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HOUSE BILL NO. 721

Offered January 22, 1996

A BILL to amend and reenact §§ 8.01-316, 8.01-317, 15.1-583, 15.1-1036, 20-104, 64.1-108, 64.1-109, 64.1-110 and 64.1-179 of the Code of Virginia, relating to payment for costs of publication.

Patrons—Johnson, Almand, Davies and Moran; Senator: Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-316, 8.01-317, 15.1-583, 15.1-1036, 20-104, 64.1-108, 64.1-109, 64.1-110 and 64.1-179 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-316. Service by publication; when available.

A. Except in condemnation actions, an order of publication may be entered against a defendant in the following manner:

1. An affidavit by a party seeking service stating one or more of the following grounds:

a. That the party to be served is (i) a foreign corporation, (ii) a foreign unincorporated association, order, or a foreign unincorporated common carrier, or (iii) a nonresident individual, other than a nonresident individual fiduciary who has appointed a statutory agent under § 26-59; or

b. That diligence has been used without effect to ascertain the location of the party to be served; or

c. That the last known residence of the party to be served was in the county or city in which service is sought and that a return has been filed by the sheriff that the process has been in his hands for twenty-one days and that he has been unable to make service; or

2. In any action, when (i) a pleading states that there are or may be persons, whose names are unknown, interested in the subject to be divided or disposed of; (ii) briefly describes the nature of such interest; and (iii) makes such persons defendants by the general description of "parties unknown"; or

3. In any action, when (i) the number of defendants upon whom process has been served exceeds ten, and (ii) it appears by a pleading, or exhibit filed, that such defendants represent like interests with the parties not served with process.

Under subdivisions 1 and 2 of this section, the order of publication may be entered by the clerk of the court. Under this subdivision such order may be entered only by the court.

Every affidavit for an order of publication shall state the last known post-office address of the party against whom publication is asked, or if such address is unknown, the affidavit shall state that fact.

B. The cost of such publication shall be paid by the petitioner or applicant.

§ 8.01-317. What order of publication to state; how published; when publication in newspaper dispensed with.

Except in condemnation actions, every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than fifty days after entry of the order of publication. Such order of publication shall be published once each week for four successive weeks in such newspaper as the court may prescribe, or, if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the courthouse wherein the court is held; also a copy of such order of publication shall be mailed to each of the defendants at the post-office address given in the affidavit required by § 8.01-316. The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within ten days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the requirements of this section have been complied with. Provided, the court may, in any case where deemed proper, dispense with such publication in a newspaper. *The cost of such publication shall be paid by the petitioner or applicant.*

§ 15.1-583. Petition and order for election; notice; resolution in lieu of petition.

Upon a petition filed with the circuit court of the county signed by ten per centum of the qualified voters of such county which in no event shall be less than 100 qualified voters of the county, asking that a referendum be held on the question of adopting one of the forms of county organization and government herein provided for, the court shall, by order entered of record, in accordance with § 24.1-165, require the regular election officials to open a poll and take the sense of the qualified voters of the county on the question submitted as herein provided. The clerk of the county shall cause a notice of such election to be published in some newspaper published in or having a general circulation in the county once a week for three consecutive weeks and shall post a copy of such notice at the door of the courthouse of the county. *The cost of such publication shall be paid by the petitioner or applicant.*

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60 In lieu of such a petition, a resolution may be passed by the board of supervisors and filed with the
61 court asking for a referendum, in which case the court shall proceed as in the case of a petition.

62 § 15.1-1036. Additional parties.

63 A. In any proceedings hereunder any qualified voters or property owners in the territory proposed to
64 be annexed or any adjoining city or town may, by petition, become parties to such proceeding as
65 provided in B hereof. Any county whose territory is affected by the proceedings, or any city, town or
66 persons affected thereby, may appear and shall be made parties defendant to the case, and be represented
67 by counsel.

68 B. The court shall by order, fix a time within which such additional parties not served may become
69 defendants to such proceeding, and thereafter, no such petition shall be received, except for good cause
70 shown. A copy of the order fixing such time for parties not previously served shall be published at least
71 once a week for two successive weeks in a newspaper of general circulation in the city or town seeking
72 the territory and in the territory sought to be annexed.

73 *C. The cost of such publication shall be paid by the petitioner or applicant.*

74 § 20-104. Order of publication against nonresident defendant.

75 In any suit for annulment, for divorce, either a vinculo matrimonii or a mensa et thoro, or for
76 affirmance of a marriage, an affidavit shall be filed that the defendant is not a resident of the
77 Commonwealth of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain
78 in what county or city such defendant is, without effect, an order of publication shall be entered against
79 such defendant by the court, or by the clerk of the court wherein such suit is pending, either in term
80 time or vacation, which order shall state the object of the suit and the grounds thereof, and the order of
81 publication shall be published as required by law. No depositions in the suit shall be commenced until at
82 least ten days shall have elapsed after the order of publication has been duly published as required by
83 law.

