

2019 EDITION

Manual for Commissioners of Accounts

The Standing Committee on Commissioners of
Accounts of The Judicial Council of Virginia



Continuing Legal Education
by the Virginia Law Foundation





Manual for Commissioners of Accounts

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MANUAL FOR COMMISSIONERS OF ACCOUNTS

Sixth Edition (2019)

PREPARED BY
THE STANDING COMMITTEE ON COMMISSIONERS
OF ACCOUNTS
of
THE JUDICIAL COUNCIL OF THE
SUPREME COURT OF VIRGINIA

c/o Executive Secretary
Supreme Court of Virginia
100 N. 9th Street
Richmond, Virginia 23219

Standing Committee Members 2018

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TABLE OF CONTENTS

<i>Preface to the Sixth Edition</i>	iii
<i>Acknowledgments</i>	v
<i>Dedication</i>	vii
<i>In Memoriam: Furman B. (Pat) Whitescarver, Jr.</i>	ix
<i>Electronic Forms: Instructions and Table</i>	xi
<i>Lists of Commissioners of Accounts:</i>	
<i>Alphabetically by Jurisdiction</i>	xxv
<i>Alphabetically by Last Name</i>	xlvi

CHAPTER 1: PURPOSES OF MANUAL AND STATUTORY AUTHORIZATION AND JURISDICTION OF COMMISSIONERS OF ACCOUNTS

1.1	IN GENERAL.....	1
1.2	SUMMARY OF STATUTORY AUTHORIZATION AND JURISDICTION OF COMMISSIONERS OF ACCOUNTS	1
1.201	Introduction	1
1.202	Foreword	2
1.203	Summaries of Statutes	3

CHAPTER 2: JUDICIAL APPOINTMENT AND OVERSIGHT OF COMMISSIONERS OF ACCOUNTS

2.1	INTRODUCTION.....	13
2.2	APPOINTMENT PROCEDURES.....	13
2.201	Preliminary Considerations of the Office of Commissioners of Accounts	13
2.202	Job Description and Qualities to Consider in Prospective Appointees	15
2.203	Appointment Procedure.....	16
2.204	Assistant/Deputy Commissioners of Accounts: Appointment and Relationships.....	18
2.3	SUPERVISION	19
2.301	Review of Timeliness of Fiduciaries' Work	20
2.302	Timeliness of the Commissioner's Work	22
2.303	Evaluation of the Commissioner's Continuing Commitment to the Office	23
2.304	The Commissioner's Relationships with the Public, the Bar and Court Personnel	23
2.4	THE COMMISSIONER'S OFFICE	24
2.5	CONCLUSION.....	25

