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HOUSE BILL NO. 1733

Offered January 10, 2001

Prefiled December 20, 2000

A *BILL to amend and reenact §§ 26-12 and 26-17.7 of the Code of Virginia, relating to filing accountings and inventories of testamentary trusts.*

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-12 and 26-17.7 of the Code of Virginia are amended and reenacted as follows:

§ 26-12. Inventories to be filed with commissioners.

A. Every personal representative or curator shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts an inventory of all the personal estate under his supervision and control, the decedent's interest in any multiple party account in any financial institution, all real estate over which he has the power of sale and any other real estate that is an asset of the decedent's estate, whether or not situated in the Commonwealth. Every personal representative or curator shall also return to the commissioner an inventory of any such assets discovered thereafter as provided in subsection E.

B. Every guardian of an estate, conservator or committee shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts an inventory of the ward's personal estate which is under his supervision and control, the ward's real estate, the ward's legal or equitable ownership interest in any real or personal property that will pass to another at the ward's death by a means other than testate or intestate succession, and any periodic payments of money to which the ward is entitled. Every guardian of an estate, conservator or committee shall also return to the commissioner an inventory of any such assets discovered thereafter as provided in subsection E.

C. Every trustee who qualifies in the clerk's office shall, within four months after the first date that any assets are received, return to the commissioner of accounts an inventory of the real and personal estate which is under the trustee's supervision and control. Every such trustee shall also return to the commissioner an inventory of any such assets received thereafter as provided in subsection E. *However, any trustee who is not required to account under the provisions of § 26-17.7 shall be exempted from the duty to file an inventory for so long as there remains no duty to file annual accounts with the commissioner of accounts.*

D. In listing property pursuant to subsection A, B or C, the fiduciary shall place the market value on each item. The market value shall be determined as of the date of death if a decedent's estate; the date assets are received by the trustee if a trust; or as of the date of qualification in all other cases. Any reasonable expense incurred in determining such values shall be allowable as a cost of the administration of the estate.

E. In the case of assets discovered or received by a fiduciary after filing an inventory, the further inventory required by subsections A, B and C may be made by filing an amended inventory showing all assets of the estate or trust, by filing an additional inventory showing only the after-discovered assets or, with the permission of the commissioner of accounts, by showing the after-discovered assets on the estate's or trust's next regular accounting. The filing shall be made or the permission granted within four months after the discovery or receipt of the assets.

§ 26-17.7. Testamentary trustees under a will waiving accounts.

A. If the will of a decedent probated on or after July 1, 1993, contains a waiver of the obligations of the testamentary trustee nominated therein to account, the trustee will not be required to file accounts with the commissioner of accounts provided the trustee (i) within ninety days after qualification, notifies in writing all beneficiaries of the trust who are adults *other than the trustee*, whose addresses are known to the trustee and ~~who may then be entitled to receive income or principal from the trust to whom income or principal of the trust could be currently distributed~~; provides each with a copy of the applicable provisions of the will; advises each of his right to require an annual accounting; and provides each with a copy of this code section and (ii) annually thereafter provides each such beneficiary an accounting upon request. The trustee shall send to the commissioner of accounts a copy of the notice given to each beneficiary or, in the alternative, file a writing with the commissioner stating that the requirements of this section have been met. For receiving and filing such notice or writing, the Commissioner shall be allowed a fee not to exceed twenty-five dollars.

B. Language substantially in form and effect as follows will be sufficient to constitute a waiver of

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59 the trustee's obligation to account: I hereby direct that my trustee(s) shall not be required to file annual
60 accounts with a court as otherwise required by Virginia law.

61 C. Notwithstanding such a waiver by the decedent *or any prior consent of a beneficiary*, any such
62 adult beneficiary may, at any time during the administration of the trust, demand in a writing delivered
63 to the trustee and to the commissioner of accounts that the trustee settle annually with the commissioner
64 of accounts. Upon notice of such demand to the trustee and the commissioner of accounts, such trustee
65 shall file an account with such commissioner for a period acceptable to the commissioner as though
66 there were no waiver by the testator. The beneficiary making such demand may later revoke his demand
67 by a writing delivered to the trustee and the commissioner of accounts. The demand for settlement of
68 the trustee's account before the commissioner of accounts may also be made by the personal
69 representative of a deceased beneficiary whose estate is a beneficiary, an attorney in fact for a
70 beneficiary, a guardian of an incapacitated beneficiary, a committee of a convict or insane beneficiary,
71 the duly qualified guardian of a minor, or if none exists, a custodial parent of a minor or by any minor
72 who has attained fourteen years of age.

73 D. Notwithstanding the provisions of this section, any trustee under a will of a decedent ~~probated~~
74 ~~prior to July 1, 1993~~, containing the requisite waiver, *whenever probated*, shall be relieved of the duty
75 to file *an inventory or* annual accounts with the commissioner of accounts ~~with the written consent of~~
76 ~~all adult beneficiaries who may be entitled to receive income or principal at the time such written~~
77 ~~consent is signed if the trustee (i) obtains the written consent of all adult beneficiaries, other than the~~
78 ~~trustee, to whom income or principal of the trust could be currently distributed, after providing those~~
79 ~~beneficiaries with the documents and information specified in subsection A, and (ii) files those consents~~
80 ~~with the commissioner on or before the date on which the inventory or next required accounting would~~
81 ~~otherwise be due~~. For receiving and filing such written consent, the Commissioner shall be allowed a
82 fee not to exceed twenty-five dollars.

83 E. A court having jurisdiction may order the filing of annual accounts if it deems such filings to be
84 in the best interests of one or more beneficiaries of the trust.