

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 842

An Act to amend and reenact §§ 26-2, 26-3, 26-8.1, 26-12, 26-12.1, 26-15, 26-17.3, 26-18, 26-24, 26-32, 26-37, 26-39 and 55-59.4 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 26-1.2; and to repeal §§ 26-17.8 and 26-36.1 of the Code of Virginia, relating to commissioners of accounts; fiduciaries.

[H 2085]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-2, 26-3, 26-8.1, 26-12, 26-12.1, 26-15, 26-17.3, 26-18, 26-24, 26-32, 26-37, 26-39 and 55-59.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 26-1.2 as follows:

§ 26-1.2. Information to be provided to clerk by fiduciary.

On and after July 1, 1998, every person seeking to qualify in any fiduciary capacity before the court or clerk shall provide to the court or clerk the information required to make the qualification on forms provided to the proposed fiduciary by the clerk. The forms, with appropriate instructions concerning their use, shall be provided to each clerk by the Office of the Executive Secretary of the Supreme Court. In lieu of any form, a computer-generated facsimile of the form may be used by any person seeking to qualify.

§ 26-2. Commissioners to examine and report on bonds and whether fiduciaries should be removed.

When any fiduciary, other than a sheriff or other officer, who is required to do so, except a sheriff or other officer, has filed with a commissioner an inventory or has laid the statement required by § 26-17 before a an account with the commissioner of accounts, the commissioner shall examine whether such the fiduciary has given such bond as the law requires, and whether it is in a penalty, and with sureties sufficient. Any commissioner of the court in which the order was made conferring on such fiduciary his authority, shall At any time before such statement a required filing is laid before a made with the commissioner, upon the application of any person who is interested or who appears as next friend of an infant interested, after reasonable notice to such fiduciary, any commissioner of accounts for the court in which the order conferring authority on the fiduciary was made shall investigate any of such matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct, or removal of any fiduciary from this Commonwealth, or for any other cause, it is improper to permit the estate of the decedent, ward, or other person, to remain under his control. The result of every such examination and inquiry shall be reported by the commissioner to the court by which he is appointed and to the clerk of such court.

When any fiduciary of an estate has given a bond to the court and then absconds with or improperly disburses any or all of the assets of the estate, the commissioner may petition the court in which the order was made conferring his authority on the fiduciary, and ask the court to order that such bond be forfeited.

§ 26-3. When court may require new bond, or revoke authority; giving new bond upon motion of fiduciary, surety or other party in interest.

The court under whose order or under the order of whose clerk any such fiduciary derives his authority, on the application of any surety or his personal representative, shall, or, when it appears proper on such report of the clerk or a commissioner or on evidence adduced before it by any party interested, may, at any time, whether such fiduciary shall or shall not have before given bond, or whether he shall have given one with or without sureties, order him to give before such the court, or before the clerk thereof, a new bond in a reasonable time to be prescribed by it in such penalty and with or without sureties as may appear to it to be proper and may, if such. In all cases where the fiduciary qualified pursuant to an order issued by a clerk, the clerk shall have the same power regarding bond and surety. If the order be of the court or clerk is not complied with, or whenever from any cause it appears proper, the court may revoke and annul the powers of any such fiduciary; but. However, no such order shall be made unless reasonable notice appear appears to have been given to such the fiduciary by (i) the commissioner who made such the report, or by (ii) the surety or his representative making the application aforesaid, or by (iii) the service of a rule or otherwise; and no such. No order or revocation shall invalidate any previous act of such fiduciary.

Upon motion of any such the fiduciary, surety or other party in interest, a new bond may be given before the court, or before the clerk thereof, in such penalty and with such sureties as may appear to the court or the clerk to be proper; which. The new bond shall have the effect provided by § 49-14.

§ 26-8.1. Subpoena powers of commissioners, assistants and deputies.

Commissioners of accounts, assistant commissioners of accounts and deputy commissioners of accounts shall have the power to issue subpoenas to require any person to appear before them *and to issue subpoenas duces tecum to require the production of any documents or papers before them.* Such commissioners shall not have the power to punish any person for contempt for failure to appear *or to produce documents or papers,* but may certify the fact of such nonappearance *or failure to produce* to the circuit court, which may impose penalties for civil contempt as if the court had issued the subpoena.

§ 26-12. Inventories to be filed with commissioners.

