

Instructions and Duties of an Executor or Administrator for Decedent's Estate

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**It is extremely important that you read this instruction
packet in its entirety before you begin administering
the decedent's estate.**

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**INTRODUCTION TO INSTRUCTIONS AND DUTIES OF
A PERSONAL REPRESENTATIVE
(EXECUTOR, ADMINISTRATOR, ADMINISTRATOR C.T.A.)**

These instructions and duties were prepared by the Commissioner of Accounts of Prince William County to both assist you in performing the general duties required of you as a personal representative, address the many issues that arise, and address the most-commonly asked questions with regards to only those matters concerning administration of a decedent's estate supervised by the Commissioner of Accounts. Although many personal representatives properly fulfill their duties without the assistance of an attorney, you may determine it is appropriate to consult with an attorney experienced in probate of decedents' estates to assist you and to avoid liability you may incur for the improper administration of an estate. Please be advised that the Commissioner of Accounts is not an employee of the Commonwealth of Virginia or Prince William County, but rather is appointed by the Judges of the Circuit Court of Prince William County. **The Commissioner of Accounts cannot give you legal advice.**

It is important that you are aware of the following information and principles to avoid your incurring personal liability in your role as a personal representative and to fulfill the requirements of filing the proper documentation with the Commissioner of Accounts and the Circuit Court of Prince William County:

1. KEEP ALL ESTATE ASSETS AND MONEY SEPARATE.

This is not your money. Do not deposit any estate money in to your personal account or use this money for any of your bills or personal finances or you will be subject to court sanctions and you could be subject to criminal prosecution. An estate account should be opened to receive all estate funds.

2. DO NOT PAY ANY DEBTS OF THE ESTATE OR DISTRIBUTE ANY ASSETS OF THE ESTATE UNTIL YOU DETERMINE THAT THE ESTATE IS SOLVENT.

It may be several months before you determine that there are insufficient assets in the estate to pay all debts of the decedent and, if this is the case, you are administering an insolvent estate which requires that the debts of the estate be paid in a certain priority and in certain amounts, **which includes the funeral bill**. Failure to comply with the insolvency statute set forth in the Code of Virginia may result in your being held personally liable for paying certain creditors more than their respective priority amount.

3. CANCELLED CHECKS AND RECEIPTS ARE REQUIRED.

When you file an Accounting with the Commissioner of Accounts you will have to prove that any disbursements of money and distributions of property to any beneficiary under a will or heir of the estate as well as creditors were in fact received. Open the account for the estate at a

bank which returns cancelled checks or provides a photocopy of the check which, together with the bank statements, itemizes that check. If you make a distribution of personal property obtain an itemized receipt from the recipient that they have received this property to provide to the Commissioner of Accounts.

4. **RECORD KEEPING.**

It is your obligation to maintain an accurate record of all estate assets, receipts and disbursements you have made from estate assets and estate funds. These records will be required in support of the documentation you are required to file with the Commissioner of Accounts during your administration of the estate. Beneficiaries under a will or heirs of the estate and creditors of the estate may also want to review these records.

5. **IMPORTANT DEADLINES.**

The following are important deadlines to meet your filing requirements with the Clerk of the Circuit Court and the Commissioner of Accounts:

30 days from the date of qualification: Mail or hand deliver the Notice Regarding Estate provided to you by the probate clerk to all the interested parties (heirs at law and all the beneficiaries under the will). (*Virginia Code §64.2-508*)

4 months from the date of qualification: Mail or hand deliver the Affidavit of Notice and filing fee to the probate clerk. This Affidavit must be filed before the Inventory can be approved. (*Virginia Code §64.2-508*)

4 months from the date of qualification: (*Virginia Code §64.2-1300*) Send the Inventory to the Commissioner of Accounts Office with the appropriate fees (See fee schedule).

16 months from date of qualification: (*Virginia Code §64.2-1304*) Send the first Accounting to the Commissioner of Accounts Office covering the initial 12-month period of administration with the appropriate fees (See fee schedule).

Second and subsequent Accountings are due to the Commissioner of Accounts with the appropriate fees within 16 months from the end date of the prior account and should cover each 12-month period subsequent to the first Accounting. (*Virginia Code §64.2-1304*)

Final Accounting is due within 4 months of the ending date of the period covered, which may not necessarily cover a 12-month period. **All assets must be distributed. The account may not reflect any remaining assets on hand.**

Failure to comply with these deadlines or to submit additional documentation requested by the Commissioner of Accounts may result in:

- 1. Delinquency fees imposed by the Commissioner of Accounts you are required to pay from your personal funds. (See the fee schedule for the various delinquency fees that may be imposed).**
- 2. A summons being issued by the Commissioner of Accounts to file any delinquent documentation.**
- 3. Forfeiture of your commission for your services as Executor, Administrator or Administrator, C.T.A.**
- 4. A summons being issued by a Judge of the Circuit Court of Prince William County to appear before the Circuit Court to answer for your delinquency which can result in your being fined and/or imprisoned.**
- 5. Removal of your appointment as Executor, Administrator or Administrator, C.T.A. together with being held personally liable for any losses incurred by the estate which includes, but is not limited to, costs to investigate your administration and to qualify a substitute personal representative to administer the estate.**

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General Information on Estate Administration

Taking Possession of Assets: The Certificate of Qualification, which you received from the Probate clerk, is your authority to take possession of estate assets. Other names for the Certificate of Qualification are Letters Testamentary and Certificate of Appointment. In order to take possession of financial personal property and change title to the decedent's estate, any bank, brokerage or other investment entity will require that you provide the estate Tax Identification Number. This will require applying for the estate Tax Identification Number with the IRS. To obtain a taxpayer identification number:

Go to www.irs.gov/businesses
Click on the link titled 'Employer Identification Number'
Click on "Apply for an EIN Online"
Scroll down to click on line titled 'Apply Online Now'
Click on 'Begin Application'
Choose Estate
Click 'Continue' -follow all instructions and complete all requested information. The IRS will provide an EIN number and confirmation page to print for your records.

Or, to apply by phone: prepare the SS4 form and then call 1-800-829-4933. A representative will ask you if you have a completed SS4 form, ask for the entries you have made, and provide a Tax Identification Number for the estate over the phone.

Identifying Assets: The Personal Representative should immediately determine the deceased person's personal property and real property:

Identify all assets owned by the decedent. Personal property such as, bank accounts, brokerage firm accounts, stocks, bonds, notes, business interests, life insurance, annuities, retirement accounts, motor vehicles, etc., and real property such as a house or land are typical assets.

Determine whether personal property or real property is owned solely by the decedent, owned jointly with survivorship, or owned jointly without right of survivorship, or is payable upon death.

Notice from the Virginia Department of the Treasury: The Personal Representatives are advised to check with the Virginia Department of the Treasury's Division of unclaimed property division to see if the decedent has a claim to property being held there. Information may be obtained through email at www.vamoneysearch.org, or by calling 1-800-468-1088.

