COMMISSIONERS OF ACCOUNTS AND FIDUCIARIES

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

to

THE GOVERNOR

and

THE GENERAL ASSEMBLY OF VIRGINIA

SD 16, 1966

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
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COMMUNICATIONS OF ACCOUNTS AND FIDUCIARIES

REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, December 28, 1965.

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Over the past several years it has become increasingly apparent that there is wide variance in the interpretation of our laws relating to settling of estates; primarily, as to the accounting of fidiciaries, filing of inventories and appraisements, and the practice of approving accounts by Commissioners of Accounts. Realizing that the problems existing in this vital area could not be solved by piecemeal amendments, the General Assembly of Virginia, at its 1964 Session, directed the Virginia Advisory Legislative Council to study and report upon the laws relating to Commissioners of Accounts and fiduciaries and related matters. The Council was directed to recommend any changes in the statutory law which will clarify the respective duties of Fiduciaries and Commissioners of Accounts. Senate Joint Resolution No. 20 which directed the study is as follows:

SENATE JOINT RESOLUTION NO. 20

Directing the Virginia Advisory Legislative Council to study the laws relating to Commissioners of accounts and fiduciaries.

Whereas, among the several cities and counties of this State, there is a wide variance in the interpretation of the laws concerning the accounting of fiduciaries and the practice of approving accounts, inventories and appraisements by commissioners of accounts; and

Whereas, variance in interpretation and practice tends to lead to indecision and confusion on the part of persons and corporations regularly engaged in the practice of handling fiduciary matters in the various counties and cities; and

Whereas, several amendments to the statutes relating to the work of the commissioners of accounts have been suggested in recent years; and

Whereas, the Virginia State Bar Association has suggested that the present statutes relating to the work of commissioners of accounts be reviewed; and

Whereas, a thorough study and review should be made regarding such matters; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to study and report upon the laws relating to personal representatives

of deceased persons and other fiduciaries, and commissioners of accounts, together with any statutory changes that it might recommend towards clarifying or modifying the respective duties of fiduciaries and commissioners of accounts. The Council shall complete its study and report to the Governor and General Assembly not later than October one, nineteen h ndred sixty-five.

J. C. Hutcheson, of Lawrenceville, member of the Senate of Virginia and member of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were chosen to serve as members of the Committee with Senator Hutcheson: Edward L. Breeden, Jr., Attorney, Assistant Commissioner of Accounts and member of the Senate of Virginia, Norfolk; Hale Collins, Attorney and member of the Senate of Virginia, Covington; William P. Dickson, Jr., Attorney, Norfolk; George T. Ellis, Senior Vice-President and Trust Officer, First National Exchange Bank of Virginia, Roanoke; Brockenbrough Lamb, former Judge, Chancery Court, Richmond; Robert J. McCandlish, Jr., Attorney and Commissioner of Accounts, Fairfax; Miles Poindexter, II, Vice-President and Trust Officer, American National Bank and Trust Company, Danville; Charles H. Ryland, Attorney and Commissioner of Accounts, Warsaw; Virginius R. Shackelford, Jr., Attorney and Commissioner of Accounts, Orange; K. MacFarlane Smith, Attorney, Arlington; William B. Spong, Jr., Attorney, Commissioner of Accounts and member of the Senate of Virginia, Portsmouth; W. Carrington Thompson, Attorney and member of the House of Delegates, Chatham; and McDonald Wellford, Attorney and Commissioner of Accounts, Richmond.

The Committee organized and elected Mr. W. Carrington Thompson Vice-Chairman. John B. Boatwright, Jr. and Robert L. Masden served as Secretary and Recording Secretary, respectively, to the Committee.

Although no specific limitations were set forth in the resolution directing the study, the consensus of the Committee was that because of time limitations and the complexity of the study, the Committee should confine itself primarily to a study of Commissioners of Accounts and their relationships with fiduciaries.

To gain full appreciation of all the problems involved, the Committee sought the recommendations and suggestions of all Commissioners of Accounts, judges and clerks of court having probate jurisdiction, throughout the State. Appropriate notice was also given to all attorneys through the *Virginia Bar News* with the request that they submit any suggestions for recommendations to the Committee which they might have pertaining to the matters under study.

The Committee also sought the views of all interested individuals, groups and organizations throughout the State. After appropriate publicity, the Committee held a public hearing on March 8, 1965 at the State Capitol, which was well attended.

The Committee gave careful consideration the large volume of information and material compiled and the views expressed at the public hearings. After thorough discussion and deliberation of all aspects of the problems involved in the study, the Committee made its report to the Council. The Council has reviewed the report of the Committee and now presents its findings and recommendations, and reasons therefor.

RECOMMENDATIONS

I. Inventory and Appraisal

1. The fiduciary should be required to list all property which is within his possession or knowledge on the inventory, whether or not such property is subject to his supervision and control. (See page 9)
2. A statutory inventory form should be adopted and its use made mandatory. (See page 10)
3. An inventory and accounting should be required of every personal representative who qualifies on a decedent's estate except where qualification is for the sole purpose of bringing suit. (See page 10)
4. When court appointed appraisers are not requested by the personal representative or appointed on motion of the court or clerk to appraise the estate, the personal representative should be required to list on the inventory the value of all property of the decedent. The cost of determining the value of property of an estate should be specifically allowable as a proper cost of administration. (See page 10)
5. Appraisement of decedents' estates should not be mandatory. Appraisers should be appointed only upon request of the personal representative or on motion of the court or clerk. (See page 10)
6. Appraisers, if requested, should continue to be appointed at the time of qualification. (See page 11)
7. When appraisers are required to act under the law, they should appraise the entire estate, both real and personal, and such other property as may be presented for appraisal by the fiduciary. (See page 12)
8. Appraisers should be appointed only in the county or city where the personal representative qualifies. (See page 12)
9. The values established by appointed appraisers should be given prima facie value for all purposes. (See page 19)

II. Proceedings before Commissioners of Accounts:

1. The clerk should be authorized to take a new bond of a personal representative or other fiduciary on motion of the Commissioner, a party in interest or on the fiduciary's own motion or that of his surety. (See page 12)
2. The Commissioner of Accounts should be required to report to the clerk on the sufficiency of the bonds of all fiduciaries required to settle their accounts before the Commissioner. (See page 13)
3. A testamentary trustee should be required to qualify and give bond with surety unless surety is waived in the will. (See page 13)
4. Provisions pertaining to enforcing accountings by fiduciaries shoul- be made applicable to trustees under a deed of trust. (See page 13)
5. Time limitations and publication requirements imposed upon debts and demands and show cause proceedings should be reduced to approximately one-half of that required by present statutes. (See page 13)

6. The Commissioner of Accounts should be required to file his report of debts and demands within 60 days after the hearing or the last adjournment thereof. The period allowed for confirmation of accounts should be reduced to fifteen days. For clarity, § 26-27 of the Code should be amended to provide that "Every Commissioner of Accounts shall, o
. . . post . . . a list of fiduciaries whose accounts are before him for settlement . . ." (See page 14)

7. That § 31-11.1 of the Code be amended so as to omit the provisions allowing guardians to convert income payments from the Veterans' Administration into the corpus of an estate. It should also be provided that payments received by a guardian of an infant under the Federal Insurance Contributions Act, Workmen's Compensation Acts, or a policy of insurance shall be considered income rather than principal. (See page 14)

8. No security should be required on the bond if the personal representative of an estate is the sole distributee or sole beneficiary thereof unless requested by some party in interest. (See page 15)

III. Miscellaneous:

1. The personal representative should be given authority to sell property of the estate privately as well as at public auction. (See page 15)

2. Courts should be empowered to direct the delivery of intangible personal property to infants or adults and certain incompetents, where the value of the property does not exceed the statutory limit, without the intervention of a guardian or committee. Limitations thereon imposed in §§ 8-750 and 8-751 should be increased to $2,500. (See page 15)

