COMMISSIONERS OF ACCOUNTS AND FIDUCIARIES

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

to

THE GOVERNOR

THE GENERAL ASSEMBLY OF VIRGINIA

SD 17, 1968

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

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COMMISSIONERS OF ACCOUNTS AND FIDUCIARIES

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, November 27, 1967

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Over the past several years prior to 1964 it had become increasingly apparent that there was wide variance in the interpretation of Virginia's laws relating to the settlement of estates; primarily, as to the accounting of fiduciaries, filing of inventories and appraisals, 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.

During the two-year interim between the 1964 and 1966 Session of the General Assembly the Council carefully studied the various aspects of the problems involved. Because of the breadth and depth of the study assigned as well as time limitations, the Council was not able to treat all areas as carefully as it thought appropriate to allow specific recommendations to be made in each.

The Council in that study made some twenty-seven major recommendations, all of which were adopted by the General Assembly of Virginia at its 1966 Session, including the recommendation that its study be continued. The General Assembly thought well of the suggestion and by Senate Joint Resolution directed its continuation with particular emphasis on 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 text of the Resolution follows:

SENATE JOINT RESOLUTION NO. 9.

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.

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; and McDonald Wellford, Attorney and Commissioner of Accounts, Richmond.

The Committee organized and elected G. M. Lapsley as Secretary and Robert L. Masden served as Staff Attorney to the Committee.

In order to gain a full appreciation of all aspects of the problems involved, the Committee solicited suggestions and recommendations from all interested individuals, groups and organizations throughout the State. In addition, after due publicity, the Committee held a public hearing in the State Capitol, which was well attended.

The following matters were given special attention at the public hearing:

1. Whether or not Virginia should abolish the contingent rights of dower and curtesy; and if so, what other interest, if any, should be reserved to the surviving consort;

2. Whether or not Virginia should abolish the distinction between real and personal property in intestate succession;

3. Whether or not a personal representative should be authorized to bring suit to subject real property of a decedent to the payment of debts of the estate.

It is interesting to note that the overwhelming majority of those responding to the Committee's invitation to make suggestions and recommendations on the above matters answered in the affirmative.

The Committee gave careful consideration to 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

1. That the personal representative of a decedent be authorized to bring suit to subject the real property of the decedent to the payment of debts of the estate. The personal representative should be required to meet the same criteria presently imposed upon creditors of the decedent; to include, specifically, the necessity of so proceeding due to lack of personal assets to meet claims against the estate. When the personal representative so proceeds he should be required to file a lis pendens.

2. That dower and curtesy be converted to a fee simple interest.

3. That the amount which the court may distribute to guardians, committees or trustees of an infant, insane or incapacitated person from proceeds of rents, income, royalties or sale of lands of such persons be increased from $2,000 to $2,500. When so distributed by the court such sum should be considered personal estate. When the amount remaining in such account is reduced to $2,500 or less, the court should be authorized to distribute such amount as provided above. In addition, parents or committees of such persons should be authorized to receive such funds for the use and benefit of such persons.

4. That provisions authorizing the taking of depositions to prove a will prior to the time that the will is offered for probate and for filing of such deposition at the same time the will is offered should be deleted.

5. That § 64-127 should be amended to provide that the personal representative shall not receive any compensation for his services until the list of heirs has been filed rather than filed and recorded. Thus, the amendment will simply delete the words "and recorded" in the last sentence of the section after the word "filed."

6. That Trustees named in any will probated after July 1, 1968 should be required to qualify and give bond before the proper court or clerk thereof. Surety on the bond should not be mandatory, but discretionary with the court or clerk thereof.

7. That allowances for funeral expenses in the following cases be increased to three hundred dollars to conform with the allowances provided in Code § 64-147 which sets forth the general order in which debts of decedents are to be paid:

§ 6.1-71. Increase from $200 to $300 the amount which a bank or trust company may pay to undertaker or mortuary to defray funeral expenses of decedent where there has been no qualification.

§ 63-191. Increase first priority lien for funeral expenses from $200 to $300 in the case of welfare recipients.

8. That the clerk of the court appointing committees or trustees should have specific authority to set the penalty on bonds as well as authority to pass upon the sufficiency of the surety offered. The same should apply in the case of guardians appointed by such courts.

