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HOUSE BILL NO. 2127

House Amendments in [] — January 30, 2001

A BILL to amend and reenact §§ 64.1-123, 64.1-123.1, 64.1-123.3, 64.1-124, 64.1-124.1, 64.1-130, 64.1-132.2, 64.1-151.2, 64.1-151.3 and 64.1-151.4 of the Code of Virginia, relating to estate payments.

Patron Prior to Engrossment—Delegate McClure

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.1-123, 64.1-123.1, 64.1-123.3, 64.1-124, 64.1-124.1, 64.1-130, 64.1-132.2, 64.1-151.2, 64.1-151.3 and 64.1-151.4 of the Code of Virginia are amended and reenacted as follows:

§ 64.1-123. Payment of certain small sums due persons upon whose estates there has been no qualification.

When there is due a sum of not exceeding \$10,000 25,000 from the Commonwealth, whether it be a state income tax refund or a sum due on some other account, or when there is due a sum of not exceeding \$10,000 25,000 from the United States as a pension or money allowed for burial expenses of soldiers, or from benefits resulting from occupational pneumoconiosis, or for any death benefit from any labor union, or from any employer to a deceased employee, upon whose estate there has been no qualification, the Commonwealth, the United States or such employer, or union, or any agency required to provide benefits to such deceased employee, after sixty days from the death of such person to whom such money is due, may pay such sum to his ~~or her~~ surviving consort, if any, and if none such, then to the distributees of the decedent under the laws of this Commonwealth whose receipt therefor shall be a full discharge and acquittance to all persons whomsoever on account of such sum.

§ 64.1-123.1. Payment where decedent owned securities issued by corporation.

When a resident of Virginia owning securities issued by a corporation dies and there has been no qualification upon his estate within sixty days following his death, the corporation, or its transfer agent, upon surrender of the certificates evidencing such security to it, may transfer such security to his ~~or her~~ surviving spouse or, if none such, then to the distributees of the decedent under the laws of this Commonwealth. The receipt of the surviving spouse or distributees shall be a full discharge and acquittance to all persons on account thereof. The provisions of this section shall not apply in any case in which the security or securities of a particular issuer have an aggregate market value as of date of death or date of transfer of more than \$10,000 25,000; nor shall they apply in any case in which a claim has been asserted under the provisions of § 13.1-429; nor shall they apply in any case in which the decedent left a will directing distribution of the securities in any other manner, but the issuer or transfer agent shall be entitled to rely upon the affidavit of the surviving spouse or the distributees, as the case may be, as to the existence or nonexistence of a will.

The term "securities" shall include any evidence of ownership in a corporation, including stocks of any class, and any evidence of indebtedness, other than a certificate of deposit, having an initial maturity of seven years or more, and being of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as medium for investment.

This section is intended to be permissive only and the issuer or transfer agent, in a case deemed appropriate by either, may require endorsement of a qualified personal representative.

§ 64.1-123.3. Payment of small sums due trust or estate beneficiaries where no qualification on estate.

Where there is due a sum not exceeding \$10,000 25,000 from a trust or estate, whether it be accrued income or principal, if there has been no qualification on the estate of the person to whom such money is due sixty days after the death of such person, the trustee or personal representative may pay such sum to the distributees of the decedent or other person entitled thereto under the laws of this Commonwealth. The receipt therefor shall be a full discharge on account of such sum.

§ 64.1-124. Payment to consort or to court of small sum of deceased inmate of state mental institution.

When a person for whom no committee or trustee has been appointed is committed to a mental institution supported by the Commonwealth and dies therein and there is in the hands of the superintendent of such institution a sum not exceeding \$10,000 25,000, the property of such deceased person, and there has been no qualification upon the estate of such deceased person within sixty days following the death of such person, then such superintendent may pay such sum to the surviving consort, if any, and if none, then to the next of kin of the decedent whose receipt therefor shall be a full

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59 discharge and acquittance to the superintendent on account of such sums, and if none such then to the
60 court having jurisdiction over the appointment of the personal representative of the decedent who may
61 distribute the same in accordance with § 8.01-606.

62 § 64.1-124.1. Payment of small sum due deceased patient of municipally operated health care facility
63 to surviving spouse or distributee of decedent.

64 When there is due from any municipally operated health care facility, a sum not exceeding \$10,000
65 25,000, to a deceased patient of such health care facility, upon whose estate there has been no
66 qualification, such municipally operated health care facility, after sixty days from the death of such
67 person, may pay such sum to his ~~or her~~ surviving spouse, and if none, then to the distributees of
68 decedent under the laws of this Commonwealth, whose receipt therefor shall be a full discharge and
69 acquittance to all persons whomsoever on account of such sum; provided, such sum, not exceeding the
70 amount given priority by § 64.1-157, after thirty days from the death of such person, at the request of
71 the surviving spouse, or if none, then the said distributees of such deceased person, may be paid in
72 accordance with § 64.1-157 and a receipt of the payee shall be a full and final release of the payor.

73 § 64.1-130. Money and personal property belonging to nonresident decedents.