A. Every personal representative, ~~guardian, or curator or committee,~~ shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts, ~~under his oath and in proper form,~~ an inventory of all the personal estate ~~which is under his supervision and control, the decedent's interest in any multiple party account in any financial institution, all real estate over which he has the power of sale and any other real estate of the decedent of which he has knowledge that is an asset of the decedent's estate, whether or not situated in the Commonwealth; and shall, within four months, after any other such estate shall come to his possession or knowledge, return to such commissioner a further inventory thereof.~~ Every personal representative or curator shall also return to the commissioner an inventory of any such assets discovered thereafter as provided in subsection D.

B. Every guardian of an estate, conservator or committee shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts an inventory of the ward's personal estate which is under his supervision and control, the ward's real estate, the ward's legal or equitable ownership interest in any real or personal property that will pass to another at the ward's death by a means other than testate or intestate succession, and any periodic payments of money to which the ward is entitled. Every guardian of an estate, conservator or committee shall also return to the commissioner an inventory of any such assets discovered thereafter as provided in subsection D.

C. In listing ~~such~~ property pursuant to subsection A or B, the fiduciary shall place the market value on each item unless appraisers are appointed under § 64.1-133, in which case such appraised values shall be used. The market value shall be determined as of the date of death if a decedent's estate, and if not, as of the date of qualification. Any reasonable expense incurred in determining such values shall be allowable as a cost of the administration of ~~such~~ the estate.

D. In the case of assets discovered by a fiduciary after filing an inventory, the further inventory required by subsections A and B may be made by filing an amended inventory showing all assets of the estate, by filing an additional inventory showing only the after-discovered assets or, with the permission of the commissioner of accounts, by showing the after-discovered assets on the estate's next regular accounting. The filing shall be made or the permission granted within four months after the discovery of the assets.

§ 26-12.1. Forms for inventories.

Forms and instructions for the inventories required by § 26-12 shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court. Every inventory filed pursuant to § 26-12 ~~may~~ shall be filed on the appropriate forms ~~provided form,~~ which shall be provided to the fiduciary by the clerk of the court granting administration or on a computer-generated facsimile of the appropriate form.

(a) When appraisers are appointed either upon request of the fiduciary or upon motion of the court or clerk thereof, the form may be as follows:

VIRGINIA: In the Clerk's Office of the.....Court of
the.....of....., on the.....
day of, 19
Inventory and Appraisement
of the Estate of
.....
.....
Oath of Appraisers

STATE OF VIRGINIA,of....., to wit:

This day before me,, a Notary Public for
the.....aforesaid, in the State of Virginia, personally
appeared.....and....., three of the persons named as
appraisers of the foregoing estate and made oath that they would
truly and justly appraise all the property, both real and
personal, of the estate of....., deceased, under the
authority, supervision and control of the personal representative
and such other property of said estate as they may be requested
to appraise by said personal representative, and return their
inventory and appraisement under their hands as the law directs.

Given under my hand, this day of....., 19.....
 My commission expires

Notary Public

I. Property under the authority, supervision and control of
 Personal Representative:

DESCRIPTION OF PROPERTY	VALUE
TOTAL	\$

(Use additional sheets if necessary)

The foregoing will be printed on page one.

II. Property appraised at request of the Personal
 Representative:

(If none, so state)

DESCRIPTION OF PROPERTY	VALUE
TOTAL	\$

(Use additional sheets if necessary)

The foregoing will be printed on page two.

Certificate of Appraisers

WE, THE UNDERSIGNED,.....three of
 the appraisers appointed by the Clerk of the.....
 Court of the.....of by order entered on
 theday of....., 19....., to appraise all the property,
 both real and personal, of the estate of, deceased,
 having been first duly sworn, have appraised all such property
 under the authority, supervision and control of the
 personal representative, and such other property of said estate
 requested to be appraised by said personal representative, and
 herewith return the foregoing as our appraisal thereof:

Appraisers:

Certificate of Personal Representative

I,, solemnly swear (or affirm) that to
 the best of my knowledge and belief the foregoing inventory
 and appraisal embraces all the property, both real and
 personal of the estate of, deceased,
 under my authority, supervision and control as
 thereof, aggregating \$...; and also all other
 property of said estate of which I have knowledge.

Address

Subscribed and sworn to before me thisday
 of, 19....