3. Banks and trust companies should be authorized to pay small balances of deceased depositors to their surviving consort, if any, and if none, then to the next of kin. (See page 15)

4. § 6-54 of the Code should be amended to provide that banks or trust companies, upon request of the consort, or if there be no consort, then the next of kin, m y p y to the undert ker or mortuary handling the funeral of the decedent a sum not exceeding $200 to help defray the cost of such services. (See page 15)

5. Where any person has become a patient in a nursing home, or convalescent home or similar institution, it should be presumed that the place of legal residence of such person continues to be the same as before becoming a patient. (See page 16)

6. Where there are welfare funds due any decedent and there has been a qualification on his estate, the welfare agency should be authorized to disburse such funds directly to such person or persons as it might in its own discretion determine to be entitled thereto. Such agency should be authorized to stop payment on any check issued but not cashed at the time of death of such person and to distribute the funds in the above manner. (See page 16)

7. The amount which a superintendent of a mental institution, supported by the State, may pay to the consort or next of kin of a deceased person who died in such institution and for whom no committee or trustee has been appointed, should be increased to $1,000. (See page 16)

8. All Commissioners of Accounts, their assistants and deputies appointed hereafter should be discreet and competent attorneys at law; however, if no such attorney be found willing to serve, the court should be authorized to appoint some other discreet and proper person. Provision should be made to allow those individuals who are not attorneys presently holding the office to continue therein until dismissal, retirement or death. (See page 16)

9. Fees charged by Commissioners of Accounts for their services should not be standardized. (See page 17)

10. This study should be continued with emphasis on the following matters: whether or not Virginia should adopt the Uniform Fiduciaries Act; whether or not the distinctions between real and personal property in the administration of estates should be removed; orders of distribution; final discharge of fiduciaries; and problems of the pour-over trust. (See page 18)

REASONS FOR RECOMMENDATIONS

Among the several states there are many systems of settling estates. Virginia's present statutory procedure has much in common with many such systems. In most aspects we believe Virginia's procedure, which has been built on the solid foundation of trial and error over many years, is superior to that in a large number of our sister states. It is practical and flexible and has worked well for many years. Our recommendations are therefore directed to improving our system of settling estates where weaknesses have appeared from its application over the years.

I. *Inventory and Appraisal*

1. The expression "Inventory and Appraisal" is quite often thought of in a conjunctive sense, while in fact, the statute referring to appraisals is found in Title 64 of the Code relating to "Wills and Decedents' Estates," the specific section being 64-126; and the statutes relating to inventories are found in Title 26, dealing with "Fiduciaries Generally", the specific sections being 26-12 through 26-16.

Virginia Code § 26-12 requires every personal representative, guardian, curator or committee to file an inventory of all the personal and real estate, which has come to his possession or knowledge or which is under his management or subject to his authority as fiduciary, with the Commissioner of Accounts within a specified time. We believe that the inventory of an estate is truly the starting point for accounting and other fiduciary responsibilities and should be a document giving all possible information as to the nature of the property committed to the fiduciary's care.

At present there is some confusion as to just what must be included in the inventory. In most cases the fiduciary reports only assets subject to his supervision and control. In some instances of course, real estate, even though the fiduciary might have no power of sale, could be subject to his supervision and control pending location of heirs or devisees. It is interesting to note that some commissioners require the personal representative of an estate to report only assets subject to probate tax; that is, those subject to administration and real estate passing by descent or devise. Other commissioners require jointly owned property to be reported, including real and personal property, even though it is not part of the decedent's estate subject to administration. Nothing is usually said about

insurance passing to named beneficiaries or assets held in a revocable or irrevocable living trust that pass on death by terms of the trust. Yet both of these last two items could be construed as personal property "which has come to the knowledge" of the fiduciary.

Since the inventory is the instrument which, when recorded, places heirs and creditors on notice as to the assets of the estate, we believe the fiduciary should be required to list on the inventory all property which comes into his possession and of which he has knowledge whether or not it is under his management or subject to his authority in his fiduciary capacity.

2. To avoid confusion and to promote optimal uniformity in settling estates, we believe a statutory form of inventory should be adopted and required of all fiduciaries in all instances where inventories are required by law. The form should include appropriate instructions and should be presented to the fiduciary at the time of qualification by the court wherein the fiduciary qualifies. A suggested form is set forth in the appendix.

3. An inventory of some description is a necessity where there is property, real or personal, in the estate to be administered; but we believe the personal representative should be allowed to qualify without filing an inventory when qualification is for the sole purpose of bringing an action to recover damages under our Wrongful Death Statutes.

4. The value of the property in the estate is very important even in the administration of small estates. The fiduciary should be required to list the fair market value of all property listed in the inventory unless he requests the court to appoint appraisers to determine the value of the property in the estate. The cost of determining the value of property in the estate, when professional advice is deemed necessary by the fiduciary, should be allowed as part of the cost of administering the estate.

We believe this would be an improvement over the present method of allowing the appraisal to serve as an inventory. Under the recommended procedure, it would then be the responsibility of the fiduciary, if he does not request formal appraisement by court appointed appraisers, to determine the value of the assets and retain evidence to support these values if required.

5. During earlier years smaller estates used a simpler and shorter form known as an inventory, which was appropriate at that time. The inventory was presented to the commissioner, signed by the fiduciary and no appraisers were appointed to make an appraisement of the estate. This was a good system for the smaller estates.

It has been repeatedly suggested that the requirement of appraisal for a substantial estate should not apply to those of smaller monetary value. This is now the case with regard to the transfer of a family automobile, bank accounts under $1,000, and the payment of other small sums to the surviving consort without administration. The appraisement waiver was first written into the law in 1960 with an exemption of $1,000. It was increased by the 1964 amendment to $2,500.

The difficulty is not only the size of the estate that should be exempt from a great amount of the troublesome detail of estate administration, but also, how certain can we be that an estate is in fact what is indicated on the inventory and no more? Thus, the problem is not simply the amount to be exempted, but whether such exemption from appraisement should be determined by some arbitrary aggregate value of an estate or whether by the type of property in the estate. We believe the latter is

the most appropriate means of determining whether an appraisement is needed. Since most estates vary so greatly in size, quantity and type of property to be administered, the fiduciary is the best person to determine whether a formal appraisement by court appointed appraisers is really necessary to the proper administration of the estate and for the fiduciary's own protection.

Our recommendation makes the appointment of appraisers *optional with the personal representative.* If appraisement is desired it may be had; and it will, if had, have all the force and effect that such appraisement may have under the existing law. We believe this should be agreeable to all parties concerned. Also, it will be noted that such appraisement, if had, will cover all the estate of the decedent, both real and personal, and such other property as the fiduciary may request. In view of the bearing of the appraisement upon death duties, the authority of the personal representative over the property is altogether irrelevant. The value of the real property, for instance, that passes immediately to a divisee, or to an heir at law, is the pertinent fact as respects estate and inheritance taxes, and is just as important regardless of whether the personal representative has any power or control over it or not. So the proposed amendment will be helpful to those who find appraisement useful-and at the same time relieve those who consider appraisement of no value—(an idle and useless formality, as they view it).

6. From time to time questions are raised by personal representatives as to the need of filing an appraisal of an estate which consists only of proceeds of life insurance, money in a bank or building and loan association, stock and the like. All of these items are expressed in dollars and therefore no appraisal appears to be necessary. Very often, when appraisals are required under our present law, the fiduciary seeks the advice of experts and is confronted with fees for appraisal of real estate from $100 to $200, and fees up to $250 for appraisal of stocks listed on the stock exchange, which values are easily ascertainable from the daily newspapers. Such information could ordinarily be secured by the fiduciary, free of charge, by calling the office of any expert for such information or through his own facilities, such as newspapers, the assessor's office and friends. This is an unnecessary cost in small estates.

