

## **SOLVING THE INSOLVENT ESTATE PUZZLE.**

Virginia Academy of Elder Law Attorneys UnProgram  
March 2017

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- I. Why Would Anyone Do This? *Part I: Is it Worth it?***
- II. So We're Doing it Anyway. Review the Rules Right Away!**
- III. Administer the Estate with Extra Care.**
- IV. Be Aware of Special Rules for Insolvent Estates.**
- V. Take Advantage of the Debts and Demands Process.**
- VI. Why Would Anyone Do This? *Part II: Control the process!***
- VII. Hypothetical. Let's Do Some Math.**
- VIII. Any Questions?**

## I. Why Would Anyone Do This?

- A. Estate administration is already hard enough, and with insolvent estates there are extra rules. Disappointed creditors and heirs will be scrutinizing every move.
- B. Administrators and Executors take on fiduciary obligations and may become personally liable for mistakes.
- C. Knowing what lies in store for them, sometimes the best advice is to just let it go and move on!

## II. So We're Doing it Anyway. Review the Rules Right Away!

- A. Administrators of insolvent estates have been required to respect higher priority creditors since the founding of the Commonwealth:

"The law has fixed the various grades of dignity among the debts due from an intestate. According to which order, the administrator is bound to pay them at the peril of what is called *devastavit*, and he is bound to pay, a creditor of superior dignity postponed, out of his own estate, if his assets fail..."<sup>1</sup>

- B. A testator cannot use a Will to try to change the statutory order of priority of debts.<sup>2</sup>
- C. Statutory order of priority of debts:<sup>3</sup>
  - 1. Costs and expenses of administration;
  - 2. Statutory allowances (64.2-309 *et seq.*);
  - 3. Funeral expenses up to \$4,000;
  - 4. Debts and taxes with preference under federal law;
  - 5. Medical expenses of decedent's last illness, including compensation of persons attending him not to exceed

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<sup>1</sup> *Mayo v. Bentley*, 8 Va. 528 at 557 (1800).

<sup>2</sup> *Deering & Co. v. Kerfoot's Ex'r*, 89 Va. 491 at 494 (1892).

<sup>3</sup> Virginia Code § 64.2-258. All statutes listed in the footnotes are included in the appendix.

\$2,150 per hospital/nursing home and \$425 per person furnishing services or goods.

6. Debts and taxes due the Commonwealth;
  7. Debts due as trustee for persons under disabilities, as receiver or commissioner or fiduciary;
  8. Debts and taxes due localities;
  9. (COMING SOON??? *Child support debts*;<sup>4</sup>)
  10. All other claims.
- D. Pay all debts in the highest priority class in full before moving on to the next class.<sup>5</sup>
- E. If there aren't enough funds to pay all debts of the same class, pay them *pro rata* – do not favor one over the other.<sup>6</sup>

### **III. Administer the Estate with Extra Care.**

- A. Don't spend too much on the funeral!
- *Consider donating the body to science.*<sup>7</sup>
  - *If it's too late and the family already paid out of their own pocket, just give them the bad news they will only be reimbursed \$4,000 from the Estate; a portion of the rest of their claim for reimbursement could be paid pro rata with the rest of the lowest priority debts, IF there's enough money leftover.*
- B. Don't pay any bills other than a mortgage or lien.

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<sup>4</sup> Senate Bill 815, Virginia 2017 Session, prefiled by Senator Surovell on Nov. 2, 2016.

<sup>5</sup> Virginia Code § 64.2-529.

<sup>6</sup> Virginia Code § 64.2-528.

<sup>7</sup> For more information, see the website of the Virginia Department of Health, Office of the Chief Medical Examiner: [www.vdh.virginia.gov/medical-examiner/vsap/body-donation](http://www.vdh.virginia.gov/medical-examiner/vsap/body-donation)

- *A mortgage is a debt secured during decedent's lifetime, so it is not affected by 64.2-528 priority rules.<sup>8</sup>*
- C. Send every Creditor a letter telling them they will have to wait.
- *See my sample letter in the materials, along with the sample creditor Proof of Claim form used by Ross Hart.*
  - *The best practice is to not pay off any debts until it is time to close the Estate.*
- CI. Proceed as normal with administration of the Estate:
1. Probate the Will, if any; qualify as Executor/Administrator.
  2. Send Notice to heirs at law and beneficiaries of Will, if any, and file the Affidavit of Notice with the court.
  3. Start working on taxes right away!
    - *Hire a CPA, it is an administrative cost, highest priority.*
  4. If decedent was intestate, petition the circuit court to grant you the powers listed in Virginia Code § 64.2-105, including authority to sell any real estate.<sup>9</sup>
    - *Attorney fees for this are paid as an administrative cost.*
  5. Marshall the assets.
  6. File the Inventory.
    - *An appraisal is not required, but is very strongly recommended.*
    - *You don't want to over-value any personal items, especially if those items are going to the spouse or minor children as exempt property.*
    - *It's better to show that you sold assets for more than their inventory value, than to show a loss.*

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<sup>8</sup> Virginia Code § 64.2-530.

<sup>9</sup> Virginia Code § 64.2-106.

7. Debts and Demands process (see section V below).
8. Pay debts in the proper order as directed.
9. File your final accounting.

#### **IV. Be Aware of Special Rules for Insolvent Estates.**

- A. No interest can be paid on debts.<sup>10</sup>
- B. Debts of the same class are not given priority if the debt was already due. They are paid on equal footing as debts in the same class that are not yet due.<sup>11</sup>
- C. Twelve-month rule (from date of qualification) protects the personal representative if another debt in the same class, previously unknown, is later claimed after a debt was paid.<sup>12</sup>
  - *This statutory rule may be derived from the common law maxim “vigilantibus non dormientibus lege subveniunt” – “the law serves those who are vigilant, not those who sleep”. It was not the duty of executors to hunt after creditors who never made a claim against the estate.*<sup>13</sup>
  - *However, this should be irrelevant, as the personal rep can be protected by the debts and demands process!*
- D. An administrator who has failed to follow the rules cannot be charged beyond the assets of the estate.<sup>14</sup>
- E. If an insolvent estate is owed money, the administrator is not required to sue for the debt (or be charged personally for failing to do so) when it is apparent the debtor is unable to pay it.<sup>15</sup>

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<sup>10</sup> Manual for Commissioners of Accounts, ¶ 15.301(B), citing *Virginia Surety Co., Inc., v. Hilton*, 181 Va. 952 (1943).

<sup>11</sup> Virginia Code § 64.2-528.

<sup>12</sup> Virginia Code § 64.2-529.

<sup>13</sup> *Mayo v. Bentley*, 8 Va. 528 at 549 (1800).

<sup>14</sup> *Virginia Surety Co. v. Hilton*, 181 Va. 952 at 956 (1943).

<sup>15</sup> *Id.* at 95.

- F. If the decedent owned a business, be careful! If it was a sole proprietorship, then business debts are likely the lowest priority and may not be paid with estate funds until all higher priority debts are paid.<sup>16</sup>
- G. Statutory claims for spouse and/or minor children are high priority! They must be paid even before ANY funeral expense.
  - 1. Family Allowance – up to \$24,000.<sup>17</sup>
  - 2. Exempt Property – up to \$20,000 (first from tangibles, or else with cash).<sup>18</sup>
  - 3. Homestead Allowance – up to \$20,000 (in lieu of any share the spouse would have received by will or intestacy) (but this claim is not available if the spouse claims elective share of augmented estate).<sup>19</sup>
  - 4. Be aware, if the administrator pays the maximum, a zealous creditor could sue and ask the court to determine in its discretion whether the amount paid was “reasonable”.<sup>20</sup> (However, rarely do commercial creditors take such measure, this would more likely be either a local entity or a big creditor.)

## **V. Take Advantage of the Debts and Demands Process.**

- A. Contact the Commissioner of Accounts in writing to schedule.<sup>21</sup>
- B. Send notices to each known creditor at least 10 days prior to hearing. Certified mail is best in order to prove they were sent.

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<sup>16</sup> *Estate of Wisemiller*, 2006 Va. Cir. LEXIS 217, \*5 (Fairfax, 2006). This case is included in the appendix.

<sup>17</sup> Virginia Code § 64.2-309.

<sup>18</sup> Virginia Code § 64.2-310.

<sup>19</sup> Virginia Code § 64.2-311.

<sup>20</sup> *Hill v. Clarke*, 71 Va. Cir. 377 at 380 (Culpeper, 2006).

<sup>21</sup> Virginia Code § 64.2-550 *et seq.*

Inform the creditor whether or not you agree with their claim and explain why.

- C. The Commissioner will publish the notice in the newspaper.
- D. Find out if any creditor shows up at the hearing. In most jurisdictions, you do not have to attend (since creditors rarely appear), and if a creditor does appear the Commissioner will continue the hearing for that creditor.
  - *If it is a contested claim, the Commissioner may require you to resolve it in court.*<sup>22</sup>
- E. Only those creditors who have a claim recognized by the administrator, or else creditors who file a claim and appear at the hearing with proof are allowed to be paid from the estate.<sup>23</sup>
  - *Is it still an insolvent estate?*
- F. Within 60 days, the Commissioner will file a Report with the Circuit Court setting forth the debts and expenses to be paid, stating separately the debts and demands of each class.<sup>24</sup>
- G. File Motion for Show Cause with Circuit Court. The earliest this can occur is six months after qualification.
- H. Court Clerk publishes the Show Cause Order in the newspaper.
  - *See Ross Hart's sample Order in materials.*
- I. Appear in Court for entry of Order of Payment of Debts per the Report of the Commissioner.<sup>25</sup> This hearing may also be utilized to "clean up" other minor issues with the Estate.
- J. Pay the debts and demands as instructed in the Order. When following this process in good faith, the personal rep "shall not be liable for any demands of creditors and all other persons."<sup>26</sup>

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<sup>22</sup> Virginia Code § 64.2-550(C).