My commission expires

Notary Public

COMMISSIONER'S CERTIFICATE

Inspected, found to be in proper form, and approved this
day of....., 19

Commissioner of Accounts

~~VIRGINIA:~~

~~In the Clerk's Office of the Court of
the.....of.....on the..... day
of....., 19.....~~

~~The foregoing Inventory and Appraisement of the
estate of....., deceased, was this day received and
admitted to record.~~

~~....., Clerk
By D.C.~~

~~The foregoing will be printed on page three.~~

~~INVENTORY AND APPRAISEMENT
of the Estate of~~

~~.....
DECEASED~~

~~Received by the
Commissioner of Accounts~~

~~....., 19~~

~~Deliver to the Clerk~~

~~....., 19~~

~~Recorded:~~

~~Book Page~~

~~The foregoing will be printed on page four, and positioned
so that when folded for filing this information will be
discernible.~~

~~(b) When no appraisers are appointed, the form may be as
follows:~~

~~VIRGINIA: In the Clerk's Office of the.....Court of
the.....of....., on the.....
day of, 19~~

~~Inventory of the Estate of~~

~~I. Personal property under the authority, supervision and
control of the personal representative:~~

DESCRIPTION OF PROPERTY	VALUE
TOTAL	\$

~~(Use additional sheets if necessary)~~

~~The foregoing will be printed on page one.~~

~~II. Real property in which the decedent had an interest
over which the Personal Representative has power of sale:~~

DESCRIPTION OF PROPERTY	VALUE
TOTAL	\$

~~(Use additional sheets if necessary)~~

~~The foregoing will be printed on page two.~~

~~III. Other real property in which the decedent had an~~

~~(Use additional sheets if necessary)~~

~~The foregoing will be printed on page three.~~

~~Certificate of Fiduciary~~

I,, solemnly swear (or affirm) that to the best of my knowledge and belief the foregoing inventory embraces all the property, both real and personal, of the estate of under my authority, supervision and control as thereof, aggregating \$.....

Address

~~Subscribed and sworn to before me this.....day
of....., 19....~~

My commission expires

.....
Notary Public

~~COMMISSIONER'S CERTIFICATE~~

~~Inspected, found to be in proper form, and approved~~
~~this..... day of....., 19.....~~

~~Commissioner of Accounts~~

~~VIRGINIA:~~

In the Clerk's Office of the Court of the of
..... on the day of, 19.....

~~The foregoing Inventory of the estate of....., deceased,
was this day received and admitted to record.~~

....., Clerk.
By....., D.C.

~~The foregoing will be printed on page four.~~

~~INVENTORY~~
~~of the Estate of~~

DECEASED

Received by the
Commissioner of Accounts
..... 19.....

Delivered to the Clerk
..... 19

~~Recorded:~~

Book.....Page.....

The foregoing will be printed on page five, and positioned so that when folded for filing this information will be discernible.

(c) The court or clerk shall upon request furnish each fiduciary with a copy of the order appointing such appraisers.

(d) The court or clerk thereof shall provide the fiduciary with a list of instructions (which may be printed on the forms supplied for making such inventory or inventory and appraisal) which shall be substantially as follows:

INSTRUCTIONS TO FIDUCIARIES AND APPRAISERS

1. ~~File this Inventory in duplicate with the Commissioner of Accounts within four months after qualification.~~
2. ~~Assets should be clearly identified and listed in reasonable detail as of date of death if a decedent's estate, and if not, as of date of qualification. It is not necessary to list each article of personal effects and household property separately; however, if an article is specifically mentioned in the will or is of unusual value, it should be listed separately. Make, model, and year of motor vehicle should be given. State name of bank or banks and sums on deposit therein. A promissory note should be described by maker's name and balance due thereon and bonds and shares of stock by usual description. Give issue or maturity date of United States Bonds. If an unincorporated business or interest therein is included among the assets, the name and location of the business should be given.~~
3. ~~If this form is being utilized to state the assets of a minor or incapacitated person by his or her guardian, Sections II, III and IV are not applicable and Section I should be utilized to state the ward's personal property.~~
4. ~~The value of the items listed under Section I dealing with personal property and Section II dealing with real estate over which the personal representative has power of sale should total the aggregate amount stated in the Certificate of Fiduciary and should include all of the assets, real and personal, over which the fiduciary has supervision and control.~~
5. ~~Personal property to be listed under Section I includes all assets other than real estate such as currency and coins, bank accounts, stocks and bonds, mutual funds, automobiles, boats, sporting equipment, furniture, silver, gold, rugs having value and any other property having value. Personal property which was held by the decedent and surviving spouse as tenants by the entirety or by the decedent and a surviving co-owner as joint tenants with right of survivorship or personal property payable directly to a surviving beneficiary need not be listed.~~
6. ~~Real estate to be listed under Section III includes real estate over which the personal representative has no power of sale such as property held by the decedent and another as joint tenants with right of survivorship or as tenants by the entireties or property which is subject to a direct devise.~~
7. ~~When appraisers are appointed, the values determined by such appraisers should be listed on the inventory in the column headed "Value." If appraisers are not appointed, the fiduciary shall determine the value of each item listed on the inventory.~~
8. ~~The fiduciary may retain expert assistance in determining values reported herein and reasonable expense incurred for such assistance may be allowed as a cost of administration.~~

