

2010 SESSION

LEGISLATION NOT PREPARED BY DLS HOUSE SUBSTITUTE

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HOUSE BILL NO. 56

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Cole
on February 1, 2010)

(Patron Prior to Substitute—Delegate Cole)

A BILL to amend and reenact § 26-17.7 of the Code of Virginia, relating to testamentary trustees' duty to file an inventory or annual accounts.

Be it enacted by the General Assembly of Virginia:

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

§ 26-17.7. Testamentary trustees under a will waiving accounts; waiver where beneficiary also trustee.

A. If (i) 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, or (ii) if the sole beneficiary of the trust also is a trustee, the trustee will not be required to file accounts with the commissioner of accounts. For purposes of this section, a "sole beneficiary" means a person who is (a) the only income beneficiary who is entitled to the principal, or the remaining principal goes to the trustee's estate or (b) the only income beneficiary and has either a general power of appointment over the principal or has a special power of appointment that is not limited to a particular class of persons.

Where the waiver is contained in the decedent's will, the trustee shall (i) within 90 days after qualification, notify in writing all beneficiaries of the trust who are adults other than the trustee, whose addresses are known to the trustee and to whom income or principal of the trust could be currently distributed; provide each with a copy of the applicable provisions of the will; advise each of his right to require an annual accounting; and provide each with a copy of this code section and (ii) annually thereafter provide 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 \$25.

B. Language substantially in form and effect as follows will be sufficient to constitute a waiver in the will of the decedent of the trustee's obligation to account: I hereby direct that my trustee(s) shall not be required to file annual accounts with a court as otherwise required by Virginia law.

C. Notwithstanding a waiver in the will of the decedent or any prior consent of a beneficiary, any such adult beneficiary may, at any time during the administration of the trust, demand in a writing delivered to the trustee and to the commissioner of accounts that the trustee settle annually with the commissioner of accounts. Upon notice of such demand to the trustee and the commissioner of accounts, such trustee shall file an account with such commissioner for a period acceptable to the commissioner as though there were no waiver by the testator. The beneficiary making such demand may later revoke his demand by a writing delivered to the trustee and the commissioner of accounts. The demand for settlement of the trustee's account before the commissioner of accounts may also be made by the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney in fact for a beneficiary, a guardian of an incapacitated beneficiary, a committee of a convict or insane beneficiary, the duly qualified guardian of a minor, or if none exists, a custodial parent of a minor or by any minor who has attained 14 years of age.

D. Notwithstanding the provisions of this section, any trustee under a will of a decedent containing the requisite waiver, whenever probated, shall be relieved of the duty to file an inventory or annual accounts with the commissioner of accounts if the trustee (i) obtains the written consent of all adult beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those beneficiaries with the documents and information specified in subsection A; and (ii) files those consents with the commissioner on or before the date on which the inventory or next required accounting would otherwise be due. For receiving and filing such written consent, the Commissioner shall be allowed a fee not to exceed \$25.

E. *Notwithstanding the provisions of this section, any trustee under a will of a decedent probated on or after July 1, 2010, shall be relieved of the duty to file an inventory or annual accounts with the commissioner of accounts if the will of the decedent does not direct the filing of such inventory and accounts and the trustee (i) obtains the written consent of all adult beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those beneficiaries with the documents and information specified in subsection A; (ii) obtains the written consent of the representative of all incapacitated beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those representatives with the documents and information specified in subsection A; and (iii) files those consents with the*

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60 commissioner on or before the date on which the inventory or next required accounting would otherwise
61 be due. For receiving and filing such written consent, the Commissioner shall be allowed a fee not to
62 exceed \$25. The consent of an incapacitated beneficiary may be made by the personal representative of
63 a deceased beneficiary whose estate is a beneficiary, an attorney in fact for a beneficiary, a guardian of
64 an incapacitated beneficiary, a committee of a convict or insane beneficiary, the duly qualified guardian
65 of a minor, or if none exists, a custodial parent of a minor who is not also the trustee. Language
66 substantially in form and effect as follows will be sufficient to constitute a direction in the will of the
67 decedent of the trustee's obligation to account: I hereby direct that my trustee(s) shall be required to file
68 annual accounts with a court as otherwise required by Virginia law.

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