Record Keeping/Supporting Documentation: As Personal Representative, you have an obligation to maintain a record of all receipts and disbursements of the estate funds. Be prepared to present supporting documentation to the Commissioner of Accounts during your administration of the estate. Below is a list which provides you with some of the records you should retain:

- All original invoices of bills paid
- Paid promissory notes
- Original banking and brokerage statements
- Cancelled checks or copy of front of check with a signed invoice or receipt
- Signed (and preferably notarized) receipts from beneficiaries for each asset distributed

Investment of Estate Funds

A Personal Representative has the responsibility to invest the principal funds of the estate in excess over the amount reasonably necessary for working funds. If the Personal Representative fails to invest these principal assets, the Personal Representative can be assessed a surcharge equal to at least the interest rate payable on money market accounts during the accounting period. Any surcharge must be paid from the personal funds of the Personal Representative.

Time Requirement: Principal funds must be invested within four (4) months from the time such funds come under the control of the Personal Representative. (*Virginia Code* §64.2-1501)

Standard of care for investments: the standard of care for investments is set out in the **Virginia Code, Article 2 Uniform Prudent Investor Act, §64.2-781, et seq.**, and is referred to as the "**prudent investor rule**", unless the prudent investor rule is waived in the will.

If the value of personal property to be invested under the fiduciary's control or management does not exceed \$100,000, a Personal Representative may invest in the securities listed in *Virginia Code* §64.2-1502 and be presumed to have been prudent in investing the funds held by them in a fiduciary capacity.

Preservation of Estate Assets

The Personal Representative is responsible for the care, preservation, and management of the estate's assets.

If the Personal Representative fails to preserve the value of estate assets because of negligence or improper conduct of the Personal Representative, the Personal Representative is charged with the lost principal and interest thereon. (*Virginia Code* §64.2-1415)

Estate assets and funds cannot be combined or commingled with the personal assets and funds of the Personal Representative. Estate assets and funds should be kept in separate accounts from the personal assets and funds of the Personal Representative.

Taxes

It is the responsibility of the Personal Representative before settling the estate to determine whether all taxes due by the estate and the decedent have been satisfied, including but not limited to:

- all probate taxes due to the Clerk of the Circuit Court
- decedent's individual federal and state income taxes
- federal and state estate taxes
- federal and state estate income taxes
- individual personal property tax and business taxes
- any other applicable taxes

Pursuant to Virginia Code §64.2-507:

"As an Executor or Administrator of an estate, you are charged with the responsibility of filing any income, inheritance, or estate tax returns required by state or federal law and an accounting of your handling of the estate."

Pursuant to Virginia Code §58.1-23:

"Every personal representative, before settling the estate in his hands, shall make inquiry of the treasurer of the county or city wherein the decedent last resided and of the Department with respect to any unpaid taxes and levies assessed against his decedent."

Contact Information:

State taxes: **Virginia Department of Taxation** - www.tax.va.gov -804-367-8031

Federal taxes: **Internal Revenue Service** - www.irs.gov -800-829-3676

Local taxes: **Prince William County as decedent's residence**-703-792-6710
City of Manassas as decedent's residence -703-357-8253
City of Manassas Park as decedent's residence -703-335-8825

Document Filing Dates

A. Within thirty (30) days after your date of qualification:

Provide notice to all the heirs at law (including, where there is a will, the heirs at law if there was not a will) AND all the beneficiaries under the will. Use the form titled "Notice Regarding Estate", which was given to you at your qualification appointment with the Probate Clerk.

B. Within thirty (30) days after your date of qualification:

File the "**Affidavit of Notice Regarding Estate**" form with the Probate Clerk. **(This form must be signed by all personal representatives and all signatures must be notarized)**. This form was given to you by the Probate Clerk at the time of your qualification. NOTE: The Commissioner of Accounts will NOT approve an accounting unless this document has been received by the Probate Clerk. The recommended filing date is 30 days from date of qualification, however, VA Code Section 64.2-508 states the affidavit be filed within 4 months of qualification.

C. Within four (4) months after your date of qualification:

Mail your completed "**Inventory for Decedents Estate**" form to the Commissioner of Accounts Office. Be sure to include the appropriate fees and supporting documentation. This form (Form CC-1670) was given to you at your qualification appointment with the Probate Clerk and may also be obtained from the Virginia Supreme Court website at <http://courts.state.va.us/forms/circuit/fiduciary.html> .

D. Within sixteen (16) months after date of qualification:

Mail your completed "Account for Decedent's Estate" form to the Commissioner of Accounts Office. Be sure to include the appropriate fees and supporting documentation. This form (Form CC-1680) was given to you at your qualification appointment with the Probate Clerk and may also be obtained from the Virginia Supreme Court website at <http://courts.state.va.us/forms/circuit/fiduciary.html>

E. When applicable, second and subsequent accountings are due sixteen (16) months after the ending date of the prior account and should cover a twelve (12) month period: Mail your completed "Account for Decedent's Estate" form to the Commissioner of Accounts Office. Be sure to include the appropriate fees and supporting documentation. Form CC-1680 is available from the Probate Clerk or the Commissioner of Accounts Office and may also be obtained from the Virginia Supreme Court website at <http://courts.state.va.us/forms/circuit/fiduciary.html>

The Personal Representative may also refer to the "Important Deadlines to Remember" on Page 3.

Explanation of forms:

Notice Regarding Estate: The Notice Regarding Estate is the legal form required to be given to all the heirs at law and all the beneficiaries under the will of an Estate, which notifies them that probate has begun. The Personal Representative is required to provide written notice of qualification within thirty (30) days of qualification or probate to all the heirs at law and all the beneficiaries under the will (including beneficiaries of any trust created under the will) of a decedent, as specifically required by Virginia Code §64.2-508.

Affidavit of Notice Regarding Estate: The Affidavit of Notice is a form which upon completion, certifies that the Personal Representative has provided "Notice of Probate" to all the heirs at law and all the beneficiaries under the will, as required by law. The Personal Representative is requested to file an affidavit of notice of probate or qualification, or must certify that no notice was required to be given to any person within thirty (30) days of qualification. As provided in Virginia Code §64.2-508, the Personal Representative must file the affidavit of notice within four (4) months of date of qualification. The Commissioner of Accounts will not approve any accounting unless this form has been filed at the Probate clerk.

Inventory for Decedent's Estate: The Inventory is an itemized list of all the assets that are under your supervision and control as Personal Representative. The Personal Representative is required to file an inventory with the Commissioner of Accounts within four (4) months after the date of your qualification.

Account for Decedent's Estate: An accounting is a financial report showing how you, as Personal Representative of the Estate, are managing the assets of the estate. This accounting must be filed with the Commissioner of Accounts and must be accompanied with supporting documentation.¹ The Personal Representative is required to file a first accounting with the Commissioner of Accounts within sixteen (16) months after the date of qualification and should cover a twelve (12) month period. When applicable, second and subsequent accountings are due sixteen (16) months after the ending date of the prior account, and each should cover a twelve (12) month period.

Inventory for Decedent's Estate

General Information

The Personal Representative is required by law to file an inventory with the Commissioner of Accounts within four (4) months after the date of your qualification listing all assets under your supervision and control as Personal Representative. (Virginia Code §64.2-1300)

Example: Date of qualification -June 1, 2010

Inventory Filing Due Date -October 1, 2010

The Personal Representative must report on the "Inventory for Decedent's Estate" form, the exact value of assets as they existed on the date of decedent's death.²

The Personal Representative may be required to provide documentation to support the value of the decedent's assets on the date of death.

