

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 195

An Act to amend and reenact §§ 8.01-606, 26-4, 37.1-144, 58.1-1712 and 58.1-1714 of the Code of Virginia, relating to amounts of money; fiduciary duties; probate tax.

[H 1921]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-606, 26-4, 37.1-144, 58.1-1712, and 58.1-1714 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-606. Payment of small amounts to certain persons through court without intervention of fiduciary; authority of commissioners of accounts; certain fiduciaries exempt from accountings.

A. Whenever there is due to any person, any sum of money from any source, not exceeding ~~\$10,000~~ ~~\$15,000~~, the fund may be paid into the circuit court of the county or city in which the fund became due or such person resides. The court may, by an order entered of record, (i) pay the fund to the person to whom it is due, if the person is considered by the court competent to expend and use the same in his behalf, or (ii) pay the fund to some other person who is considered competent to administer it, for the benefit of the person entitled to the fund, without the intervention of a fiduciary, whether the other person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the person to whom the money is paid, which shall show the source from which it was derived, the amount, to whom it belongs, and when and to whom it was paid. The receipt shall be signed and acknowledged by the person receiving the money, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. Upon the payment into court the person owing the money shall be discharged of such obligation. No bond shall be required of the party to whom the money is paid by the court.

B. Whenever (i) it appears to the court having control of a fund, tangible personal property or intangible personal property or supervision of its administration, whether a suit is pending therefor or not, that a person under a disability who has no fiduciary, is entitled to a fund arising from the sale of lands for a division or otherwise, or a fund, tangible personal property or intangible personal property as distributee of any estate, or from any other source, (ii) a judgment, decree, or order for the payment of a sum of money or for delivery of tangible personal property or intangible personal property to a person under a disability who has no fiduciary is rendered by any court, and the amount to which such person is entitled or the value of the tangible personal property or intangible personal property is not more than ~~\$10,000~~ ~~\$15,000~~, or (iii) a person under a disability is entitled to receive payments of income, tangible personal property or intangible personal property and the amount of the income payments is not more than ~~\$10,000~~ ~~\$15,000~~ in any one year, or the value of the tangible personal property is not more than ~~\$10,000~~ ~~\$15,000~~, or the current market value of the intangible personal property is not more than ~~\$10,000~~ ~~\$15,000~~, the court may, without the intervention of a fiduciary, cause such fund, property or income to be paid or delivered to any person deemed by the court capable of properly handling it, to be used solely for the education, maintenance and support of the person under a disability. In any case in which an infant is entitled to such fund, property or income, the court may, upon its being made to appear that the infant is of sufficient age and discretion to use the fund, property or income judiciously, cause the fund to be paid or delivered directly to the infant.

C. Whenever a person is entitled to a fund or such property distributable by a fiduciary settling his accounts before the commissioner of accounts of the court in which the fiduciary qualified, and the amount or value of the fund or property, or the value of any combination thereof, is not more than ~~\$10,000~~ ~~\$15,000~~, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority herein conferred upon a court including exemption from filing further accounts where the value of the fund being administered is less than ~~\$10,000~~ ~~\$15,000~~.

D. Whenever an incapacitated person or infant is entitled to a fund or such property distributable by a fiduciary settling accounts before the commissioner of accounts of the court in which the fiduciary qualified and the will or trust instrument under which the fiduciary serves, authorizes the fiduciary to distribute the property or fund to the incapacitated person or infant without the intervention of a guardian, conservator or committee, and the amount or value of such fund or property, or the value of any combination thereof, is not more than ~~\$10,000~~ ~~\$15,000~~, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority hereinabove conferred upon a court or judge thereof.

E. Whenever a fiduciary is administering funds not exceeding ~~\$10,000~~ ~~\$15,000~~, the circuit court of the county or city in which the fund is being administered by order entered of record may authorize the fiduciary, when considered competent to administer the funds, to continue to administer the funds for

the benefit of the person entitled to the fund without the necessity of filing any further accounts, whether such person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the fiduciary, which shall show the amount of the fund remaining, to whom it belongs, and the date the court entered the order exempting the filing of further accounts. The receipt shall be signed and acknowledged by the fiduciary, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. No ~~bond~~ surety shall be required *on the bond* of a fiduciary granted an exemption from filing any further accounts.

§ 26-4. When fiduciary may qualify without security.

The several courts in this Commonwealth and the clerks thereof, having jurisdiction to appoint personal representatives, guardians, conservators and committees may, in their discretion, when the amount coming into the hands or possession of the personal representative, guardian of a minor, conservator or committee does not exceed ~~\$10,000~~ \$15,000, allow any such personal representative, guardian, conservator or committee to qualify by giving bond without surety. Any personal representative or trustee serving jointly with a bank or trust company exempted from giving surety on its bond as such under § 6.1-18 shall, unless the court shall otherwise direct, be likewise exempt.

§ 37.1-144. Surrender of incapacitated person's estate.

The fiduciary shall surrender the ~~ward's~~ *incapacitated person's* estate or that portion for which he is accountable, to the ~~ward~~ *incapacitated person*, if the ~~ward~~ *incapacitated person* is restored to capacity, or

If the ~~ward~~ *incapacitated person* dies prior to such restoration, the fiduciary shall surrender the real estate to the ~~ward's~~ *incapacitated person's* heirs or devisees, and the personal estate to his executors or administrators. If upon the death of the ~~ward~~ *incapacitated person*, (i) the value of the personal estate in the custody of the fiduciary is ~~\$5,000~~ \$15,000 or less, (ii) a personal representative has not qualified within ~~sixty~~ 60 days of the ~~ward's~~ *incapacitated person's* death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the ~~ward's~~ *incapacitated person's* estate to the ~~ward's~~ *incapacitated person's* surviving spouse, or if there is no surviving spouse, to the distributees of the ~~ward~~ *incapacitated person* or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the ~~guardian's~~ *fiduciary's* final accounting submitted to the Commissioner of Accounts.

~~Nothing in this section or in §§ 37.1-138 to 37.1-142 shall be construed as affecting in any way the provisions of § 37.1-145 relative to supplying comforts and luxuries for persons committed.~~

§ 58.1-1712. Levy; rate of tax.

A tax is hereby imposed on the probate of every will or grant of administration not exempt by law. The tax shall be based on the value of the estate as determined in § 58.1-1713. For every \$100 of value, or fraction of \$100, a tax of 10 cents is imposed. However, the tax imposed by this section shall not apply to decedents' estates of ~~\$10,000~~ \$15,000 or less in value.

§ 58.1-1714. Filing of return.

When the value of an estate exceeds ~~\$10,000~~ \$15,000, a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best of the knowledge and belief of the persons submitting the will for probate or requesting the grant of administration, (i) the value of the decedent's real estate as set forth in § 58.1-1713 based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes, and (ii) the estimated value of the decedent's personal property as of the date of the decedent's death. Such return shall be subject to the provisions of § 58.1-11, and the information set forth therein shall be entitled to the privilege accorded by § 58.1-3. For the purpose of § 58.1-3, the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book.