CHAPTER 3: COMPLAINTS AGAINST COMMISSIONERS

CHAPTER 4: RECORD KEEPING AND FILE MAINTENANCE

4.1 IN GENERAL..... 33

4.2 METHODS FOR KEEPING THE RECORD OF FIDUCIARIES 34

4.3 PRACTICE 34

CHAPTER 5: ACCESS TO FILES OF COMMISSIONERS

5.1 IN GENERAL..... 37

 5.101 Nature of the Office of Commissioner of Accounts 37

 5.102 Applicability of FOIA to the Court and Its Records 37

5.2 RECORDS THAT ARE NOT “PUBLIC RECORDS” 38

5.3 PROTECTION OF CONFIDENTIAL INFORMATION IN COURT FILES 38

5.4 REVIEW BY INTERESTED PARTIES 39

CHAPTER 6: ADEQUACY OF THE FIDUCIARY’S BOND

6.1 IN GENERAL..... 41

6.2 NONRESIDENT FIDUCIARIES 42

6.3 ADEQUACY OF PENALTY ON BOND 43

6.4 REDUCTION OF PENALTY ON BOND 44

6.5 FAILURE OF FIDUCIARY TO POST NEW BOND 45

CHAPTER 7: THE INVENTORY

7.1 IN GENERAL..... 47

 7.101 Forms 47

 7.102 When Inventories Not Required..... 48

 7.103 Furnishing Copies of Inventories 49

 7.104 Enforcement of Filing Requirement..... 49

 7.105 Affidavit of Notice of Probate; Enforcement 49

7.2 DECEDENTS’ ESTATES..... 50

 7.201 Instructions Generally..... 50

 7.202 Specific Instructions 50

 7.203 Assets That Do Not Exceed \$25,000 53

 7.204 Uniform Real Property Transfer on Death Act..... 53

TABLE OF CONTENTS

7.3	TIMELINESS	54
7.4	VALUATION	55
7.5	INCAPACITATED ADULTS	55
	7.501 Instructions Generally.....	56
	7.502 Specific Instructions	57
7.6	MINORS	58
	7.601 Instructions Generally.....	59
	7.602 Specific Instructions	59
7.7	TESTAMENTARY AND INTER VIVOS TRUSTEES AND OTHERS.....	60
	7.701 Minor's Tort Claims Recoveries	61
	7.702 Trustees for Incapacitated Veterans.....	61
	7.703 Instructions Generally.....	61
	7.704 Specific Instructions	61
7.8	OBJECTIONS TO INVENTORIES.....	62
	7.801 Enforcement Authority.....	62
	7.802 Unresolved Objections	65
CHAPTER 8: POSTING OF ACCOUNTS; NOTICE TO INTERESTED PARTIES		
8.1	IN GENERAL.....	67
8.2	DECEDENTS' ESTATES.....	68
8.3	OTHER FIDUCIARY ESTATES	69
CHAPTER 9: THE ACCOUNT AUDIT		
9.1	IN GENERAL.....	71
9.2	GUIDELINES FOR ACCOUNTS	71
	9.201 Format of Account	71
	9.202 Time for Processing	73
	9.203 Fee Quotes and Commissions.....	74
	9.204 Debts and Demands.....	74
	9.205 Vouchers (Documents) to Be Submitted to Support an Account.....	75
9.3	AUDITOR'S REVIEW	79
CHAPTER 10: THE VOUCHER AND OTHER SUPPORTING DOCUMENTS		
10.1	VOUCHERS GENERALLY	89

TABLE OF CONTENTS

10.2 TYPES OF VOUCHERS 89
10.201 Receipts and Copies of Cancelled Checks for Payment of Debts..... 89
10.202 Receipts for Tangible Personal Property 91
10.203 Other Supporting Documents 91

**CHAPTER 11: ESTATES OF DECEDENTS: A CHECKLIST OF DUTIES
OF THE COMMISSIONER**

11.1 IN GENERAL..... 93

11.2 PROTECTION OF BENEFICIARIES 93
11.201 Investment of Cash..... 93
11.202 Debts Paid Those of Decedent..... 93
11.203 Funeral Expenses 94
11.204 Fiduciary Compensation and Attorneys' Fees 94
11.205 Interest on Bequests..... 95
11.206 Interest on Accounts and Debt Instruments Specifically
Bequeathed..... 95
11.207 Dividends on Stock Bequeathed..... 96
11.208 Distribution to a Minor..... 96
11.209 Distribution to Other Persons Non Sui Juris 96
11.210 Distribution to Person Deceased..... 97
11.211 Ademption..... 99
11.212 Abatement 100
11.213 Distribution to a Trust 100
11.214 Improper By-Pass Distributions From the Estate to
Beneficiaries of Trust Under Agreement..... 103
11.215 Payment of Estate Taxes or Debts by Trust 105
11.216 Allocation of Estate Taxes 105
11.217 Partial Distributions 106
11.218 The Omitted Spouse 107
11.219 The Augmented Estate..... 107
11.220 Family Allowance, Exempt Property, and Homestead..... 109
11.221 What to Do with the Personal Representative Who Will Not
Settle His or Her Account 110
11.222 Statement in Lieu of Account..... 111
11.223 Enforcement of Notice Requirement in Va. Code § 64.2-508..... 113
11.224 Additional Duties of Commissioner Under Va. Code § 64.2-508..... 114
11.225 Furnishing Inventories and Accounts; Delay in Approval of
Same (Va. Code § 64.2-1303)..... 114
11.226 Nonexoneration (Va. Code § 64.2-531)..... 114
11.227 Sale of Real Property to Pay Estate Obligations or Legacies..... 116
11.228 Uniform Real Property Transfer on Death Act..... 117