Use the "**Inventory for Decedent's Estate" form (CC-1670)**, provided to you by the Probate Clerk at the time of your qualification. The Inventory must be signed by each Personal Representative. The inventory must also be **typed or computer generated**, and an **original and one copy must be submitted** to the Commissioner of Accounts Office along with the appropriate filing fee. *See the fee schedule that the Clerk gave you at your qualification appointment for appropriate fees. Additionally, if applicable, one copy of the signed Last Will and Testament must be submitted with the Inventory.

Valuation of Assets

Personal Property: Use the fair market value as of the date of the decedent's death, not the value of the assets when the inventory is prepared. (Provide the exact dollars and cents values; do not round figures)

¹ See Record keeping/supporting documentation, Page 6

² Gains or losses on assets must be reported on the "Account for Decedent's Estate Form"

Real Property: Use the local real estate assessed value or appraised value. (Do not reduce gross value by outstanding mortgage, loan, lien, or other claim against the property).

Note: Reasonable expenses incurred in determining the values to place on estate assets, such as appraisals, are allowable as an administrative cost of the estate.

Preparing the "Inventory for Decedent's Estate" Form (CC-1670)

Part 1. List the decedent's personal estate; tangible and intangible.

- Assets should be clearly identified, listed in reasonable detail, and valued as of the decedent's date of death. Group similar assets together such as personal effects and household property unless an article is specifically mentioned in the decedent's will.

EXAMPLE	VALUE
Personal items	\$ 200.00
Household furnishings	\$ 500.00
Diamond ring, Article I of will	\$ 855.00

- List articles separately that have a value of more than \$500.00 such as a collection (stamps, coins, or other collectibles)

EXAMPLE	VALUE
Coin Collection (appraised value)	\$3,900.00
Stamp Collection (appraised value)	\$1,500.00

- Un-cashed checks should be listed separately and not included with the “cash on hand” at date of death

EXAMPLE	VALUE
ABC Corporation, dividend check	\$50.00
XYZ bank, interest check	\$75.00

- Motor vehicles, boats, and personal watercraft should be listed by year, make and model.

2009 Toyota Camry	\$15,000.00
2008 Bayliner Watercraft	\$4,800.00

- Checking, savings, and other accounts should include the bank name, type of account, the account number (**only the last four digits for privacy reasons**), any accrued interest, and the maturity date

ABC Bank, checking Acct #6215	\$ 2,522.00
XYZ Bank, Certificate of Deposit #9237 2.5% interest, maturity date 12/2/09	\$ 9,500.00

- Stock, mutual funds, partnerships, or limited liability companies, whether held in certificate form, book account form, or in a brokerage account, must be listed separately and must include name, number of shares, or percentage of ownership, and price per share or value of percentage of ownership.

ABC Company, 200 shares, \$50 per share	\$ 10,000.00
GGG Mutual fund, 1,000 shares, \$5 per share	\$ 5,000.00
WWW Brokerage Acct Money market Acct	\$ 4,222.00

- Bonds and promissory notes should be listed and each should include the issuer's name, face amount, interest rate, and maturity date for each item.

City Water Authority Bond, \$8,000 6.75% interest, maturity date 10/2/12	\$ 8,000.00
Mary Smith, promissory note, face amount \$27,000 7% interest, maturity date 11/1/12	\$ 27,000.00

- A sole proprietorship is not a separate entity but rather an accumulation of assets that a person uses in a business and should be listed as a heading with the various personal assets listed except proprietorship real estate should be listed in Parts 3, 4, or 5 on the Inventory for Decedent's Estate form.

OK Proprietorship:	\$
Office furnishings	\$ 3,995.00
2 HP notebook computers	\$ 5,000.00
2008 VUE Hybrid – Saturn	\$ 18,000.00

NOTE: if, in unusual circumstances, there are assets for which there is no recognized market value, such as partnership interests, stock in closely held corporations, or legal claims against others, they may be valued at \$2.00 or an estimate of value on the inventory, however,

the accurate market value must be provided on the first accounting, or on an amended inventory. If there is an increase in value of \$25,000.00 or more, you must file an amended inventory. Any increases of less than \$25,000.00 can be reflected as an “adjustment” on the accounting.

Part 2. Multiple Party Accounts and Certificates of Deposit

There are generally three forms of multiple party accounts and certificates of deposit as follows: Joint, Payable on Death (P.O.D.³) and Totten Trust (another form of P.O.D.)

Special rules apply when these accounts or deposits are held in a bank, credit union, or similar financial institution. Some joint accounts or certificates of deposit are "with survivorship", and some are "without-survivorship". The correct classification of all particular account or certificate will ordinarily be determined by the language on the form signed by the decedent when the account was opened.

The Personal Representative should only list accounts that are Pay on Death or “with survivorship, in Part 2. A joint account that is not Payable on Death or designated as “with survivorship” is reported under Part 1 of the “Inventory for Decedent’s estate” form to the extent of the decedent’s interest in the account.

The Personal Representative must list in Part 2 of the “inventory for Decedent’s Estate” form, the decedent’s interest in any joint account with right of survivorship and the entire amount of a pay on death account by bank name, names of multiple parties, type of account, account number (only last four digits), any accrued interest, and any interest rate and maturity date.

ABC Bank, Certificate of Deposit, Acct #9999, Decedent and Mary Smith, joint account with Survivorship, 3.75% interest, maturity – 11/20/12	\$ 5,000.00
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Important Note about Multiple Party Accounts with survivorship:

These assets will not become a part of the decedent’s probate estate unless:

- (1) The estate is insufficient to pay debts, taxes, and expenses of administration, including statutory allowances to a surviving spouse and minor or dependent children (Virginia Code §6.2-611); or
- (2) The Personal Representative asserts a claim to such funds upon receiving a request in writing from any interested party in the estate within 6 months from the date of initial qualification of a Personal Representative (Virginia Code §6.2-515) .

Part 3. Decedent's Real Estate in Virginia, over which you, as Personal Representative, have a power of sale.

- Power of sale may be by express grant in the will, incorporated in the will powers

³ Transfer on Death (T.O.D.) is considered to be the same as Payable on Death.

enumerated in Virginia Code §64.2-105, or by Court Order, pursuant to Virginia Code §64.2-106.

- The Personal Representative should list all of the decedent's Virginia real estate, or partial interests in real estate, over which the Personal Representative has the power of sale.
- Do NOT include under Part 3 any real estate held in survivorship form with another person, or held in a living trust created by the decedent having beneficiaries following the decedent's death.
- Report each piece of real estate, street address, and city or county in which the property is located.

Lot 1, Block B, 3201 Main Street, Manassas, VA, assessed value	\$ 350,000.00
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Part 4. List the Decedent's Real Estate in Virginia, over which you, as Personal Representative, do NOT have a power of sale.

- Real estate over which the Personal Representative has no power of sale, such as
 1. The decedent died without a will and real property passes by intestacy to heirs at law;
 2. The decedent's will did not contain power of sale and no powers under Virginia Code Section 64.2-105;
 3. The decedent's will contained no devise of real estate and no residuary clause resulting in real estate passing by intestacy.