<sup>23</sup> Virginia Code § 64.2-552.

<sup>24</sup> Virginia Code § 64.2-551.

<sup>25</sup> Virginia Code § 64.2-553.

<sup>26</sup> Virginia Code § 64.2-556(B).

## VI. Why Would Anyone Do This? Control the process!

- A. Minimize claims with Debts and Demands Hearing.
- B. Protect special assets (heirlooms, sentimental items, etc.)
- C. Protect joint accounts.
  - *Executor/Administrator has no obligation to make a claim on a joint account unless "any person interested in the estate" requests it in writing within six months of qualification.<sup>27</sup>*
- D. Try to minimize consequences on joint debtors.
  - *Ordinarily an Estate has a claim against a joint debtor for contribution of half of a joint debt paid by the Estate.*
- E. Enforce maximum statutory claims to benefit spouse/minors.
- F. Take Fiduciary Compensation.
  - *If an attorney assisted with ordinary fiduciary duties, the attorney fees may be deducted from normal fiduciary compensation. Since insolvent estates are more difficult than normal, ask the Commissioner to consider the fees as an administrative cost so the fiduciary can still take normal compensation. Ask the Commissioner to pre-approve fees.*

## VII. Hypothetical. Let's Do Some Math.

Danny Deadbeat died owing the following debts:

- \$ 40,000 credit card debt
- \$ 10,000 secured loan on his work pickup
- \$ 50,000 promissory note to his brother Darrell
- \$ 13,000 medical bills from his last illness
- \$ 40,000 business debts from his sole proprietorship
- \$ 25,000 federal taxes
- \$ 10,000 state taxes
- \$ 5,000 county personal property taxes

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<sup>27</sup> Virginia Code § 64.2-515(B).



= \$193,000 total debts

Danny's assets included his own separate bank account that held \$30,000, a business bank account with \$5,000, stocks worth \$50,000, a motorcycle worth \$15,000, a work pickup worth \$15,000, tools from his business worth \$10,000, and other personal items worth \$5,000. His entire probate estate is valued at \$130,000.

Danny's wife Delores collected \$100,000 from a life insurance policy and went to live with her sister. Delores paid out of her pocket for a funeral that cost her \$14,000. Delores hired you to help her through probate and you charged a total of \$5,000. You hired a CPA to prepare Danny's tax returns and the accounting, and paid the CPA \$2,000. Delores paid out of pocket \$2,000 for probate tax, court costs, and filing fees. Delores filed claims for the maximum amount of Family Allowance and Exempt Property.

Delores gives the work truck to the bank's collector, who sells it at auction for \$12,000 after costs. The bank pays \$2,000 of the proceeds to the Estate after paying off the debt. Delores sells the stock and the motorcycle for what they are worth. She then has \$102,000 in the estate bank account plus the tools and personal items. Next she starts paying some debts:

- 1) Costs of Administration:
  - \$ 5,000 to you for attorney fees
  - \$ 2,000 to the CPA
  - \$ 2,000 to herself for probate tax, court costs, and filing fees
  - \$ 1,500 to herself as a fiduciary fee (5% of \$130,000 = \$6,500; less the \$5,000 paid to you for normal administrator duties)
- 2) Statutory Claims:
  - \$24,000 to herself for Family Allowance claim
  - \$10,000 in business tools and \$5,000 personal items are given to Delores under the Exempt Property claim plus \$5,000 cash
- 3) Funeral Expenses:
  - \$ 4,000 to herself for partial reimbursement of funeral expenses (leaving a debt to herself in the amount of \$10,000)
- 4) Federal debts and taxes:
  - \$25,000 in federal taxes
- 5) Medical expenses of last illness
  - \$ 2,150 to partially pay the hospital bill
  - \$ 425 to a doctor

\$ 425 to the lab  
(leaving total medical debts in the amount of \$10,000)

6) State taxes:  
\$10,000 in state taxes.

7) Local taxes:  
\$ 5,000 in county taxes.

Delores now has \$15,500 in the estate bank account. Danny's brother Darrell and the other creditors have been hounding Delores and you for payment! You request a debts and demands hearing and everyone shows up with proper proof. The Commissioner of Accounts files a Report approving of everything you and Delores have done thus far. (Hurrah! Note the safer route would have been to get the Court Order approving payment of all of these debts she already paid.)

The Commissioner finds that there remain the following debts, all in the same lowest priority class: \$40,000 credit card debt, \$50,000 loan from Darrell, \$10,000 in medical bills, \$10,000 to Delores for funeral expenses, and \$40,000 in business debts for a grand total of \$150,000. The pro rata share is  $\$15,500/\$150,000 = 10.333\%$ . The Commissioner's Report directs that the remaining debts be paid as follows:

\$ 4,133.33 to the credit card company  
\$ 5,166.67 to Darrell for the loan  
\$ 1,033.33 for medical bills  
\$ 1,033.33 to Delores for funeral expenses  
\$ 4,133.33 for business debts  
\$15,499.99 total

(The leftover penny should go to you for a job well done!)

### **VIII. Any Questions?**

Check with your Commissioner of Accounts or local probate attorneys for questions as some local preferences and procedures may vary.

Please don't hesitate to give me a call at 703-368-9196 or email me at [pmenke@manassasalawyers.com](mailto:pmenke@manassasalawyers.com).

## [Va. Code Ann. § 64.2-528](#)

Current through the 2016 Regular Session of the General Assembly

[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 5. PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES](#) > [ARTICLE 5. LIABILITY OF PERSONAL ESTATE TO DEBTS.](#)

### **§ 64.2-528. Order in which debts and demands of decedents to be paid**

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When the assets of the decedent in his personal representative's possession are not sufficient to satisfy all debts and demands against him, they shall be applied to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;
2. The allowances provided in Article 2 ([§ 64.2-309](#) et seq.) of Chapter 3;
3. Funeral expenses not to exceed \$ 4,000;
4. Debts and taxes with preference under federal law;
5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed \$ 2,150 for each hospital and nursing home and \$ 425 for each person furnishing services or goods;
6. Debts and taxes due the Commonwealth;
7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of the Commonwealth; as personal representative, guardian, conservator, or committee when the qualification was in the Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;
8. Debts and taxes due localities and municipal corporations of the Commonwealth; and
9. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

### **History**

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Code 1950, § 64-147; 1956, c. 231; 1966, c. 274; 1968, c. 656, § 64.1-157; 1972, c. 96; 1981, c. 580; 1986, c. 109; [1993, c. 259](#); [1996, c. 84](#); [1997, c. 801](#); [2007, c. 735](#); [2008, cc. 666, 817](#); [2012, c. 614](#); [2014, c. 532](#).

Annotations

## Notes

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### THE 2014 AMENDMENTS. --

The 2014 amendment by c. 532, in subdivision 3, substituted "\$4,000" for "\$3,500"; and in subdivision 5, substituted "\$2,150" for "\$400" and "\$425" for "\$150."

## Case Notes

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EDITOR'S NOTE. --The cases annotated below were decided under prior law.

PROVISIONS OF THIS SECTION ARE MANDATORY; they cannot be changed or disregarded by the court. [Trevillian's Ex'rs v. Guerrant's Ex'rs, 72 Va. \(31 Gratt.\) 525 \(1879\)](#); [Deering & Co. v. Kerfoot, 89 Va. 491, 16 S.E. 671 \(1892\)](#).

THEY ARE BINDING UPON THE TESTATOR. --Wills must conform to this section as to the order in which personalty shall be applied in the payment of a decedent's debts; and it is beyond the power of a testator to affect the legal order of payment by a direction in his will. [Deering & Co. v. Kerfoot, 89 Va. 491, 16 S.E. 671 \(1892\)](#).

AND UPON THE PERSONAL REPRESENTATIVE. --It is the duty of a personal representative to pay the debts of the decedent in their order of priority as prescribed by law, and if he pays an inferior debt, leaving a debt of a preferred class unpaid, the payment constitutes a devastavit in case of a deficiency of assets. [Mayo v. Bentley, 8 Va. \(4 Call\) 528 \(1800\)](#); [Nimmo's Ex'r v. Commonwealth, 14 Va. \(4 Hen. & M.\) 57, 4 Am. Dec. 488 \(1809\)](#); [McCormick v. Wright, 79 Va. 524 \(1884\)](#).

WHEN A WILL CONTAINS NO SPECIFIC DIRECTIONS for the payment of funeral expenses and debts, the provisions of this section control. [Moon v. Norvell, 184 Va. 842, 36 S.E.2d 632 \(1946\)](#).

SECTION APPLIES ONLY TO DEBTS OF DECEDENT. --This section applies to debts of the decedent, not to debts for someone else. [Hall v. Stewart, 135 Va. 384, 116 S.E. 469 \(1923\)](#).

FUNERAL EXPENSES AND COSTS OF ADMINISTRATION HAVE PRIORITY. --This section in effect declares that no part of a decedent's estate shall be applied to his debts until the costs of administration of his estate and his funeral expenses have been paid. [Hall v. Stewart, 135 Va. 384, 116 S.E. 469 \(1923\)](#).

