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HOUSE BILL NO. 2067

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact § 64.1-122.2 of the Code of Virginia, relating to written notice of probate.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-122.2 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-122.2. Written notice of probate and qualification to be provided to certain parties.

A. Except as otherwise provided in this section, a personal representative of a decedent's estate or a proponent of a decedent's will when there is no qualification, for estates of persons dying on or after January 1, 1994, shall provide written notice of qualification or probate to the following persons:

- 1. The surviving spouse of the decedent, if any;
- 2. All heirs at law of the decedent, whether or not there is a will;
- 3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under § 64.1-64.1 and beneficiaries of any trust created by the will; and
- 4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided (i) when the known assets passing under the will or by intestacy do not exceed \$5,000 or (ii) to the following persons:

- 1. A personal representative or proponent of the will;
- 2. Any person who has signed a waiver of right to receive notice;
- 3. Any person to whom a summons has been issued pursuant to § 64.1-79 or § 64.1-80;
- 4. Any person who is the subject of a conservatorship, guardianship, or committeehip, if notice is provided to his conservator, guardian, or committee;
- 5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;
- 6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;
- 7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or person in loco parentis;
- 8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in either case the beneficiary is not an heir at law and the value of the bequest is not in excess of \$5,000; and
- 9. Any unborn or unascertained persons.

C. The notice shall include the following information:

- 1. The name and date of death of the decedent;
- 2. The name, address and telephone number of a personal representative or a proponent of a will;
- 3. The mailing address of the clerk of the court in which the personal representative qualified or the will was probated; and
- 4. A statement as follows: "This notice does not mean that you will receive any money or property."

D. Within thirty days after the date of qualification or admission of the will to probate, a personal representative or proponent of the will shall forward notice by delivery or by first class mail, postage prepaid, to the persons entitled to notice at their last known address. If the personal representative or proponent does not determine that the assets of the decedent passing under the will or by intestacy exceed \$5,000 until after the date of the qualification or admission of the will to probate, notice shall be forwarded to the persons entitled thereto within thirty days after such determination.

E. Failure to give the notice required by this section shall not of itself (i) affect the validity of the probate of a decedent's will, nor (ii) render any person required to give notice, who has acted in good faith, liable to any person entitled to receive notice. In determining the limitation period for any rights that may commence upon or accrue by reason of such probate or qualification in favor of any entitled person, the time that elapses from the date that notice should have been given to the date that notice is given shall not be counted, unless the person required to give notice could not determine the name and address of the entitled person after the exercise of reasonable diligence.

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59 F. The personal representative or proponent of the will shall record in the clerk's office where the
60 will is recorded an affidavit stating *(i)* the names and addresses of the persons to whom he has mailed
61 or delivered notice and when the notice was mailed or delivered to each *or (ii) that no notice was*
62 *required to be given to any person.* A commissioner of accounts shall not approve ~~the~~ *any* settlement
63 filed by a personal representative ~~under § 26-17~~ until the affidavit described in this subsection has been
64 recorded. If the personal representative of an estate, or the proponent of a will, is unable to determine
65 the name and address of any person to whom notice is required after the exercise of reasonable
66 diligence, a statement to that effect in the required affidavit shall be sufficient for purposes of this
67 subsection. Notwithstanding the foregoing provisions, any person having an interest in an estate may
68 give the notice required by this section and record the affidavit described in this subsection.

69 G. The form of the notice to be given hereunder, which shall contain appropriate instructions
70 regarding its use, shall be provided to each clerk of the circuit court by the Office of the Executive
71 Secretary of the Supreme Court ~~on or after October 1, 1993,~~ and each clerk shall provide copies of such
72 form to the proponents of a will or those qualifying on an estate.