74 When any person, at the time of his death domiciled outside of this Commonwealth, owned stocks,
75 bonds, securities, money or tangible personal property located in this Commonwealth or was entitled to
76 any debts, choses in action or tangible personal property in this Commonwealth, such stocks, bonds,
77 other securities, money, debts, tangible personal property and choses in action shall, for ninety days
78 from the death of such decedent, be retained in the possession of the person, firm or corporation holding
79 or owing the same. After the ninety-day period such portion thereof as to which the person, firm or
80 corporation has not received legal notice of any lien or encumbrance, shall be paid over or delivered on
81 demand to an executor or an administrator or other personal representative, qualified according to the
82 laws of the decedent's domicile if the value of such stocks, bonds, securities, money, debts, tangible
83 personal property and choses in action in this Commonwealth, to the knowledge of the person holding
84 or owing the same, is less than ~~\$10,000~~ 25,000. When the value of such stocks, bonds, securities,
85 moneys, debts, tangible personal property and choses in action is ~~\$10,000~~ 25,000 or more, such payment
86 or delivery of such stocks, bonds, securities, money, debts, tangible personal property and choses in
87 action may be made upon the expiration of such ninety-day period after the transferor has given public
88 notice of his intention to make such transfer by publication thereof once a week for four successive
89 weeks in a newspaper of general circulation in the city, town or county wherein the transferor resides or
90 has its principal place of business, and after the lapse of thirty days from the completion of such
91 publication, and provided, in either case, that at the time of such payment or delivery, the transferor has
92 no actual notice of the appointment, within this Commonwealth, of a personal representative for such
93 decedent.

94 This section shall be construed as providing, as to the payment of money and the delivery of
95 personal property belonging to nonresident decedents or their estates, optional methods of procedure in
96 addition to those otherwise permitted or provided by law, and shall not as to such matters add any
97 limitations or restrictions to existing law.

98 § 64.1-132.2. Collection of personal property by affidavit.

99 A. Sixty days after the death of a decedent, any person indebted to the decedent or having possession
100 of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action
101 belonging to the decedent may make payment of the indebtedness or deliver the tangible personal
102 property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to
103 be the successor of the decedent upon being presented an affidavit made by or on behalf of the
104 successor stating that:

- 105 1. The value of the entire personal probate estate, wherever located, does not exceed ~~\$10,000~~ 25,000;
- 106 2. At least sixty days have elapsed since the death of the decedent;
- 107 3. No application for the appointment of a personal representative is pending or has been granted in
108 any jurisdiction;
- 109 4. The will, if any, was duly probated and the list of heirs required by § 64.1-134 was duly filed;
110 and

- 111 5. The claiming successor is entitled to payment or delivery of the property, and the basis upon
112 which such entitlement is claimed.

113 B. A transfer agent of any security shall change the registered ownership on the books of a
114 corporation from the decedent to the successor upon the presentation of an affidavit as provided in
115 subsection A.

116 § 64.1-151.2. Exempt property.

117 In addition to the family allowance, the surviving spouse of a decedent who was domiciled in this
118 Commonwealth is entitled from the estate to value not exceeding ~~\$10,000~~ [25,000 15,000] in excess of
119 any security interests therein in household furniture, automobiles, furnishings, appliances and personal
120 effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to

the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$10,000 [~~25,000~~ 15,000], or if there is not \$10,000 [~~25,000~~ 15,000] worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000 [~~25,000~~ 15,000] value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but not over the family allowance.

The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

§ 64.1-151.3. Homestead allowance.

In addition to the right to family allowance and exempt property, a surviving spouse of a decedent who was domiciled in this Commonwealth is entitled to a homestead allowance of \$10,000 [~~25,000~~ 15,000]. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to \$10,000 [~~25,000~~ 15,000], divided by the number of minor children of the decedent. The homestead allowance has priority over all claims against the estate, but not over the right to family allowance and exempt property.

The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the will of the decedent or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the will of the decedent or by intestate succession is less than \$10,000 [~~25,000~~ 15,000], then the surviving spouse or minor children shall be entitled to a homestead allowance in an amount which, when added to the property passing to the surviving spouse and minor children by the will of the decedent or by intestate succession, will equal the sum of \$10,000 [~~25,000~~ 15,000].

If the surviving spouse claims and receives an elective share of the decedent's estate under §§ 64.1-13 through 64.1-16, the surviving spouse shall not have the benefit of any homestead allowance.

§ 64.1-151.4. Source, determination and documentation of family allowance, exempt property, and homestead allowance.

If the estate is otherwise sufficient, property specifically bequeathed or devised shall not be used to satisfy rights to exempt property and homestead allowance. Subject to this restriction, the surviving spouse or the guardian of the minor children may select property of the estate as exempt property and homestead allowance. The personal representative may make these selections if the surviving spouse or the guardian of the minor children is unable or fails to do so within a reasonable time, or if there is no guardian of the minor children. The personal representative may execute a deed of distribution to establish the ownership of property taken as homestead allowance or exempt property, which deed, if executed, shall: (i) describe the property with reasonable certainty, and (ii) state the value of each asset included therein. The personal representative may determine the family allowance in a lump sum not exceeding \$12,000 [~~24,000~~ 18,000], or periodic installments not exceeding \$1,000 [~~2,000~~ 1,500] per month for one year; and he may disburse funds of the estate in payment of the family allowance and any part of the exempt property or homestead allowance, payable in cash.

The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the circuit court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined. Such petition may be ex parte; provided, however, that the court in its discretion may require such notice to and the convening of interested parties as it may deem proper in each case.