EXECUTORS AND ADMINISTRATORS OUGHT TO BE ALLOWED ALL REASONABLE CHARGES and disbursements for the benefit of the estate they represent, and a reasonable recompense for their personal trouble, in preference to the claim of any creditor of the decedent. [\*Nimmo's Ex'r v. Commonwealth, 14 Va. \(4 Hen. & M.\) 57 \(1809\).\*](#)

FEES PAID COUNSEL. --An executor or administrator ought to be credited in his administration account for fees paid to counsel, notwithstanding those fees were more than the law allowed. [\*Lindsay v. Howerton, 12 Va. \(2 Hen. & M.\) 9 \(1807\).\*](#)

CLAIM OF STATE AGAINST ESTATE OF DEFAULTING OFFICER. --The fourth clause of this section (see now subdivision 6), referring to taxes and levies assessed on a decedent prior to his death does not apply to the claim of the State against the estate of a deceased defaulting sheriff for taxes collected and unaccounted for by him. [\*Spilman v. Payne, 84 Va. 435, 4 S.E. 749 \(1888\).\*](#)

SUBDIVISION PREFERRING FIDUCIARY DEBTS WAS ONLY PROSPECTIVE IN ITS OPERATION, and will not authorize the placing of decedent's debts as trustee in the preferred class, where the decedent died before the passage of the act though the estate is not distributed until afterwards. [\*Price's Ex'r v. Harrison's Ex'r, 72 Va. \(31 Gratt.\) 114 \(1878\).\*](#)

IT ACCORDS PRIORITY ONLY WHEN FIDUCIARY HAS QUALIFIED. --The wards of a guardian de son tort are not entitled, under this section, to any priority over the general creditors of such guardian in the distribution of his personal estate after his death. The language of this section plainly accords priority only where there has been a qualification, and that qualification has been in this State, and the section cannot be extended by construction. [\*Watts v. Newberry, 107 Va. 233, 57 S.E. 657 \(1907\).\*](#)

TERM "TRUSTEE" MUST BE UNDERSTOOD IN THE RESTRICTED SENSE of an express trustee, as distinguished from trustee in a general sense, by construction or implication of law. But a trustee de facto, by qualifying, becomes an express trustee, and liable as such for the amount which he owed the estate while acting as trustee de facto, and should have paid to himself. [\*Brown v. Lambert's Adm'r, 74 Va. \(33 Gratt.\) 256 \(1880\).\*](#)

IT DOES NOT INCLUDE A CONSTRUCTIVE TRUSTEE. --When a commissioner received the proceeds of the sale of an infant's lands under such circumstances as to make him a constructive or de facto trustee for the infant, the claim for these funds does not, upon his death, become a preferred debt under this section, as the statute does not contemplate a preference in favor of the debts of constructive trustees. [\*Pope v. Prince, 105 Va. 209, 52 S.E. 1009 \(1906\).\*](#)

CHARACTER OF DEBT IS NOT CHANGED BY GIVING BOND. --B was the guardian of J, and upon J's coming of age had a settlement with J of his account as guardian, and being found indebted on the account, executed bonds, for the amount of the

balance due. B paid the interest during his life, and a part of the principal, and was up to the war able to pay the whole. It was held that the giving and taking of these bonds was not a novation of the debt, but the debt due from B to J continued to be a fiduciary debt, and was entitled to rank as such in the administration of B's estate. [Smith v. Blackwell, 72 Va. \(31 Gratt.\) 291 \(1879\)](#). See also [Hamlin's Adm'r v. Atkinson, 27 Va. \(6 Rand.\) 574 \(1828\)](#); [Yerby v. Lynch, 44 Va. \(3 Gratt.\) 460 \(1847\)](#).

FIDUCIARY OBLIGATION HAS PRIORITY OVER PARTNERSHIP DEBTS. --Where a deceased partner's separate assets are insufficient to pay all his debts, those due by him in a fiduciary capacity are to be paid before firm debts. [Robinson v. Allen, 85 Va. 721, 8 S.E. 835 \(1889\)](#).

DEBT ATTRIBUTABLE TO DECEDENT'S ESTATE. --The estate was liable to pay the mortgage debt based on two questions: (1) whether the decedent had a personal obligation to pay the debt; and (2) whether the mortgage debt was secured by real property owned by the decedent upon his death. The answer to the first question was that the decedent was personally and solely liable for the note that he signed, and therefore, the mortgage debt was a debt of his estate. In answer to the second question, the mortgage debt was not secured by real property owned by the decedent upon his death. The decedent's ownership interest did not survive his death. The spouses owned the property as tenants by the entirety with the right of survivorship. Therefore, the property passed to the surviving spouse by operation of law and was not part of the estate. [Dolby v. Dolby, 280 Va. 132, 694 S.E.2d 635, 2010 Va. LEXIS 69 \(2010\)](#).

## **CIRCUIT COURT OPINIONS**

PRIORITY OF CLAIMS FOR ELECTIVE SHARE AND EXEMPT PROPERTY. --Estate and a surety company were ordered to pay claims by the wife of a decedent under §§ 64.1-151.1 and 64.1-151.2, as the executor breached her duties by paying claims against the estate other than death taxes and administrative costs prior to paying the wife's claims, as the wife's claims had priority under § 64.1-157. Hill v. [Clarke, 71 Va. Cir. 377, 2006 Va. Cir. LEXIS 260 \(Hopewell 2006\)](#).

PRIORITY OF CLAIMS. --Because the parties stipulated that the Category 7 creditor had priority under § 64.1-157, the executor improperly paid credit card debts, business expenses, and funeral expenses exceeding \$2,000 [now \$3,500], which had a lower priority; however, the county personal property tax payment and an autopsy were properly paid as Category 1 and 5 claims. [Estate of Wisemiller, 2006 Va. Cir. LEXIS 217](#) (Fairfax County Nov. 13, 2006).

## **Research References & Practice Aids**

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**LAW REVIEW. --**

For article on 2007 and 2008 legislative and judicial developments in the areas of wills, trusts, and estates, see [43 U. Rich. L. Rev. 435 \(2008\)](#).

**MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see [8A M.J. Executors and Administrators, §§ 91, 106, 110](#); [12B M.J. Marshaling Assets and Securities, § 15](#).

CODE OF VIRGINIA

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## 2016 Bill Text VA S.B. 815

Prefiled, November 2, 2016

### Reporter

2016 Bill Text VA S.B. 815

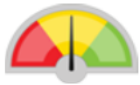
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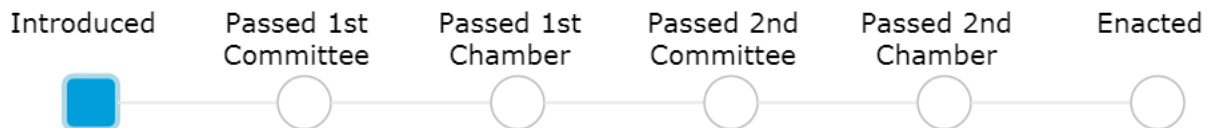
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**THE STATE OF VIRGINIA BILL TEXT > VIRGINIA 2017 SESSION > SENATE BILL 815**

### Progress



**Medium** chance to pass next stage



### Synopsis

A BILL to [amend and reenact Section 64.2-528](#) of the Code of Virginia, relating to priority of debts to be paid from decedent's assets; unpaid child support.

Patron-- Surovell

Referred to Committee for Courts of Justice

### Text

*Be it enacted by the General Assembly of Virginia:*

1. That [Section 64.2-528 of the Code of Virginia](#) is amended and reenacted as follows:



Section 64.2-528. Order in which debts and demands of decedents to be paid.

When the assets of the decedent in his personal representative's possession are not sufficient to satisfy all debts and demands against him, they shall be applied to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;
2. The allowances provided in Article 2 (Section 64.2-309 et seq.) of Chapter 3;
3. Funeral expenses not to exceed \$ 4,000;
4. Debts and taxes with preference under federal law;
5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed \$ 2,150 for each hospital and nursing home and \$ 425 for each person furnishing services or goods;
6. Debts and taxes due the Commonwealth;
7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of the Commonwealth; as personal representative, guardian, conservator, or committee when the qualification was in the Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;
8. **DEBTS FOR UNPAID CHILD SUPPORT OBLIGATIONS;**
9. Debts and taxes due localities and municipal corporations of the Commonwealth; and
- 9 **10.** All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

## **History**

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SENATE BILL NO. 815

OFFERED JANUARY 11, 2017

PREFILED NOVEMBER 2, 2016

## **Sponsor(s)**

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Surovell

## **Classification**

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**Subject:** CHILD CUSTODY & SUPPORT (93%); LEGISLATION (91%); LEGISLATIVE BODIES (90%); LEGISLATORS (90%); HOSPITALS (75%); NURSING HOMES (69%)

**Load-Date:** November 3, 2016

THE STATE OF VIRGINIA BILL TEXT  
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## [Va. Code Ann. § 64.2-529](#)

Current through the 2016 Regular Session of the General Assembly

[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 5. PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES](#) > [ARTICLE 5. LIABILITY OF PERSONAL ESTATE TO DEBTS.](#)

### **§ 64.2-529. Creditors to be paid in order of their classification; class paid ratably; when representative not liable for paying debt**

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No payment shall be made to creditors of any one class until all those of the preceding class have been fully paid, and if the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after 12 months from his qualification, pays a debt or demand of his decedent is not personally liable for any debt or demand against the decedent of an equal or superior class, whether it is of record or not, unless he had notice of such debt or demand before making such payment.

### **History**

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Code 1950, § 64-148; 1968, c. 656, § 64.1-158; [2012, c. 614](#).

Annotations

### **Case Notes**

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EDITOR'S NOTE. --The cases annotated below were decided under prior law.

REPRESENTATIVE MAY NOT PREFER ONE CREDITOR OVER ANOTHER. --The representative's right to prefer one creditor over another is generally abolished and all debts of the same class are made payable pro rata in case of deficiency of assets. [Scott v. Cheatham, 78 Va. 82 \(1883\)](#).

HE MUST TAKE NOTICE OF JUDGMENTS. --An executor was required at his peril, to take notice of a judgment against his testator, and if he exhausts the assets by paying inferior debts (now within 12 months of his qualification), he must satisfy such judgment de bonis propriis. [Mayo v. Bentley, 8 Va. \(4 Call\) 528 \(1800\)](#); [Nimmo's Ex'r v. Commonwealth, 14 Va. \(4 Hen. & M.\) 57 \(1809\)](#).

