

**REPORT OF THE
JOINT HOUSE AND SENATE SUBCOMMITTEES
ON PROBATE OF WILLS AND ADMINISTRATION OF ESTATES
REPORTED TO
THE GOVERNOR
AND
GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 15

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Department of Purchases and Supply
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ERRATA SHEET

SENATE DOCUMENT NO. 15 (1975)

**JOINT HOUSE AND SENATE SUBCOMMITTEES
ON PROBATE OF WILLS AND ADMINISTRATION OF ESTATES**

The form for deletions and additions to laws set forth on pages 8 through 8 is to set forth the material deleted with lines under such material, e.g. deleted material or words, and by italicizing the words added.

The General Assembly, at its 1973 Session, passed House Joint Resolution No. 234 directing the Courts of Justice Committees of both the House and Senate to conduct a study of the present Virginia probate statutes and the Uniform Probate Code. It was determined that further study in this area was needed, therefore, at its 1974 Session, the General Assembly passed Senate Joint Resolution No. 82 directing that the study be continued.

The text of the Resolution follows:

SENATE JOINT RESOLUTION NO. 82

Whereas, House Joint Resolution No. 234 of the session of the General Assembly of nineteen hundred seventy-three authorized the Committees for Courts of Justice of the Senate of Virginia and the House of Delegates to study the probate of wills and administering estates; and

Whereas, such a study was made, but insufficient time did not permit the Committees to make a sound evaluation and isolation of the problem areas within the study; and

Whereas, the Committees recommend the continuance of the study to the end that the mission set out in House Joint Resolution No. 234 be completed; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Committees for Courts of Justice of the House of Delegates and of the Senate, jointly and severally, are hereby authorized to continue to study the probate of wills and administering of estates, both testate and intestate, to determine how such procedures can be made more efficient; and in such study continue to investigate the various model acts pertaining to probate of wills and administration of estates.

All agencies of the State and local governments shall cooperate with the Committees in their study.

The Committees may conclude their study and make their report with recommendations to the General Assembly not later than November one, nineteen hundred seventy-five.

Pursuant to the study directive the Senate Courts of Justice Committee appointed Senators J. Harry Michael, Jr., Charlottesville; Herbert H. Bateman, Newport News; and Edward M. Holland, Arlington. The House Courts of Justice Committee appointed Delegates Richard W. Elliott, Rustburg; George E. Allen, Jr., Richmond; Joseph A. Leafe, Norfolk; C. Hardaway Marks, Hopewell; A. L. Philpott, Bassett; and Frank M. Slayton, South Boston.

The members of the Subcommittee elected Senator J. Harry Michael, Jr., Chairman and Delegate Richard W. Elliott, Vice-

Chairman of the study.

The Division of Legislative Services, represented by G. William White, Jr., and Howard P. Anderson, Jr., provided counsel and facilities for the study.

Preliminary Statement

With the advent of the Uniform Probate Code there has been a nationwide advocacy for more efficient probate and administration laws. This study was created to determine whether or not there is a need for change in the Virginia probate and administration laws and whether or not Virginia should adopt the Uniform Probate Code. The members of this subcommittee have found that by and large, the citizens of Virginia are satisfied with the present situation. This is not to say that there were no complaints voiced nor changes that should be made; the subcommittee simply found no justification for the adoption of the Uniform Probate Code in Virginia.

The Subcommittee made a point by point comparison of the Uniform Probate Code and the Virginia probate statutes. This comparison included a scrutiny of the Virginia Commissioner of Accounts system and the practices inherent in it. The Subcommittee looked with particular concern to measures which would ease the burden and cost of probate and administration of small estates in which there are a limited number of heirs. Quite often these burdens and costs could be alleviated in certain instances where the estate is small or where the sole heirs or beneficiaries are all members of the immediate family by creating exceptions or alternative procedures to the probate and administration of estates where the court deems it justified and prudent.

The Subcommittee held a series of public hearings in Richmond, Newport News, Arlington and Roanoke. The public at large was invited and responded with complaints and recommendations which gave direction to the Subcommittee's areas of study.

Recommendations

1. The Subcommittee recommends that the Uniform Probate Code should not be adopted in Virginia. There are many reasons why the Subcommittee takes this view. First, Virginia ranks near the bottom on the American Bar Association scale comparing administration costs among the states. However, the Subcommittee feels that administration costs could and should be even further reduced in certain instances in Virginia. This will be taken up later in the recommendations.

Second, the Uniform Probate Code would impose a completely new system of probate and administration which would nullify hundreds of years of sound case law built up in Virginia. Virginia has a chancery system of probate which is flexible, that is, it can be

tailored to meet the needs of the immediate situation. In contrast, the Uniform Probate Code is a rigid set of rules which would afford little variation.