11.3 TAXING AUTHORITIES..... 118

11.4 THE ACCOUNT AS A PERMANENT RECORD 120

CHAPTER 12: CREDITORS AND CLAIMS AGAINST THE ESTATE

12.1	IN GENERAL.....	139
12.2	FILING OF CLAIMS AGAINST THE ESTATE	139
12.3	DEBTS AND DEMANDS HEARING	141
12.4	WHEN CREDITORS' CLAIMS SHOULD NOT BE PAID.....	141
	12.401 Expired Statutes of Limitations.....	141
	12.402 Insolvent Estates.....	142
12.5	CONTINGENT AND UNLIQUIDATED CLAIMS.....	144
12.6	CONTESTED CLAIMS.....	144
12.7	STATUTORY EXEMPTIONS AND ALLOWANCES.....	145
12.8	STATUTES OF LIMITATION	146
12.9	SPECIFIC STATUTES OF LIMITATIONS	146

CHAPTER 13: AUDITING ACCOUNTS OF TRUSTEES OF TESTAMENTARY TRUSTS

13.1	IN GENERAL.....	149
13.2	PRELIMINARY REQUIREMENTS	149
13.3	DISTRIBUTIONS FROM ESTATE TO TRUST	150
13.4	RECEIPTS, GAINS AND LOSSES ON ASSET SALES AND DISBURSEMENTS.....	151
13.5	TRUSTEE'S FEES	153
13.6	ALLOCATION OF PRINCIPAL AND INCOME.....	154
	13.601 In General.....	154
	13.602 Receipts Not Requiring Apportionment.....	155
	13.603 Disbursements Not Requiring Apportionment.....	155
	13.604 Receipts/Disbursements Requiring Apportionment	155
	13.605 Uniform Principal and Income Act (1997)—Prefatory Note, Official Text, and Commissioners' Comments.....	156
	13.606 Equitable Adjustment	157
13.7	DISTRIBUTIONS TO BENEFICIARIES.....	157
13.8	WAIVER OF TESTAMENTARY TRUST ACCOUNTINGS	158

TABLE OF CONTENTS

13.9	UNIFORM TRUST CODE	158
13.10	TRUST DECANTING UNDER THE VIRGINIA UNIFORM TRUST DECANTING ACT	161
CHAPTER 14: GUARDIANS/CONSERVATORS OF INCAPACITATED ADULTS		
14.1	INTRODUCTION.....	163
14.2	ALLOWABLE EXPENDITURES	165
14.3	COMPENSATION FOR CONSERVATORS AND GUARDIANS.....	169
	14.301 Conservator.....	169
	14.302 Guardian of the Person of an Incapacitated Adult.....	169
14.4	ACCOUNTS AND ACCOUNTING PERIODS	170
14.5	INVESTMENTS AND THE SALE OF REAL ESTATE.....	171
14.6	SURETY BOND COVERAGE	173
14.7	TERMINATION OF GUARDIANSHIP AND/OR CONSERVATORSHIP ...	174
14.8	MEDICAID CONSERVATORSHIPS	175
14.9	“REPRESENTATIVE PAYEE” BENEFITS	175
	14.901 Is There a Need for Qualification as a Conservator for Representative Payee Benefits?.....	175
	14.902 Accounting for Representative Payee Benefits by a Conservator Appointed by the Court.....	176
14.10	PROBLEM AREAS	178
	14.1001 Joint Accounts	178
	14.1002 Furniture and Furnishings	179
	14.1003 Jewelry	179
	14.1004 Real Estate	180
14.11	CONVERSION OF CONSERVATORSHIP TO CUSTODIAL TRUSTEE....	180
14.12	COURT-APPROVED TRANSFER TO SPECIAL NEEDS TRUST	181
14.13	FINANCIAL EXPLOITATION OF INCAPACITATED PERSONS.....	182
CHAPTER 15: GUARDIANS OF MINORS’ ESTATES		
15.1	INTRODUCTION.....	203
15.2	DISBURSEMENTS OF PRINCIPAL AND INCOME.....	203

TABLE OF CONTENTS

15.3 DISTRIBUTIONS TO OR FOR MINOR WITH LIVING PARENT 204
15.301 Distributions Authorized by Court..... 204
15.302 Distributions Authorized by Commissioner of Accounts 205