DEBTS WAIVING HOMESTEAD EXEMPTIONS. --After the exempted property has been set apart, the residue shall be applied towards paying all the decedent's debts

ratably, unless there be some entitled to priority under § 64.1-157, and after the residue has been exhausted the exempted property may be subjected to pay such portions of the homestead-waived debts as remain unpaid. [Strange v. Strange, 76 Va. 240 \(1882\)](#).

## **Research References & Practice Aids**

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### **MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see [8A M.J. Executors and Administrators, §§ 108, 110, 350](#); [12B M.J. Marshaling Assets and Securities, § 15](#).

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## [Va. Code Ann. § 64.2-530](#)

Current through the 2016 Regular Session of the General Assembly

[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 5. PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES](#) > [ARTICLE 5. LIABILITY OF PERSONAL ESTATE TO DEBTS.](#)

### **§ 64.2-530. Lien acquired during lifetime of decedent not affected**

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The provisions of [§§ 64.2-528](#) and [64.2-529](#) shall not affect any lien acquired during the lifetime of the decedent.

#### **History**

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Code 1950, § 64-149; 1968, c. 656, § 64.1-159; [2012, c. 614](#).

Annotations

#### **Case Notes**

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JUDGMENT LIEN TAKES PRIORITY OVER FUNERAL EXPENSES. --It is clear that the liens obtained in the lifetime of a decedent, whether upon his real or personal property, are paramount to all other claims whatsoever attaching thereon after his death. Consequently judgment liens acquired on the decedent's property during his lifetime have priority over the funeral expenses of the decedent. *Wood v. Wood's Adm'r*, 5 Va. L. Reg. 395 (1899) (decided under prior law).

LIEN OF FIERI FACIAS UPON CHOSSES IN ACTION. --The lien of an execution of fieri facias upon the debtor's choses in action, though not enforced in his lifetime, continues after his death as against the other creditors of the debtor. [Trevillian's Ex'rs v. Guerrant's Ex'rs](#), 72 Va. (31 Gratt.) 525 (1879) (decided under prior law).

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## [Va. Code Ann. § 64.2-515](#)

Current through the 2016 Regular Session of the General Assembly

[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 5. PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES](#) > [ARTICLE 3. AUTHORITY AND GENERAL DUTIES.](#)

### § 64.2-515. Duty of fiduciaries as to joint accounts

- A.** Except as provided in subsection B, a fiduciary charged with the administration of the estate of a decedent is not required to assert a claim on behalf of the decedent's estate to any funds on deposit in any financial institution in a joint account held, at the time of the decedent's death, in the name of the decedent and one or more other persons when the terms of the contract of deposit, or the laws of the state in which such funds are deposited, permit such financial institution to pay the funds to (i) any of such persons in whose name the account is held, whether the other, or others, are living or not, or (ii) a named survivor or survivors.
- B.** The fiduciary shall assert a claim to such funds if he receives a request in writing from any person interested in the estate within six months from the date of the initial qualification of the estate. The fiduciary, or his attorney, shall acknowledge in writing receipt of such request within 10 days, and if the fiduciary is the surviving cotenant of such funds, the fiduciary shall segregate such funds and place such funds in an interest-bearing account, awaiting an appropriate court order concerning the ultimate disposition of such funds. The fiduciary shall not use such funds for his own personal account. However, if the fiduciary accedes to the request that such funds be treated as estate funds, the fiduciary may distribute the funds according to law without any court order.

### History

Code 1950, § 64-131.1; 1966, c. 600; 1968, c. 656, § 64.1-140; 1970, c. 425; [2012, c. 614](#).

Annotations

### Case Notes

THIS SECTION IS DESIGNED TO PROTECT BANKS AND PERSONAL REPRESENTATIVES. It does not prohibit the filing of claims on such bank account. It

does protect a personal representative who elects not to file. [Colley v. Cox, 209 Va. 811, 167 S.E.2d 317 \(1969\)](#) (decided under prior law).

## **Research References & Practice Aids**

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### **LAW REVIEW. --**

For survey of legislation on wills and estates -- and duty of fiduciary regarding joint accounts and those payable on death, see 5 U. Rich. L. Rev. 202 (1970). For survey of Virginia law on wills, trusts and estates for the year 1969-1970, see 56 Va. L. Rev. 1559 (1970).

### **MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see [3A M.J. Banks and Banking, § 66](#); [8A M.J. Executors and Administrators, §§ 64, 66](#).

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## [Va. Code Ann. § 64.2-309](#)

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[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 3. RIGHTS OF MARRIED PERSONS](#) > [ARTICLE 2. EXEMPT PROPERTY AND ALLOWANCES.](#)

### **§ 64.2-309. Family allowance**

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- A.** In addition to any other right or allowance under this article, upon the death of a decedent who was domiciled in the Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum not to exceed \$ 24,000, or in periodic installments not to exceed \$ 2,000 per month for one year. It is payable to the surviving spouse for the use of the surviving spouse and minor children or, if there is no surviving spouse, to the person having the care and custody of the minor children. If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.
- B.** The family allowance has priority over all claims against the estate.
- C.** The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.
- D.** The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid.

### **History**

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1981, c. 580, §§ 64.1-151.1, 64.1-151.4; 1987, c. 222; [1990, c. 831](#); [1996, c. 549](#); [2001, c. 368](#); [2012, c. 614](#); [2014, c. 532](#).

Annotations

### **Notes**

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**THE 2014 AMENDMENTS. --**



The 2014 amendment by c. 532, in subsection A, substituted "\$24,000" for "\$18,000" and "\$2,000" for "\$1,500."

## Case Notes

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### CIRCUIT COURT OPINIONS

EDITOR'S NOTE. --The cases below were decided under former Title 64.1 and prior law.

PRIORITY OF PAYMENT. --Estate and a surety company were ordered to pay claims by the wife of a decedent under §§ 64.1-151.1 and 64.1-151.2, as the executor breached her duties by paying claims against the estate other than death taxes and administrative costs prior to paying the wife's claims, as the wife's claims had priority under § 64.1-157. Hill v. [Clarke, 71 Va. Cir. 377, 2006 Va. Cir. LEXIS 260 \(Hopewell 2006\)](#).

NO WAIVER OF ALLOWANCE. --Widow had not waived her claims to the family allowance and exempt property by signing a premarital agreement. The agreement limited the widow's waiver to separate property and thus did not prevent her from claiming her statutory rights to marital property. [Davenport v. Walters, 69 Va. Cir. 334, 2005 Va. Cir. LEXIS 332 \(Norfolk 2005\)](#).

EXECUTOR'S COMPLIANCE WITH § 64.1-151.5 SUPPORTED MOTION TO AFFIRM VALIDITY OF ELECTION. --Elections affirmed because: (1) an executor, who was also the decedent's surviving spouse, complied with § 64.1-151.5 regarding her intent to claim the allowances enumerated thereunder; (2) a claim that she failed to make the election in her capacity as the surviving spouse, but as the estate's executor, lacked merit; and (3) the court disagreed that the language in the deed in which the executor recorded said intent was precatory. [In re Wisemiller, 2007 Va. Cir. LEXIS 192](#) (Fairfax County Nov. 19, 2007).

ASSETS CONSIDERED. --Non-probate assets flowing to a spouse and the spouse's independent sources of income were properly considered in denying the spouse's request for a family allowance above \$18,000 under § 64.1-151.1. [Estate of Spears v. Spears, 2008 Va. Cir. LEXIS 149](#) (Fairfax County Nov. 3, 2008).

## Research References & Practice Aids

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### LAW REVIEW. --

For article, "Support of the Surviving Spouse and Minor Children in Virginia: Proposed Legislation v. Present Law," see 14 U. Rich. L. Rev. 639 (1980). For article reviewing recent legislative and judicial developments in the Virginia law of wills, trusts, and estates, see [68 Va. L. Rev. 521 \(1982\)](#). For article, "How Bankruptcy Exemptions Work: Virginia As an Illustration of Why the 'Opt Out' Clause Was a Bad

Idea," see 8 G.M.U. L. Rev. 1 (1985). For article, "Wills, Trusts, and Estates," see [35 U. Rich. L. Rev. 845 \(2001\)](#).

**MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see [8A M.J. Executors and Administrators, § 106](#); 8A M.J. Exemptions from Execution and Attachment, §§ 7, 12.

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## [Va. Code Ann. § 64.2-310](#)

Current through the 2016 Regular Session of the General Assembly

[Code of Virginia](#) > [TITLE 64.2. WILLS, TRUSTS, AND FIDUCIARIES](#) > [SUBTITLE II. WILLS AND DECEDENTS' ESTATES](#) > [CHAPTER 3. RIGHTS OF MARRIED PERSONS](#) > [ARTICLE 2. EXEMPT PROPERTY AND ALLOWANCES.](#)

### § 64.2-310. Exempt property

- A.** In addition to any other right or allowance under this article, the surviving spouse of a decedent who was domiciled in the Commonwealth is entitled from the estate to value not exceeding \$ 20,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If the value of the exempt property selected in excess of any security interests therein is less than \$ 20,000, or if there is not \$ 20,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$ 20,000 value.
- B.** The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property has priority over all claims against the estate, except the family allowance.
- C.** The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

### History

1981, c. 580, § 64.1-151.2; [1990, c. 831](#); [1996, c. 549](#); [2001, c. 368](#); [2012, c. 614](#); [2014, c. 532](#).

Annotations

### Notes

#### **THE 2014 AMENDMENTS. --**

The 2014 amendment by c. 532, in subsection A, substituted "\$20,000" for "\$15,000" throughout the subsection.

### Case Notes

## **CIRCUIT COURT OPINIONS**

EDITOR'S NOTE. --The cases below were decided under former Title 64.1 and prior law.