(e) Such other instructions not inconsistent with the foregoing as the court having jurisdiction deems appropriate may be included with the instructions set forth above. Such forms as may be required shall be paid for as other books and stationery used for public records.

§ 26-15. Accounts of sales under deeds of trust, etc.

~~When~~ *Within six months after the date of a sale is made under any recorded deed of trust, mortgage or assignment for benefit of creditors, otherwise than under a decree, there shall, within six months after the sale, be returned by the trustee shall return an account of sale to the commissioner of accounts of the court wherein the instrument was first recorded an account of sale. The date of sale is the date specified in the notice of sale, or any postponement thereof, as required by subsection A of § 55-59.1.* The commissioner shall state, settle and report to the court an account of the transactions of such trustee, and the same shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court. If the commissioner of accounts of the court wherein an instrument was first recorded becomes aware that an account as required by this section has not been filed, the commissioner and the court shall proceed against the trustee in like manner and impose like penalties as set forth in § 26-13, unless such trustee is excused for sufficient reason. If after a deed of trust is given on land lying in a county, and before sale thereunder, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city.

§ 26-17.3. Settlement of fiduciaries' accounts.

Every fiduciary referred to in this chapter shall account before the commissioner of accounts of the jurisdiction wherein he qualified as hereinafter provided. *Every account shall be signed by all fiduciaries. A statement in a separate document attached to an account that a fiduciary has received, read and agrees with the account shall, if signed by the fiduciary, be treated as a signature to the account.*

Forms for accounts containing instructions concerning their use shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide the appropriate form to every fiduciary who qualifies in the clerk's office.

An accounting may be made on the form provided by the clerk, on a computer-generated facsimile or in any other clear format.

§ 26-18. Failure to account; enforcement.

If any such fiduciary fails to make ~~any such exhibit~~, *a complete and proper account* as required by § 26-17.3, the commissioner and the court shall proceed against him in like manner, and the court shall impose the same penalty, unless such fiduciary is excused for sufficient reason, as is herein provided in cases in which fiduciaries fail to return inventories of their respective estates. Every commissioner shall *either proceed against each such fiduciary by summons and report to the court as provided by § 26-13, or file with his court or judge, and a duplicate in the clerk's office, in the months of April and October, a list of all fiduciaries required to make periodic settlements who have failed to make such settlements as a complete and proper account within three months of the date required; and, at the same times, with like duplicate with the clerk a report of all fiduciary accounts which have been before him for more than three months and which remain unsettled.* Upon the filing of this list the clerk shall issue a summons against each fiduciary shown thereon returnable to the first day of the next term of court and the court shall take action against such fiduciary in accordance with § 26-13 for failure to file inventories.

Whenever the commissioner reports to the court that a fiduciary, who is an attorney-at-law licensed to practice in the Commonwealth, has failed to make the required settlement within thirty days after the date of service of a summons, the commissioner shall also mail a copy of his report to the Virginia State Bar.

§ 26-24. Fees of commissioners of accounts.

The fees of commissioners of accounts ~~for the special duties hereinbefore imposed upon them~~ shall be the same as are now allowed by law to commissioners in chancery *prescribed by the court which appointed them.*

§ 26-32. Where filed.

The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after its completion; ~~and shall, with his report, return such of the vouchers or evidence before him as any person interested may desire him to return, or as he may deem proper.~~

§ 26-37. Disposition of papers relating to estates.

All inventories and original accounts of sales filed with the clerk as required by §§ 26-14 and 26-16, all reports filed with the clerk under § 26-35, when the same have been actually recorded by the clerk, compared, indexed, and confirmed as respectively required by law, and all vouchers or other evidence filed with the commissioner, the court or the clerk at the time of confirmation of an account, and not required as evidence of any further matter of inquiry pending before the court or the commissioner, shall upon request made at the time of filing the same, *or in the discretion of the commissioner if no request is made*, be returned by the commissioner or by the clerk of the court to the fiduciary or other person

who filed the same.

