sole beneficiary" means a person who is the sole income beneficiary and who has a particular power of appointment over the principal.

## **II. INVENTORY**

A. If you are not able to file the Waiver of Inventory and Trust Accounts pursuant to Virginia Code Section 64.2-1307, then you will be required under Virginia Code Section 64.2-1300 to file an Inventory of the assets of the Trust within four months from the date of the initial funding of the Trust. If funding will occur

later than four months after qualification you should notify the Commissioner of Accounts.

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](http://www.courts.state.va.us)). Review the instruction sheet 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 Trustee.

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

F. 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 with an auditor you should call for an appointment first. An appointment can usually be made with as little as one day's notice.

G. Each Trustee 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 Trustee to keep the Commissioner of Accounts informed of your current street address and telephone number.

### **III. ACCOUNTS**

A. If you are not able to file the Waiver of Inventory and Trust Accounts pursuant to Virginia Code Section 64.2-1307, then you will be required under Virginia Code Section 64.2-1306 to file annual accounts of the assets in the Trust.

B. The Probate Clerk will have given you, at the time of qualification, an Account form which must be used, along with 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](http://www.courts.state.va.us)).

C. Trustees must file their first trust account for the period beginning with the first date that the Trustee received assets and ending on December 31 of the same year. This trust account must be filed with the Commissioner of Accounts no later than May 1 of the following year. Subsequent trust accounts shall cover each calendar year and are due by May 1 of the following year.

D. Every Account filed must be accompanied by the following:

1. Original and one copy of the Account signed by each Trustee 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. 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 acceptable. Statements are required to document bank fees and electronic debits. **Vouchers must be organized in the same order as they appear on the Account. Vouchers do not need to be filed in duplicate.**

4. Copy of front and back of cancelled check with endorsement on the back for any cash distribution to a beneficiary or a signed receipt from the beneficiary.

5. Signed receipts for any distribution of assets delivered in kind, i.e. cars, stock, jewelry, household furnishings, etc., shown on the Account. The receipt

should name the asset received and its value. Securities such as stock should include the number of shares.

6. Copy of signed settlement sheet on any sale of real estate.
7. Brokers' statements to support any sale of stocks or other securities.
8. Back-up verification for all reimbursements, i.e., cancelled checks or paid receipts.
9. 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 Trustee 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 that 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 use a

separate column for the market value. Market value is used to calculate the Trustee's commission, filing fees, and the amount of surety bond if required.

10. A Final Account must show ZERO assets on hand. No assets may be held in escrow by the Trustee for any reason whatsoever.

E. All original vouchers will be returned to the Trustee or his representative after the completion of the Commissioner's audit.

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

G. Accounts may be filed by mail or in person at the Commissioner of Accounts office during office hours. 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.

H. Each Trustee 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 Trustee to keep the Commissioner of Accounts informed of your current address and telephone number.

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

#### **IV. PRINCIPAL AND INCOME ALLOCATION**

You are required to properly allocate receipts and disbursements between income and principal as it may affect the amount which you are to distribute to the beneficiaries. Refer to the "Instructions for Account for Trust" given to you at time of qualification. If you are not sure how to allocate you may contact the Commissioner of Accounts office for more detailed guidelines.

## V. COMPENSATION FOR ADMINISTRATION OF TRUST

A. Virginia Code Section 64.2-1208 allows a “reasonable compensation” to a Trustee for services rendered in the administration of a trust. There is no specific definition of “reasonable compensation”, but, absent unusual circumstances, the Commissioner would expect to allow an annual fee based upon the market value of the assets brought forward from the Inventory or prior account in accordance with the following schedule:

First \$500,000	1%
Next \$500,000	.75%
Balance over 1,000,000	.50%
Balance over \$10,000,000	Prior consultation with Commissioner required

### B. Special Rules

1. Where the Trustee employs an attorney or accountant to perform the duties of the Trustee, those fees shall be deducted from the compensation due the Trustee. Note that 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 Trust.

2. Where the Trustee employs an investment advisor, those fees, if reasonable, will not generally be deducted from the Trustee’s compensation.

3. Where the required Account is for a period of less than one full year, the compensation should be pro-rated.

4. The Commissioner may reduce the allowable fee in certain circumstances, such as where the Trustee has delegated total investment responsibility to professionals and is not making any discretionary distributions.

5. The Commissioner, if requested, may also increase the allowable fee in exceptional circumstances, such as where the Trustee is a financial institution that provides its own investment advice and requests to charge in accordance with its published fee schedule. Other 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.

6. Where the exact amount of the fee is set forth specifically in the Will, the Commissioner will allow that fee. Where the Will refers to a fee to be determined by a future published fee schedule, the Commissioner will presume that fee to be reasonable unless there is objection thereto by a beneficiary.

## **VI. SURETY BOND COVERAGE**

A. The Court must determine the penalty of the personal bond on every trust and whether surety on the personal bond is required. Virginia Code Section 64.2-1401 and 64.2-1410 through 64.2-1412.

B. Surety is where an insurance company is paid a premium to insure that a Trustee will properly discharge his duties. The surety bond is set at an amount sufficient to cover the assets in the hands of the Trustee 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 Trustee 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 Trustee when an inventory or account is filed which shows assets on hand, plus anticipated income, are less than the current surety bond coverage.

C. When you terminate the Trust, send a copy of your Final Account to the bondsman so that the company will stop billing you.

## **VII. INVESTMENT OF FUNDS**

A. A Trustee 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 Sections 64.2-780 to 64.2-791 (Prudent Investor Act) require that a Trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Trust. The Trustee shall consider, in investing and managing trust assets, the general economic conditions, the possible effect of inflation or deflation, the tax consequences of investment decisions, the overall trust portfolio, the expected total return from income and the appreciation of capital, the other resources of the beneficiaries and the needs for liquidity, regularity of income and preservation or appreciation of capital.

C. A Trustee shall diversify the investments unless the Trustee reasonably determines that because of specific circumstances, the purposes of the Trust are better served without diversifying. Virginia Code Section 64.2-783.

D. It is recommended that a Trustee use Virginia banks for Trust accounts. This is suggested in case the Trustee cannot complete the administration of the Trust due to his death, removal, or other reason. A substituted Trustee 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 Trust.

## **VIII. TAXES**

A. It is the duty of the Trustee to ascertain that any and all income taxes due by the Trust are satisfied.

B. It is recommended that the Trustee consult with an attorney or accountant to determine the Trust liability for income taxes.

## **IX. TERMINATION OF TRUST**

The terms of the Will set forth the circumstances of termination of a Trust. If the termination is a result of the death of the beneficiary, the Trustee must furnish a copy of the death certificate. If termination is due to the beneficiary reaching the age required by the Will, the Trustee should notify the Commissioner of this. For other circumstances, the Trustee should consult with the Commissioner of Accounts prior to distributing remaining assets in order to avoid an improper termination.

## **X. FAILURE TO PROPERLY FILE INVENTORY OR ACCOUNTS**

A. Should a Trustee fail to file the required 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 Trustee by the Sheriff. The summons gives the Trustee 30 days from the date of service to file the required 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 Trustee. Said Rule will be served by the Sheriff, and the Trustee will be required to appear in Court to explain to the Judge why he has not filed the required Inventory or Account and why he should not be removed as the Trustee.

B. Virginia Code Section 64.2-1217 provides that a Trustee who fails to settle his accounts as required by Section 64.2-1206 shall forfeit his commission 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 Trustee 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 Trustee who is also an attorney.