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HOUSE BILL NO. 1195

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on November 20, 2000)

(Patron Prior to Substitute—Delegate Diamonstein)

A BILL to amend and reenact §§ 26-32 and 64.1-122.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 26-12.4, relating to probate of estates.

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-32 and 64.1-122.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 26-12.4, as follows:

§ 26-12.4. Copies of inventories and accounts to be provided by personal representatives.

A. Every personal representative filing an inventory or account (including an affidavit of intent to file a statement in lieu of an account pursuant to § 26-20.1) or any document making changes to either with the commissioner of accounts shall, on or before the date of such filing, send a copy thereof (which need not include copies of any supporting vouchers) by first class mail to such of those persons to whom notice was given pursuant to subsections (A) and (B) of 64.1-122.2 as have requested the same from the personal representative in writing; provided, however, that copies need not be given to (i) persons who would take only as heirs at law in a case where all of the decedent's probate estate is disposed of by will, or (ii) beneficiaries whose gifts have been satisfied in full prior to such filing. A request for copies may be made to a personal representative at any time. It may relate to one specific filing or to all filings to be made by the personal representative but it is not effective for filings made prior to its receipt by a personal representative.

B. No commissioner of accounts shall approve any personal representative's inventory or account (i) until twenty-one days have elapsed from the receipt thereof, and (ii) unless the inventory or account contains a statement that any copies requested pursuant to this section have been mailed, and shows the names and addresses of the persons to whom they were mailed and the date of such mailing.

§ 26-32. Where filed; notice to certain parties.

The commissioner shall file the report in the office of the court by which he is appointed as soon as practicable after its completion. On or before the date of filing a report on a personal representative's account, the commissioner shall send a copy of the report and any attachments by first class mail to every person who (i) was entitled to request a copy of the account pursuant to § 26-12.4, and (ii) submits a written request therefor to the commissioner. The copy of the commissioner's report shall be accompanied by a statement advising the recipient of the date that the report will stand confirmed by law in the absence of any objections being filed thereto.

§ 64.1-122.2. Written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties.

A. Except as otherwise provided in this section, a personal representative of a decedent's estate or a proponent of a decedent's will when there is no qualification, for estates of persons dying on or after January 1, 1994, shall provide written notice of qualification or probate, and notice of entitlement to copies of inventories, accounts, and reports, to the following persons:

1. The surviving spouse of the decedent, if any;
2. All heirs at law of the decedent, whether or not there is a will;
3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under § 64.1-64.1 and beneficiaries of any trust created by the will; and
4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided (i) when the known assets passing under the will or by intestacy do not exceed \$5,000 or (ii) to the following persons:

1. A personal representative or proponent of the will;
2. Any person who has signed a waiver of right to receive notice;
3. Any person to whom a summons has been issued pursuant to § 64.1-79 or § 64.1-80;
4. Any person who is the subject of a conservatorship, guardianship, or committee ship, if notice is provided to his conservator, guardian, or committee;
5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;
6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;
7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or person

60 in loco parentis;

61 8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in
62 either case the beneficiary is not an heir at law and the value of the bequest is not in excess of \$5,000;
63 and

64 9. Any unborn or unascertained persons.

65 C. The notice shall include the following information:

66 1. The name and date of death of the decedent;

67 2. The name, address and telephone number of a personal representative or a proponent of a will;

68 3. The mailing address of the clerk of the court in which the personal representative qualified or the
69 will was probated; and

70 4. A statement as follows: "This notice does not mean that you will receive any money or property;";

71 5. A statement as follows: *"If personal representatives qualified on this estate, they are required by*
72 *law to file an inventory with the commissioner of accounts within four months after they qualify in the*
73 *clerk's office, to file an account within sixteen months of their qualification, and to file additional*
74 *accounts within sixteen months from the date of their last account period until the estate is settled. If*
75 *you make written request therefor to the personal representatives, they must mail copies of these*
76 *documents (not including any supporting vouchers) to you at the same time they are filed with the*
77 *commissioner of accounts unless (i) you would take only as an heir at law in a case where all of the*
78 *decedent's probate estate is disposed of by will, or (ii) your gift has been satisfied in full before the time*
79 *of such filing. Your written request may be made at any time; it may relate to one specific filing or to*
80 *all filings to be made by the personal representative, but it will not be effective for filings made prior to*
81 *its receipt by a personal representative. A copy of your request may be sent to the commissioner of*
82 *accounts with whom the filings will be made. After the commissioner of accounts has completed work on*
83 *an account filed by a personal representative, the commissioner files it and a report thereon in the*
84 *clerk's office of the court wherein the personal representative qualified. If you make written request*
85 *therefor to the commissioner before this filing, the commissioner must mail a copy of this report and*
86 *any attachments to you on or before the date that they are filed in the clerk's office.";* and

87 6. *The mailing address of the commissioner of accounts with whom the inventory and accounts must*
88 *be filed by the personal representatives, if they are required.*

89 D. Within thirty days after the date of qualification or admission of the will to probate, a personal
90 representative or proponent of the will shall forward notice by delivery or by first class mail, postage
91 prepaid, to the persons entitled to notice at their last known address. If the personal representative or
92 proponent does not determine that the assets of the decedent passing under the will or by intestacy
93 exceed \$5,000 until after the date of the qualification or admission of the will to probate, notice shall be
94 forwarded to the persons entitled thereto within thirty days after such determination.

95 E. Failure to give the notice required by this section shall not of itself (i) affect the validity of the
96 probate of a decedent's will, nor (ii) render any person required to give notice, who has acted in good
97 faith, liable to any person entitled to receive notice. In determining the limitation period for any rights
98 that may commence upon or accrue by reason of such probate or qualification in favor of any entitled
99 person, the time that elapses from the date that notice should have been given to the date that notice is
100 given shall not be counted, unless the person required to give notice could not determine the name and
101 address of the entitled person after the exercise of reasonable diligence.

102 F. The personal representative or proponent of the will shall record in the clerk's office where the
103 will is recorded an affidavit stating the names and addresses of the persons to whom he has mailed or
104 delivered notice and when the notice was mailed or delivered to each. A commissioner of accounts shall
105 not approve the settlement filed by a personal representative under § 26-17 until the affidavit described
106 in this subsection has been recorded. If the personal representative of an estate, or the proponent of a
107 will, is unable to determine the name and address of any person to whom notice is required after the
108 exercise of reasonable diligence, a statement to that effect in the required affidavit shall be sufficient for
109 purposes of this subsection. Notwithstanding the foregoing provisions, any person having an interest in
110 an estate may give the notice required by this section and record the affidavit described in this
111 subsection.

112 G. The form of the notice to be given hereunder, which shall contain appropriate instructions
113 regarding its use, shall be provided to each clerk of the circuit court by the Office of the Executive
114 Secretary of the Supreme Court on or after October 1, 1993, and each clerk shall provide copies of such
115 form to the proponents of a will or those qualifying on an estate.

116 **2. That the provisions of this act shall apply to the estates of persons dying after December 31,**
117 **2001.**