Part 5. List the Decedent's Non-Virginia Real Estate.

The Personal Representative should report all of the decedent's real estate or partial interest in real estate not situated in Virginia that are assets of the estate, whether or not the property is located in the United States.

Lot 200, Block BB, 201 8 th Street, Miami, Florida assessed value	\$ 150,000.00
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Certificate of Accuracy, Completeness, and Mailing:

Explanation:

All Personal Representatives are required by law to send a copy of the Inventory, to every person who has submitted a written request for a copy after receiving the "Notice of Probate." The copy should be sent when the inventory is filed with the Commissioner of Accounts.

If copies of the Inventory were mailed to the requesting party, then the Personal Representative must check block 'A', affirming that copies were mailed, and, on page four (4) of the Inventory form, the Personal Representative must fill in the names and addresses of the persons to whom copies were sent.

Before filing the 'Inventory for Decedent's Estate' form, be sure to do the following:

- Date and sign page 3 (All Personal Representatives are required to sign)
- Date and sign page 4 (if applicable & all Personal Representatives are required to sign)
- Write a check for the appropriate Inventory filing fee (payable to: Commissioner of Accounts)
- Make at least two (2) copies of the Inventory; 1 for your records, and 1 for the Commissioner of Accounts Office to be filed with the original inventory.

When ready to file, mail ALL of the items listed below to the Commissioner of Accounts Office:

1. The completed Inventory form
2. One copy of the completed Inventory form
3. A copy of the Last Will and Testament (if applicable)
4. Payment for the Inventory Filing Fees (see fee schedule)

Mail or hand deliver to: The Commissioner of Accounts to whom you were assigned at the address on the front page of these Instructions.

Note: If, after filing the Inventory, additional assets are discovered, or if errors are found that increase the total estate assets by more than \$25,000 over the Inventory Value, an Amended Inventory must be filed with the Commissioner of Accounts within four (4) months from the date of discovery of the additional assets or the discrepancy.

However, if the after discovered assets or errors are less than \$25,000, an Amended Inventory is not required and the adjustment(s) can be made on the First Account for the estate. (see "Account for Decedent's Estate" form).

PAYMENT OF DECEDENT'S DEBTS

The Personal Representative is responsible for determining whether there are sufficient assets to pay all debts of the decedent.

Solvent⁴ Estates

1. After the Personal Representative determines that there are sufficient assets, all legal debts can be paid as soon as feasible.
2. Claims of creditors are preferred over the rights of beneficiaries, or intestate heirs.
3. If there are disputed claims filed against the estate, the Personal Representative may want to request a Debts and Demands proceeding.(*see Debts & Demands Proceeding below)

Insolvent⁵ Estates

1. The order of priority for payment of debts of the decedent in an insolvent estate is found in Virginia Code §64.2-528 through 64.2-530.
2. The Personal Representative may want to retain an attorney for assistance in completing the administration of an insolvent estate.
3. If there are disputed claims filed against the estate, the Personal Representative may want to request a Debts and Demands proceeding.(*see Debts & Demands Proceeding below)
4. When there are insufficient assets to pay all debts and demands, the Personal Representative must file with the Commissioner of Accounts, on or before the date set for the proceeding for receiving debts and demands, a listing of debts and demands setting forth the order of priority as provided in Virginia Code §64.2-528.(*see Debts & Demands Proceeding below)

DEBTS AND DEMANDS PROCEEDING

The Personal Representative, or attorney, may request, in writing, that the Commissioner of Accounts schedule a proceeding for receiving debts and demands against the decedent or the estate as provided in Virginia Code §64.2-550.

The Personal Representative is required to provide notice of the debts and demands proceeding to the claimants. (Virginia Code §64.2-550) The Commissioner of Accounts will request evidence of certified mailings and return receipts of said notices.

After the Personal Representative files the accounting(s), and the Commissioner of Accounts files the report of the debts and demands hearing with the Probate clerk, the Personal Representative should proceed with a Show Cause Order for distribution as provided in Virginia Code §64.2-556 and Virginia Code §64.2-557. Note: A copy of the entered show cause order for

⁴ Solvent – able to pay debts; estate has sufficient assets to pay all decedent's debts

⁵ Insolvent – unable to pay estate debts; estate does not have sufficient assets to pay all decedents' debts

distribution must be filed with the Commissioner of Accounts with the final accounting.

DISTRIBUTION OF ESTATE ASSETS

The Personal Representative cannot be compelled to make any distribution until six months after the date of qualification. (Virginia Code §64.2-554)

Distribution may be affected by any of the following:

1. Filing of any exemptions and allowances (i.e. family allowances, exempt property, homestead allowances) within one year of date of death as provided by Virginia Code §64.2-309 through Virginia Code §64.2-314.
2. Marriage or divorce of testator: (a) marriage after the date the will was signed by the decedent, Virginia Code §64.2-422; (b) Divorce or annulment after the date the will was signed by the decedent. Virginia Code §64.2-412.
3. Renunciation by spouse to take elective share under augmented estate provisions. Virginia Code §64.2-302 through Virginia Code §64.2-304.
4. Suit for aid and direction of will interpretation.
5. Death of a beneficiary prior to death of decedent. Virginia Code §64.2-418.
6. Death of an heir or beneficiary subsequent to the death of the decedent but prior to distribution-distribution must be made to the qualified Personal Representative of the deceased heirs' or beneficiaries estate.
7. Pretermitted (omitted) children. Virginia Code §64.2-419 and Virginia Code §64.2-420.
8. Ademption (bequest prepaid by testator or object of bequest no longer in existence).
9. Advancements. Virginia Code §64.2-417.
10. Abatement (insufficient assets to fund all bequests).
11. Disclaimers.
12. Will contest.

ACCOUNT FOR DECEDENT'S ESTATE

General Information

The Personal Representative is required by law to file a first accounting with the Commissioner of Accounts within sixteen (16) months after the date of qualification. When applicable, second and subsequent accountings are due sixteen (16) months after the date of the prior account, and should not cover more than a twelve (12) month period. All accountings should be filed in a format using **Summary Form (CC-1680)**. Where all residual beneficiaries of the estate are also the personal representatives, you may be eligible to file a **“Statement In Lieu of Account For Decedent’s Estate” (CC-1681)**. Virginia Code Section 64.2-1314 sets forth the requirements for eligibility to file a “Statement In Lieu of Account For Decedent’s Estate”, and specifically states a trustee of a trust which receives the residuary under a decedent’s will is not a residuary beneficiary which qualifies for the filing of a “Statement In Lieu of Account For Decedent’s Estate.”

Example First Account: Date of Death -February 20, 2009

Date of Qualification -April 30, 2009

Due Date -August 30, 2010 (16 months from 4/30/09 date of qualification)

Time period Accounting covers -February 20, 2009 to April 30, 2010

Example Subsequent Account: Ending date of last Account -April 30, 2010

Due Date -August 30, 2011 (16 months from end date on last account 4/30/10) Time period Accounting covers (12 months only) April 30, 2010-April 30, 2011

Documentation to prove all receipts and disbursements on the account must be filed with the Commissioner of Accounts along with the completed "Account for Decedent's Estate" form. This documentation includes:

- Original bank statements
- Broker's statements
- HUD-I settlement statements
- Original receipts*
- Original billing statements*
- Original invoices*

*The Personal Representative **MUST** furnish the original. If the original document is unavailable and you use a copy, the copy must contain both sides (front & back), and must be made in accordance with admissibility requirements of Virginia Code §8.01-391.