STATUTORY ALLOWANCES. --Despite the lack of personal representative, § 6.1-125.8 [now see [§ 6.2-611](#)] provided that the funds in a joint bank account could be used to satisfy a widow's allowance under § 64.1-151.2 when the assets of the estate were otherwise insufficient. [Bray v. Ireland, 69 Va. Cir. 270, 2005 Va. Cir. LEXIS 333 \(Norfolk 2005\)](#).

PRIORITY OF PAYMENT. --Estate and a surety company were ordered to pay claims by the wife of a decedent under §§ 64.1-151.1 and 64.1-151.2, as the executor breached her duties by paying claims against the estate other than death taxes and administrative costs prior to paying the wife's claims, as the wife's claims had priority under § 64.1-157. Hill v. [Clarke, 71 Va. Cir. 377, 2006 Va. Cir. LEXIS 260 \(Hopewell 2006\)](#).

NO WAIVER OF EXEMPT PROPERTY. --Widow had not waived her claims to the family allowance and exempt property by signing a premarital agreement. The agreement limited the widow's waiver to separate property and thus did not prevent her from claiming her statutory rights to marital property. [Davenport v. Walters, 69 Va. Cir. 334, 2005 Va. Cir. LEXIS 332 \(Norfolk 2005\)](#).

ELECTIONS AFFIRMED. --Elections affirmed because: (1) an executor, who was also the decedent's surviving spouse, complied with § 64.1-151.5 regarding her intent to claim the allowances enumerated thereunder; (2) a claim that she failed to make the election in her capacity as the surviving spouse, but as the estate's executor, lacked merit; and (3) the court disagreed that the language in the deed in which the executor recorded said intent was precatory. [In re Wisemiller, 2007 Va. Cir. LEXIS 192](#) (Fairfax County Nov. 19, 2007).

## **Research References & Practice Aids**

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### **MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see 8A M.J. Exemptions from Execution and Attachment, §§ 7, 12, 21.

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## [Va. Code Ann. § 64.2-311](#)

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### § 64.2-311. Homestead allowance

- A.** In addition to any other right or allowance under this article, a surviving spouse of a decedent who was domiciled in the Commonwealth is entitled to a homestead allowance of \$ 20,000. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to \$ 20,000, divided by the number of minor children.
- B.** The homestead allowance has priority over all claims against the estate, except the family allowance and the right to exempt property.
- C.** The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will or by intestate succession is less than \$ 20,000, then the surviving spouse or minor children are entitled to a homestead allowance in an amount that when added to the property passing to the surviving spouse and minor children by the decedent's will or by intestate succession, equals the sum of \$ 20,000.
- D.** If the surviving spouse claims and receives an elective share of the decedent's estate under [§§ 64.2-302](#) through [64.2-307](#) or Article 1.1 ([§ 64.2-308.1](#) et seq.), as applicable, the surviving spouse shall not have the benefit of any homestead allowance.

### History

1981, c. 580, § 64.1-151.3; [1990, c. 831](#); [2001, c. 368](#); [2012, c. 614](#); [2014, c. 532](#); [2016, cc. 187, 269](#).

Annotations

### Notes

#### **THE 2014 AMENDMENTS. --**

The 2014 amendment by c. 532 substituted "\$20,000" for "\$15,000" throughout the section.

## **THE 2016 AMENDMENTS. --**

The 2016 amendments by cc. 187 and 269 are identical, and inserted "or Article 1.1 ([§ 64.2-308.1](#) et seq.), as applicable" in subsection D.

## **Case Notes**

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DECEASED SPOUSE'S FAILURE TO EXERCISE EXEMPTION RIGHTS. --Debtor was not entitled to an additional \$5,000 (now \$15,000) homestead exemption under this section resulting from his deceased wife's failure to exercise her homestead exemption rights. *Ames v. Custis*, 87 Bankr. 415 (Bankr. E.D. Va. 1988) (decided under prior law).

SPOUSE OR MINOR MAY NOT EXERCISE DECEDENT'S EXEMPTION. --This section does not grant a surviving spouse or minor children the right to exercise for their own benefit a decedent's homestead exemption. *Ames v. Custis*, 87 Bankr. 415 (Bankr. E.D. Va. 1988) (decided under prior law).

## **CIRCUIT COURT OPINIONS**

ELECTIONS AFFIRMED. --Elections affirmed because: (1) an executor, who was also the decedent's surviving spouse, complied with § 64.1-151.5 regarding her intent to claim the allowances enumerated thereunder; (2) a claim that she failed to make the election in her capacity as the surviving spouse, but as the estate's executor, lacked merit; and (3) the court disagreed that the language in the deed in which the executor recorded said intent was precatory. *In re Wisemiller, 2007 Va. Cir. LEXIS 192* (Fairfax County Nov. 19, 2007) (decided under prior law).

## **Research References & Practice Aids**

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### **LAW REVIEW. --**

For article, "How Bankruptcy Exemptions Work: Virginia As an Illustration of Why the 'Opt Out' Clause Was a Bad Idea," see 8 G.M.U. L. Rev. 1 (1985).

### **MICHIE'S JURISPRUDENCE REFERENCES. --**

For related discussion, see 8A M.J. Exemptions from Execution and Attachment, §§ 7, 12.

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## *Estate of Wisemiller*

Circuit Court of Fairfax County, Virginia

November 13, 2006, Decided

FI-2004-0072482

### **Reporter**

2006 Va. Cir. LEXIS 217 \*; 2006 WL 3420623

Estate of C. Joseph Wisemiller, III

**Subsequent History:** Motion granted by [\*In re Wisemiller, 2007 Va. Cir. LEXIS 192 \(Va. Cir. Ct., Nov. 19, 2007\)\*](#)

### **Case Summary**

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#### **Procedural Posture**

A Category 7 creditor filed exceptions to an executor's first account filed pursuant to Va. Code Ann. § 64.1-157; the creditor claimed that the executor improperly paid Category 8 creditors of the estate before paying it.

#### **Overview**

The parties stipulated that the Category 7 creditor had priority under § 64.1-157 and that its claim was to be granted in full. However, because the estate was insolvent, the priority of creditors' claims was important since it was unlikely that all claims would be paid in full. The court found that the executor improperly paid creditors of the estate with a lower priority than the Category 7 creditor. It was undisputed that the decedent's credit card debts and business expenses had a Category 8 priority. In addition, any funeral expenses exceeding \$ 2,000 were improperly paid. However, the county personal property tax payment qualified as a cost or expense of the administration of the decedent's estate, and thus was a Category 1 debt properly paid before the Category 7 creditor. In addition, the autopsy qualified as a Category 5 claim under § 64.1-157. expenses associated with a funeral. The proper remedy was for the executor to refund the amount improperly paid to Category 8 creditors of the estate and to file a second account.

#### **Outcome**

The exceptions were granted, and the executor was directed to the amount improperly paid to Category 8 creditors of the estate and to file a second account.

**Counsel:** [\*1] Cathleen Schmidt Gormley, Esq., Law Offices of Cathleen Schmidt Gormley, P.C., Fairfax, Virginia.

Karl W. Pilger, Esq., Boring & Pilger, P.C., Vienna, Virginia.

**Judges:** Robert W. Wooldridge, Jr.

**Opinion by:** Robert W. Wooldridge, Jr.

## Opinion

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### OPINION LETTER

This matter recently came before me on the Exceptions to the First Account filed by Dianne Steelman, Trustee of the Jason C. Kefauver Trust (the "Kefauver Trust"), a creditor to the Estate of C. Joseph Wisemiller, III (the "Estate"). The Kefauver Trust, as a Category 7 claim under Va. Code Ann. § 64.1-157, enjoys priority over all Category 8 claims against the Estate. The Trustee's Exceptions to the First Account states that Kathryn Thiel as Executor <sup>1</sup> of the Estate has improperly paid \$ 52,872.83 to Category 8 creditors of the Estate before paying the Category 7 Kefauver Trust. Following the hearing, I took the matter under advisement. For the reasons that follow, I find that the Executor improperly paid \$ 50,545.53 to creditors of the Estate with a lower priority than the Kefauver Trust. Therefore, I rule that \$ 50,545.53 should be refunded to the Estate and a Second Account be filed to permit the proper [\*2] distribution of assets as required by § 64.1-157.

The name decedent, C. Joseph Wisemiller, died on January 16, 2004. His wife, Ms. Thiel, qualified as the Executor of his estate on February 6, 2004. On July 11, 2005, the Executor filed the First Account of the Estate. The Commissioner held a Debts and Demands hearing on September 13, 2005, pursuant to Va. Code Ann. § 64.1-171, at which time the claim of the Kefauver Trust was heard. On January 6, 2006, the Commissioner approved the First Account. On January 23, 2006, the Trustee filed her Exceptions to the First Account, stating that claims with a Category 8 priority had been improperly paid before the claim of the Kefauver Trust.

At the outset, it should be noted that the parties have stipulated that the Kefauver Trust should be granted Category 7 priority [\*3] under § 64.1-157 and that the claim of the Kefauver Trust of \$ 157,000 should be granted in full. It should also be recognized that the Estate is insolvent and thus the priority of creditors' claims is important since it is unlikely that all claims will be paid in full. The issue then is whether the Executor improperly paid the claims of Category 8 creditors before the claim of the Kefauver Trust.

At the hearing, the Trustee identified seven types of improper payments paid by the Executor to creditors having a lower priority than the Kefauver Trust. The first type of improper payments is "Payments admitted by Executor ('Cat 8 Creditor')," totaling \$ 27,100.78. The Executor has agreed that these payments were to creditors with Category 8 claims that should not have been paid before the claim of the Kefauver Trust. Since both parties have agreed that these payments were to

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<sup>1</sup> Ms. Thiel is referred to as the Executor, rather than the Executrix, of the Estate throughout the parties' pleadings; therefore, that nomenclature will be used in this letter.



