

INSTRUCTIONS TO CURATORS OF DECEDENTS' ESTATES

(Revised October 2012)

A Curator is most often appointed by the Clerk of Court in emergency situations. A Curator's primary responsibility is to gather and protect the assets of the estate until such time as an Executor or Administrator is qualified by the Court. He may demand, sue for, recover and receive the decedent's personal estate and all debts due the decedent. He may likewise lease or rent any real estate owned by the decedent.

Virginia Code Section 64.2-451 deals with Curators specifically.

The following outline of information is intended to aid you as Curator in handling the duties and responsibilities of your office.

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OFFICE OF THE COMMISSIONER OF ACCOUNTS

Courthouse, Suite 6500
1425 N. Courthouse Road
Arlington, Virginia 22201

HOURS: 8:30 - 12:00 and 1:00 - 4:30 BY APPOINTMENT
703-228-7150

I. INVENTORY

A. Virginia Code Section 64.2-1300 requires every Curator to file an inventory of the assets of the decedent's estate within four months from the date of qualification.

B. The Clerk will have given you an Inventory form at the time of your qualification, along with instructions for completing the form. List the assets over which you took control at the date of death value. Use the exact figures for valuation. Do not round numbers.

1. If you have determined that there are no assets and that no assets are expected to be found, you may file a combination Inventory/First and Final Account (using the Inventory form) on which you state in sentence form "No assets found or anticipated to be found and the Curatorship is closed". There is no filing fee required in this instance.

2. If an Executor or Administrator qualifies on this estate before you have made any disbursements, you may file a combination Inventory/First and Final Account (using the Inventory form) on which you state in sentence form after the listing of the assets over which you took control, "As Curator I made no disbursements of the above assets. I have delivered all such assets to the Executor or Administrator of this estate who qualified on (date)". The filing fee in this instance is based on the account fee schedule (no separate fee for an Inventory is required).

C. Inventories must be printed legibly in blue or black pen or typed and signed by each Curator who qualified.

D. You should submit the fully executed Inventory form, in duplicate, with the appropriate filing fee to the Commissioner of Accounts office. The Clerk will have given you a filing fee schedule at the time you qualified.

E. Inventories may be filed by mail or in person at the Commissioner of Accounts office if you make an appointment ahead of time. An appointment can usually be made with as little as one day's notice.

F. Each Curator must supply the Commissioner of Accounts with his telephone numbers and current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Curator to keep the

Commissioner of Accounts apprized of a current street address.

II. ACCOUNTINGS

A. Virginia Code Section 64.2-1206 requires every Curator to file an account of the assets of the estate with the Commissioner of Accounts.

B. The Clerk will have given you an Account form which must be used and instructions on completing the form at the time of qualification. You may also download forms and instructions from the Virginia Supreme Court website (www.courts.state.va.us).

C. The first accounting must cover the period from the date of qualification through the next four months. It must be filed with the Commissioner of Accounts within six months from the date of qualification.

1. If you have determined that there are no assets and that no assets are expected to be found, you may file a combination Inventory/First and Final Account (using the Inventory form) on which you state in sentence form "No assets found or anticipated to be found and the Curatorship is therefore closed".

2. If an Executor or Administrator qualifies on this estate before you have made any disbursements, you may file a combination Inventory/First and Final Account (using the Inventory form) on which you state in sentence form after the listing of the assets over which you took control, "As Curator I made no disbursements of the above assets. I have delivered all such assets to the Executor or Administrator of this estate who qualified on (date)". The filing fee in this instance is based on the account fee schedule (no separate fee for an Inventory is required).

D. Second and subsequent accountings are due within 16 months from the ending date of the prior report, and should cover 12 months. A final account may cover less than 12 months.

E. Every accounting filed must be accompanied by the following:

1. Original and one copy of the accounting signed by each Curator who qualified.

2. A check payable to the Commissioner of Accounts in

the appropriate amount for the filing fee. The Clerk will have given you the filing fee schedule when you qualified.

3. Bank photocopies of cancelled checks. When you set up your bank accounts make sure you use a bank that will give you copies of the cancelled checks with your monthly statement. A bank statement or brokerage statement showing the date, the check number, the payee, and the amount will also be accepted. Statements are required to document bank fees and electronic debits. **Vouchers must be submitted in the same order as the disbursements appear on the accounting.** Vouchers do not need to be filed in duplicate.

4. Verification of each asset that remains on hand as of the end of the account period must be provided.

a. For bank accounts, a bank statement, reconciled to agree with your accounting, must be provided.

b. Brokerage account statements should be supplied to verify stocks, bonds, and other securities or funds held. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or provide a statement from a bank officer certifying that the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the accounting.

c. Titles for cars, boats, etc., should be exhibited. Jewelry and furnishings can be supported by a statement from a disinterested third party certifying the existence and the location of said assets. The statement by the third party should include his printed name, address and daytime phone number.

d. Original Notes must be exhibited.

e. Copies of K-1 forms from the tax returns may be used to verify any limited partnership interests.

f. Where the market value of the asset is not equal to the carrying value, show the market value in parentheses within the asset description, or use a separate column for market value.