84 All annulments or divorces heretofore granted in suits in which the defendant was proceeded against
85 by an order of publication which required the defendant to appear within ten days after due publication
86 thereof, and in which depositions were taken less than fifteen days, but not less than ten days, after such
87 due publication and in suits in which the defendant was proceeded against by an order of publication
88 issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what
89 county or city such defendant was, without effect, or wherein the order of publication was entered by
90 the court, are hereby validated and declared to be binding upon the parties to such suit, when the other
91 proceedings therein were regular and the annulment or divorce otherwise valid.

92 *The cost of such publication shall be paid by the petitioner or applicant.*

93 § 64.1-108. Probate or administration before court; notice of application.

94 Whenever a will of any person supposed to be dead on account of absence for seven years or more
95 from the place of his last domicile in this Commonwealth shall be offered for probate, or whenever
96 letters of administration on the estate of any person so supposed to be dead shall be applied for, the
97 court having jurisdiction if such person were dead, if satisfied that the will so offered for probate should
98 be probated or that the applicant would be entitled to letters of administration were the supposed
99 decedent in fact dead, shall cause to be advertised in a newspaper published in the county or city once a
100 week for four successive weeks the fact of the offer or application, together with notice that on a certain
101 day, which shall be at least two weeks after the advertisement, the court or judge will hear evidence
102 concerning the alleged absence of the supposed decedent and the circumstances and duration thereof.

103 *The cost of such publication shall be paid by the petitioner or applicant.*

104 § 64.1-109. Application for order when probate or administration unnecessary.

105 Whenever any person shall claim, either as widow or heir at law or otherwise, any property of a
106 person supposed to be dead on account of absence for seven years or more from the place of his last
107 domicile and there shall be no will or no necessity for grant of letters of administration, such person
108 may apply to the court which would have jurisdiction for probate or for granting letters of
109 administration, or the judge thereof in vacation, to have the fact of such descent established and
110 thereupon the court shall, if satisfied that the person so claiming would be so entitled were the supposed
111 decedent in fact dead, shall cause notice of such application to be published as provided above in
112 respect to offer of a will for probate or application for letters of administration. *The cost of such*
113 *publication shall be paid by the petitioner or applicant.*

114 § 64.1-110. Hearing application; evidence receivable; further publication.

115 At the hearing, which shall be either in term or vacation, the court or judge shall hear such legal
116 evidence as may then be offered for the purpose of ascertaining whether or not the presumption of death
117 is made out and if satisfied that the legal presumption of death is made out the court or judge shall so
118 order. If the evidence show the length of absence of supposed decedent to be more than seven years, but
119 less than twenty years, the court or judge shall forthwith cause notice of the order to be inserted once a
120 week for two successive weeks in a newspaper published in the county or city and also, when
121 practicable, in a newspaper published at or near the place where the supposed decedent had his

residence when last heard from. Such notice shall require the supposed decedent, if alive, or any person for him to produce to the court, or the judge thereof in vacation, within twelve weeks from the date of its last insertion satisfactory evidence of his continuance in life. If there be not in the county or city a newspaper in which the publication required by this and §§ 64.1-108 and 64.1-109 may be had, the same may be published in such newspaper having general circulation therein as the court or judge shall order. *The cost of such publication shall be paid by the petitioner or applicant.*

§ 64.1-179. Order to creditors to show cause against distribution of estate to legatees or distributees; their liability to refund.

When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate has been filed in the office of a clerk of a court, whether under §§ 64.1-171 and 64.1-172 or in a suit in chancery, the court, after six months from the qualification of the personal representative, may, on motion of the personal representative, or a successor or substitute personal representative, or on motion of a legatee or distributee of his decedent, make an order for the creditors and all other persons interested in the estate of the decedent to show cause on some day to be named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes. However, every legatee or distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years afterward, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate which have been finally allowed by the commissioner of accounts or the court, or which were not presented to the commissioner of accounts, and the costs attending their recovery. In the event any claim shall become known to the fiduciary after the notice for debts and demands but prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall be given notice in the form provided in § 64.1-171 and the order of distribution shall not be entered until after expiration of ten days from the giving of such notice. If the claimant shall, within such ten-day period, indicate his desire to pursue the claim, the commissioner shall schedule a date for hearing the claim and for reporting thereon if action thereon is contemplated under § 64.1-171.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with or, as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto shall be fully protected against the demands of creditors and all other persons.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with, or as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto, even if such distribution shall be prior to the expiration of the period of one year provided in §§ 64.1-13, 64.1-89, 64.1-96 or § 64.1-151.5, shall be fully protected against the demands of spouses, persons seeking to impeach the will or establish another will, or purchasers of real estate from the personal representative, provided that the personal representative shall have contacted any surviving spouse known to it having rights of renunciation and ascertained that he had no plan to renounce the will, such intent to be stated in writing in the case of renunciation under § 64.1-13, and that the personal representative shall not have been notified in writing of any person's intent to impeach the will or establish a later will in the case of persons claiming under § 64.1-89 or § 64.1-96 or under a later will.

In the case of such distribution prior to the expiration of such one-year period, the personal representative shall take refunding bonds, without surety, to the next of kin or legatees to whom distribution is made, to protect against the contingencies specified in this and the preceding paragraphs. *The cost of such publication shall be paid by the petitioner or applicant.*