Category 8 creditors, I find the amount of \$ 27,100.78 was improperly paid by the Executor from the Estate.

Next, the Trustee identified \$ 1,137.66 as "Payments improperly classified as 'Paid Before Qualification.'" These payments consist of two automated debits from the decedent's bank account to pay two credit [\*4] card bills. The first payment was made on February 9, 2004, to "Chrysler CR" for \$ 674.20. The second payment was made on February 26, 2004 to "Cap One" for \$ 463.46. It is undisputed that the credit card debts are debts having a Category 8 priority under § 64.1-157. The Trustee argued that since the Executor's date of qualification was February 6, 2004 (before either of the automated payments), any credit card payments after the date of qualification should not have been paid before the Kefauver Trust, regardless of whether the payments were automated. The Executor argued that since the payments were automated and came directly from the decedent's bank account, she should not be required to refund that amount to the Estate. I find the Executor's argument unpersuasive. The Executor is certainly not to be faulted for automated payments paid from the decedent's bank account less than one month after the date of her qualification. However, the fact remains that these payments occurred after the Executor's date of qualification and are to creditors with a lower priority than the Kefauver Trust. As such, I find that \$ 1,137.66 was improperly paid from the Estate.

The third type of improper [\*5] payments identified by the Trustee is "Payments improperly classified as 'Business Expenses'" in the amount of \$ 506.92. These payments consist of three payments to Verizon for \$ 117.51, \$ 146.53, and \$ 52.87; two payments to AT&T for \$ 86.64 and \$ 23.97; and one payment to Fairfax County for \$ 79.40. The five charges to Verizon and AT&T were paid as business expenses of the decedent's corporation J&W Associates. The payment to Fairfax County was for the decedent's personal property tax. Regarding the Verizon and AT&T charges, the Trustee argued that business expenses should be considered Category 8 claims under § 64.1-157. I find that argument persuasive. In the First Account, the Executor listed J&W Associates in the assets of the Estate and noted that J&W Associates was to be treated as a sole proprietorship. As such, any debts of J&W Associates should be considered as claims against the Estate and since such claims carry a Category 8 priority, they were improperly paid by the Executor before the claim of the Kefauver Trust. However, I find that the \$ 79.40 Fairfax County personal property tax payment qualifies as a cost or expense of the administration of the decedent's Estate [\*6] and thus is a Category 1 debt properly paid before the Kefauver Trust. Therefore, I find that \$ 427.52 was improperly paid from the Estate.

The Trustee identified the fourth type of improper payment as "Payments improperly classified as 'Funeral.'" The Trustee argues that a \$ 699.42 payment for an obituary reimbursement and a \$ 2,000 payment for an autopsy reimbursement are Category 8 claims, rather than funeral expenses. I find that an autopsy qualifies as a Category 5 claim under § 64.1-157, which provides for medical and hospital

expenses of the last illness of the decedent. As a Category 5 claim, the autopsy has a higher priority than the Category 7 Kefauver Trust and thus was properly paid by the Executor before the Kefauver Trust. However, a newspaper obituary does not qualify as a Category 3 funeral expense under § 64.1-157. Therefore, I find that the \$ 699.42 charge for an obituary should not have been paid before the claim of the Kefauver Trust.

The fifth type of improper payment identified by the Trustee is "Account # 41 (United Bank)" in the amount of \$ 1,681.93. I find that all payments in this category are Category 8 claims against the Estate, which were improperly [\*7] paid before the claim of the Kefauver Trust. First, there are eleven payments to "Paychex" totaling \$ 680.33. These are business debts of J&W Associates and as discussed above, should be classified as Category 8 claims. (It should be noted that Paychex overcharged J&W Associates and subsequently issued a refund of \$ 248.00, which was properly credited in the First Account). Next, there are eight "billing fee" charges totaling \$ 79.60. These are expenses associated with the J&W Associates checking account and are properly classified as Category 8 claims. There are also overdraft and stop payment fees of \$ 322.00 associated with the J&W Associates checking account, which are also business expenses that should be classified as Category 8 claims. Finally, there was a \$ 600.00 payment to "Shirley Flaherty" made from the J&W Associates checking account on March 17, 2004. Evidence was produced at the hearing that this expense was a reimbursement for the decedent's funeral. Although funeral expenses are classified as Category 3 claims under § 64.1-157, as discussed below, there is a \$ 2,000 limit on expenses associated with funerals. As the Executor has already exceeded the \$ 2,000 limit, [\*8] this \$ 600.00 payment to Shirley Flaherty was improperly paid before the claim of the Kefauver Trust. Therefore, I find that all the above charges from Account # 41 were improperly paid from the Estate.

Next, the Trustee identified \$ 15,997.22 as "Funeral Expenses exceeding Sec. 64.1-157." In the First Account, the Executor lists a number of payments that were classified as expenses arising out of the decedent's funeral. This includes two separate funeral charges of \$ 3,200.00 and \$ 12,843.14, as well as a reception cost of \$ 1,504.08 and the St. Ambrose funeral cost of \$ 450.00. Together, these costs total \$ 17,997.22. While it is true that under § 64.1-157, funeral debts enjoy Category 3 status, there is a \$ 2,000 limit on expenses associated with a funeral. Therefore, only \$ 2,000 was properly paid from the Estate as a Category 3 claim enjoying priority over the Category 7 Kefauver Trust. The remaining \$ 15,997.22 was improperly paid from the Estate.

Finally, the Trustee identifies \$ 3,748.90 as "Account # 58 (United Bank)" payments. These payments consist of a check book fee and various charges for preparing tax returns for the decedent's businesses. The Executor argued that [\*9] these payments qualify as Category 1 claims since they were costs and expenses of the administration of the decedent's estate. Given that corporate tax returns are prepared annually in the regular course of a corporation's business, I find the

Executor's argument unpersuasive and regard these claims as Category 8 claims improperly paid before the claim of the Kefauver Trust.

In summary, the following payments were improperly paid by the Executor:

<b>Improper Payment</b>	<b>Amount</b>
Payments Admitted by Executor	\$ 27,100.78
Cap One Autopayment	\$ 463.46
Chrysler CR Autopayment	\$ 674.20
J&W Associates' Verizon bills	\$ 317.01
J&W Associates' AT&T bills	\$ 110.61
Post Obituary Reimbursement	\$ 699.42
Paychex payments	\$ 680.33
J&W Associates billing fees	\$ 79.60
J&W Associates overdraft fees	\$ 322.00
Shirley Flaherty	\$ 600.00
Funeral	\$ 3,200.00
Funeral	\$ 12,843.14
Reception (funeral)	\$ 1,504.08
St. Ambrose funeral	\$ 450.00
Account # 58	\$ 3,748.90
 Subtotal	 \$ 52,793.53
Less \$ 2,000.00 exemption for funerals under § 64.1-157(3)	\$ (2,000.00)
Less \$ 248.00 Paychex reimbursement	\$ (248.00)
Total Overpayment	\$ 50,545.53

At the hearing, the [\*10] Executor urged the Court to consider the fact that the Commissioner has twice approved the Account for the Decedent's estate. While it is true that the Commissioner did approve the Account, the Commissioner also noted in the Commissioner's Report of Debts and Demands that the debt due from the Trust was a "proper [Category] seven claim." The Commissioner noted that the First Account was approved *without taking into account the fact that the Trust was a Category 7 claim* (Commissioner's Response to Exceptions # 6). This was due to the fact that the Commissioner felt that he was making a determination of law that the Trust was a claim having Category 7 preference. Since the Commissioner felt that determinations of law "are not matters for decision by the commissioner," he specifically noted that the Account was approved "without taking into account [my] opinion that the Kefauver Trust claim has the category 7 priority in the distribution of an insolvent estate." The parties have since stipulated that the Kefauver Trust is a Category 7 claim to the Estate. The Commissioner noted in his Response that in the event the Court should find that the Kefauver Trust claim has a Category [\*11] 7 priority, the Commission concurs with the Trustee that the First Account shows payment of debts that should not have been paid before the Kefauver Trust.

At the hearing, the Executor urged that the proper remedy is to offset any alleged improper payments made by the Executor against any amounts due to the Executor until such time as there is a final settlement of the estate. Given that the Estate is

insolvent and there will likely not be adequate funds to satisfy the claims of all creditors, I decline to follow this recommendation. It is crucial that any improper payments be refunded to the Estate and an accurate Second Account be filed. Therefore, I rule that the proper remedy is for the Executor to refund the \$ 50,545.53 improperly paid to Category 8 creditors of the Estate and to file a Second Account.

Robert W. Wooldridge, Jr.

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End of Document

**Va. Code Ann. § 64.2-550**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-550. Proceedings for receiving proof of debts by commissioners of accounts**

- A.** A commissioner of accounts who has for settlement the accounts of a personal representative of a decedent shall, when requested to so do by a personal representative or any creditor, legatee, or distributee of a decedent, or may at any other time determined by the commissioner of accounts, even though no accounting is pending, conduct a hearing for receiving proof of debts and demands against the decedent or the decedent's estate. The commissioner of accounts shall publish notice of the hearing at least 10 days before the date set for the hearing in a newspaper published or having general circulation in the jurisdiction where the personal representative qualified, and shall also post a notice of the time and place of the hearing at the front door of the courthouse of the court of the jurisdiction where the personal representative qualified. The commissioner of accounts may adjourn the hearing from time to time as necessary.
- B.** The personal representative shall give written notice by personal service or by regular, certified, or registered mail at least 10 days before the date set for the hearing to any claimant of a disputed claim that is known to the personal representative at the last address of the claimant known to the personal representative. The notice shall inform the claimant of his right to attend the hearing and present his case, his right to obtain another hearing date if the commissioner of accounts finds the initial date inappropriate, and the fact that the claimant will be bound by any adverse ruling. The personal representative shall also inform the claimant of his right to file exceptions with the circuit court in the event of an adverse ruling. The personal representative shall file proof of any mailing or service of notice with the commissioner of accounts.
- C.** The commissioner of accounts may direct the personal representative, the claimant, or both of them to institute a proceeding in the circuit court to establish the validity or invalidity of any claim or demand that the commissioner of accounts deems not otherwise sufficiently proved.