The Account Summary form **must be signed by each Personal Representative**. The Account must also be typed or computer generated, and a signed original and one signed copy must be submitted to the Commissioner of Accounts Office, along with the appropriate filing fee. *See the fee schedule that the

Clerk gave you at your qualification appointment for appropriate fees. Also, be sure to number each page in sequential order.

Valuation of Assets:

As Personal Representative, you must prepare applicable exhibits before you can prepare the account summary.

Carrying Value is the value established when the asset was acquired, that is, the value of an asset as reported on the Inventory; or, the cost of a new asset on the date of purchase.

Current Market Value is the value of an asset if the asset were sold as of the date of the end of the accounting period.

NOTE: Some assets such as bank accounts, certificate of deposits, and money market funds will have the same carrying and current market value.

In some special cases where the will creates a trust, or where a life estate is created, the receipts and disbursements must be allocated and apportioned to principal and income and you should refer to the Uniform Principal and Income Act, Virginia Code §64.2-1000, et seq.

Preparing the "Account for Decedent's Estate" Form (CC-1680)

1. Beginning Assets

If filing a FIRST account, itemize the beginning assets from Part 1 and Part 3 of the Inventory for Decedent's Estate form that you filed four months after you qualified before the Clerk. Include the full description of each asset and the carrying value and market value. If filing a second or subsequent account, itemize the total assets on hand at the end of the prior accounting period, including the full description of each asset and the carrying value and market value. The TOTAL of the beginning assets must be entered on line number '1' on the Account for Decedent's Estate Summary Form (CC-1680)

2. Receipts

Itemize chronologically all interest, dividends, gross rental income, refunds, and any other income received during the accounting period by account. For example, show each quarterly dividend from XYZ Stock rather than a lump sum for the year.

ABC Bank Checking Account		
3/1/09 ABC Bank interest	\$ 8.50	
3/5/09 Virginia Natural Gas, Refund	\$ 30.00	
4/1/09 ABC Bank Interest	\$ 8.50	TOTAL
5/15/09 IRS Tax refund	\$ 1,200.00	\$ 1247.00

ABC Brokerage Account		
3/1/09 ABC MM Account, interest	\$100.00	
3/5/09 AB Inc., dividend	\$25.00	= \$125.00
		TOTAL RECEIPTS:
		\$ 1,372.00

The total of the receipts must be entered on the line number 2 on the “Account for Decedent’s Estate” Summary Form (CC-1680).

3. Gains on Asset Sales

For Securities sold by a broker, show the date of the sale, the name of security, the total number of shares, the total number of shares sold, the total carrying value, the gross sales price and the net gain.

ABC Corporation, 300 shares		
3/1/09 carrying value	\$ 14,388.50	
Sold 300 shares	\$ 15,327.38	NET GAIN:
		\$ 938.85

For real property sold, show the date of the sale, property description, to whom sold, total carrying value, gross sales price, and the net gain. Itemize the cost of sale from the settlement statement under disbursements. (i.e. realtor commission, recording fees, taxes, title, etc).

Lot 1, Block B, 3201 Main Street, Manassas, VA, sold to John Smith		
3/15/09 carrying value	\$ 350,000.00	
Gross Sales price	\$ 450,000.00	NET GAIN:
		\$ 100,000.00

For miscellaneous items sold, show date of sale, description, name of purchaser, total carrying value, gross sales price, and net gain.

2007 Chevrolet Suburban		
3/15/09 carrying value	\$ 15,000.00	
Gross Sales Price	\$ 18,000.00	NET GAIN:
		\$ 3,000.00

The **TOTAL** of the net gains must be entered on line number 3 on the “Account for Decedent’s Estate” Summary Form (CC1680).

4. Adjustments

Itemize any additional **after-discovered** assets under \$25,000.00:

3/1/09 After discovered asset		
1 U.S. Savings Bank, serial #25555, face amount \$500.00, maturity May 1, 2020		
Date of death value	\$500.00	
Net increase in value		\$500.00

Itemize **corrections** to assets previously reported:

3/1/09 Asset correction		
CCC Company, 200 shares, inventory value \$40/share	\$ 8,000.00	
Date of death value was \$30/share	\$ 6,000.00	
Adjustment		-\$2,000.00

Itemize **mergers** and **name changes of securities** and **stock splits** showing the **effective date** and any **changes in the number of shares**.

4/8/09 Merger and Name change		
Bell Atlantic Corp., 100 shares	\$ 3,000.00	
Merger and exchange of shares Verizon Communications, 100 shares	\$ 3,000.00	
Adjustment		\$ 0.00

Itemize **acquisition** of additional **principal** assets:

3/1/09 Asset Acquisition		
Dominion Resources, Inc.	\$ 2,250.00	
Commission	\$ 65.00	
Amount paid for Dominion Resources	- \$2,315.00	
Adjustment		\$ 0.00

Itemize shares acquired from **reinvested dividends** showing each reinvestment and the amount of stock purchase:

3/1/09 Reinvested Dividends		
MFS Mun bd Tr. 200 shares @ \$11.25/share	\$2,251.68	
Less dividends used for purchase	-\$2,251.68	\$ 0.00

The TOTAL of the net adjustments must be entered on line number 4.

5. Total

The total dollar amount of line #'s **1, 2, 3, and 4** must be inserted on line #5 of the account summary form.

6. Disbursements for Debts & Expenses

Itemize chronologically all disbursements by date, check number, payee, and the purpose of disbursement, including any expense for sale of real property as reflected on HUD-I settlement statement.

DATE	CHECK #	PAYEE	PURPOSE	AMOUNT
3/1/09	#100	Clerk of Circuit Court	Probate Tax	\$ 500.00
3/4/09	#101	EE funeral Home	Funeral service	\$ 3,000.00
3/9/09	#102	Virginia Power	Final power bill	\$ 60.00
5/6/09	HUD 1	ABC Realtors	Commission	\$ 6,000.00
		Countrywide	Deed of Trust	\$100,000.00
		Prince William County	Recording Fees	\$ 40.00
Total				\$109,600.00

The TOTAL of the disbursements must be entered on line number '6'.

NOTES: A canceled check OR a copy of the front and back of the check AND a signed invoice or receipt from each payee must be provided for each disbursement and must be organized chronologically by account.

If a reimbursement is made to a third party for expenses paid on behalf of the estate, you must provide an invoice or receipt for said expense and the third party's cancelled check or credit card statement verifying payment.

7. Losses on Asset Sales

For securities sold by a broker: show the date of sale, the name of security, the total number of shares, the total number of shares sold, the total carrying value, the gross sales price, and the net loss.