Code § 64-126 deals with the above-mentioned appraisement and directs the court or clerk to appoint appraisers who shall appraise such goods or chattles and real estate as may be produced to them by the fiduciary. "Real estate" as used in the section refers only to real estate when the personal representative is given the power to sell or rent by the will. The Supreme Court of Appeals in *Bank v. Holland,* 99 Va. 495, 503 et seq. has defined "goods and chattels" as tangible personal property. It would appear, therefore, that if the personal representative signs the appraisement and it is filed with the commissioner of accounts there may, under the above definition, be nothing in the appraisement except tangible personal property and real estate; and the inventory is not required by the terms of Code § 26-12.

In order to overcome these apparent shortcomings in our present system, appraisers should continue to be appointed at the time of qualification of the fiduciary, if the fiduciary so requests. Where the estate consists primarily of items which are expressed in dollars, as mentioned previously, the fiduciary will have the option of determining the values of such property himself or of requesting appraisers to determine their values. We believe, at the fiduciary's option, considerable expense can be avoided where practicable.

7. To avoid possible confusion on the part of the fiduciary and the appraisers and for the sake of completeness, the appraisers when appointed should be required to appraise the entire estate of the decedent both real and personal which is subject to the control and supervision of the fiduciary, and such other property as the fiduciary may request. It will also serve as a corollary to our previous recommendation that the fiduciary be required to list all property of the decedent's estate in the inventory. Needless to say, this should also prove helpful and informative to the Commissioner of Accounts.

8. Code § 64-126 also requires the court or clerk to appoint appraisers ". . . in every county or corporation in which there may be any goods or chattles of the deceased . . ."; and, also, in case of a will, " . . . in every county or corporation in which there is any real estate which the personal representative is authorized to sell or of which he is authorized to receive the rents and profits." To use an old expression, this provision is honored more in its breach than in its execution. Few if any courts ever appoint several sets of appraisers, primarily because it would be an unwieldy procedure creating an unnecessary burden upon the estate, without serving any apparent purpose. Nothing is so destructive of a good system as such unnecessary requirements which serve no useful purpose. Therefore, we believe such provisions should be repealed.

9. It must be admitted that in numerous instances the court appointed appraisers act in a perfunctory manner, but this is a failure in personnel and not in principle. It is in this area that the help of the Bar and the courts in the conscientious application of the clear intent of the law is greatly needed. It has been brought to our attention that in some of our courts the judges are not very diligent, and likewise the court clerks, in seeing that only competent people are appointed as appraisers. It would appear, as a matter of ordinary practice, that the naming of law office partners, associates or friends, as well as co-workers, in the offices of corporate personal representatives should be avoided where possible.

If the courts will appoint only qualified appraisers in each instance and if the Commissioners of Accounts properly scruitinize the activities of the fiduciaries which fall under their area of responsibility, then it seems only proper that the values of property in the estate established by the appointed appraisers should be given prima facie validity for all purposes.

II. *Proceedings before Commissioners of Accounts*

1. On the appointment and qualification of an administrator c.t.a. (§ 64-112), an administrator (§ 64-115), an executor (§§ 64-116, 64-117), and a trustee (§ 26-1), the fiduciary bond may be taken either before the court or the clerk. Such apparently is not the case with the giving of a new bond. Under § 26-3, a new bond must be given before the court and only after evidence adduced before the court may the order be entered requiring the new bond.

There is no apparent reason why a new bond should not be given before the clerk of the court nor why there should be the formality of an order requiring the giving of a new bond. In many instances the fiduciary volunteers to give a new bond when the current bond is less than the value of the undistributed assets of the estate. It is accordingly recommended that probate courts be relieved of this volume of work and that § 26-3 be amended and enlarged to enable the clerk to take the new bond. Further, such new bond might be taken on the motion of the fiduciary, his surety or other interested party.

2. The list of fiduciaries included in Code § 26-2 ("personal representative, guardian, curator or committee, except a sheriff or other officer") does not include all of the fiduciaries required to settle annual accounts before the commissioner. It would seem appropriate that commissioners of accounts should be authorized to report on the sufficiency of the bonds of all of the fiduciaries required to settle their accounts before them. This would include the addition of the testamentary trustee, trustee for incompetent ex-service personnel and their dependents, and receiver for a married woman who is a minor, and thus conform with the list of fiduciaries set forth in § 26-17 prescribing who must account before the Commissioner.

3. There apparently exists some confusion as to the role of the testamentary trustee. There is no requirement that the testamentary trustee qualify before the court or the clerk. He derives his authority from the probated will. In some portions of the State, the clerk apparently requires the testamentary trustee to qualify, while in others the testamentary trustee voluntarily qualifies or not, as he sees fit or the requirements of transfer agents might dictate. The bond of the testamentary trustee who qualifies as such is set by the court or clerk. However, no bond is given by a testamentary trustee who does not qualify and who is not the executor.

We recommend that there be incorporated in the law a provision requiring a testamentary trustee to qualify before the court or the clerk and give bond with surety except where surety is waived by the will, unless it shall be deemed necessary by the clerk or on application of an interested party.

4. The Commissioner has means to enforce the filing of inventories and accounts with the possible exception of a trustee under a deed of trust. The only penalty here for not filing seems to be the loss of his fee. § 26-15 requires the trustee under a deed of trust to file an account of sale with the commissioner of accounts within four months after the sale. It provides " . . . any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court." Other than this provision for the forfeiture of commissions, no penalty is imposed upon the trustee who fails to file his account of sale nor does the section contain the enforcement provisions imposed by §§ 26-13 and 26-18 for failure to file inventories and accounts.

Appropriate amendments should provide that if the commissioner of accounts is advised in writing by a party in interest that such an account has not been filed, the commissioner and the court shall proceed against the trustee and the court shall impose the same penalty, unless such trustee is excused for sufficient reason, as is provided for failure to file inventories.

5. Various methods have been suggested to the committee for combining the debts and demands proceedings before the commissioner of accounts with the show cause proceedings before the court. The primary objective is the reduction of the time element involved and the expense of the six publications required. We are of the opinion that it is not practical to combine the debts and demands proceedings with the show cause proceedings and that substantially the same result may be obtained by reducing the time limitations and number of the advertisements to one-half that required by the present statutes.

At the present time § 64-161, requires the commissioner of accounts to publish notice for receiving proof of debts and demands against the decedent or his estate ". . . once a week for two successive weeks .

the first publication of which shall be at least twenty days before the date set for the hearing; and at least twenty days before the date fixed for the hearing he shall also post a notice . . ", etc. It is believed that a single publication would be sufficient. The time before which such publication must be made preceding the date set for the hearing should be reduced from 20 to 10 days.

§ 64-169 now requires the publication of the show cause order for four successive weeks. This requirement could be reduced to two successive weeks without serious detriment to any interested party.

6. § 64-162 requires the commissioner ". . . within one year from the time first appointed for receiving such proof . . . " to make out an account of the debts and demands which appear to him to be sufficiently proved. It is presumed that this is to take care of various continuances, but what if there is no continuance? We believe it should be mandatory that the account be returned in a certain number of days after the hearing. We are of the opinion that the one year period allowed the commissioner of accounts for filing his report on debts and demands is unrealistic and for that reason it is recommended that the period be reduced to sixty days from the date of the hearing or the last adjournment thereof.

§ 26-33 now permits the filing of exceptions to an account one month from the day the report has been filed with the court. In order that there might be no hiatus between the return date of the show cause order at which time the order of distribution could be entered and confirmation of the report made, it is thought advisable to reduce the period for confirmation under § 26-33 from one month to fifteen days. This fifteen days would appear to be adequate and is in excess of the normal appeal period to the circuit and corporation courts.