**History**

Code 1950, §§ 64-161, 64-162; 1966, c. 335; 1968, cc. 385, 656, §§ 64.1-171, 64.1-172; 1981, c. 484; 1989, c. 492; 2012, c. 614.

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**Va. Code Ann. § 64.2-551**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-551. Account of debts by commissioners of accounts**

The commissioner of accounts, within 60 days from the date of the hearing for receiving proof of debts and demands against the decedent or the decedent's estate or the date of the last adjournment of any such hearing, shall make out an account of all such debts or demands as have been sufficiently proved, stating separately the debts and demands of each class.

**History**

Code 1950, § 64-162; 1966, c. 335; 1968, c. 656, § 64.1-172; 2012, c. 614.

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**Va. Code Ann. § 64.2-552**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-552. How claims filed before commissioners of accounts; tolling of limitations period**

- A.** Any person who seeks to prove that he has a debt or demand against the decedent or the decedent's estate shall file his claim in writing with the commissioner of accounts, who shall endorse upon it the date of the filing and sign the endorsement in his official character.
- B.** If the commissioner of accounts recommends in writing the recovery or enforcement of a claim for a debt or demand against the decedent or the decedent's estate, the filing of such claim with the commissioner of accounts pursuant to subsection A shall toll any limitations period that would otherwise bar an action for the recovery or enforcement of the claim or bar the filing of such claim until the termination of the proceedings commenced under § 64.2-550.

**History**

Code 1950, § 64-163; 1968, c. 656, § 64.1-173; 1989, c. 492; 2012, c. 614.

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**Va. Code Ann. § 64.2-553**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia** > **TITLE 64.2.** > **SUBTITLE II.** > **CHAPTER 5.** > **ARTICLE 9.**

**§ 64.2-553. When court to order payment of debts**

- A. Upon confirmation of a report of the accounts of any personal representative and of the debts and demands against the decedent's estate pursuant to Chapter 12 (§ 64.2-1200 et seq.), the court shall order that so much of the estate in the possession of the personal representative as is proper be applied to the payment of such debts and demands. The court, in its discretion, may order that a portion of the estate be reserved to pay all or a proportion of a claim of a surety for the decedent or any other contingent claim against the estate, or to pay all or a proportion of any other claim not finally passed upon, provided that creditors of the same class shall be paid in the same proportion.
- B. For any claim allowed subsequent to any dividend where the court ordered that a portion of the estate be reserved to pay such a claim, the court shall order that the claim be paid from the estate in the possession of the personal representative, regardless of the existence of any debt or demand of superior dignity for which no reservation has been ordered. The claim shall be paid in the same proportion as creditors of the same class, provided, however, that whether there be enough reserved to pay the claim pursuant to this subsection shall not affect any dividend already paid.
- C. If there are assets remaining in the possession of the personal representative after claims are paid pursuant to subsections A and B, or if further assets come into the possession of the personal representative, such surplus shall be divided among all the decedent's creditors who have proved debts and demands against the decedent's estate in the order and proportion in which they may be entitled.

**History**

Code 1950, §§ 64-164, 64-165, 64-166; 1968, c. 656, §§ 64.1-174, 64.1-175, 64.1-176; 2012, c. 614.

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**Va. Code Ann. § 64.2-554**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Recieved by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-554. When distribution may be required; refunding bond**

A personal representative shall not be compelled to pay any legacy made in the will or to distribute the estate of the decedent for six months from the date of the order conferring authority on the first executor or administrator of such decedent and, except when it is otherwise specifically provided for in the will, the personal representative shall not be compelled to make such payment or distribution until the legatee or distributee gives a bond, executed by himself or some other person, with sufficient surety, to refund a due proportion of any debts or demands subsequently proved against the decedent or the decedent's estate and of the costs of the recovery of such debts or demands. Such bond shall be filed and recorded in the clerk's office of the court that may have decreed such payment or distribution or in which the accounts of such representative may be recorded.

**History**

Code 1950, § 64-167; 1968, c. 656, § 64.1-177; 2012, c. 614.

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Va. Code Ann. § 64.2-555

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia** > **TITLE 64.2.** > **SUBTITLE II.** > **CHAPTER 5.** > **ARTICLE 9.**

**§ 64.2-555. When fiduciaries are protected by refunding bonds**

If any personal representative pays any legacy made in the will or distributes any of the estate of the decedent and a proper refunding bond for what is so paid or distributed, with sufficient surety at the time it was made, is filed and recorded pursuant to § 64.2-554, *such personal representative shall not be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within six months from his qualification or before such payment or distribution, he had notice of such debt or demand. However, if any creditor of the decedent establishes a debt or demand against the decedent's estate by judgment therefor or by confirmation of a report of the commissioner of accounts that allows the debt or demand, a suit may be maintained on such refunding bond, in the name of the obligee or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon to the same extent that would have been had if such obligee or his personal representative had satisfied such debt or demand.*

**History**

Code 1950, § 64-168; 1968, c. 656, § 64.1-178; 2012, c. 614.

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**Va. Code Ann. § 64.2-556**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-556. Order to creditors to show cause against distribution of estate to legatees or distributees; liability of legatees or distributees to refund**

- A. When a report of the accounts of any personal representative and of the debts and demands against the decedent's estate has been filed in the office of a clerk of a court, whether under §§ 64.2-550 and 64.2-551 or in a civil action, the court, after six months from the qualification of the personal representative, may, on motion of the personal representative, or a successor or substitute personal representative, or on motion of a legatee or distributee of the decedent, enter an order for the creditors and all other persons interested in the estate of the decedent to show cause on the day named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs; the costs of such publication shall be paid by the petitioner or applicant. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes. However, every legatee or distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years after such payment or delivery is made, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate that have been finally allowed by the commissioner of accounts or the court, or that were not presented to the commissioner of accounts, and the costs of the recovery of such claim. In the event any claim becomes known to the fiduciary after the notice for debts and demands but prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall be given notice in the form provided in § 64.2-550 and the order of distribution shall not be entered until after expiration of 10 days from the giving of such notice. If the claimant, within such 10-day period, indicates his desire to pursue the claim, the commissioner of accounts shall schedule a date for hearing the claim and for reporting thereon if action thereon is contemplated under § 64.2-550.
- B. Any personal representative who has in good faith complied with the provisions of this section and has, in compliance with or, as subsequently approved by, the order of the court, paid and delivered the money or other estate in his possession to any party that the court has adjudged entitled thereto shall not be liable for any demands of creditors and all other persons.
- C. Any personal representative who has in good faith complied with the provisions of this section and has, in compliance with, or as subsequently approved by, the order of the court, paid and delivered the money or other estate in his possession to any party that the court has adjudged entitled thereto, even if such distribution shall be prior to the expiration of the period of one year provided in § 64.2-302, 64.2-313, 64.2-448, or 64.2-457, shall not be liable for any demands of spouses, persons seeking to impeach the will or establish another will, or purchasers of real estate from the personal representative, provided that the personal representative has contacted any surviving spouse known to it having rights of renunciation and ascertained that the surviving spouse had no plan to renounce the will, such intent to be stated in writing in the case of renunciation under § 64.2-302, and that the personal representative has not been notified in writing of any person's intent to impeach

the will or establish a later will in the case of persons claiming under § 64.2-448 or 64.2-457 or under a later will.

- D.** In the case of such distribution prior to the expiration of such one-year period, the personal representative shall take refunding bonds, without surety, to the next of kin or legatees to whom distribution is made, to protect against the contingencies specified in this section.

<b>History</b>
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Code 1950, § 64-169; 1966, c. 335; 1968, c. 656, § 64.1-179; 1980, c. 439; 1982, c. 588; 1989, c. 492; 1991, c. 527; 1996, c. 352; 2005, c. 681; 2012, c. 614.

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**Va. Code Ann. § 64.2-557**

Current through the 2012 Regular Session, and 2012 Special Session I. Annotations Current For Cases Received by January 8, 2013.

**Code of Virginia > TITLE 64.2. > SUBTITLE II. > CHAPTER 5. > ARTICLE 9.**

**§ 64.2-557. Form for notice to show cause under § 642-556**

Any notice to show cause published or posted in pursuance of the requirements of § 64.2-556 may be substantially in the form following:

Virginia: In the ..... Court of.....

the ..... day of ....

Re: ....., deceased.

**SHOW CAUSE ORDER**

It appearing that a report of the accounts of ....., Personal Representative of the estate of ....., deceased, and of the debts and demands against (his)(her) estate has been filed in the Clerk's Office, and that six months have elapsed since the qualification, on motion of ....., (a distributee;)(a legatee;)(the personal representative;) IT IS ORDERED that the creditors of, and all others interested in, the estate do show cause, if any they can, on the ..... day of ..... (before this Court at its courtroom) at ..... against the payment and delivery of the Estate of ....., deceased, to (the distributees) (the legatees) (without requiring refunding bonds) (with or without refunding bonds as the Court prescribes).

A Copy -- Teste:

.....

Clerk

....., p.q.

**History**

Code 1950, § 64-170; 1968, c. 656, § 64.1-180; 2012, c. 614.