Third, the Uniform Probate Code requires that every estate be brought before the court. This system is used in the District of Columbia and has resulted in varying degrees of backlog in the courts. The beauty of the Commissioner of Accounts system as used in Virginia is that more often than not, the parties can go before the Commissioner of Accounts and not encounter the delay of being placed on a court docket. Furthermore, the employment of the court system as required by the Uniform Probate Code would markedly increase the already heavy burden on the courts, possibly to the point of having to create additional courts.

It should be noted that a comparison of the Uniform Probate Code and Virginia probate statutes revealed that approximately 75 percent of the Uniform Probate Code provisions are already contained in some form in the Virginia probate statutes. Public reaction across the Commonwealth as revealed in the public hearings has been, with certain exceptions, strongly in favor of retaining the present system with some changes.

2. The Subcommittee is of the opinion that certain changes should be made to facilitate the administration of small estates. Research has revealed that approximately 75 to 80 percent of the total estates in Virginia consist of total assets of less than \$20,000 exclusive of real estate.

(a) One means by which costs could be reduced would be to provide that surety not be required where the immediate family is the sole heir of the estate. This would be left to the court's discretion and allowed only where all heirs are sui juris and all agree to the waiver.

(b) Another means by which time and money could be saved would be to permit distribution of estates under \$5,000 without qualification. At present, under the provisions of § 8-750 of the Code, amounts up to \$2500 may be handed over to the court and distributed by it with no requirement for qualification. It should also be noted that, at present, Virginia law provides that an executor or administrator may distribute the estate at the end of six months upon publication of notice and proper showing that the debts have been paid and the estate is in order.

3. The Subcommittee recommends that the surviving spouse or dependent beneficiary be allowed an interim allowance from the estate. This allowance would be based on need and limited as to total amount permitted and period of time allowed. Whether this allowance would be permitted and if permitted, the limitations placed on it, would be left to the discretion of the court and would by no means be an inherent right of the surviving spouse or dependant beneficiary. The court would be authorized to refer the matter of allowances to the Commissioner of Accounts. The Subcommittee feels that, used properly, this power could be most beneficial to a surviving spouse or dependent beneficiary left

financially dependent pending distribution of the estate.

4. The Subcommittee recommends that the Virginia Code Commission be directed to recodify all statutes pertaining to probate of wills and administration of estates into one section in the Code. At present, these statutes are scattered throughout the Code with no evidence of any particular organization.

5. The Subcommittee recommends that a study commission be formed consisting of members from the House and Senate, the Virginia State Bar, Estates and Properties Section and Unauthorized Practice of Law Committee to look into practices which may constitute the unauthorized practice of law. There exists a definite need to determine what constitutes the unauthorized practice of law in probate and administration practices. The purpose of this study would be to insure that the citizens of Virginia receive the best possible legal services available.

6. The Subcommittee recommends that the Commissioners of Accounts form a Statewide organization with a purpose of establishing some degree of uniformity of procedures and fees among the Commonwealth's Commissioners of Accounts. While it is recognized that total uniformity would be impractical with some counties being highly urbanized and other counties predominantly rural, the Subcommittee is of the opinion that some degree of uniformity of practice is possible and desirable.

7. The Subcommittee recommends that the Virginia State Bar be asked to formulate a uniform guide for the lay fiduciary which would outline the requirements, procedures and duties of a fiduciary. Quite often the lay fiduciary is unaware of the duties and responsibilities placed upon him by law and would benefit greatly if this information were readily available.

8. The Subcommittee recommends that Senate Bill No. 142 which provides for the appointment of foreign fiduciaries in Virginia be passed by at this time. The unauthorized practice of law study proposed in Recommendation No. 5 will study the problem in depth, and, if the legislation is reintroduced in any subsequent session of the General Assembly, it can be reviewed in a fresh light.

9. The Subcommittee is not making an official recommendation concerning dower and curtesy because the Virginia Advisory Legislative Council's Study on Separation and Divorce is incorporating this matter into its study. The Subcommittee did, however, discuss dower and curtesy and a general consensus was reached that changes in the present law concerning dower and curtesy are warranted and necessary.

10. The Subcommittee has also taken up the matter of savings and loan survivorship cards. Work on this matter is continuing and any recommendations concerning these survivorship cards will be contained in a supplement to this report.

Respectfully submitted

J. Harry Michael, Jr., Chairman

Richard W. Elliott, Vice Chairman

George E. Allen, Jr.

Herbert H. Bateman

Edward M. Holland

Joseph A. Leafe

C. Hardaway Marks

A. L. Philpott

Frank M. Slayton

A BILL to amend and reenact § 8-750, as amended, of the Code of Virginia to amend the Code of Virginia by adding a section numbered 64.1-132.1, the amended and added sections relating to payment of small sums of money 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 is amended and reenacted and the Code of Virginia is amended by adding a section numbered 64.1-132.1 as follows:

§ 8-750. Payment of small amounts to infants or adults through court without intervention of guardian or committee.—Whenever there is accruing to any person, adult or infant, any sum of money from any source *other than inheritance*, 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 a 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 a administrator, guardian or committee.