15.4 COMPENSATION FOR GUARDIAN..... 205

15.5 INVENTORY, ACCOUNTINGS, AND ACCOUNTING PERIODS..... 206

15.6 INVESTMENTS..... 208

15.7 SURETY BOND COVERAGE 209

CHAPTER 16: ACCOUNT OF FORECLOSURE SALE

16.1 IN GENERAL..... 213

16.2 FORM FOR ACCOUNTING 214

16.3 PAPERS TO ACCOMPANY THE ACCOUNT..... 219

16.4 BID PRICE..... 220

16.5 TRUSTEE’S COMMISSION..... 220
16.501 Statutory Commission..... 220
16.502 Background..... 220
16.503 Cases and Orders..... 221

16.6 MISCELLANEOUS EXPENSES..... 222
16.601 Clerk’s Fee and Recording Costs..... 222
16.602 Auctioneer’s Fee..... 223
16.603 Attorney’s Fees 223
16.604 Fee to Commissioner 223
16.605 Interest 223

16.7 REAL ESTATE TAXES AND OTHER CITY OR COUNTY LIENS..... 224

16.8 SUBSTITUTION OF TRUSTEE 224

16.9 ADVERTISEMENT AND NOTICES..... 225

16.10 DISTRIBUTION OF BALANCE AFTER PAYMENT OF EXPENSES
OF SALE; SURPLUS..... 225
16.1001 Payment of Other Liens 226
16.1002 Credit Bids..... 228
16.1003 Payments to Noteholder; Surplus..... 230
16.1004 Death of Grantor or Successors in Title Prior to Foreclosure 231

