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HOUSE BILL NO. 315

House Amendments in [] — January 17, 2002

A *BILL to amend and reenact § 64.1-118 of the Code of Virginia, relating to appointment of administrator of estate.*

Patron Prior to Engrossment—Delegate Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-118 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-118. What clerk or court to appoint administrator of estate; who to be preferred.

A. In the case of a person dying intestate the jurisdiction to hear and determine the right of administration of his estate shall be in the same court or before the same clerk who would have jurisdiction as to the probate of his will, if there were a will. *The [same court or the same court or the] clerk who would have jurisdiction as to the probate of a will, if there were a will, shall have the jurisdiction to hear and determine the right of administration of the estate in the case of a person dying intestate.* Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife and then such of the others entitled to distribution as the court or clerk shall see fit. But any of the distributees may at any time waive his right to qualify in favor of any other person to be designated by him. If no distributee apply for administration within thirty days from the death of the intestate, the court or clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or other person shall certify that he has made diligent search to find an address for the husband or wife entitled to preference under the provisions hereof, and has given not less than thirty days notice by certified mail of his intention to apply for administration to the last known address or addresses of the husband or wife discovered or alternatively, that he has not been able to find any such address; and provided, further, that administration shall be granted to persons entitled to preference under the provisions hereof who apply therefor before the expiration of the thirty-day period as follows:

1. During the first thirty days following the intestate's death, the clerk may grant administration (i) to a sole distributee or his designee or (ii) in the absence of a sole distributee, to any distributee or his designee who presents written waivers of right to qualify from all other competent distributees.

2. After thirty days have passed since the intestate's death, the clerk may grant administration to the first distributee, or his designee, who applies therefor, without either waiting for any further period of time, or requiring the consent or waiver of any other distributee; provided, however, that if, during the first thirty days following the intestate's death, more than one distributee notifies the clerk of an intent to qualify after the thirty-day period has elapsed, the clerk shall not appoint any distributee, or his designee, until the clerk has given all such distributees an opportunity to be heard.

3. After sixty days have passed since the intestate's death, the clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or other person certifies that he has made diligent search to find an address for any sole distributee and has given not less than thirty days notice by certified mail of his intention to apply for administration to the last known address or addresses of the distributee discovered or alternatively, that he has not been able to find any such address. Qualification of a creditor or person other than a distributee ~~shall not be~~ is not subject to challenge on account of a failure to have made the certification herein required.

4. The court may appoint administrators under the same conditions as herein provided for the clerk, and when the court determines that it is in the best interests of an intestate's estate, the court may depart therefrom at any time and appoint such person as the court, in the exercise of its discretion, deems most appropriate.

B. ~~Administration~~ The court or clerk shall not ~~be granted~~ grant administration to any person unless the court or clerk is satisfied that he is suitable and competent to perform the duties of his office. A person under a disability as defined in § 8.01-2 is not eligible to qualify.

C. If any beneficiary of the estate objects, no husband, wife or parent who has been barred from all interest in the estate because of desertion or abandonment as provided under § 64.1-16.3 ~~shall be~~ is suitable to serve as an administrator of the estate of the deceased spouse or child, as the case may be.

ENGROSSED

HB315E