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HOUSE BILL NO. 665

House Amendments in [] — February 11, 1998

A *BILL to amend and reenact §§ 8.01-424, 26-9, 26-12, 26-15, 26-20.1, 55-59.4, 64.1-134 and 64.1-135 of the Code of Virginia and to repeal § 64.1-133 of the Code of Virginia, relating to trusts and estates; commissioners of accounts; clerks.*

Patrons—Deeds and Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-424, 26-9, 26-12, 26-15, 26-20.1, 55-59.4, 64.1-134 and 64.1-135 of the Code of Virginia are amended and reenacted, as follows:

§ 8.01-424. Approval of compromises on behalf of persons under a disability in suits or actions to which they are parties.

A. In any action or suit wherein a person under a disability is a party, the court in which the matter is pending shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such party, including claims under the provisions of any liability insurance policy, if such compromise is deemed to be to the interest of the party. Any order or decree approving and confirming the compromise shall be binding upon such party, except that the same may be set aside for fraud.

B. In case of damage to the person or property of a person under a disability, caused by the wrongful act, neglect or default of any person, when death did not ensue therefrom, any person or insurer interested in compromise of any claim for such damages, including any claim under the provisions of any liability insurance policy, may, upon motion to the court in which the action is pending for the recovery of damages on account of such injury, or if no such action is pending, then to any circuit court, move the court to approve the compromise. The court shall require the movant to give reasonable notice of such motion to all parties and to any person found by the court to be interested in the compromise.

C. A compromise action involving a claim for wrongful death shall be in accordance with the applicable provisions of § 8.01-55. Nothing in this section shall be construed to affect the provisions of § 8.01-76.

D. In any compromise action the court shall direct the payment of the proceeds of the compromise agreement, when approved, as follows:

1. Payment of the sum into court as provided by § 8.01-600 or to the general receiver of such court;
2. To a duly qualified fiduciary of the person under a disability, after due inquiry as to the adequacy of the bond of such fiduciary;

3. As provided in § 8.01-606; or

4. Where the agreement of settlement provides for payments to be made over a period of time in the future, whether such payments are lump sum, periodic, or a combination of both, the court shall approve the settlement only if it finds that all payments which are due to be made are (i) secured by a bond issued by an insurance company authorized to write such bonds in this Commonwealth or (ii) to be made by an insurance company or companies authorized to do business in this Commonwealth and which is rated "A plus" (A+) by Best's Insurance Reports. Payments made under this subdivision totaling not more than \$4,000 in any calendar year may be paid in accordance with § 8.01-606. Payments made under this subdivision, totaling more than \$4,000 in any calendar year while the recipient is under a disability, shall be paid to a duly qualified fiduciary after due inquiry as to adequacy of the bond of such fiduciary.

E. Payments made under this section, in the case of damage to the person or property of a minor, may be made payable in the discretion of the court to the parent or guardian of the minor to be held in trust for the benefit of the minor. Any such trust shall be subject to court approval and the court may provide for the termination of such trust at any time following attainment of majority which the court deems to be in the best interest of the minor. [*Unless specifically provided otherwise in the court's order authorizing the trust or additions to an existing trust, the trustee thereof shall In an order authorizing the trust or additions to an existing trust the court may order that the trustee thereof] be subject to the same duty to qualify in the clerk's office and to file an inventory and annual accountings with the commissioner of accounts as would apply to a testamentary trustee.*

§ 26-9. Report on fiduciaries' bonds; "record of fiduciaries."