The clerk of court, may destroy any papers mentioned in the first paragraph of this section or any other papers relating to estates, when the matter concerned has been closed with final settlement for more than three years and appropriate recordations have been made; ~~provided, however, that. However,~~ nothing in this section shall apply to original documents recorded by binding; ~~and provided further that if such.~~ If recordation is done by facsimile or microfilm reproduction process, such papers may be destroyed if the return thereof was not requested at the time of filing for recordation.

The commissioner of accounts may destroy any papers mentioned in the first paragraph of this section or any other papers relating to estates when the matter concerned has been closed with a confirmed final accounting for more than one year.

§ 26-39. Time within which guardian of an estate, conservator or other fiduciary to invest funds; reasonable diligence required.

Whenever a guardian of an estate, conservator or other fiduciary charged with the investment of funds collects any principal he shall have a reasonable time not exceeding four months to invest or loan the same, and shall not be charged with interest thereon until the expiration of such time; ~~provided that such.~~ A guardian of an estate, conservator or any other fiduciary shall only be required to ~~exercise reasonable diligence in lending or investing trust funds,~~ invest in accordance with the provisions of §§ 26-40.01, 26-40.1, 26-40.2, 26-44, 26-44.1 and 26-45.1 and if ~~such guardian or other fiduciary is reasonably diligent in lending or investing such funds he so invests~~ shall be accountable only for such interest and profits as are earned. If any funds be loaned at a rate of interest less than six per centum ~~per annum~~ are otherwise invested without the previous consent of the court having jurisdiction of such trust funds, except in the classes of securities bearing less than that rate of interest now or hereafter ~~permitted by law~~ the burden shall be on the guardian of an estate, conservator or other fiduciary before his settlement is approved by the commissioner of accounts to show to the satisfaction of the commissioner that after exercising reasonable diligence he was unable to ~~lend the funds at six per centum interest on good security and that the rate of interest secured so invest the funds and that the investment made~~ was reasonable and proper under all of the circumstances and fair to the beneficiary of the funds.

This section shall not be construed as altering the provisions of any will, deed or other instrument giving to the fiduciary discretion as to the rate of interest, character of security, nature or investment under the trust, or time within which the trust funds are to be loaned or invested.

§ 55-59.4. Powers and duties of trustee in event of sale under or satisfaction of deed of trust.

A. In the event of sale under a deed of trust, the trustee shall have the following powers and duties in addition to all others:

1. Written one-price bids may be made and shall be received by the trustee from the beneficiary or any other person for entry by announcement of the trustee at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee or trustees, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Whenever the written bid of the beneficiary is the highest bid submitted at the sale, such document shall be filed by the trustee with his account of sale required under § 26-15. The written bid submitted pursuant to this subsection may be prepared by the beneficiary, its agent or attorney.

2. The trustee may require of any bidder at any sale a cash deposit of as much as ten per centum of the sale price (unless the deed of trust specifies a higher or lower maximum, which may be done by the words "bidder's deposit of not more than dollars may be required," or words of like purport), before his bid is received, which shall be refunded to the bidder unless the property is sold to him, otherwise to be applied to his credit in settlement or, should he fail to complete his purchase promptly, to be applied to pay the costs and expense of sale and the balance, if any, to be retained by the trustee as his compensation in connection with that sale.

3. The trustee shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, *account for the same to the commissioner of accounts pursuant to § 26-15* and apply the same, first, to discharge the expenses of executing the trust, including a *reasonable* commission to the trustee of ~~five per centum of the gross proceeds of sale~~; secondly, to discharge all taxes, levies, and assessment, with costs and interest if they have priority over the lien of the deed of trust, including the due pro rata thereof for the current year; thirdly, to discharge in the order of their priority, if any, the remaining debts and obligations secured by the deed, and any liens of record inferior to the deed of trust under which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be paid to the grantor or his assigns; provided, however, that the trustee as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the grantor's equity, without actual notice thereof prior to distribution; provided further that such order of priorities shall not be changed or varied by the deed of trust.

B. Upon discharge (other than by sale by the trustee) of all debts, duties and obligations imposed by the deed upon the grantor, including any expenses incurred preparatory to sale, then upon the grantor's request the trustee shall execute and deliver a good and sufficient deed of release at the grantor's own

proper costs and charges.

- 2. That §§ 26-17.8 and 26-36.1 of the Code of Virginia are repealed.**
- 3. That the provisions of this act shall become effective July 1, 1998.**