7. The present language of § 31-11.1 provides that monthly payments of pension, compensation, insurance or other benefits received from the Veterans' Administration by a guardian shall be considered an income and accumulations from these sources on hand at the end of the accounting year amounting to two hundred dollars or more, may be carried over as principal and converted into the corpus of the estate.

That portion of the present statute (§ 31-11.1) which permits the conversion of income to corpus appears to be in conflict with the latest amendment (1962) to § 31-10 which provides that: "Any excess of income over expenditures in any year shall retain its characteristic as income and shall not be deemed an accretion to corpus." We accordingly recommend that the portion of § 31-11.1 permitting the conversion of income to corpus be deleted.

The present statute (§ 31-11.1) also specifies "monthly" payments. It is our opinion that the statute should not be so limited and should include not only monthly payments but also periodic payments made on a more frequent basis. We are also of the opinion that monthly or more frequent periodic payments to the guardian of an infant from the Treasurer of the United States under the Federal Insurance Contributions Act, or by an award under the Workmen's Compensation Act of this State, or similar act of another state, or under a policy of life insurance pursuant to an option designated by the insured, should be considered as income and not principal. The guardian who receives periodic payments in which the income and principal are commingled almost inextricably cannot practically distinguish between the two. Further, these payments would appear to fall generally in the same category as the monthly payments from the Veterans' Administration. Therefore, such payments should be considered as income and not principal.

8. Recommendation was made by several individuals that the Code be amended so that surety be required only when the court or clerk deems it necessary where the personal representative is the sole beneficiary. It was pointed out in this connection that a person can now eliminate surety on the bond by so providing in his will, unless the clerk of court deems it necessary. Since giving surety often results in a hardship where there is no will, we recommend that the court or clerk should not require surety if the personal representative of an estate is the sole beneficiary thereof, unless on the application of an interested person or from their own knowledge, the court or clerk thinks surety ought to be required.

III. *Miscellaneous*

1. Under the present wording of § 64-144, the authority of the personal representative to sell is limited to sales "at public auction." In some instances, such sales are neither feasible nor practical, particularly in the disposition of personal property likely to be impaired in value by keeping. In the vast majority of attested wills the power is given the executor to sell at public auction or privately, and it is our opinion that this discretionary authority should be given the personal representative by statute.

2. § 8-751 authorizes the court to direct not only the payment of money but also to distribute tangible personal property in an amount not to exceed the statutory limitation. We are of the opinion that § 8-751 should also permit the court discretionary power to direct the distribution of intangible personal property which, on its then market value, does not exceed the statutory limit.

3. It should be noted that under § 64-119, relating to payment of certain small sums due persons upon whose estate there has been no qualification, it is provided that the sum in question shall be paid to the decedent's consort, if any, or to his next of kin. However, under § 6-54 small bank balances are to be disbursed to the decedent's next of kin. It would seem that § 6-54 should be amended to provide that the money be paid to the decedent's consort, if any, and if none, then to his next of kin.

4. It is also recommended that the following additional proviso be added to § 6-54:

> § 6-54— . . ., provided, such sum, not exceeding two hundred dollars, thirty days after the decedent's death, at the request of the consort, or if no consort, then the next of kin, may be paid to the undertaker or funeral parlor handling the funeral of such decedent and a receipt of the payee shall be a full and final release of the payor.

The family of a decedent is usually very much interested in having the funeral bill paid as soon as possible. It has been pointed out that the lump sum death payment under the Federal Social Security Act, in many instances, is paid to the undertaker or mortuary to help defray the cost of such services. At the present time, the maximum payable thereunder is $255, which when coupled with the $200 provided by our recommended amendment to Code § 6-54 will provide minimal services. We have limited the amount payable under our amendment to $200 so as to be consistent with the priority claim allowed undertakers and mortuaries under Code § 64-147, in the case of insolvent estates.

5. It has been suggested that it would be well to remove by statute the uncertainty that sometimes arises as to the place of legal residence of persons who have found it necessary to enter a nursing home, a convalescent home or similar institution, which may be in a jurisdiction different from that of their home at the time of such entry.

Under § 37-95 of the Code of Virginia, which is a part of Title 37 pertaining generally to "Insane, Epileptic, Feeble Minded and Inebriate Persons," the place of legal residence of patients of "any hospital or colony" is fixed as that existing before removal to the hospital or colony.

To place patients of nursing or convalescent homes, or similar institutions, on the same basis, reserving to them, however, the right to voluntarily change their place of legal residence should they so desire, it is suggested that the Code be amended to provide that it shall be presumed that the place of legal residence of such person shall continue to be the same as before becoming such a patient; provided, however, that such presumption may be rebutted by competent evidence.

6. The Department of Welfare and Institutions has indicated the desirability of some simple and inexpensive method of disbursing small amounts due deceased welfare clients from welfare funds, which amounts have either been disbursed to the client or are payable to the client for a specific purpose. It is felt that the procedure outlined under § 8-750 for the payment of small amounts to infants and adults without the intervention of an administrator through the courts in most instances would exhaust the funds so that the person for whom the funds were allotted would receive either little or no part of them. It is, therefore, recommended that the Code be appropriately amended so as to provide that where there is only a small amount of welfare funds due the client the welfare agency be authorized to disburse the funds directly to such person or persons as it might in its own discretion determine to be entitled thereto; and such agency shall be authorized to stop payment on any check issued by it but not cashed at the time of the client's death and disburse said funds as hereinbefore provided. Receipts of such persons receiving said funds shall be a full and complete release of said agency.

7. The General Assembly in its wisdom saw fit, by a 1954 amendment of the Code, to authorize the superintendent of a State mental institution to distribute sums not exceeding $300, belonging to a person who dies therein and upon whose estate there has been no qualification, to the surviving consort of the decedent or the court.

As indicated previously there is a need for some simple method of distributing small sums of money so held to the appropriate individuals when there is no other property in the decedent's estate and when no qualification is likely. While such sums are usually so small that normal statutory procedures for distribution would probably consume a disproportionate part of them, the amounts so held in many cases exceeds the $300 presently distributable under present provisions of law and has proven unduly restrictive and impractical. We, therefore, believe it should be increased to $1,000.

8. It has been suggested many times that inasmuch as a great deal of the work of a Commissioner of Accounts is of a semi-judicial nature and requires a thorough knowledge of law in general, and particularly of the law affecting the administration of estates of decedents and of incompetents, that the office should be held only by a qualified attorney. The present statutes provide for the appointment of Commissioners of Accounts, their assistants and deputies by the judges of courts having

probate jurisdiction. It is suggested that these statutes be amended to provide for the appointment of discreet and competent attorneys, if available; however, if no such attorney be found willing to serve, the court should be authorized to appoint some other discreet and proper person. Appointments now in effect should continue until the appointee is relieved, or until his retirement or death.

9. One of the issues that occasionally arises between the fiduciary and the Commissioners of Accounts in the execution of their respective duties is the matter of charges made by the Commissioners for services rendered. Code § 26-14 provides for the inspection and filing of inventories by the Commissioner. Nothing is said in this section as to his fee. As may be expected, there is great variance in fees charged for filing inventories and auditing and reporting accounts among the several Commissioners.

At present the only clue in the statute seems to be in § 26-24, which provides: "The fees of Commissioners of Accounts for these special duties hereinbefore imposed upon them shall be the same as are now allowed by law to Commissioners in Chancery." Code § 14.1-133 provides that Commissioners in Chancery may charge fees: " . . . for services which might be performed by notaries, the like fees for like services; for any other services such fees as the court by which the Commissioner is appointed may from time to time prescribe."