The clerk of each such court shall furnish his commissioner or commissioners of accounts at the end of each month a list of the fiduciaries authorized to act as such under orders entered during that month

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60 and examine as to each fiduciary whether he has given such bond as the law requires, ~~and if it appear~~
61 ~~that he~~. *If it appears that a fiduciary has given no bond or that his bond is defective, the commissioner*
62 *shall report such fact to his court forthwith. The clerk shall deliver to the commissioner of accounts a*
63 *copy of the order appointing each fiduciary who qualified in the clerk's office and [a copy copies of the*
64 *information form, and the memorandum of fact and executed bond] . In addition, for a personal*
65 *representative, the clerk shall deliver [copies of] the list of heirs, any testamentary instrument and the*
66 *affidavit required by § 64.1-122.2 when available.*

67 The commissioner or commissioners of accounts shall enter in separate columns in a book or other
68 proper record to be kept by him and called the "record of fiduciaries":

69 (1) The name of every such fiduciary;

70 (2) The name of the decedent whose estate he represents or the name of the living person for whom
71 he is acting in fiduciary capacity;

72 (3) The penalty of his bond;

73 (4) The names of his sureties;

74 (5) The date of the order conferring his authority;

75 (6) The date of any order revoking his authority;

76 (7) The date of the return of every inventory of the estate; and

77 (8) The date of each settlement of the accounts of the fiduciary.

78 The commissioner or commissioners of accounts shall index the book or other proper record in the
79 name of the decedent or person represented by the fiduciary.

80 The clerk of the court shall certify to the commissioner or commissioners within ten days the
81 revocation of the authority of every such fiduciary.

82 Any commissioner failing to make such entry or any clerk failing to certify such revocation for ten
83 days after the time herein prescribed shall for every such failure forfeit twenty dollars.

84 § 26-12. Inventories to be filed with commissioners.

85 A. Every personal representative or curator shall, within four months after the date of the order
86 conferring his authority, return to the commissioner of accounts an inventory of all the personal estate
87 under his supervision and control, the decedent's interest in any multiple party account in any financial
88 institution, all real estate over which he has the power of sale and any other real estate that is an asset
89 of the decedent's estate, whether or not situated in the Commonwealth. Every personal representative or
90 curator shall also return to the commissioner an inventory of any such assets discovered thereafter as
91 provided in subsection D E.

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

99 C. Every trustee who qualifies in the clerk's office shall, within four months after the first date that
100 any assets are received, return to the commissioner of accounts an inventory of the real and personal
101 estate which is under the trustee's supervision and control. Every such trustee shall also return to the
102 commissioner an inventory of any such assets received thereafter as provided in subsection E.

103 D. In listing property pursuant to subsection A ~~or~~, B or C, the fiduciary shall place the market value
104 on each item ~~unless appraisers are appointed under § 64.1-133, in which case such appraised values shall~~
105 ~~be used.~~ The market value shall be determined as of the date of death if a decedent's estate, ~~and if not, ;~~
106 ~~the date assets are received by the trustee if a trust; or as of the date of qualification in all other cases.~~
107 Any reasonable expense incurred in determining such values shall be allowable as a cost of the
108 administration of the estate.

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

115 § 26-15. Accounts of sales under deeds of trust, etc.

116 Within six months after the date of a sale made under any recorded deed of trust, mortgage or
117 assignment for benefit of creditors, otherwise than under a decree, the trustee shall return an account of
118 sale to the commissioner of accounts of the court wherein the instrument was first recorded. *Promptly*
119 *after recording any trustee's deed, the clerk shall deliver to the commissioner of accounts a copy of the*
120 *deed.* The date of sale is the date specified in the notice of sale, or any postponement thereof, as
121 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.

§ 26-20.1. Statement in lieu of settlement of accounts by personal representative or representatives in certain circumstances.

If all distributees of a decedent's estate or all residuary beneficiaries under a decedent's will are personal representatives of that decedent's estate, whether serving alone or with one or more others who are not distributees or residuary beneficiaries, the personal representatives may, in lieu of the settlement of accounts required by § 26-17.5, file with the commissioner of accounts a statement under oath that all known charges against the estate have been paid, and that after the time required by law, the residue of the estate has been delivered to the distributees or beneficiaries. In the case of a residuary beneficiary, the statement shall *include an itemized listing, substantiated and* accompanied by proper vouchers showing satisfaction of all other bequests in the will. The statement shall be considered an account stated and subject to all the provisions of this chapter applicable to accounts stated. If the statement required by this section cannot be filed with the commissioner within the time prescribed by § 26-17.5, the personal representatives, within that time, shall provide either an interim account or a written notice under oath to the commissioner, that a statement in lieu of the settlement of accounts will be filed when all requisites of this section have been met. Second and subsequent notices of intent to file shall be filed annually until the statement in lieu of the settlement of accounts is filed. The filing of an interim account shall not preclude the filing of a subsequent statement. For examining and approving a statement and vouchers under the provisions of this section, the commissioner shall be allowed a fee not to exceed seventy-five dollars.