9. That a trustee appointed by deed or other writing in which qualification is required should not act thereunder until he shall have qualified before the proper court by giving bond and taking oath that he will perform the duties of his office. If qualification is waived by the instrument creating the trust, the trustee should be authorized to qualify on his own motion, as though it were required by such instrument.

10. That commissioners of accounts be required to have an account before them for settlement before appointing a time and place for receiving proof of debts and demands against the decedent or his estate.

11. That this study be continued with particular emphasis on the distinctions between real and personal property in the administration of estates.

REASONS FOR RECOMMENDATIONS

There are many systems of settling estates to be found among the several states. Virginia's present statutory procedure has much in common with many of them. 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. As in our previous study, our recommendations are, therefore, directed to improving our present system of settling estates and fiduciary accounting where weaknesses have appeared from its application over the years.

1. Virginia seems to be unique in not granting authority to a personal representative to subject the real property of the decedent to the payment of just claims against the estate. It seems unduly burdensome that in cases where real estate must be sold to satisfy claims against the estate that a personal representative must defer this duty to a friendly or unfriendly creditor who is willing to bring suit. If the beneficiaries are over 21 years of age and competent, the real estate can be sold by common consent of the beneficiaries. This leaves the difficult case where an infant or incompetent is involved, and it would seem that it is in exactly this case where the personal representative should be authorized to act. The standard inclusion in most wills by competent lawyers of a power to sell real estate can leave no doubt of the desirability of such a provision.

We, therefore, have recommended that the personal representative be authorized to bring suit to subject the real property of the decedent to the payment of just claims against the estate. This we believe will provide an orderly method of settling estates through a more simplified method of marshaling all the assets of the estate to satisfy such claims.

We have suggested that the personal representatives be held to the same criteria which are imposed upon creditors under the present law. We have provided, specifically, that the personal representative must show to the satisfaction of the court that there are not sufficient personal assets in the estate before so proceeding. This gives the courts sufficient supervisory power to assure that the privilege granted will not be abused by any personal representative to the detriment of the heir or devisee.

2. The ancient marital rights of dower and curtesy are products of the English feudal system, which was based upon land-holding in return for personal services, and prior to the Wills Act (1540) did not legally permit an owner to dispose of his land by will. On his death, intestate, it went by right of primogeniture to the eldest son to the exclusion of the rest of the immediate family, and neither husband nor wife could ever be heir to the other; nor a parent the heir of his child. Under such a system of law when there was little commerce and land was the foundation of society, the life estates of dower and curtesy afforded the surviving spouse, daughters and younger sons of the deceased landowner some measure of assured economic security. But these ancient rules of inheritance in effect made a will for a man which few testators would ever make. In consequence, English law eventually permitted freedom of testation so that a person could by will cut off his or her family completely except for the surviving spouse's right of dower or curtesy which could not be barred by will or by deed without the other's written assent.

Virginia adopted almost completely this English common law system. So long as our economy was essentially agrarian, and the family farm constituted the bulk of the average person's estate, dower and curtesy worked pretty well. But with the twentieth-century shift of population from the farm to the city, the property of the average person is no longer concentrated in land, but consists of life insurance, bank deposits, stocks, bonds and business interests. There forms of wealth are classified as *personal property,* and since dower and curtesy attach only to *real property,* they have today become largely anachronous because they no longer serve their original purpose of guaranteeing for the surviving spouse a reasonable share of the other's property.

The common law life estates of dower and curtesy have been abolished by statute in England and about two-thirds of the states in the United States; in most of which the surviving spouse gets absolute title to a fractional share of the other's estate. In the remaining one-third of the states substantial alterations of dower and curtesy have occurred, a principal tendency being to equalize the rights of husband and wife by limiting his life estate to one-third of her lands. In about a dozen of these states dower and curtesy life estates still exist. Thus, the predominant American solution is to abolish the life estates of dower and curtesy, which are confined to real property, and to give the surviving spouse absolute title to a fractional share of both the real and personal property comprising the estate of the deceased, which share is often assured by giving the survivor the right to dissent from the deceased's will.

We do recognize, however, that there may be areas, especially rural areas, and there certainly are specific estates, where the predominance of real estate values over personal property has not changed. For this reason we have not recommended abolishing dower and curtesy altogether at this time.