We do not believe that it is practical or just to have any fixed fee for Commissioners of Accounts for there are entirely too many instances where estates of decedents or infants and incompetents vary so greatly that they do not lend themselves to a fixed computation of fees. A fixed fee schedule would inure to the benefit of some estates and to the detriment of the Commissioner of Accounts in some instances; while in other estates, the Commissioner of Accounts would receive a windfall at the expense of the estate.

The variety of duties performed by the Commissioners of Accounts are not well recognized. In many instances perhaps one-half of the Commissioner's time is spent in an advisory capacity to lawyers representing estates, to lawyers acting as fiduciaries and to other fiduciaries. Of course, there can be no specific charge for such service, but the fact remains that these people are seeking advice without cost to themselves or the estate which they represent. As with any attorney, time is the Commissioner's stock in trade.

In addition to the services mentioned above, the Commissioner of Accounts has to obtain the certificate from the clerk and record it in his fiduciary book, notify delinquent fiduciaries, frequently correspond with bonding companies, prepare notices for delinquent fiduciaries, have them served on such delinquents and twice each year report to the court those who continue to be delinquent after notice. He also has certain office overhead which is properly allocated to his Commissioner of Accounts duties. For none of these items, so far as we known, is there any successful way to make specific charges.

In a jurisdiction where the volume of work is great, the lawyer-Commissioner of Accounts must have additional secretarial help to handle this phase of his practice as well as additional space and office equipment because the files soon become voluminous. To place on a fixed fee basis a Commissioner of Accounts who has a very low volume of accounts and whose secretary for his general practice can handle the small number of accounts may be unduly rewarding. The fees of Commissioners of

Accounts are under the scrutiny of the court and anyone dissatisfied with the amount of the fee charged by the Commissioner of Accounts may bring the question before the court and ask for redress. In such a case, the Commissioner of Accounts must show the court his work product and his reasons justifying the fee charged. If the court feels that the fee is exorbitant, it will reduce the fee. We believe that the present system of allowing the judge of the court of record which appoints the Commissioner of Accounts to be the most appropriate method of supervising the fees charged by the Commissioners.

It appears that the Commissioners of Accounts are steadily improving their services and are realizing their true responsibilities and duties, and should, of course, be adequately compensated. We are of the opinion that any action by the General Assembly of Virginia to fix a uniform schedule of fees for Commissioners of Accounts will prove impractical, unsatisfactory and might be the cause of deterring qualified men from the office of Commissioner of Accounts.

10. We feel that adherence to the archaic distinction between real and personal property existing in Virginia impedes the administration of decedents' estates since a personal representative has no control over a decedent's realty, absent specific authority in a will, and cannot sell it for payment of debts even though the decedent's personal estate is insufficient for such payment. In order to subject the decedent's realty to such payment, a creditor's suit with its burdensome delays and costs must be brought.

We question whether the marital estates of dower and courtesy really serve a worthwhile purpose in our modern society. We also question the priority of personalty over realty for the payment of debt; and whether it would be advisable to remedy by statute the common law requirement of exoneration of land devised by will and encumbered by mortgage which the testator placed on the property. There are other ramifications of this adherence to the distinction between realty and personalty which we feel might be remedied.

We, therefore, recommend that this study be continued and that the present distinctions between real and personal property be fully considered along with related matters such as the problems of the pour-over trust, orders of distribution and final discharge of fiduciaries. The study should specifically include consideration of the Uniform Fiduciaries Act.

CONCLUSION

The Council hereby expresses its appreciation to the members of the Committee for the time and effort given by them in carefully and thoroughly studying the important and difficult problems. We also express our appreciation to the many individuals, groups and organizations who afforded the Committee the benefit of their experience and suggestions.

Bills and resolutions to carry out the recommendations contained herein are attached.

Respectfully submitted,

EDWARD E. WILLEY, *Chairman*

TOM FROST, *Vice-Chairman*

C. W. CLEATON

JOHN WARREN COOKE

JOHN H. DANIEL

CHARLES R. FENWICK

J. D. HAGOOD

EDWARD M. HUDGINS

CHARLES K. HUTCHENS

J. C. HUTCHESON

LEWIS A. McMURRAN, JR.

CHARLES D. PRICE

ARTHUR H. RICHARDSON

WILLIAM F. STONE

A BILL to amend and reenact § 26-12 of the Code of Virginia, relating to filing of inventories by certain fiduciaries in the administration of estates and the cost of determining the value of property in such estates.

Be it enacted by the General Assembly of Virginia:

1. That § 26-12 of the Code of Virginia be amended and reenacted as follows:

§ 26-12. Every personal representative, guardian, curator or committee, shall, within four months after the date of the order conferring his authority, return to the Commissioner of accounts, *under his oath and* in proper form, an inventory of all the personal and real estate which has come to his possession or knowledge *; and shall, within four months, after any other such estate shall come to his possession or knowledge, return to such commissioner a further inventory thereof *.

In listing such property the fiduciary shall place the market value on each item thereof which has come to his possession and/or knowledge unless appraisers are appointed under § 64-126 in which case such appraised values shall be used. The market value shall be determined as of the date of death if an estate, and if not, as of the date of qualification.

Any reasonable expense incurred in determining such values shall be allowable as a cost of the administration of such estate.

A BILL to amend the Code of Virginia by adding in Title 26 a section numbered 26-12.1, prescribing the form for inventories required of judiciaries.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Title 26 a section numbered 26-12.1, as follows:

§ 26-12.1. (a) Every inventory filed pursuant to § 26-12 shall be filed on forms provided by the clerk of the court granting administration, which shall be as follows:

Page 1, front side of form—

Inventory

of the Estate of

.....

CERTIFICATE OF FIDUCIARY

I, ..., solemnly swear that to the best of my knowledge and belief this Inventory embraces all the estate, real and personal, which has come to my knowledge or possession including that wheich is subject to my authority in my fiduciary capacity as ....., and that the estate under my supervision and control aggregates $.....

Given under my hand this ..... day of ..... 19.....

(To be signed by all fiduciaries) .....

.....

Address .....

Subscribed and sworn to before me this ..... day of ..... 19.....

My commission expires ....

Notary Public

APPRAISEMENT

(This section to be completed only if appraisers are appointed)

VIRGINIA: In the Clerk's Office of the ..... Court of the .....

the ..... day of ....., 19.....

It is ordered that ..... or any three of them being first duly sworn for the purpose, do truly and justly appraise in current money all property, both real and personal, which is under the supervision and control of the personal representative, and such other property as the personal representative may request, and return their appraisement under their hands as the law directs.

A COPY—TESTE ....., Clerk

State of Virginia, ... of ....., To-wit:

This day before me, ..., a Notary Public in and for the ..... aforesaid in the State of Virginia, personally appeared .... and ....., three of the appraisers named in the foregoing order, and made oath before me in my said ..... that they would truly and justly appraise such estate as may be produced to them in accordance with the foregoing order, and return their appraisement under their hands as the law directs.

Given under my hand this ..... day of ....., 19.....

My commission expires ....

Notary Public

WE, THE UNDERSIGNED, ..., three of the appraisers named in the above order, having been first duly sworn, have appraised such estate as was produced to us pursuant to the foregoing order and herewith return our appraisement thereof, aggregating $.....

(.....

Appraisers (.....

(.....

Inspected and approved: Received and admitted to record:

Date: ....

.....

Commissioner of Accounts

Clerk of the ..... Court of the ..... of .....

MAKE OUT AND RETURN THIS IN DUPLICATE TO COMMISSIONER OF ACCOUNTS

Begin inventory on the back of this sheet

Page 2, back side of form—

INVENTORY

of the Estate of

.....

Description of Estate Property	Value
Personal Property	
.....	.....
.....	.....
Real Property	
.....	.....
.....	.....
Total aggregate estate under supervision and control of fiduciary	.....

Other assets of which fiduciary has knowledge and which are not under his supervision and control	Value
Personal Property	
.....	.....
.....	.....
Real Property	
.....	.....
.....	.....
Total other assets	.....