3/1/09 ABC Corp 300 shares @ \$47.97/share		
Carrying value of 60 shares	\$ 2,877.60	

5/1/09 Sold 60 shares	\$ 2,500.00	
Computations: (14,388.53 ÷ 300 = \$47.96) (\$47.96 × 60 = \$2,877.60) (\$2,877.60 - \$2,500.00 = \$377.60) [\$14,388.53 - \$2,877.60 = 11,510.93]*		\$ 377.60

*240 shares remaining of ABC Corp. with remaining carrying value of \$11,510.93

For real property sold: show the date of the sale, the property description, to whom sold, the total carrying value, the contract/gross sales price, and the net loss.

3/15/09 Sale 15 E. Main St., Manassas, VA		
Carry value	\$ 300,000.00	
Gross Sales Price	\$ 250,000.00	
		\$ 50,000.00

For miscellaneous items sold: show the date of sale, the description, to whom sold, the total carrying value, the gross sales price, and the net loss.

2007 Ford Mustang		
Carrying value	\$ 8,000.00	
Contract/Gross Sales Price	\$ 7,500.00	
Loss		\$ 500.00

The Total from the above examples is \$50,877.60.

The TOTAL of ALL of the NET LOSS must be entered on line number '7'

8. Distribution to Beneficiaries

Itemize each specific bequest⁶, in-kind distribution⁷, interim and residuary distribution by date, a description and value of the assets distributed.

	Beneficiary: Sally J. Doe	
7/6/09	House furnishings, Article Two of Will	\$ 200.00
7/6/09	Stamp Collection, Article Three of Will	\$ 2,000.00
11/1/09	Grandfather clock, Article Three of Will	\$ 1,000.00
11/1/09	Check #110, 50% residual beneficiary	\$25,000.00
TOTAL		\$28,200.00

The TOTAL value of the distributions must be entered on line number '8'.

⁶ Specific monetary bequests must be paid within one (1) year or interest will begin to run at a legal rate

⁷ In-Kind distribution: distribution of assets such as personal property, specific bequest items, securities, etc.

Notes: A signed and notarized receipt from each beneficiary must be provided acknowledging receipt of each item of tangible personal property distributed and the value thereof.

The Personal Representative should be aware that **if a specific bequest of money is not paid to the beneficiary within one year after decedent's death**, interest shall run at the legal rate (now 6%) beginning one year after the date of death. (Virginia Code §64.2-425)

9. Assets on Hand

Itemize each assets remaining on hand at its carrying value and its market value at the end of the accounting period.

Assets on hand	Carrying Value	Market Value
ABC Bank, Checking Acct #111	\$ 25,200.00	\$ 25,200.00
SYZ Brokerage, MM Acct #2222	\$ 75,800.00	\$ 75,800.00
Coin Collection	\$ 3,500.00	\$ 3,500.00
ABC Corp. 300 shares	\$ 10,000.00	\$ 8,000.00
CCC Company, 200 shares	\$ 6,000.00	\$ 7,000.00
Dominion Resources, 100 shares	\$ 2,300.00	\$ 3,400.00
Verizon Communications, 100 shares	\$ 3,000.00	\$ 4,000.00
TOTAL VALUE	\$125,800.00	\$126,900.00

The TOTAL of the Carrying Value must be entered on line number 9.**

****The Total of the Market Value must be entered below line number 10.**

NOTES:

The Personal Representative will be required to provide verification of the existence of each asset. This includes bank statements, (reconciled to agree with your account balance) broker's statements, copies of K-1 forms, copies of promissory notes, Certificate of Deposit Statements, titles to vehicles and watercraft.

10. Total

The total dollar amount of line #'s 6, 7, 8, and 9 must be inserted on line #10 of the account summary form, AND this total MUST equal the total listed on line #5 of the account summary form.

Certificate of Mailing

If copies of the Accounting were mailed to a requesting party, then the Personal Representative must check block 'A' affirming that copies were mailed, and, on page two (2) of the 'Account for Decedent's Estate' form, the Personal Representative must fill in the names and addresses of the persons to whom the copies were sent.

Before filing the account for Decedent's Estate' form, be sure to do the following:

- Date and sign page 1 (All Personal Representatives are required to sign)
- Date and sign page 2 (if applicable & all Personal Representatives are required to sign)

- Write a check for the appropriate Account filing fee (payable to: Commissioner of Accounts)
- Be sure to number each page in sequential order.
- Make at least two (2) copies of the Accounting; 1 for your records, and 1 for the Commissioner of Accounts Office.
- If the Account being filed is a Final Account, a Tax Certificate must accompany the Account dated and signed by all Personal Representatives before the Final Account can be audited or approved(Virginia Code §58.1-911). The Tax Certificate To Accompany Fiduciary Accounts was given to you at your qualification appointment with the Probate Clerk.

When ready to file, mail ALL of the items listed below:

1. An Original complete and executed Account Summary for the Decedent's Estate for together with an itemized list for each figure on the Summary Form and stated supporting documentation.
2. One copy of the completed Account for Decedent's Estate form together with an itemized list for each figure on the Summary Form.
3. Payment for the Account Filing Fees (see fee schedule)

Mail to: Mail or hand deliver to: The Commissioner of Accounts to whom you were assigned at the address on the front page of these Instructions.

COMPENSATION FOR ADMINISTRATION OF ESTATE

General Information

A Personal Representative is entitled to "reasonable" compensation for administering an estate. (Virginia Code §64.2-1208)

The Personal Representative's compensation is for the complete handling of the administration of the estate. Compensation is not an honorarium, but it is based on services rendered by the Personal Representative. The Compensation Guidelines that follow are based on the "Guidelines for Fiduciary Compensation" adopted by the Judicial Counsel of Virginia and this jurisdiction.

Compensation Guidelines for Personal Representative

If you have any questions regarding Personal Representative Compensation, please contact the Commissioner of Accounts Office BEFORE YOU TAKE A FEE.

Principal Fee (one-time fee)

5% of the first \$400,000.00

4% of the next \$300,000.00

3% of the next \$300,000.00

2% over \$1,000,000.00

Over \$10,000,000.00 -by agreement with the Commissioner (consultation required)

AND

Income (taken annually) 5% of income receipts (not including capital gains)

Successor Personal Representative

When a Personal Representative is succeeded by another, the annual fees shall be pro-rated, and an additional compensation fee may be allowed, but only if the Commissioner of Accounts or the Court determines this to be appropriate.

Co-Personal Representative

One fee will be divided equally among the co-personal representatives. The co-Personal Representative's may agree among themselves on a different division. In case of a dispute concerning the division of the compensation fee, the Commissioner of Accounts may hold a hearing to resolve the dispute, but only if ALL of the Personal Representatives first agree to the use of this hearing procedure.

Important Notes about Compensation for Personal Representatives:

The Commissioner of Accounts may deviate from the above compensation guideline on a case-by-case basis, if necessary, to insure that each Personal Representative receives "reasonable compensation" for services provided.

The Commissioner of Accounts will also allow a deviation from the above compensation guideline if the will clearly sets out the Personal Representative compensation in a specific dollar amount or percentage OR, if all interested parties give informed consent and agree in writing to the amount of compensation.

The value of real estate will be considered for compensation purposes only if the Personal Representative has the power to sell the real estate, AND the Personal Representative is directed by the will to sell the real estate, by all beneficiaries, or if selling the real estate is in the best interest of the estate.