While incohate dower or curtesy is of very little value in today's economy, the Council recognizes its intrinsic value to many people, especially those in predominantly rural areas. To increase the resultant security attained thereby, the Council recommends that the present life interests of dower and curtesy be converted into an interest in fee simple.

3. The underlying philosophy in Virginia in its ex parte procedures for administering estates and in the general supervisory provisions relating to fiduciary responsibility is to simplify procedures as much as possible consistent with appropriate safeguards to all concerned. The courts have always been given supervisory responsibility in all aspects of these procedures.

The Virginia Code authorizes the supervising court to distribute certain small funds belonging to an infant or incompetent to a parent or person deemed capable of properly handling the same, without the intervention of a guardian or commitee, for the education, maintenance and support of the person under disability.

The present Code §§ 8-685 and 8-694 now authorize the courts to distribute the proceeds in such account if the sum does not exceed $2,000. We have proposed that this amount which the court may distribute be increased to $2,500 to be consistent with other similar Code provisions relating to the distribution of small sums by the courts without the appointment of a fiduciary.

To further simplify procedures and alleviate many troublesome problems attendant upon our distinctions between real and personal property, we have recommended that such funds when so paid shall be deemed personal property.

4. Virginia Code § 64-83 provides that a deposition to prove a will may be taken prior to the time that the will is offered for probate, and the deposition filed at the same time the will is offered, provided, that if probate is opposed by some person who has made himself a party, such person shall have the right to examine such witness. This portion of the section was added by the General Assembly at the 1966 Session.

Prior to the 1966 amendment, if a party desired to prove a will by deposition he was permitted to withdraw the original temporarily, leaving an attested copy with the court or clerk. With the 1966 amendment, the deposition may now be taken prior to the time the will is offered for probate.

We feel that it is of the utmost importance that the original will be offered for probate promptly to avoid the possibility of loss or destruction. Because the witness may have moved from the immediate area, it is quite often necessary that the will be sent through the mails. This latter method then presents a very real danger of loss.

5. Under Code § 64-127, the personal representative of a decedent is prevented from receiving any compensation for his services until the list of heirs has been filed and recorded. The matter which gives concern to the Council and to many personal representatives is the word "recorded". The recording of the list of heirs is purely and simply a responsibility of the clerk of the court and the personal representative has no further responsibility in fact than to file the list of heirs. For this reason, we have recommended that the word "recorded" be deleted from Code § 64-127. This then is simply a clarification of responsibilities rather than a substantive change in present procedures.

6. We feel very strongly that trustees named in any will should be required to qualify and give bond before the proper court or clerk thereof. We feel, however, that security on the bond should not be mandatory, but discretionary with the court or clerk thereof.

The Council as well as practitioners in the field have encountered considerable problems in interpreting a recent amendment (1966) to § 26-46.2. The second paragraph, second sentence, reads as follows:

> "Such trustee shall be required to give bond in the penalty prescribed by such court or clerk, without surety, unless the will specifically provides for surety; provided, however, no trustee shall be required to qualify, give bond or file any account if the instrument creating the trust so directs."

§ 26-1 presently authorizes the court "on the motion of any person interested, if it deem the same proper for the security of the trust estate", to order the trustee to give bond with surety before the court or the clerk and if the order be not complied with in a reasonable time to remove the trustee. Where the will is silent on the subject of security or where the will directs that no bond be required, the question, because of the 1966 amendment, arises as to whether or not the specific language in the last paragraph of § 26-46.2 would not supersede the authority granted to the court under § 26-1.

§ 26-2—The general responsibility of any commissioner of the court to inquire into the trustee's bond and the sufficiency of the surety upon the application of any person interested, or for any other cause, is put in question where the will is silent as to surety or directs that no bond be given as provided in § 26-46.2.

§ 26-3—Here again the general authority of the court, upon evidence adduced before it, to require the trustee to give bond with or without surety is subject to question by the last paragraph of § 26-46.2 where the will is silent on the subject of surety or where the bond is waived by the will.

§ 26-46.1—This section authorizes the clerk to qualify a trustee and require and take the necessary bonds in the same manner and with like effect as the court could do if in session. It directs that no security shall be required of a trustee, if the will so provides, unless on application of a person interested or from his own knowledge, the clerk believes security ought to be required. It reaffirms the jurisdiction of the court to qualify trustees and to require security or not as it sees fit. The question again is raised as to the effect of the last paragraph of § 26-46.2 (1966 amendment) where the will is silent on surety or the will directs that no bond be given.