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

§ 64.1-132.1. *Payment of estates not exceeding five thousand dollars.*—Whenever there is accruing to any person, adult or infant, any sum of money or personalty from an estate, the gross value of which is five thousand dollars or less, the same may be paid or delivered into the court of the county or corporation having jurisdiction over such estate. Such court may, by order entered of record, (1) pay such funds or deliver such personalty 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 or deliver such personalty 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 a guardian or committee, whether such person reside within or without this State, nor shall there be any requirement for the qualification of an administrator or executor. The clerk of such court shall take a receipt from the person to whom such money is paid or such personalty is delivered, which will show the source from which the same was derived, the amount, to whom it belongs, and when and to whom it was paid or delivered. Such receipt shall be signed and acknowledged by the person so receiving such money or personalty, 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 the administrator, executor, 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 § 64.1-121, as amended, of the Code of Virginia, relating to instances in which security or a bond is not required.

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-121, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 64.1-121. When security not required.—Where the personal representative, or representatives if there be not more than two, of an estate is the sole distributee or sole beneficiary thereof, or sole distributees, or sole beneficiaries, as the case may be, the court or clerk shall not require security, nor shall security be required of an executor when the will waives security of an executor nominated therein, unless, in either case, upon the application of any person who has a pecuniary interest or upon motion of the court or clerk such fiduciary may be required to provide security in an amount deemed sufficient. If at any time any person with an interest, or a legatee, devisee or distributee of an estate shall file with the court a motion in writing suggesting that surety upon the bond should be required of a fiduciary for the protection of the estate, a copy of such motion shall be served upon the fiduciary and the court shall hear the matter and may require the fiduciary to furnish surety upon his bond in the amount it deems necessary and, in addition, award to the movant reasonable attorney's fees and costs which shall be paid out of the estate.

Where the sole heirs or beneficiaries are all members of the immediate family and all are sui juris and all are agreed to the waiver of security, the court may, in its sound discretion, waive the requirement of security. The term "immediate family" as used in this section shall be construed to mean children, spouse, parents, brothers and sisters of a decedent.

This section shall be deemed to permit qualification without security in situations where the personal representative, or personal representatives if there be not more than two, is the sole distributee or sole beneficiary, or sole distributees or sole beneficiaries as the case may be, by virtue of one or more instruments of disclaimer filed prior to, or at the time of, such personal representative's qualification *and with court approval, where the sole heirs or beneficiaries are members of the decedent's immediate family and the stipulations set forth herein have been met.*

A BILL to amend the Code of Virginia by adding a section numbered 64.1-177.1, so as to provide for an interim monthly allowance for surviving spouses and other dependents of a decedent.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 64.1-177.1 as follows:

§ 64.1-177.1. The court may, upon petition of the surviving spouse or dependent of the deceased, allow such spouse or dependent an interim monthly allowance. Such interim allowance shall terminate upon the distribution of the estate or one year from the death of the decedent, whichever occurs first, or upon subsequent order of the court. Such interim allowance is not an inherent right of the surviving spouse or dependent of the deceased and may be terminated by the court at any time. The petition of the surviving spouse or dependent shall show to the satisfaction of the court that a sufficient need for the interim allowance exists and that such interim allowance will not, in any manner, jeopardize the rights of any creditors of the estate or of any heirs of the estate.

The court may, in its discretion, delegate the authority conferred upon it by this section to hear such petitions for interim allowance to its Commissioner of Accounts, whereupon such Commissioner of Accounts shall be empowered to make orders directing or referring interim allowances or may, upon petition terminate such allowance. Review of any such order by the court shall be allowed as in any other Chancery matter.

HOUSE JOINT RESOLUTION NO. ..

Creating a commission to study possible unauthorized practice of law in Virginia.

Whereas, it has been alleged that certain parties in Virginia may be engaging in practices which may amount to the practice of law; and

Whereas, the General Assembly believes that the public at large should receive the most effective legal services available; and

Whereas, there is a need to determine what constitutes the practice of law in the area of probate of wills and administration of estates; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That a Commission be created to study the possible unauthorized practice of law by certain trust companies and banking institutions in Virginia. The Commission shall consist of three members of the House Courts of Justice Committee, three members of the Senate Courts of Justice Committee, three members from the Unauthorized Practice of Law Committee of the Virginia State Bar, and three members from the Estates and Properties section of the Virginia State Bar.

All agencies of the State shall assist the Commission in their study.

Members of the Commission shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties for which there is hereby allocated a sum sufficient from the contingent fund of the General Assembly.

The Commission shall conclude its study and make its report to the General Assembly not later than November one, nineteen hundred seventy-five.