Fees paid to an attorney or accountant employed by the Personal Representative to perform duties that could be performed by the Personal Representative will be deducted from the compensation due to the Personal Representative. "Reasonable fees" paid to attorneys or accountants for tax work, litigation, or other professional services reasonably necessary for the orderly administration of the estate need not be deducted from the Personal Representative's compensation.

Bond

When you qualified as Personal Representative, you signed a Bond guaranteeing your performance as required by law. The Probate Clerk determined the dollar amount of every Personal Representative's bond, and also determined whether the bond shall be secured or unsecured. (Virginia Code §64.2-504)

Unsecured Bond

This bond only requires the Personal Representative's signature.

Secured (surety) Bond

This bond requires both the Personal Representative's signature and the signature of a third party (usually a corporate surety).

Bond Increase

If there is an increase in the value of the assets under your control as Personal Representative, and the dollar value of the assets becomes greater than the dollar amount set on your bond at the time of qualification before the Clerk, you will be required to sign a new bond to increase the dollar amount on the bond. You will receive notification from the Clerk to execute a new bond within a set deadline. If you do not sign a new bond by the deadline given, your powers of appointment as Personal Representative may be revoked due to an insufficient bond.

Bond Reduction

If there is a decrease in the value of the assets under your control and the dollar values of the assets become less than the dollar amount set on your bond at the time of your qualification, you can request a reduction in the amount of the bond. **A bond reduction request can only be considered after an inventory or accounting has been approved by the Commissioner of Accounts showing that the assets on hand, plus anticipated income, are less than the current bond amount. Please mail a written request for a bond reduction to the Probate Clerk.**

PENALTIES

The Code of Virginia provides for certain penalties if a Personal Representative does not properly file the required documents with the Commissioner of Accounts Office in a timely manner. Any penalties are to be paid from the Personal Representative's personal assets and **NOT** from the assets of the estate.

Late Fee

For failure to file an inventory or accounting within the time required by law, the Personal Representative will be assessed a late filing fee. Personal Representatives who fail to settle their accounts in a timely manner shall forfeit their compensation unless good cause can be shown for their delay.

Summons

If the Personal Representative fails to respond to letters from the Commissioner of Accounts regarding the filing of an inventory or accounting, or fails to provide appropriate supporting documentation, a summons will be issued and served upon the Personal Representative by the Sheriff. Upon service, the Personal Representative has thirty (30) days in which to submit the required information to the Commissioner of Accounts.

Court Appearance

If a summons deadline is not met, the Commissioner of Accounts will report the delinquency to the Court and will request that a Show Cause Order be entered against the Personal Representative. After the Court issues a Show Cause Order, the Personal Representative will be

required to appear in the Circuit Court of Prince William County. The Personal Representative will have to explain to the Judge why he/she has not complied with the law. The Court may revoke the Personal Representative's powers, and may also impose a fine not to exceed \$500.00.

Any fees or fines incurred because of delinquency must be paid by the Personal Representative, individually and personally, and cannot be paid from the estate assets.

Change of Address

Any Personal Representative who moves from Virginia and becomes a resident of another state shall inform the Probate Clerk and the Commissioner of Accounts of his/her new address and phone number within thirty (30) days of the date of the change in residency. **Any person who fails to inform the Clerk and the Commissioner shall be subject to a civil penalty of \$50.00.**

ALERT!

- As a part of your fiduciary responsibilities, you may be required to obtain a tax identification number for an estate or trust.
- You may do so quickly and without charge at irs.gov.
[<https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>]
- There are vendors that purport to offer a similar service for fees ranging from \$175 to \$250.
- IT IS NOT NECESSARY THAT YOU USE SUCH A VENDOR.
- irs.gov is quicker and free.

Timothy A. Cope
Commissioner of Accounts
31st Judicial Circuit

TAX CERTIFICATE TO ACCOMPANY FIDUCIARY ACCOUNTS

To: Commissioner of Accounts
Circuit Court of Prince William County, Virginia

Re: Estate of _____ Fiduciary No. _____

The undersigned fiduciary/fiduciaries of the above-referenced estate ("Estate") does/do hereby certify, to the best of the knowledge of the undersigned, as follows:

1. The undersigned has read and reviewed the sections of the Code of Virginia on the reverse side of this Tax Certificate to Accompany Fiduciary Accounts.
2. (a) All taxes pertaining to the Estate have been paid; or,
(b) All taxes pertaining to the Estate have been paid to the extent ascertainable after personal inquiry of the Virginia Department of Taxation and the Director of Tax Administration, Prince William County, Virginia, or the Commissioner of Revenue of the City of Manassas and the City of Manassas Park, Virginia, as may be appropriate based upon the residence of the decedent; or,
(c) There remains in the possession of the undersigned a sufficient sum, over and above the charges of administration, to pay all taxes charged against the undersigned in the undersigned's fiduciary capacity; or,
(d) The Estate is insolvent and the debts of the decedent were paid in accordance with existing statutes made and provided for such instances.
3. Under the laws of the United States and the Commonwealth of Virginia, all required federal and Virginia estate tax returns have been filed. All federal and Virginia estate taxes imposed upon the property of the Estate have been paid in full or no such tax is due.
4. The undersigned certifies under penalty of perjury that the foregoing is true and correct.

Fiduciary Name and Title: _____
(Please Print)

Date: _____
(Signature)

Fiduciary Name and Title: _____
(Please Print)

Date: _____
(Signature)

Excerpts from the 1950 Code of Virginia, as amended, relating to the duties of the Commissioner and the fiduciary with regard to the payment of taxes:

Section 58.1-22. Accounts not to be settled until taxes paid or provided for,

No Commissioner of Accounts shall, under Section 64.2-1211, file any report of an account of the transactions of any :fiduciary not governed by Section 58.1.911 until the commissioner finds that all taxes, whether state, county or city, assessed and chargeable upon property in the hands of the person for whom such account is settled have been paid or unless such account shall show that there remains in the hands of such person a sufficient sum, over and above the charges of administration, to pay all taxes charged. against such person in his capacity as fiduciary.

Section 58.1-23. Inquiries required of fiduciaries.

Every personal representative, before settling the estate in his hands, shall make inquiry of the treasurer of the county or city wherein the decedent last resided and of the Department with respect to any unpaid taxes and levies assessed against his decedent.

Section 58.1-911. Final Account.

No final account of a personal representative shall be approved by a commissioner of accounts unless the commissioner finds that all state, county or city taxes assessed and chargeable upon property in the hands of a personal representative have been paid. No final account of a personal representative who is required to file a federal estate tax return shall be approved by the commissioner of accounts unless the commissioner finds that the tax imposed on the property by this chapter, including applicable interest, has been paid in full or that no such tax is due.