§ 26-17 *requires* the annual settlement of accounts by a testamentary trustee. This section has been in the Code for many years and it has been the accepted and approved practice of testamentary trustees to settle annual accounts before the commissioner. The problems of interpretation again arise because of the 1966 amendment to § 26-46.2.

The testamentary trust differs from an outright gift or a direct bequest in a number of respects, among which are the following:

(a) The trust involves some period of time for its performance and during such time it is an existing legal relationship involving a set of primary rights and duties, whereas a gift is a transfer of property.

(b) A trust involves a separation of legal and equitable titles, whereas a direct gift involves a disposition of both legal and equitable ownership in the donee.

(c) The making of a trust may be without delivery although delivery is requisite in making a gift or outright conveyance.

(d) Trust always involves an equitable ownership embracing a set of rights and duties, fiduciary in character.

As pointed out by Judge Brockenbrough Lamb in *Virginia Probate Practice,* Section 193, pages 331-332:

> ". . . trusts set up in wills, or in agreements *inter vivos,* are as a rule not only more elaborate and complex in their provisions, but—and this is more to the point—they continue over a period of time, often a long span of years, and the *cestuis* are not infrequently *non sui juris,* or not born, or members of a class not yet capable of ascertainment.
>
> "The court is to exercise a discretion in the matter of requiring a bond. There is no reason why the court should not have the benefit, in exercising discretionary judgment, of the human experience of the judge. Experience and observation have shown that depletion of trust estates does not as a rule occur when the duties are promptly exercised and the results are watched by those immediately interested and entitled to enjoy the beneficial ownership without delay. It is in the long continued trust that negligence is prone, such is the frailty of human nature, to result in misfeasance; the mingling of funds and of investments, accompanied by lack of immediate accountability by the trustee and by the absence of inquiry and investigation by alert *cestuis,*—the situation tends to present temptations that under stress

> may lead well-intentioned men astray in money matters. And so transactions that begin with mere carelessness may, and all too often do, develop into culpable misfeasance, resulting in the depletion, or loss, of the trust estate."

Under the requirements of § 26-17, annual accounts are required from the testamentary trustee and are subjected to review by the commissioner and the court. Record keeping, verification of disbursements and a compliance with the terms of the trust are routine and prompt. The incapacity or misconduct of the trustee can be readily ascertained. Copies of the accounts are available to the beneficiaries and remaindermen without the necessity of bringing suit for their production. The dangers inherent in authorizing the testator to change the long established law in Virginia by waiving the filing of testamentary trust accounts, and for the trustee to act without the safeguards of regular supervision, indicate the advisability of eliminating this exception from the statute.

7. For the sake of uniformity and in keeping with our ever changing economic setting, we have recommended that the allowances for funeral expenses be increased from $200 to $300 in various sections of the Code so as to conform with the allowances provided in Code § 64-147 which sets forth the general order in which debts of decedents are to be paid. Otherwise, we believe the proposed amendments are self-explanatory.

8. As a result of our recommended amendments which were by the General Assembly at its 1966 Session, some confusion has risen concerning the interpretation of Virginia Code § 37-144.1, relating to authority of the clerk of a court to accept new or increased bond of a fiduciary without a court order. Our recommended change of § 26-3 of the Code of Virginia was apparently the cause of this confusion. The Honorable Daniel Weymouth, Judge, Twelfth Judicial Circuit posed the following problem:

> "We . . . have before us in our Circuit a fairly large sum belonging to an incapacitated person in another Circuit. A guardian was appointed by the Court of Record pursuant to Section 37-140 of the Code in the place of residence of such incapacitated person and gave bond for $500.00, without surety, before the Court. This order dispenses with surety, the filing of an inventory as well as the duty to settle accounts. Several weeks thereafter the fiduciary (guardian) voluntarily appeared in the Clerk's Office of the Court of appointment and gave a new bond before the Clerk for $8,000.00 with corporate surety. According to the guardian the Judge of such Court contends no court order is necessary—that the second paragraph of Section 26-3 takes care of it—that the Clerk has such authority.
>
> "Code Section 37-140 expressly provides 'shall give such bond as is required by the court or judge'.
>
> "The first paragraph of Section 26-3 expressly provides for notice and definitely limits the procedure for new and additional bonds to the court with the court determining the penalty and surety.
>
> "The second paragraph says 'Upon motion'. Can the motion be made before the Clerk? It further says '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'. Can the Clerk change the penalty? . . ."

