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SENATE BILL NO. 711

Offered January 9, 2013

Prefiled November 28, 2012

A BILL to amend and reenact § 64.2-1307 of the Code of Virginia, relating to testamentary trustees' duty to file an inventory or annual accounts.

Patron—Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 64.2-1307 of the Code of Virginia is amended and reenacted as follows:****§ 64.2-1307. Testamentary trustees under a will waiving accounts; waiver where beneficiary also trustee.**

A. For purposes of this section, the term "sole beneficiary" means a person who is (i) the only income beneficiary who is entitled to the principal, or the remaining principal goes to the trustee's estate or (ii) 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.

B. 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) the sole beneficiary of the trust also is a trustee, the trustee will not be required to file accounts with the commissioner of accounts.

Where the waiver is contained in the decedent's will, the trustee shall within 90 days after qualification notify in writing all beneficiaries of the trust, other than the trustee, who are adults, whose addresses are known to the trustee, and to whom income or principal of the trust could be currently distributed; provide each such beneficiary with a copy of the applicable provisions of the will; advise each such beneficiary of his right to require an annual accounting; and provide each such beneficiary with a copy of this section and 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 of accounts stating that the requirements of this section have been met. For receiving and filing such notice or writing, the commissioner of accounts shall be allowed a fee not to exceed \$25.

C. Language substantially in form and effect as follows shall 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."

D. 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 the commissioner of accounts for a period acceptable to the commissioner of accounts 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.

E. 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 B, and (ii) files those consents with the commissioner of accounts 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 of accounts shall be allowed a fee not to exceed \$25.

F. Notwithstanding the provisions of this section, any trustee under a will of a decedent, *whenever* 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 or 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

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59 beneficiaries with the documents and information specified in subsection B; (ii) obtains the written
60 consent of the representatives of all incapacitated beneficiaries, other than the trustee, to whom income
61 or principal of the trust could be currently distributed, after providing those representatives with the
62 documents and information specified in subsection B; and (iii) files those consents with the
63 commissioner of accounts on or before the date on which the inventory or next required accounting
64 would otherwise be due. For receiving and filing such written consent, the commissioner of accounts
65 shall be allowed a fee not to exceed \$25. The consent of an incapacitated beneficiary may be made by
66 the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney-in-fact for
67 a beneficiary, a guardian of an incapacitated beneficiary, a committee of a convict or insane beneficiary,
68 the duly qualified guardian of a minor, or if none exists, a custodial parent of a minor who is not also
69 the trustee. Language substantially in form and effect as follows shall be sufficient to constitute a
70 direction in the will of the decedent of the trustee's obligation to account: "I hereby direct that my
71 trustee(s) shall be required to file annual accounts with a court as otherwise required by Virginia law."

72 G. A circuit court having jurisdiction may order the filing of annual accounts if it deems such filings
73 to be in the best interests of one or more beneficiaries of the trust.