Tax inquiries may be made to:

Commonwealth of Virginia	Internal Revenue Service
Virginia Department of Taxation Office of Customer Services Post Office Box 1115 Richmond, VA 23218-1115 804-367-8031 www.tax.virginia.gov	1-800-829-1040 (Local Office) 5205 Leesburg Pike Baileys Crossroads, VA 22041 703-756-6663 www.irs.gov

Taxpayer Services for Prince William Co.	Taxpayer Services for Manassas Park
Dr. A.J. Ferlazzo Building 15941 Donald Curtis Drive Woodbridge, VA 22191 703-792-6710	Commissioner of Revenue 100 Park Central Plaza Suite 303 Manassas Park, VA 20111 703-335-8825
Sudley North Government Center 7987 Ashton Avenue Manassas, VA 20109	Taxpayer Services for Manassas City
James J. McCoart Administration Building 1 County Complex Court Prince William, VA 22192	Commissioner of Revenue 9027 Center Street Manassas, VA 20110 703-257-8253

GUIDELINES FOR FIDUCIARY COMPENSATION

A guideline is a statement of policy or procedure; it is not a fiat. The Judicial Council, in establishing the Standing Committee on Commissioners of Accounts in 1993, charged the committee with promoting uniformity of practice among commissioners of accounts. Mindful of the Supreme Court's admonition that the circumstances in each case determine the allowance of fiduciary compensation, the Standing Committee suggests the following Guidelines for Fiduciary Compensation to promote a degree of uniformity among the Commissioners of Accounts in Virginia in their task of determining compensation to be allowed fiduciaries. The guidelines are not intended as a substitute for the analytical work the Commissioner must do in determining the statutory "reasonable compensation" for each case.

A. DECEDENT'S ESTATES

1. Where the will clearly sets out compensation in a specific dollar amount or a specific percentage that the Executor is to receive, the Testator's instructions control, and the Executor is entitled to the amount set out.
2. Where the will states that the Executor shall receive for services the compensation set out in a referenced published fee schedule in effect at the time such services are rendered, fees as set out in the fee schedule shall be presumed to be reasonable, as that term is used in §26-30. The burden of proving that fiduciary compensation taken according to such a fee schedule is not reasonable would be on the Commissioner or the objecting party.
3. The presumption in 2. does not apply in the case where the will is silent as to the Executor's compensation. In such a case, if the Executor (corporate or otherwise) uses a published fee schedule to determine compensation, the rules and the guidelines set out herein apply. However, there is no presumption that such a published fee schedule is not reasonable.

4. Where all parties affected by the amount of the compensation are (i) competent to contract (ii) understand the issues involved (i.e., have given "informed consent") and (iii) agree in writing as to the amount of the compensation to be paid, then the agreement should be honored by the Commissioner.

5. Unless determined as set out in paragraphs 1., 2. or 4. above, fees to be allowed the Executor on all property in the decedent's probate estate (calculated on the inventory value, including amendments) are as follows:

(a) 5% of first \$400,000.00

4% of next \$300,000.00

3% of next \$300,000.00

2% over one million

Over \$10 million - by agreement with the Commissioners
(prior consultation is required).

AND

(b) 5% of income receipts (not including capital gains).

6. The value of real estate will be included as property in the decedent's probate estate for fee purposes only if the Executor is given the power to sell real estate and (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 (iv) the Executor determines that such sale is clearly in the best interest of the estate and the devisees or beneficiaries as a whole.

7. If the Executor employs an attorney or accountant to perform the duties of the fiduciary, the fees of those persons are deducted from the compensation due the fiduciary. Note that this does not apply to reasonable fees paid to attorneys or accountants for tax work or

litigation or other legal services reasonably necessary for the orderly administration of the estate.

8. If the Executor employs an investment advisor, the advisor's fees, if reasonable, will not generally be deducted from the Executor's compensation.

9. The Commissioner may also increase or decrease the otherwise allowable compensation in exceptional circumstances. Factors to be considered in determining the compensation would be the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, the responsibilities assumed, the risks incurred and the results obtained. A consideration of these factors could result in a decrease or an increase of the compensation that would otherwise be determined using the standards set out elsewhere herein.

10. As a general rule, an Executor is not allowed compensation based on the value of assets not includable in the probate estate. The Commissioner may allow such compensation only in unusual circumstances. The Executor is advised to make separate fee arrangements with the beneficial owners of such non-probate assets; the estate is not to be charged with such fees.

NOTE: The use of the word Executor above includes all fiduciaries charged with administering decedent's estates. The words "fee" and "compensation" are used interchangeably.

B. TRUSTS

With respect to Trusts, the specific guidelines to compensation are:

1. Compensation shall be taken on an annual basis, based on the fair market value of the trust assets at the beginning of the accounting period. Where the required accounting is for a period of less than one full year (see, for example, §26-17.6.A.), the compensation must be pro-rated.

2. Paragraphs A. 1. through A. 4. apply as well to trusts.

3. Income and principal shall be treated alike in determining the value in B. 1. above (i.e., no distinction shall be made between income and principal).

4. The schedule of fees is as follows:

1% of the first \$500,000 (.01)

3/4 of 1% of the next \$500,000 (.0075)

1/2 of 1% over \$1,000,000 (.005)

Over \$10 million - by agreement with Commissioner

(prior consultation is required).

5. The guidelines set out in A. 7., 8., and 9. above also apply to Trustees. In addition, the Commissioner may reduce the allowable compensation in certain circumstances, such as where the Trustee has delegated total investment responsibility to professionals or is not making any discretionary distributions.

C. CONSERVATORS AND GUARDIANS

1. The same percentages as set out above for Trustees shall apply to both Conservators, Guardians of infants and Trustees of veterans under §37.1 - 137.3. The percentages shall be applied annually to the principal amount as shown on the inventory (initial account) and on the beginning balance of accountings (subsequent accounts). However, an additional fee of 5% shall be allowed on non-investment income received during the account period (for example, periodic payments such as social security or retirement payments counted as income). Compensation must be pro-rated when the required accounting is for a period of less than one full year (see §26-17.4.A.).

2. The guidelines set out in paragraphs A. 7., 8., and 9. and B. 1. above shall apply where appropriate.

D. SUCCESSOR FIDUCIARIES

Where a fiduciary is succeeded by another, the annual fees (Trustees, Conservators and Guardians) shall be pro-rated. In the case of Executors, the fees shall be based on the guidelines, but the Commissioner will determine the amount to be allowed, based on the factors set out in A. 9. above. More than one full fee may be allowed, subject to the Commissioner's decision.

E. CO-FIDUCIARIES

1. Generally, one fee will be divided equally among the co-fiduciaries. The co-fiduciaries may agree among themselves on a different division.
2. The Commissioner can agree to an increased fee under all the circumstances of the matter, and considering the factors set out in A. 9. above.
3. In case of a dispute concerning the division of the fee, the Commissioner may hold a hearing. However, all of the fiduciaries should first agree on the use of this procedure.

NOTES:

(1) The time to take compensation: Fiduciaries no longer must wait to take their fees until the estate is closed. However, the time of taking should bear some relationship to the expected life of the estate, the work already done, and the work remaining to be done.

(2) Fees of Conservators and Guardians of Infants: Where an account of less than a one year period must be filed (§26-17.4), a pro-rata fee will be allowed for the short account (i.e., 1/3 of an annual fee for a 4 month account).

(3) Statutes: Nothing in these Guidelines is intended to alter any statute concerning fiduciary compensation. See especially §26-19, headed "(w)hen fiduciaries to forfeit their commissions, etc."

(4) Other matters: Reference to the "Manual for Commissioners of Accounts" is recommended where other questions occur. See in particular §9.204 of the Manual, "Fiduciary Compensation and Attorney's Fees."