16.11 THE NOTE..... 232

TABLE OF CONTENTS

16.12 ASSIGNMENT OF NOTE 232

16.13 POSTING AND REPORT TO COURT 233

16.14 OVERSIGHT OF FORECLOSURE ACCOUNTS 237

CHAPTER 17: PROCEEDINGS AGAINST DELINQUENT FIDUCIARIES

17.1 DEADLINES 245

 17.101 Personal Representatives of Estates and Proponents of Wills..... 245

 17.102 Personal Representatives of Estates..... 246

 17.103 Testamentary Trustee 247

 17.104 Guardians of Minors’ Estates and Conservators of Incapacitated
 Persons 248

 17.105 Foreclosure Sale Trustees 249

17.2 REMINDER NOTICE OF DELINQUENCY 249

17.3 INITIATING ACTION BY THE COURT 250

 17.301 Affidavit of Notice..... 250

 17.302 Inventories 250

 17.303 Accountings—Semi-Annual Report or Summons Under
 Section 64.2-1216 250

 17.304 Foreclosure Accountings..... 252

 17.305 Reporting Attorney Fiduciaries to the State Bar 252

 17.306 The Quarterly Report 252

17.4 PERSONAL ASSESSMENTS TO FIDUCIARY 253

17.5 FORFEITURE OF COMMISSIONS..... 253

17.6 PROCEEDINGS BEFORE THE COURT..... 253

17.7 SURCHARGE OF FIDUCIARIES 255

CHAPTER 18: HEARINGS BEFORE COMMISSIONERS OF ACCOUNTS

18.1 IN GENERAL..... 293

18.2 CONDUCT OF THE HEARING 294

18.3 STATUTORY HEARINGS..... 296

 18.301 Debts and Demands Hearings..... 296

 18.302 Hearings Pursuant to Va. Code § 64.2-1209 305

 18.303 Hearings Pursuant to Va. Code § 64.2-1204 308

 18.304 Guardianship Parental Spending Hearings 309

 18.305 Hearings Concerning Conservatorship and Guardianship
 Real Estate Sales..... 312

CHAPTER 19: MISCELLANEOUS MATTERS

19.1 THE COMMISSIONER’S REPORT ON AN INVENTORY OR ACCOUNT..... 329

19.2 PROCEDURE ON EXCEPTIONS..... 331

19.3 WHEN THE COMMISSIONER SHOULD DISQUALIFY HIMSELF OR HERSELF 332

19.4 IMMUNITY OF THE COMMISSIONER..... 333

19.5 HEARINGS 338

19.6 THE COMMISSIONER’S ROLE WHEN AN AUGMENTED ESTATE ELECTION IS MADE..... 340

19.7 THE LENGTH OF TIME AN ESTATE MUST REMAIN OPEN 340

19.8 PAYMENT OF FUNDS INTO COURT WHEN PARTY ENTITLED THERETO CANNOT BE FOUND..... 341

19.9 RESIGNATION OR DEATH OF A FIDUCIARY..... 343

 19.901 In General..... 343

 19.902 Resignation of a Fiduciary 343

 19.903 Death of a Fiduciary 345

19.10 WRITINGS INTENDED AS WILLS AND REFORMATION OF WILLS 346

CHAPTER 20: FEES ALLOWED THE COMMISSIONER OF ACCOUNTS

20.1 STATUTORY AUTHORITY FOR FEES 347

20.2 SOURCE AND PURPOSE OF COMMISSIONERS’ FEES 348

20.3 RECOMMENDED UNIFORM FEE SCHEDULE GUIDELINES FOR COMMISSIONERS OF ACCOUNTS 348

CHAPTER 21: GUIDELINES FOR FIDUCIARY COMPENSATION

21.1 INTRODUCTION..... 357

APPENDIX OF CIRCUIT COURT FIDUCIARY FORMS..... 367

TABLE OF AUTHORITIES 535

INDEX..... I-1

CHAPTER 7

THE INVENTORY

7.1 IN GENERAL

The inventory is the starting point of the accounting process. It is not filed under oath. The commissioner's approval is *ex parte*, and the commissioner does not verify the value of items listed therein or determine that the listed assets are the only assets of the estate.¹ Fiduciary accounting is based on the theory of charge and discharge. The fiduciary charges himself or herself with the assets on the inventory. The fiduciary discharges his or her obligations with regard to those assets by showing on accountings each asset's liquidation and conversion to cash, use for payment of valid obligations, or distribution to the parties entitled thereto.

Va. Code § 64.2-1300 requires that (a) personal representatives and (b) guardians of estates for minors, conservators, and committees file inventories within four months after the date of the order conferring the fiduciary's authority. Testamentary trustees must file an inventory within four months of the date the trustees receive any assets.²

Others required to file inventories include trustees for incapacitated veterans (Va. Code § 64.2-2016), trustees of special needs trusts for incapacitated adults, and, if so ordered by the court, trustees of trusts for tort recoveries by minors under Va. Code § 8.01-424(E).

The fiduciary must list assets, as required by the particular Parts of the form, and place the fair market value on each item listed. For decedents' estates the value is determined as of the date of death; for trusts, the value is determined as of the date assets are received, and in all other cases, the date used is the date of qualification.

7.101 Forms. The clerk provides fiduciaries with Forms and Instructions for Inventories that Va. Code § 64.2-1300 requires. The Office of the Executive Secretary of the Supreme Court of Virginia prepares forms for state-

¹ The commissioner's approval of the inventory is limited. The inventory form (CC-1670) contains the statement that "[t]he Commissioner of Accounts has not independently verified the value of the items on the inventory or the fact that they are the only assets of the estate."

² See Va. Code § 64.2-1300(C). Note also that testamentary trustees who have fulfilled the requirements of § 64.2-1307 are not required to file an inventory or annual accounts with the commissioner of accounts.

wide use and furnishes them to each clerk. One may also obtain the forms from Virginia's Judicial System Website.³ Examples of these and other forms appear in the Forms Appendix at the end of this Manual. The forms are revised from time to time. To assure that you are using the most recent version, compare the revision date for the forms online to the forms in the Forms Appendix.

One can complete and print the online forms using an Internet browser. It is important to note that you cannot save the completed forms to your computer unless you have Adobe Acrobat software, which must be purchased from Adobe and is different from the Adobe Reader program that most people have on their computers to view .pdf files. Unless you have Adobe Acrobat, you must complete and print forms in one browser session or you will lose the data you entered.

Follow the instructions at the top of the online forms when printing the documents at Virginia's Judicial System Website. The forms will print a gray background in the data fields unless you use the rectangular button at the top of the forms labeled "Print for Submission to Court." Forms printed with gray background fields present a problem for some clerk's offices, as the grayed areas will not scan well for computer archiving. Some clerk's offices will not accept the forms with grayed data fields for filing. Each commissioner should determine whether the clerk of the commissioner's appointing court will accept forms with grayed areas for filing. If not, the commissioner should not accept for approval such grayed forms from fiduciaries.

If the forms are prepared by hand, fiduciaries should complete them in black or dark blue ink (not pencil) so that the clerk can properly scan the handwritten information for computer archiving.