After considering the various sections of the Code relating to this problem, the Attorney General concluded as follows:

" . . . However, in light of the precise language of §§ 37-144 and 37-144.1 authorizing the setting of the penalty of a bond only by the court in those situations involving the appointment of guardians or committees for incapacitated persons as defined in § 37-140, I am constrained to believe that the language of the 1966 amendment to § 26-3 should not be construed to authorize clerks of courts to alter the penalty of a bond which only the court—not the clerk—is authorized to set in the first instance."

We believe this confusion should be remedied in favor of authorizing the clerk of the court appointing committees, trustees and guardians to set the penalty on the bonds as well as pass upon the sufficiency of the surety offered. We have also included guardians appointed by such courts.

9. We feel very strongly that the trustee appointed by deed or other writing in which qualification is required should not act thereunder until he shall have qualified before the proper court by giving bond and taking oath that he will perform the duties of his office. We believe that even though the instrument creating the trust does not specify that the trustee shall qualify and give bond, he nevertheless should be subject to the same supervision as other fiduciaries. We believe that this procedure would promote fidelity and uniformity of and a general overall increased efficiency in the administration of such trusts as well as the execution of the fiduciaries' responsibilities thereunder.

If qualification is waived by the instrument creating the trust, the trustee should be authorized to qualify on his own motion as though it were required by such instrument. The very fact that so often the trustee finds that it is to his own interest as well as that of the trust to qualify and give bond is probably the very strongest indication of the need for requiring such qualification as suggested above. In addition, this would further avoid the ambiguities and inconsistencies such as were illustrated in our reasons for the previous recommendation.

10. § 64-161 of the Virginia Code was amended at the last session of the General Assembly by reducing the various time limitations imposed therein on the debts and demands proceedings. Inadvertently, some of the language which required that the Commissioner of Accounts have before him for settlement an account was deleted from the section when it was rewritten. Until the recent amendment, the filing of the account was considered to give the Commissioner his jurisdiction to act and to appoint a time for receiving debts and demands. To clarify existing confusion, we have recommended that the language of the old section be reinserted.

11. We feel that the adherence to the archaic distinctions between real and personal property in the administration of estates impedes orderly administration. We question seriously the practice of giving realty priority over personalty in the payment of debts of the decedent, and think it may be advisable to remedy by statute the common law requirement of exoneration for land devised by will and covered by mortgage which the testator placed on the property. In addition, there are many other ramifications of this adherence to the distinction between real and personal property which we feel might be remedied.

As we have previously pointed out, the distinctions between real and personal property are historical in origin; the plan of inheritance of realty came through the feudal law of England and was designed to support and defend the feudal economy; the distribution of personalty came from the Roman law and was administered by the Ecclesiastical Courts of England. These distinctions have their historical roots in an economic and social

setting under which real estate constituted the predominant and more permanent source of wealth. As we have seen, emphasis of ownership is now shifting from real to personal property. In view of the relative significance of corporate stocks and other forms of intangible property versus real property in present day decedents' estates, we feel that the basis for the distinction is more historical than logical when applied to the estate as a whole.

We believe that in the administration of an estate there should be as little difference as possible in the treatment of real and personal property. Whatever reasons may have existed in the past for such distinction, the difference is out of harmony with the trend of modern times. We, therefore, recommend that this study be continued and that the present distinctions between real and personal property be fully considered along with all related matters.

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,

Tom Frost, *Chairman*

Charles R. Fenwick, *Vice-Chairman*

C. W. Cleaton

John Warren Cooke

John H. Daniel

J. D. Hagood

Charles K. Hutchens

J. C. Hutcheson

*Garnett S. Moore

Lewis A. McMurran, Jr.

Sam E. Pope

Arthur H. Richardson

William F. Stone

Edward E. Willey

* Mr. Moore approved the report with the exception of recommendation number 4 and the reasons therefor.