The court or clerk thereof shall furnish each fiduciary with at least three of the above prescribed forms at the time of qualification. Such forms shall be paid for as other books and stationery used for public records.

(b) The court or clerk thereof shall also provide the fiduciary and each appraiser appointed a list of instructions which shall be substantially as follows:

INSTRUCTIONS TO FIDUCIARIES

AND APPRAISERS

1. File this Inventory in duplicate with the Commissioner of Accounts within four months after qualification.
2. Assets should be clearly identified and listed in reasonable detail as of date of death if an estate, and if not, as of date of qualification. As a rule it is not necessary to list each article of household property separately. If an article is specifically mentioned in the will or is of unusual

value, it should be listed separately. Make, model and year of motor vehicle should be given. State name of bank and sum on deposit when fiduciary assumed control. A promissory note should be described by maker's name, balance due and date from which interest is due; bonds and shares of stock by usual description. Give issue or maturity date of United States Bonds. If a business is included among the assets, the name and location of the business should be given, together with latest balance sheet or concise list of assets.

3. The value of the items listed under "estate property" should total the aggregate amount reported in the Certificate of Fiduciary and should include all of the assets, real and personal, over which the fiduciary has supervision and control.

4. "Other assets of which fiduciary has knowledge" should include all assets not already listed under "Estate Property" that have or will be declared in reporting federal estate taxes and Virginia State inheritance taxes (e.g. joint bank accounts, jointly held real property, trusts, etc.).

5. The fiduciary may retain expert assistance in determining values reported herein and reasonable expense incurred for such assistance may be allowed as a cost of administration.

6. When appraisers are appointed, the values determined by such appraisers should be listed on the inventory in the column headed "value." If appraisers are not appointed, the fiduciary shall determine the market value of each item listed on the inventory.

Such other instructions as the court or clerk thereof deems appropriate may be included with the instructions set forth above. Such forms as may be required shall be paid for as other books and stationery used for public records.

A BILL to amend the Code of Virginia by adding a section numbered 26-12.2, relating to filing of inventories and settlement of accounts by certain personal representatives.

Be it enacteed by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 26-12.2, as follows:

§ 26-12.2. An inventory under § 26-12 or a settlement under § 26-17 shall not be required of a personal representative who qualifies for the sole purpose of bringing an action under § 8-633. However, if there be no surviving relative designated as a beneficiary under § 8-638 and the court directs that the funds recovered in such action be paid to the personal representative for distribution according to law, such personal representative shall file the inventory required in § 26-12 and the statement required under § 26-17.

A BILL to amend and reenact § 64-126, as amended, of the Code of Virginia, relating to appraisement of decedents' estates.

Be it enacted by the General Assembly of Virginia:

1. That § 64-126, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 64-126.* Every court or clerk by whose order any person is authorized to act as a personal representative shall,* *if requested by the personal representative or* if the court or clerk deem it proper appoint three or more *disinterested and competent* appraisers* *who* after taking an oath for the purpose* shall appraise* *all property, both real and personal, which is under the supervision and control of the personal representative, and such other property as the personal representative may request.* The appraisers shall receive reasonable compensation for their services, the amount thereof to be subject to the approval of the commissioner of accounts. The appraisement shall be signed by them and returned to the commissioner of accounts of such court, who shall inspect the same, see that it is in proper form, and within ten days after it is received and approved by him, deliver it to the clerk of such court, who shall record the same with the certificate of approval. The date of return of an appraisement shall be entered by the commissioner in his record book. Every such appraisement shall be prima facie evidence of the value of the estate embraced therein *for all purposes* and that it came to the hands of the personal representative.

A BILL to amend and reenact § 26-3 of the Code of Virginia, relating to fiduciary bonds.

Be it enacted by the General Assembly of Virginia:

1. That § 26-3 of the Code of Virginia be amended and reenacted as follows:

§ 26-3. The court under whose order or under the order of whose clerk any such fiduciary derives his authority, on the application of any surety or his personal representative, shall, or, when it appears proper on such report of the clerk or a commissioner or on evidence adduced before it by any party interested, may, at any time, whether such fiduciary shall or shall not have before given bond, or whether he shall have given one with or without sureties, order him to give before such court, *or before the clerk thereof,* a new bond in a reasonable time to be prescribed by it in such penalty and with or without sureties as may appear to it to be proper and may, if such order be not complied with, or whenever from any cause it appears proper, revoke and annul the powers of any such fiduciary; but no such order shall be made unless reasonable notice appear to have been given to such fiduciary by the commissioner who made such report, or by the surety or his representative making the application aforesaid, or by the service of a rule or otherwise; and no such order or revocation shall invalidate any previous act of such fiduciary.

Upon motion of any such fiduciary, surety or other party in interest, a new bond may be given before the court, or before the clerk thereof, in such penalty and with such sureties as may appear to the court or the clerk to be proper; which new bond shall have the effect provided by § 49-14.

A BILL to amend and reenact § 26-2 of the Code of Virginia, concerning the examination of fiduciary bonds.

Be it enacted by the General Assembly of Virginia:

1. That § 26-46.2 of the Code of Virginia be amended reenacted as follows:

§ 26-2. When any *fiduciary required to do so,** except a sheriff or other officer, shall have laid the statement required by § 26-17 before a commissioner, he shall examine whether such fiduciary has given such bond as the law requires, and whether it is in a penalty, and with sureties sufficient. Any commissioner of the court in which the order was made conferring on such fiduciary his authority, shall, at any time before such statement is laid before a commissioner, upon the application of any person who is interested or appears as next friend of an infant interested, after reasonable notice to such fiduciary, examine into any of such matters, or inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, or whether, by reason of the incapacity, misconduct, or removal of any fiduciary from this State, or for any other cause, it is improper to permit the estate of the decedent, ward, or other person, to remain under his control. The result of every such examination and inquiry shall be reported by the commissioner to the court by which he is appointed.

A BILL to amend and reenact § 26-46.2 of the Code of Virginia, relating to the qualification of certain trustees.

Be it enacted by the General Assembly of Virginia:

1. That § 26-46.2 of the Code of Virginia be amended and reenacted as follows:

§ 26-46.2. In the case of testamentary trusts, if the will has been admitted to probate in this State, *every trustee named in a will shall qualify before the proper court or clerk thereof in* the jurisdiction where the will has been probated *which* shall be the exclusive jurisdiction for qualification of the trustee or trustees under such will. If such will is the will of a nonresident, and has not been admitted to probate, then the trustee or trustees thereunder shall be permitted to qualify in any jurisdiction in which such will could be probated, and if there be no such jurisdiction, then qualification shall be as permitted in § 26-46.3.

A BILL to amend and reenact § 26-15 of the Code of Virginia, relating to accounts of sale under deeds of trust and certain other instruments.

Be it enacted by the General Assembly of Virginia:

1. That § 26-15 of the Code of Virginia be amended and reenacted as follows:

§ 26-15. When sale is made under any recorded deed of trust, mortgage or assignment for benefit of creditors, otherwise than under a decree, there shall, within four months after the sale, be returned by the trustee to the commissioner of accounts of the court wherein the instrument was first recorded an account of sale. The commissioner shall state, settle and report to the court an account of the transactions of such trustee, and the same shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court. *If the commissioner of accounts of the court wherein an instrument was first recorded is advised in writing by a party in interest that an account as required by this section has not been filed, the commissioner and the court shall proceed against the trustee in like manner and impose like penalities as set forth in § 26-13, unless such trustee is excused for sufficient reason.* If after a deed of trust is given on land lying in a county, and before sale thereunder, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city.

A BILL to amend and reenact § 26-27 of the Code of Virginia, relating to posting lists of fiduciaries.