7.102 When Inventories Not Required. Va. Code § 64.2-1302 requires the clerk to waive the requirement of filing an inventory when a decedent's personal estate does not exceed \$25,000 and an heir, beneficiary, or creditor whose claim exceeds the value of the estate seeks qualification. The waiver does *not* apply when the decedent died owning real estate over which the person seeking qualification would have the power of sale.⁴

Qualification may be allowed by the clerk under Va. Code § 64.2-454 solely to bring a civil action for personal injury suffered during the decedent's

³ www.courts.state.va.us.

⁴ See also Va. Code § 64.2-1301 (no inventory is required where qualification is solely for the purpose of bringing a wrongful death action).

lifetime. Inventory and accounts are not waived as to such qualification. If a recovery is received it is an asset of the estate, and the administrator appointed by the court is obligated to appear before the clerk and declare such sums, be bonded, and be subject to inventory and accounts if the recovery results in an estate that exceeds \$25,000.

7.103 Furnishing Copies of Inventories. Va. Code § 64.2-1303 requires a personal representative to send a copy of the inventory as filed with the commissioner to those persons who have received the notice of probate or qualification and who have made a written request therefor. The commissioner may not approve an inventory (a) until 21 days after its receipt and (b) unless the inventory contains a statement that no person entitled to a copy made a written request therefor or that copies have been mailed to every person entitled to and requesting one, with the names and addresses of persons to whom they were mailed and the date of mailing. The requirement to provide copies to requesting persons applies only to personal representatives (executors and administrators) and not to other fiduciaries required to file inventories. See “Instructions for Inventory—Decedent’s Estate” for more complete instructions.⁵

7.104 Enforcement of Filing Requirement. If any fiduciary fails to file an inventory timely, the commissioner *shall* issue a summons to the fiduciary giving him or her 30 days (after service) to file. If the fiduciary does not do so, the commissioner *shall* report the fact to the court. Whenever the commissioner reports to the court a fiduciary who is an attorney-at-law licensed in Virginia, the commissioner must mail a copy of the report to the Virginia State Bar.⁶

7.105 Affidavit of Notice of Probate; Enforcement. Va. Code § 64.2-508(F) requires a personal representative or proponent of a will to record an affidavit of compliance with the notice of probate requirements in the clerk’s office within four months from qualification and requires the commissioner to issue a summons to any fiduciary who has not recorded the affidavit within four months. It further requires the commissioner to enforce the filing of the affidavit in the manner prescribed by Va. Code § 64.2-1215.

The statute states that the commissioner shall not approve any *settlement* filed by a personal representative until the affidavit is filed. Some commissioners also require that the affidavit of notice required pursuant to Va.

⁵ See also *infra* ¶ 7.105.

⁶ Va. Code § 64.2-1215.

Code § 64.2-508 be recorded before an inventory is approved to assure timely notice to heirs and beneficiaries. Va. Code § 64.2-1215 controls the enforcement for both inventories and affidavits of notice.

7.2 DECEDENTS' ESTATES

For personal representatives and curators, there are five categories of property to be listed on the inventory. They are (i) the personal estate under the representative's supervision and control, (ii) the decedent's interest in any multiple-party account (defined in the instructions) in any bank or credit union, (iii) real estate in Virginia over which the representative has a power of sale, (iv) any other Virginia real estate that is an asset of the decedent's estate, and (v) any non-Virginia real estate that is an asset of the decedent's estate.

7.201 Instructions Generally. The instructions regarding inventories that the clerk gives to personal representatives and curators upon qualification are set out in the Forms Appendix at the end of this Manual. The current inventory instructions form is designated CC-1670 (Inst.).⁷ Commissioners should have a ready supply of forms and instructions available for personal representatives, many of whom claim never to have received the instructions or to have lost them. You may wish to periodically check the online forms to determine if revised versions have been approved and released.

7.202 Specific Instructions. The instructions contain the following headings:

GENERAL: See ¶ 7.201 above.

COPIES OF THE INVENTORY: The inventory form contains a Certificate of Mailing. By signing the certificate, the personal representative certifies compliance with Va. Code § 64.2-1303. Note that personal representatives occasionally use old forms (often computer-generated in law offices) that do not contain the certificate. Since by statute (Va. Code § 64.2-1303(B)) the commissioner *cannot* approve an inventory unless the mailing certificate is signed by the personal representative, the correct form (Form CC-1670) or a computer-generated facsimile) *must* be used.

VALUATION: Fair market values at date of death must be used. Assessed values for real estate tax purposes may be used for real estate.