A BILL to amend and reenact § 64-174 of the Code of Virginia, relating to suits to subject real estate to debts of a decedent.

Be it enacted by the General Assembly of Virginia:

1. That § 64-174 of the Code of Virginia be amended and reenacted as follows:

§ 64-174. Heir or devisee liable in equity only; judgment against representative as evidence.—An heir or devisee may be sued in equity by *the personal representative or* any creditor to whom a claim is due for which the estate descended or devised is liable, or for which the heir or devisee is liable in respect to such estate; and he shall not be liable to an action at law for any matter for which there may be redress by such suit in equity. And any judgment or decree for such claim hereafter rendered against the personal representative of the decedent shall be prima facie evidence of the claim against the heir or devisee in such suit in equity. *In any suit by the personal representative pursuant to this chapter, he shall record a notice of lis pendens as required by § 8-142. The personal representative or creditor, as the case may be, shall show to the satisfaction of the court that there is not sufficient personal assets in the estate to satisfy all claims against the estate.*

A BILL to amend and reenact §§ 64-20 and 64-27 of the Code of Virginia relating to dower and curtesy.

Be it enacted by the General Assembly of Virginia:

1. That §§ 64-20 and 64-27 of the Code of Virginia be amended and reenacted as follows:

§ 64-20. Surviving husband's curtesy.—A surviving husband shall be entitled to an estate by the curtesy in one-third of all the real estate whereof his wife, or any other to her use, was, at any time, during the coverture, seized in fact or in law of an estate of inheritance, unless his right to such curtesy shall have been lawfully barred or relinquished; but if she die wholly intestate and without issue of the marriage which was dissolved by her death or of a former marriage, her surviving husband shall be entitled to an estate by the curtesy in one-third of such real estate, as aforesaid, and, in addition thereto, subject to the rights of his wife's creditors, in all the residue of such real estate of his wife; or if she die partially intestate and without any such issue, her surviving husband shall be entitled to an estate by the curtesy in one-third of such real estate, as aforesaid, and, in addition thereto, subject to the rights of his wife's creditors and after the rights of the devisee or devisees under his wife's will shall have been fully satisfied, in all the residue, if any, of such real estate. *An estate by the curtesy shall be a fee simple interest.*

§ 64-27. Of what a widow shall be endowed.—A widow shall be endowed of one-third of all the real estate whereof her husband, or any other to his use, was, at any time during the coverture, seized of an estate of inheritance, unless her right to such dower shall have been lawfully barred or relinquished; but if he die wholly intestate and without issue of the marriage which was dissolved by his death or of a former marriage, his widow shall be endowed of one-third of such real estate, as aforesaid, and, in addition thereto, subject to the rights of her husband's creditors, of all the residue of such real estate of her husband; or if he die partially intestate and without any such issue, his widow shall be endowed of one-third of such real estate, as aforesaid, and, in addition thereto, subject to

the rights of her husband's creditors and after the rights of the devisee or devisees under her husband's will shall have been fully satisfied, of all the residue, if any, of such real estate. *Dower shall be a fee simple interest.*

A BILL to amend and reenact § 8-694 of the Code of Virginia, relating to disposition of proceeds from sale of lands of persons under disability.

Be it enacted by the General Assembly of Virginia:

1. That § 8-694 of the Code of Virginia be amended and reenacted as follows:

§ 8-694. Disposition of share in proceeds of infant or insane person.—The court making an order for sale shall, when the dividend of a party exceeds two thousand *five hundred* dollars, if such party be an infant or insane, order the same to be invested as the proceeds of a sale under article 2 (§ 8-674 et seq.) of this chapter are required to be invested. If such dividend does not exceed two thousand *five hundred* dollars the same shall be paid to the guardian of such infant, or committee of such insane person, the court being first satisfied that such guardian or committee has given bond in sufficient penalty and with sureties sufficient for the security of the same; *provided, however, that if such dividend does not exceed two thousand five hundred dollars, the court, in its discretion and without the intervention of a committee or guardian, may pay such funds to the parents of the infant or insane person. Such funds not in excess of two thousand five hundred dollars shall, when paid over to the parent,* guardian or committee, be deemed personal property. But if the interest of any person be held in trust the dividend of such person, whether greater or less than two thousand five hundred dollars, shall be paid to the trustee, upon his giving bond as trustee, with sufficient surety, to be held by him upon the same trusts as the interest of such person in the land was held.

