

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).