⁷ See *supra* ¶ 7.1.

PROPERTY NOT INCLUDED: These instructions specify what property need not be listed in the inventory, including jointly titled property (other than joint accounts at banks and credit unions), assets passing by way of survivorship (other than accounts at banks and credit unions), and money payable under a beneficiary designation (see also “Property Includable in Part 2” below).

Property Includable in Part 1 of the Inventory: The instructions contain detailed directions for the listing of items includable in the inventory under the heading “Part 1. The decedent’s personal estate under your (the personal representative’s) supervision and control.” Stocks, bonds and other items held in brokerage accounts in the decedent’s name alone must be individually listed, not grouped. The instructions detail which tangible personal property items may be grouped and which should be separately listed.

Property Includable in Part 2 of the Inventory: Part 2 is entitled “The decedent’s interest in multiple party accounts and certificates of deposit in banks and credit unions.” The instructions make it clear that the limiting phrase “in banks and credit unions” applies to “[t]he decedent’s interest in multiple party accounts” as well as to “certificates of deposit.” The instructions specifically state that “[t]he foregoing rules do not apply to multiple party accounts maintained with a mutual fund or a brokerage house.” This is stated twice in the instructions for Part 2.

It is suggested that the commissioner require documentation establishing that the accounts or certificates of deposit reported in Part 2 were actually jointly titled or had a designated beneficiary on death at the time of death. This is satisfied by the personal representative providing a copy of the decedent’s bank statements for the month of death if the statement reports ownership; if not, a copy of the bank account card or a letter from the bank may be necessary to verify that the Part 2 accounts are properly reported.

Va. Code § 6.2-611 provides in part that “no transfer of account funds, to which the deceased party was beneficially entitled immediately before his death, shall be effective, by virtue of a party’s survivorship of the decedent, against the estate of such deceased party to the extent such funds are needed to pay such liabilities of the estate.” Surviving beneficiaries are required to account to personal representatives for such funds; however, the personal representative may not assert such liability after two years from the decedent’s death and unless he or she has received a demand from a spouse, creditor, or dependent child. Sums recovered by the personal representative shall be administered as a part of the decedent’s estate. The proper way to handle such accounts is to list them in Part 2. Va. Code § 6.2-604 (definitions) makes it clear that the word “account” as used in § 6.2-611 means an account

in a financial institution, and also that “financial institution” means any entity authorized to do business under state or federal laws relating to financial institutions that is authorized to establish accounts, including, without limitation, banks, trust companies, savings institutions, and credit unions—what we normally think of as banks rather than stock brokers, mutual funds, and similar entities.

GENERAL INSTRUCTIONS FOR REAL ESTATE: See Forms Appendix (page 3 of “Instructions for Inventory—Decedent’s Estate”). Note especially that any real estate held in survivorship form with another person who survives the decedent, or held in a living trust created by the decedent having beneficiaries following the decedent’s death, or transferred by a transfer on death deed, should *not* be included anywhere on the inventory. A partial interest in real estate should be included on the inventory.

Where the decedent held an interest in a real estate partnership, or where he or she owned a lease, the ownership is personal property, not real estate, and should be listed in Part 1. Condominiums, cooperative apartments, and time shares are real estate interests.

Where the decedent executed and delivered a written contract of sale, purchase option, or other agreement to convey real property but had not conveyed the real estate interest by deed before his or her death, the interest in the real estate contract is considered personal property (by equitable conversion) and should be listed under Part 1.

Property Includable in Part 3 of the Inventory: Part 3 is entitled “The decedent’s real estate in Virginia over which you have a power of sale.” Power of sale may be by express grant in the will, incorporation in the will of the powers enumerated in Va. Code § 64.2-105, or by order of the court pursuant to Va. Code § 64.2-106.

Even if property is specifically devised to a designated party or parties or passes as part of the residue, if the will expressly confers upon the fiduciary the powers enumerated in Va. Code § 64.2-105, the property should be included in Part 3.⁸

The value of real estate subject to a power of sale identified in Part 3 is included in the bond amount as required under Va. Code § 64.2-504. The appropriate bond amount is based upon the total amount of Part 3 added with the total from Part 1 on the front of the Inventory.

⁸ See *Yamada v. McLeod*, 243 Va. 426, 416 S.E.2d 222 (1992).