A BILL to amend and reenact § 8-685, as amended, of the Code of Virginia, relating to proceeds from judicial sale of lands.

Be it enacted by the General Assembly of Virginia:

1. That § 8-685, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 8-685. How proceeds from disposition to be secured and applied; when same may be paid over.—The proceeds of sale, or rents, income, or royalties, arising from the sale or lease, or other disposition, of lands of persons under disabilities, whether in a suit for sale or lease thereof, or in a suit for partition, or in condemnation proceedings, shall be invested under the direction of the court for the use and benefit of the persons entitled to the estate; and in case of a trust estate subject to the uses, limitations, and conditions, contained in the writing creating the trust. The court shall take ample security for all investments so made, and from time to time require additional security, if necessary, and make any proper order for the faithful application and safe investment of the fund, and for the management and preservation of any properties or securities in which the same has been invested, and for the protection of the rights of all persons interested therein, whether such rights be vested or contingent, but nothing hereinbefore contained shall prevent the court having charge thereof from directing such funds when the sum to be distributed on behalf of any one person does not exceed two thousand *five hundred* dollars, to be paid over to the legally appointed and qualified guardian, committee or

trustee of the infant or insane, incapacitated or ex-service person, whenever the court is satisfied that the guardian, committee or trustee has executed sufficient bond. * *Provided, however, that if such funds do not exceed two thousand five hundred dollars, the court, in its discretion and without the intervention of a guardian or committee, may pay such funds to the parents of the person under disability. Such funds not in excess of two thousand five hundred dollars shall, when paid over to the guardian, committee or parent, be deemed personal property.*

A BILL to amend and reenact § 64-83 as amended, of the Code of Virginia, relating to depositions of witnesses to prove a will.

Be it enacted by the General Assembly of Virginia:

1. That § 64-83 as amended of the Code of Virginia be amended and reenacted as follows:

§ 64-83. When deposition of witness may be taken and read on probate of will.—When any will, or authenticated copy thereof, is offered for probate, and a witness attesting the same, or in event the will be wholly in the handwriting of the testator, a witness to prove such handwriting, resides out of this State, or though in this State is confined in another county or corporation under legal process, or is unable from sickness, age or any other cause to attend before the court or clerk where the same is offered, the same may be proved by the deposition of the witness or witnesses, which shall be taken and certified as depositions are taken in other cases, except that no notice need be given of the time and place of taking the same, unless it be in a case in which the probate is opposed by some person who has made himself a party; and the proof so given shall have the same effect as if it had been given before such court or clerk. For the purpose of making such proof the party offering such will or copy shall be permitted to withdraw temporarily the original thereof upon leaving an attested copy with such court or clerk.*

A BILL to amend and reenact § 64-127, as amended, of the Code of Virginia, relating to list of heirs furnished by personal representatives to certain courts.

Be it enacted by the General Assembly of Virginia:

1. That § 64-127, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 64-127. List of heirs.—Every personal representative of a decedent, whether such decedent died testate or intestate, shall, at the time of his qualification, furnish the court or clerk before which or before whom he qualifies and the clerk of court of any city or county wherein deeds are recorded, in which the decedent died seized of any real estate, a list containing his name, with his post-office and street address, if any, and:

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

(2) The degree of kinship of each to the decedent, accompanied by affidavit that he has made diligent inquiry as to such names, ages and addresses and that he believes such list to be true and correct.

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

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

Be it enacted by the General Assembly of Virginia:

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

§ 26-46.2. Jurisdiction for qualification of trustee; qualification and bond of trustee; when qualification, bond and account not required.—In the case of testamentary trusts, if the will has been admitted to probate in this State, the jurisdiction where the will has been probated 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.

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Each trustee named in a will probated after July one, nineteen hundred sixty-eight, before proceeding to act thereunder, shall qualify and give bond before the proper court or clerk thereof with surety, if any, as may be required by such court or clerk.

A BILL to amend and reenact § 6.1-71 of the Code of Virginia, relating to the disposition of certain funds of deceased persons by banks and trust companies.