Be it enacted by the General Assembly of Virginia:

1. That § 26-27 of the Code of Virginia be amended and reenacted as follows:

§ 26-27. Every commissioner of accounts shall, on the first day *of the term* of any circuit or corporation court of his county or corporation, or on the first Monday in any month, post at the front door of the courthouse of such circuit or corporation court a list of the fiduciaries whose accounts are before him for settlement, stating the names of such fiduciaries, the nature of their accounts, whether as personal representative, guardian, curator, committee, or trustee, and the name of their decedents, or of the persons for whom they are guardians, curators, or committees, or under whose deed or other instrument of trust they are acting. No account of any fiduciary shall be completed by any commissioner until ten days after the list containing the name of such fiduciary as aforesaid shall have been so posted.

A BILL to amend and reenact §§ 26-33, 64-161, 64-162 and 64-169 of the Code of Virginia, relating to certain fiduciary accounts and the settlement of accounts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-33, 64-161, 64-162 and 64-169 of the Code of Virginia be amended and reenacted as follows:

§ 26.33. The court, or judge in vacation, after **fifteen days* from the time the report has been filed in its office, shall examine such exceptions as have been filed. It shall correct any errors which appear on the exceptions and to this end may commit the report to the same or another commissioner, as often as it sees cause; or it may cause a jury to be empaneled to inquire into any matter which, in its opinion, should be ascertained in that way; or it may confirm the report in whole or in a qualified manner, and shall certify in the order that it has made a personal examination of the exceptions.

If no exceptions have been filed, the report shall stand confirmed on the day next following the expiration of the period of **fifteen days* after the day on which the report was filed in the clerk's office.

§ 64-161. Any commissioner of accounts who has for settlement the accounts of a personal representative of a decedent shall, when requested so to do by such representative, or any creditor, legatee or distributee of the decedent, appoint a time and place for receiving proof of debts and demands against the decedent or his estate and he shall publish notice thereof once * in some newspaper of general circulation in the county or city wherein the fiduciary qualified, the * publication of which shall be at least **ten* days before the date set for the hearing; and at least **ten* days before the date fixed for the hearing he shall also post a notice of the time and place at the front door of the courthouse of the court of the county or city wherein the fiduciary qualified.

§ 64-162. The commissioner may adjourn from time to time for receiving such proof and shall, within **sixty days* from the time first appointed for receiving such proof *or the last adjournment of any hearing thereon,* make out an account of all such debts or demands as may appear to him to be sufficiently proved, stating separately those of each class.

§ 64-169. When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate has been filed in the office of a court, whether under §§ 64-161 and 64-162 or in a suit in chancery, the court or the judge in vacation, after six months from the qualification of the personal representative, may, on motion of the personal representative or on motion of a legatee or distributee of his decedent, make an order for the creditors and all other persons interested in the estate of the decedent to show cause on some day to be 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. On or after the day named in the order the court in term, or the judge in vacation, 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; but 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 afterward, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate and the costs attending their recovery.

Any such personal representative who has in good faith complied with the provisions of this section and has, in compliance with the order of the court, paid and delivered the money or other estate in his hands to whomsoever the court has adjudged entitled thereto shall be fully protected against the demands of creditors and all other persons.

A BILL to amend and reenact § 31-11.1 of the Code of Virginia, relating to consideration of certain Veterans' Administration benefits as income; and to amend the Code of Virginia by adding a section numbered 31-11.2, relating to consideration of certain other benefits as income.

Be it enacted by the General Assembly of Virginia:

1. That § 31-11.1 of the Code of Virginia be amended and reenacted and the Code of Virginia be amended by adding a section numbered 31-11.2, as follows:

§ 31-11.1. Monthly *or more frequent periodic* payments of pension, compensation, insurance or other benefits from the Veterans' Administration made to a guardian shall be considered as income and not principal*.

§ 31-11.2. Monthly or more frequent periodic payments of pension, compensation, insurance or other benefits received by the guardian of an infant under the Federal Insurance Contributions Act, or by an award under the Workmen's Compensation Act of this State, or similar act of another state, or under a policy of life insurance pursuant to an option designated by the insured shall be considered as income and not principal.

A BILL to amend and reenact § 64-117 of the Code of Virginia, relating to security on bonds of certain executors and personal representatives.

Be it enacted by the General Assembly of Virginia:

1. That § 64-117 of the Code of Virginia be amended and reenacted as follows:

§ 64-117. When the will directs that an executor shall not give security the court or clerk shall not require it of him, unless on the application of any person interested or from its or his own knowledge it or he thinks security ought to be required; *nor shall the court or clerk require security if the personal representative of an estate is the sole distributee or sole beneficiary thereof, unless on the application of any person interested or from its or his own knowledge it or he thinks security ought to be required.*

A BILL to amend and reenact § 64-144 of the Code of Virginia, relating to certain sales by personal representatives.

Be it enacted by the General Assembly of Virginia:

1. That § 64-144 of the Code of Virginia be amended and reenacted as follows:

§ 64-144. Of the goods not mentioned in the preceding section, the personal representative shall, subject to the provisions of Title 34, sell, as soon as convenient, at public auction *or private sale,* such as are likely to be impaired in value by keeping, giving a reasonable credit except for small sums, and taking bond with good security.

A BILL to amend and reenact § 8-750, as amended, of the Code of Virginia, relating to payment of small sums of money to infants or adults without the intervention of an administrator, guardian or committee.

Be it enacted by the General Assembly of Virginia:

1. That § 8-750, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 8-750. Whenever there is accruing to any person, adult or infant, any sum of money from any source, not exceeding * *twenty-five* hundred dollars, or where any person, adult or infant, is entitled to payments under chapters 5 (§ 63-100 et seq.), 6 (§ 63-115 et seq.), 7 (§ 63-141 et seq.), 8 (§ 63-162 et seq.) and 9 (§ 63-205 et seq.) of Title 63, the same may be paid into the court of the county or corporation having jurisdiction in fiduciary matters in which such fund accrued or arose. Such court may, by an order entered of record (1) pay such fund into the hands of such person to whom the same accrued, if such person be considered by such court competent to expend and use the same in his behalf, or (2) pay such funds into the hands of some other person, who is considered competent to administer the same, for the benefit of such person to whom the same accrued, without the intervention of an administrator, guardian or committee, whether such person reside within or without this State. The clerk of such court shall take a receipt from the person to whom such money is paid, which shall show the source from which the same was derived, the amount, to whom it belongs, and when and to whom it was paid. Such receipt shall be signed and acknowledged by the person so receiving such money, and entered of record in the book in such clerk's office in which the current fiduciary accounts are entered and indexed.

After such receipt is so executed and entered of record the person owing such money shall be discharged of such obligation, as fully as if the same had been paid to an administrator, guardian or committee.

No bond shall be required of the party to whom such money is paid by the court.

A BILL to amend and reenact § 8-751, as amended, of the Code of Virginia, relating to limited disbursements to certain incompetent persons and infants.

Be it enacted by the General Assembly of Virginia:

1. That § 8-751, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 8-751. Whenever it appears to a court or to the judge in vacation, having control of a fund, * tangible personal property *or intangible personal property* or supervision of its administration, whether a suit be pending therefor or not, that an incompetent person who has no guardian or committee, or an infant is entitled to a fund arising from the sale of lands for a division or otherwise, or a fund, * tangible personal property *or intangible personal property* as distributee of any estate, or from any other source, or whenever a judgment, decree, or order for the payment of a sum of money or for delivery of tangible personal property *or intangible personal property* to such incompetent person or infant is rendered by any court, and the amount to which such incompetent person or infant is entitled or the value of the tangible personal property *or intangible personal property* is not more than * *twenty-five* hundred dollars, or whenever such incompetent person or infant is entitled to receive payments of income, * tangible personal property *or intangible persnal property* and the amount of the income payments is not more than * *twenty-five* hundred dollars in any one year, or the value of the *tangible* personal property is not more than * *twenty-five* hundred dollars, *or the current market value of the intangible personal property is not more than twenty-five hundred dollars,* the court or judge in vacation may, in its discretion, and without the intervention of a committee or guardian, cause such fund, property or income to be paid or delivered to one of the parents of such incompetent person or infant, if any such parent be living and be deemed by the court or judge capable of properly handling the same, and if there be no such parent, then to any person deemed by the court or judge capable of properly handling same, to be used by such parent or other person solely for the education, maintenance and support of the incompetent person or infant; and in any case in which an infant is entitled to such fund, property or income, the court or judge in vacation may, upon its being made to appear that the infant is of sufficient age and discretion to use the fund, property or income judiciously, cause the same to be paid or delivered directly to the infant.

