

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 716

*An Act to amend and reenact § 64.1-122.2 of the Code of Virginia, relating to notice of probate.*

[H 722]

Approved April 6, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That § 64.1-122.2 of the Code of Virginia is amended and reenacted as follows:**

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

9. Any unborn or unascertained persons.

C. The notice shall include the following information:

1. The name and date of death of the decedent;
2. The name, address and telephone number of a personal representative or a proponent of a will;
3. The mailing address of the clerk of the court in which the personal representative qualified or the will was probated;
4. A statement as follows: "This notice does not mean that you will receive any money or property";
5. A statement as follows: "If personal representatives qualified on this estate, they are required by law to file an inventory with the commissioner of accounts within four months after they qualify in the clerk's office, to file an account within sixteen months of their qualification, and to file additional accounts within sixteen months from the date of their last account period until the estate is settled. If you make written request therefor to the personal representatives, they must mail copies of these documents (not including any supporting vouchers, but including a copy of the decedent's will) to you at the same time the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an heir at law in a case where all of the decedent's probate estate is disposed of by will, or (ii) your gift has been satisfied in full before the time of such filing. Your written request may be made at any time; it may relate to one specific filing or to all filings to be made by the personal representative, but it will not be effective for filings made prior to its receipt by a personal representative. A copy of your request may be sent to the commissioner of accounts with whom the filings will be made. After the commissioner of accounts has completed work on an account filed by a personal representative, the commissioner files it and a report thereon in the clerk's office of the court wherein the personal representative qualified. If you make written request therefor to the commissioner before this filing, the commissioner must mail a copy of this report and any attachments (excluding the

account) to you on or before the date that they are filed in the clerk's office"; and

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

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

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

F. The personal representative or proponent of the will shall record *within four months* in the clerk's office where the will is recorded an affidavit stating (i) the names and addresses of the persons to whom he has mailed or delivered notice and when the notice was mailed or delivered to each or (ii) that no notice was required to be given to any person. A commissioner of accounts shall not approve any settlement filed by a personal representative until the affidavit described in this subsection has been recorded. If the personal representative of an estate, or the proponent of a will, is unable to determine the name and address of any person to whom notice is required after the exercise of reasonable diligence, a statement to that effect in the required affidavit shall be sufficient for purposes of this subsection. Notwithstanding the foregoing provisions, any person having an interest in an estate may give the notice required by this section and record the affidavit described in this subsection. *If this subsection has not been complied with within four months after qualification, the Commissioner of Accounts shall issue, through the sheriff or other proper officer, a summons to such fiduciary requiring him to comply and if he shall not, the Commissioner shall enforce the filing of the affidavit in the manner set forth in § 26-13.*

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