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-71 of the Code of Virginia be amended and reenacted as follows:

§ 6.1-71. Payment of small balance to next of kin of decedent.—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 his or her spouse, and if none, to his or her 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 * *three* 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 and reenact § 63-191, as amended, of the Code of Virginia, relating to liens on property of welfare recipients.

Be it enacted by the General Assembly of Virginia:

1. That § 63-191, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 63-191. Lien on property of recipient; recovery from estate of recipient.—Each local board of public welfare shall, for each recipient theretofore or thereafter approved for aid on and after July one, nineteen hundred fifty-four, who owns real estate, prepare and acknowledge as deeds are acknowledged a notice showing the name of such recipient, the rate of the grant and intervals of payment and the date of the first payment, and shall file the same in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real estate is located. The clerk of court shall docket this notice as a judgment is docketed indicating the type of aid received, in the current judgment lien docket, indexing it in the name of the recipient and in the name of the local board. In the event a portion or all of the aid theretofore received by the recipient shall be repaid, the local board shall prepare, acknowledge and file in the same court a notice, showing the name of recipient, the total of aid theretofore received by the recipient and not repaid, the date of the first payment thereafter, and the rate of the grant and intervals of payment from that date. The clerk of court shall docket this notice as a judgment is docketed, indicating the type of aid received, in the current judgment lien docket, indexing it in the name of the recipient and in the name of the local board, and shall mark the docket where the previous notice was docketed to indicate that it has been superseded. The clerk of the court shall receive for his services the regular fee allowed for docketing judgments in his office and the Welfare Department is hereby authorized to pay such fee from its administrative fund. The filing of a notice under the provisions of this section shall create a lien against all real property of the recipient lying within the county or city wherein the notice is filed in favor of the local board; provided, however, that no such lien shall be enforced so long as such recipient is eligible for assistance. Upon death of any recipient, the local board of welfare having reason to believe that such recipient died possessed of property, either real or personal, from which reimbursement may be had, shall file notice with the clerk of the court as hereinabove provided. The filing of such notice shall create a lien against the estate, both real and personal, of such recipient, prior to all other claims except prior liens and except funeral expenses not in excess of * *three* hundred dollars, and except hospital bills, doctors' bills and medical expenses not in excess of one hundred and fifty dollars. Nothing contained herein shall affect the operation of § 63-192.

No lien which attached prior to June 30, 1954, shall be impaired by operation of the 1954 amendment, nor shall its priority be affected.

A BILL to amend and reenact § 37-144.1 of the Code of Virginia, relating to the taking of bond by clerk of court.

Be it enacted by the General Assembly of Virginia:

1. That § 37-144.1 of the Code of Virginia be amended and reenacted as follows:

§ 37-144.1. Taking of bond by clerk of court.—Whenever in this title provision is made for the appointment of a committee, *guardian* or trustee

by a court of record or the judge thereof, the clerk of such court shall also have the authority to take the required bond, *to set the penalty thereof* and pass upon the sufficiency of the surety thereon.

A BILL to amend the Code of Virginia by adding thereto a section numbered 26-1.1, relating to qualification of trustees.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding thereto a section numbered 26-1.1, as follows:

§ 26-1.1. (a) No trustee appointed by deed or other writing in which a qualification is required by such deed or other writing, shall act thereunder until he shall have qualified as such before the court or clerk thereof having jurisdiction by giving bond and taking oath that he will perform the duties of his office. Such oath may be taken on behalf of a bank or corporation by its president or other officer.

For the purpose of this section, the phrase "deed or other writing" shall be construed as excluding a trustee appointed by a will.

(b) Any trustee appointed by deed or other writing in which qualification is waived by the terms thereof, may voluntarily so qualify; and, in every case where requested, the administration of the trust shall be in the same manner as if qualification had been required by the terms of the instrument creating it.

A BILL to amend and reenact § 64-161 as amended, of the Code of Virginia, relating to proceedings for receiving proof of debts by commissioners of accounts.

Be it enacted by the General Assembly of Virginia:

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

§ **64-161.** Proceedings for receiving proof of debts by commissioners.—Any commissioner of accounts *who has for settlement the accounts of a personal representative of a decedent* shall * *when requested to so do by such* personal 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.

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 other 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 and the advisability and feasibility of consolidating all laws relating to fiduciaries. The Council shall complete its study and make its report to the Governor and the General Assembly not later than November one, nineteen hundred sixty-nine.