§ 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; 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. *The trustee's deed shall show the trustee's mailing address.*

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

183 proper costs and charges.

184 § 64.1-134. List of heirs.

185 Every (i) personal representative of a decedent, whether such decedent died testate or intestate, at the
186 time of his qualification, and (ii) proponent of a will where there is no qualification of a personal
187 representative, when the will is presented for probate, shall furnish the court or clerk ~~before which or~~
188 ~~before whom~~ *where* he qualifies and the clerk of ~~the circuit~~ court of ~~any the~~ city or county ~~wherein~~
189 ~~deeds are recorded, in which the decedent died seized of any where~~ real estate *that is an asset of the*
190 *decedent's estate is located*, a list containing his name, with his post-office and street address, if any,
191 and:

192 (1) The names and, as far as possible, the ages and addresses of the heirs of his decedent, if
193 intestate; or, if his decedent died testate, the names, ages and addresses of those persons who would
194 have been the decedent's heirs had he died intestate; and

195 (2) The degree of kinship of each to the decedent, accompanied by affidavit that he has made
196 diligent inquiry as to such names, ages and addresses and that he believes such list to be true and
197 ~~correct.~~ *of heirs under oath in accordance with a form provided to each clerk [of court] by the Office*
198 *of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof.*

199 If there has been no qualification of a personal representative within thirty days following death, a
200 list of heirs, made under oath *in accordance with the form provided to each clerk or a computer*
201 *generated facsimile*, may be filed by any heir at law of a decedent who died intestate.

202 ~~Any list of heirs filed pursuant to this section shall be made under oath.~~

203 The clerk shall record such list in the will book and index in the name of the decedent as ~~grantor~~
204 and the heirs as ~~grantees~~. Such list so made and recorded shall be prima facie evidence of the facts
205 therein stated. The cost of recording such list shall be deemed a part of the cost of administration and
206 be paid out of the estate of the decedent. Such personal representative shall not receive any
207 compensation for his services until such list is filed unless he files an affidavit before the commissioner
208 of accounts that the heirs are unknown to him and that after diligent inquiry he has been unable to
209 ascertain their names, ages or addresses, as the case may be.

210 § 64.1-135. Affidavit relating to real estate of intestate decedent.

211 Upon the death intestate of a person owning real estate, any person having an interest therein,
212 including a personal representative if ~~a qualification he had~~ *who has qualified*, may execute an affidavit,
213 on a form provided ~~by the clerk of the court to each clerk of court~~ *by the Office of the Executive*
214 *Secretary of the Supreme Court or a computer-generated facsimile thereof*, setting forth briefly (1) the
215 real estate owned by the decedent at the time of his death situated within the city or county where such
216 affidavit is to be recorded; (2) the intestacy and (3) the names and last known addresses of the heirs at
217 law. The clerk of the court of the county or city in which deeds are admitted to record and in which
218 such real estate or any part thereof is located, shall, upon the payment of the fees provided by law,
219 record and index the same as wills are recorded and indexed.

220 The clerk of the court of the county or city where such affidavit is recorded shall transmit an abstract
221 of said affidavit to the commissioner of the revenue of said county or city as in the case of deeds
222 conveying real estate. Upon receipt thereof by said commissioner, such real estate may be transferred
223 upon the land books and assessed in accordance therewith.

224 **2. That § 64.1-133 of the Code of Virginia is repealed.**