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November 30, 2016

Estate Information Services, LLC  
PO Box 1730  
Reynoldsburg, OH 43068-8730

Re: Estate of Danny Deadbeat, deceased  
Reference # 19961411

Dear Sir or Madam,

Please be advised that Mr. Danny Deadbeat has recently died. Enclosed is a true copy of his death certificate. Please be advised that this law firm represents his wife, Delores Deadbeat, who has qualified as Administrator of his Estate with the Clerk of the Circuit Court of Prince William County. Please find enclosed a true copy of her Certificate of Qualification from the Court. Please direct all future correspondence in this matter to the undersigned attorney.

I understand Mr. Deadbeat may have an outstanding balance with your company. Please send me a detailed invoice with his balance and describing the charges. Please also send me the contract signed by Mr. Deadbeat agreeing to your services, or else tell me that none exists. Your response is requested within thirty (30) days of the date of this letter. If you do not wish to pursue this debt any further, please let me know in writing.

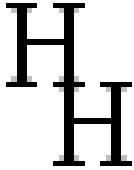
Please be patient as we begin the lengthy probate process. At this time, it does not appear that there are sufficient assets to pay all of Mr. Deadbeat's debts. Therefore, we first need to obtain information proving all of the debts and value his assets carefully. Then we must ensure that the debts are paid in the correct order of priority under Virginia law. Debts such as taxes, costs of administration, and spousal claims must be paid first.

Thank you for your attention to this matter. I am,

Sincerely Yours,  
Purnell, McKennett & Menke, PC

Phillip J. Menke

Encls.  
Cc: Delores Deadbeat



# HART & HART ATTORNEYS, LTD.

ROSS C. HART

40 W. MAIN ST., PO BOX 567, SALEM, VA 24153  
540-375-3281 F/540-375-7677 *office@hhatty.com*

January 19, 2017

Carilion Cons. Lab  
PO Box 12687  
Roanoke VA 24027-2687

RE: Lilly O. Newland  
SSN: 111-11-1111

Date of Death: August 29, 2008  
187L18863

We represent the above estate in probate proceedings now pending. As part of those proceedings, we have requested and scheduled a hearing for the receipt of debts and demands against the estate, and a copy of the notice is on the back of this sheet. The hearing is scheduled before the following Commissioner of Accounts at the date and time given:

Furman Whitescarver, Jr.  
418 E. Main Street  
Salem VA 24153

Telephone: 540-389-2381  
FAX: 540-389-4115  
**Hearing Date & Time:**  
**May 17, 2011 at 2:00 PM**

Our client has received information that you may claim entitlement to 98.00

This debt is not disputed. If you do nothing, the above amount will be assumed to be correct, and it will be paid at the proper time for distribution of the estate. **IF THE AMOUNT IS INCORRECT, YOU MUST NOTIFY THIS OFFICE AT ONCE.** If there is an error, please let us know as soon as possible, and provide the correct amount due. You may FAX the information to us at the above number; and you may wish to send a copy to the Commissioner of Accounts above. We reserve the right to dispute any correction you may claim. For your convenience we enclose a copy of a claim form and notice of your rights under Virginia law.

*NOTICE: This estate **does not** have sufficient funds to pay creditors in full. It is anticipated that distributions will be less than **One-Third** of the allowed claim amount.*

Should you have any questions, please feel free to call.

Very truly yours,

HART & HART ATTORNEYS, LTD.

Ross C. Hart

c: Linda M. Brickey  
Furman Whitescarver, Jr.

**PLEASE SEE NOTICE OF RIGHTS PURSUANT TO 64.2-550 ON THE BACK OF THIS SHEET**

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR ROANOKE COUNTY**

IN RE:

***ESTATE ADMINISTRATION PROOF OF CLAIM***

Creditor Name

Creditor Address

Contact Person

Direct Voice Phone/Ext

Fax

Contact Email

Account Number

Date Opened/Incurred

Total Amount Of Claim

Basis Of Claim/Debt

(*e.g.* Goods Or Services  
Provided, Type Of Loan  
or account)

*NOTE: if claiming a  
priority, give statutory  
basis*

SIGNATURE of  
Officer/Attorney

Print Name and Title:

Comments (use  
additional paper if  
needed)

*(Instructions for form on back or next sheet)*



## INSTRUCTIONS FOR ESTATE CLAIM:

1. You are **NOT** required to use this form; it is provided only as a convenience. You may submit whatever statement you wish as long as the ESTATE NAME appears at the top. You may also appear in person or by your attorney.
2. You **MUST** provide documentation of your claim. These include a copy of the contract or agreement signed by the deceased and a statement of account showing advances and payments for two years prior to death to date of submission. **Failure to include these documents may invalidate your claim.**
3. Submission of a written claim or response is consent to the authority of the Circuit Court for the above jurisdiction for purposes of your interest in this matter and determination of the validity of your claim.
4. A written claim submitted by a bank or corporation **must** be signed by its attorney or an officer, preferably Vice-President or higher; other businesses must sign by the owner or partner. It will be presumed that the signatory has all appropriate authority to act on behalf of the creditor.
5. If you have any questions, please call Mr. Hart or the Commissioner of Accounts.

SEND **ORIGINAL** CLAIM AND DOCUMENTATION TO:

With a *copy* to:

Commissioner of Accounts

(Commissioner of Accounts  
name & address & phone here

Ross C. Hart, Esq.  
Hart & Hart Attorneys, Ltd.  
PO Box 567  
Salem VA 24153  
(540) 375-7281  
FAX (540) 375-7677

**VIRGINIA:**

**ROANOKE CITY CIRCUIT COURT**

IN RE: [Decedent]

**ORDER**

[Fiduciary] has filed a petition to allow payment and delivery of the Estate of [Decedent] without requiring refunding bonds and for other relief, and a hearing will be held in this Court, 3<sup>rd</sup> Floor, 315 W. Church Ave., Roanoke VA 24016 on \_\_\_\_\_ at \_\_\_\_\_, or as soon after as it may be heard. It is ORDERED that all creditors and others interested in said estate appear at the hearing and SHOW CAUSE why the petition should not be granted.

The Clerk shall send a copy of this Order to the Roanoke Times to be published once a week for two weeks.

Enter: \_\_\_\_\_

Requested:  
Ross C. Hart [VSB 15888]  
PO Box 567, Salem VA 24153  
(540) 375-3281

\_\_\_\_\_  
Judge

*Drafting note: the Order modernizes the statutory advertisement, which is “suggested” language, not mandatory. It also minimizes the number of words, and therefore space, required for running the advertisement and thus the expense to the estate. The key requirements of the advertisement remain: the name of the decedent’s estate, the fact a petition has been filed to distribute the estate “and other relief”, and the date, time and location of the hearing.*

## **TOP RULES FOR FIDUCIARIES:**

You have been appointed as a Fiduciary by the Circuit Court and been given a thick instruction package which you must read carefully. Below are some important rules you need to follow as you fulfill your duties; these aren't the only rules but are the more important ones. If you are a conservator or trustee of a trust, there are additional special rules on investing and spending the money you hold, and you should consult an experienced attorney for those.

1. **KEEP MONEY SEPARATE** – DO NOT deposit any fiduciary money in your personal account or use fiduciary money to pay your personal bills – Criminal penalties could happen if you do. *Open a special account at a bank for all fiduciary funds.*
2. **GET CHECK IMAGES (or cancelled checks) AS PROOF OF PAYMENT AND KEEP ALL BANK RECORDS** – You must file an “Accounting” (a detailed statement of everything that you got and paid) with the Commissioner of Accounts assigned you by the Clerk. You have to prove that someone actually received the money you say you paid; **check images** are legal proof of payment. If your bank won't provide images, go to another bank.
3. **CAREFULLY DETAIL ALL MONEY** that comes in or goes out. For EACH item, you need to write down WHEN – WHO – WHAT/WHY – HOW MUCH. Example: If you get a \$20.00 check from an insurance company, you need the WHEN (date you got it), WHO (name of insurance company) WHAT/WHY (payment on medical treatment or refund on premium) and HOW MUCH (the exact amount of the check). If you can, photocopy all checks before depositing them in the bank.
4. **KEEP RECORDS** – Get a medium sized spiral notebook for a diary. In it write everything you do in handling the estate – who you talk to, what was said, what was done. For money, the checkbook register **MUST** be accurate. (Hint: Put money transactions in BOTH the notebook AND the checkbook register).
5. **GET RECEIPTS.** If you give someone personal property, you have to prove to the Commissioner that they got it AND what it was worth. A receipt is the best way to do this.
6. **DON'T PAY BILLS AND DEBTS TOO QUICKLY.** If there's not enough money in the estate, you can be personally responsible if you overpaid creditors. **THIS INCLUDES THE FUNERAL BILL.** There are laws that say who is entitled to what payment when, and if you think there may not be enough money to pay everything, consult an attorney.
7. **ASK QUESTIONS.** There are strict and detailed rules for handling someone else's money; few people have experience doing it. Find a lawyer experienced in this area and use him/her as a resource. Asking a stupid question is a lot cheaper than making a stupid mistake.
8. **KEEP ON TIME, USE THE PROPER FORMS.** Your inventory is due at the Commissioner's office in 4 months; your statement of account is due in 16 months (**6 months** if you are a guardian/conservator). You will have to pay a penalty personally if it's late. There are special forms and report formats the Court requires you to follow; use them.
9. **TAKE CARE OF TAXES.** You are responsible for making sure all tax returns are filed and taxes paid on time. If you're not sure what to do, get an accountant to help you.
10. **GET A SPECIAL TAX ID NUMBER** (decedent's estates and trusts). An estate is a different “person” from the person who passed away. IRS laws require a new Tax ID number. The good news is that the IRS makes this really easy to do.
11. **DON'T DISTRIBUTE TOO FAST** (or too slow) – The heirs of the estate want their money yesterday. Virginia law doesn't make you distribute for a year. If you give money to someone too early, and something happens that you need it back, you are personally and legally responsible for it.