5. A final accounting must show ZERO assets on hand. No assets may be held in escrow by the Curator for any reason whatsoever.

F. All original vouchers will be returned to the Curator or

his representative after the completion of the Commissioner's audit.

G. Accountings must be printed legibly in blue or black pen or typed.

H. Accountings may be filed by mail or in person at the Commissioner of Accounts office if you call for an appointment ahead of time. An appointment can usually be made with as little as one day's notice.

I. Each Curator must supply the Commissioner of Accounts with his telephone numbers, and current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Curator to keep the Commissioner of Accounts apprized of his current street address.

III. PAYMENTS OF DEBTS

A. A Curator is charged with gathering the assets of the decedent and marshaling or protecting them until such time as an Executor or Administrator qualifies. Therefore, a Curator should not pay any debts of the decedent except as follows:

1. Costs of administration - These include qualification costs, attorney fees relating to the administration of the estate, Curator's commission, filing fees, and bond premiums.

2. Unsecured Debts - These may be paid only to the extent that payment will not affect the priority in the order of payment prescribed by law, specifically Virginia Code Section 64.2-528, the insolvent estate statute.

3. Secured Debts - Depending on the circumstances, it may be appropriate to make car payments or mortgage payments if these expenditures are advisable to protect the assets of the decedent from repossession or foreclosure.

4. Virginia Code Section 64.2-1415(B) sets out the liability of a personal representative regarding improper payment of debts.

IV. DISTRIBUTIONS TO HEIRS

A. A Curator is not permitted to make distributions to heirs. He is only guarding the assets until delivery can be made

to the Executor or Administrator of the Estate.

V. INVESTMENTS BY CURATORS

A. A curatorship is normally a short-lived matter, therefore investments by the Curator should be minimized. It is suggested that cash be kept in an interest bearing checking account unless large sums are involved. Existing cash accounts should be kept as is except to the extent that the value of an account exceeds the FDIC insurance limits. Other assets, such as stocks, bonds, etc., should be kept as they were by the decedent unless liquidation is necessary for costs of administration.

B. Virginia Code Section 64.2-1502 provides a listing of securities which may be invested in by a Curator.

C. It is recommended that the Curator use Virginia banks for estate accounts.

D. A Curator may not invest money on unsecured notes or buy real estate or lend money to himself.

E. Be sure to title all bank accounts and investments properly. Every asset should be titled: **"Your name, Curator for Decedent's Name"**.

VI. COMPENSATION FOR CURATORS

A. Virginia Code Section 64.2-1208 provides for all fiduciaries to receive "reasonable" compensation.

1. The Commissioner of Accounts will approve a fee to a Curator based upon the amount of time and effort expended, the difficulty of the task, and the responsibility undertaken. It is recommended, therefore, that the Curator keep a detailed record of his time, including a description of work done by him, to present to the Commissioner to support the fee the Curator desires.

VII. FAILURE TO PROPERLY FILE INVENTORY OR ACCOUNTINGS

A. Should a Curator fail to file the required report within the time required by law or within an approved extension period, the following actions may result:

1. A summons will be issued by the Commissioner of Accounts and served on the fiduciary by the Sheriff. The summons gives the Curator 30 days from the date of the service to file the required report with the Commissioner of Accounts.

2. If the summons deadline is not met, the Commissioner of Accounts will make his report to the Court and request the Judge to issue a Rule to Show Cause against the fiduciary. Said Rule will be served by the Sheriff and the fiduciary will be required to appear in Court to explain to the Judge why he has not filed the required report and why he should not be fined and/or removed as the Curator.

B. Virginia Code Section 64.2-1217 provides that fiduciaries who fail to settle their accounts as required by Section 64.2-1206 shall forfeit their commissions unless allowed by the Commissioner of Accounts for good cause shown.

C. Fees for the issuance of the summons and Rule, as well as any Court appearance by the Commissioner of Accounts, are charged against the Curator personally.

D. Virginia Code Section 64.2-1216 requires the Commissioner of Accounts to send a copy of his report to the Court to the Virginia State Bar for any fiduciary who is an attorney.

VIII. TERMINATION OF CURATORSHIP

A. The Curator should deliver all remaining assets, if any, to the Executor or Administrator of his decedent's estate upon their qualification.

B. Remaining costs of administration, i.e., the filing fee and Curator's fee, should be paid by the new fiduciary.

C. File your Final Account with the Commissioner of Accounts showing a zero balance on hand, along with the Executor's or Administrator's receipt of all assets delivered to them, and other supporting vouchers.

D. Send a copy of your Final Account to your bondsman so that they will stop billing you.