A BILL to amend and reenact § 6-54, as amended, of the Code of Virginia, relating to the payment of certain bank balances to consort or next of kin of decedent.

Be it enacted by the General Assembly of Virginia:

1. That § 6-54, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 6-54. When the balance in any bank or trust company to the credit of a deceased person, upon whose estate there shall have been no qualification, shall not exceed one thousand dollars, it shall be lawful for such bank or trust company, after one hundred and twenty days from the death of such person, to pay such balance to *the decedent's consort, if any, and if none, then to* his next of kin, whose receipt therefor shall be a full discharge and acquittance to such bank or trust company to all persons whomsoever on account of such deposit; *provided, such sum, not exceeding two hundred dollars, after thirty days from the death of such person, at the request of the consort, or if no consort, then the next of kin, may be paid to the undertaker or mortuary handling the funeral of such decedent and a receipt of the payee shall be a full and final release of the payor.*

A BILL to amend the Code of Virginia by adding a section numbered 64-72.1, relating to residence of certain persons.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 64-72.1, as follows:

§ 64-72.1. Where any person has because of advanced age or impaired health either voluntarily or involuntarily become a patient in a nursing home, a convalescent home, or a similar institution, the place of legal residence of such person shall be presumed to be the same as it was before he became such a patient; provided, however, that such presumption may be rebutted by competent evidence.

A BILL to amend the Code of Virginia, by adding a section numbered 64-119.2, relating to the distribution of certain welfare funds due decedents upon whose estate there has been no qualification.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 64-119.2, as follows:

§ 64-119.2. Where any person, adult or infant, entitled to payments under chapters 5 (§§ 63-100 et seq.), 6 (§§ 63-115 et seq.), 7 (§§ 63-141 et seq.), 8 (§§ 63-162 et seq.) and 9 (§§ 63-205 et seq.) of Title 63, dies and there has been no qualification upon the estate of such deceased person within one hundred twenty days following his death, the agency may disburse the funds directly to such person or persons as it might in its own discretion determine to be entitled thereto. Such agency shall be authorized to stop payment on any check issued but not cashed at the time of the decedent's death and disburse said funds as hereinbefore provided. Receipts of such person or persons receiving said funds shall be a full and complete discharge and acquittance of said agency.

A BILL to amend and reenact § 64-119.1 of the Code of Virginia, relating to the payment of certain small sums due deceased persons upon whose estate there has been no qualification.

Be it enacted by the General Assembly of Virginia:

1. That § 64-119.1 of the Code of Virginia be amended and reenacted as follows:

§ 64-119.1. When a person for whom no committee or trustee has been appointed is committed to a mental institution supported by the State *and* dies therein and there is in the hands of the superintendent of such institution a sum not exceeding * *one thousand* dollars, the property of such deceased person, and there has been no qualification upon the estate of such deceased person within one hundred twenty days following the death of such person, then such superintendent may pay such sum to the surviving consort, if any, *and if none, then to the next of kin* of the decedent whose receipt therefor shall be a full discharge and acquittance to the superintendent on account of such sums, and if none such then to the court having jurisdiction over the appointment of the personal representative of the decedent who may distribute the same in accordance with § 8-750.

BILL to amend and reenact § 26-8 of the Code of Virginia, relating to the appointment and authority of Commissioners of Accounts.

Be it enacted by the General Assembly of Virginia:

1. That § 26-8 of the Code of Virginia be amended and reenacted as follows:

§ 26-8. The judge of each court having jurisdiction of the probate of wills and granting administration on estates of decedents shall appoint a commissioner of accounts, who shall be removable at pleasure and who shall have a general supervision of all fiduciaries admitted to qualify in such court or before the clerk thereof and make all ex parte settlements of their accounts. *The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law; however, if no such attorney be found willing to serve, the court shall appoint some other discreet and proper person. Those individuals holding the office of commissioner of accounts upon the effective date of this act shall continue therein at the pleasure of the court or until his retirement or death.*

A BILL to amend and reenact §§ 26-10 and 26-10.1, as amended, of the Code of Virginia, relating to assistant and deputy commissioners of accounts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-10 and 26-10.1, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 26-10. The judge of each court in this State having jurisdiction of the probate of wills and granting administrations on estates of decedents may, either in term or in vacation, appoint in addition to the commissioner of accounts, an assistant commissioner of accounts, who shall perform all the duties and exercise all of the powers required of the commissioner of accounts in all cases in which the commissioner of accounts from any cause is so situated that he cannot perform the duties of his office, or in which the commissioner of accounts is of opinion it is improper for him to act, and such assistant commissioner of accounts may perform such duties and exercise such powers in any other case except cases in which he is so situated that he cannot act, or in which he is of opinion it is improper for him to act. *The person so appointed shall be a discreet and competent attorney at law; however, if no such attorney be found willing to serve, the court may appoint some other discreet and proper person. Those individuals holding office on the effective date of this act shall continue therein at the pleasure of the court or until his retirement or death.* Any such general authority to such assistant commissioner of accounts under this act to be given in the discretion of the judge of such court and at the time of the appointment by him of such assistant commissioner of accounts. An assistant commissioner of accounts making a settlement of a fiduciary account under the provisions of this section shall, within thirty days, report the fact and date of such settlement to the commissioner of accounts, who shall make an entry of the same in his record books.

§ 26-10.1. In any city having a population in excess of two hundred thousand the commissioner of accounts of each court having jurisdiction of the probate of wills and granting administrations on estates of decedents, with the approval of the judge of such court, may appoint a deputy commissioner of accounts who may discharge any of the official duties of his principal during the latter's continuance in office. *The person so appointed shall be a discreet and competent attorney at law; however, if no such attorney be found willing to serve, the court may appoint some other discreet and proper person. Those individuals holding office on the effective date of this act shall continue therein at the pleasure of the court or until his retirement or death.* Any such deputy, before entering upon the duties of his office, shall take and subscribe an oath similar to that provided for his principal. The oath shall be filed with the clerk of said court and a record of such appointment and oath shall be entered in the order book of such court. Any such deputy shall be removable at the pleasure of the judge of said court.

SENATE JOINT RESOLUTION NO. ——

Directing the Virginia Advisory Legislative Council to continue its study concerning commissioners of accounts and fiduciaries.

Whereas, the Virginia Advisory Legislative Council made a study and report upon the laws relating to personal representatives of deceased persons and other fiduciaries and commissioners of accounts; and

Whereas, because of time limitations and the complexity of the matters involved in the study, the Council had to confine its study to Commissioners of Accounts and their relationships with fiduciaries; and

Whereas, the Council was unable to give full attention to many essential and related matters; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study concerning commissioners of Accounts and fiduciaries and related matters giving particular attention to such matters as the distinctions between real and personal property in the administration of estates, orders of distribution, final discharge of fiduciaries, pour-over trusts and whether or not Virginia should adopt the Uniform Fiduciaries Act. The Council shall complete its study and make its report to the Governor and the General Assembly not later than September one, nineteen hundred sixty-seven.