

Memorandum

To: Personal Representatives of Decedent's Estate

From: Mark S. Shepard, Commissioner of Accounts of Henrico County
4114-A East Parham Road
Henrico, Virginia 23228
(804) 346-4700 (phone)
(804) 273-0840 (facsimile)

Commissioner's Website: www.henricocommissionerofaccounts.com

The purpose of this Memorandum is to provide new personal representatives¹ of a decedent's estate with a timetable and brief description of the personal representative's duties and responsibilities. A more detailed description of a personal representative's responsibilities and duties can be found at the Commissioner's Website listed above.

Because every estate is unique and has its own special complexities, it is impossible to provide a comprehensive discussion of every aspect of estate administration. If you have questions about administering an estate, you should immediately seek legal advice from a lawyer with specific expertise in Virginia estate administration and/or tax advice from a tax lawyer, qualified C.P.A. or tax professional.

THIS MEMORANDUM AND THE COMMISSIONER'S WEBSITE ARE INTENDED TO BE GENERAL IN NATURE AND MAY NOT BE RELIED UPON AS LEGAL OR TAX ADVICE OR AS A COMPREHENSIVE TREATISE. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT WITH YOUR OWN LEGAL COUNSEL. THE COMMISSIONER OF ACCOUNTS AND HIS STAFF OF AUDITORS ARE NOT PERMITTED TO GIVE YOU LEGAL OR TAX ADVICE. IN ADDITION TO SEEKING LEGAL OR TAX ADVICE FROM YOUR OWN LEGAL OR TAX COUNSEL, YOU SHOULD THOROUGHLY READ THE INSTRUCTIONS OF ALL FORMS PROVIDED TO YOU AND CONSULT WITH THE COMMISSIONER'S WEBSITE.

¹ A "personal representative" of a decedent's estate is the executor or administrator of the estate.

Information Seminars

We apologize, but seminars have been suspended during the Covid-19 epidemic. We will resume seminars when it is safe to do so. The Commissioner's Website will provide information as to when seminars will resume.

The Commissioner conducts informal seminars at the Commissioner's office on the third Wednesday of each month to discuss the Inventory and Accounting processes. If you are serving as a personal representative for the first time or are unfamiliar with your accounting responsibilities, attendance at a seminar is recommended.

Please call (804) 346-4700 to reserve a place at one of the seminar sessions. Reservations are absolutely required as seating is limited.

Filing Obligations

A. The Executor or Administrator. As an executor or administrator (sometimes called a personal representative), you are a "fiduciary." As a fiduciary, you are placed in a position of trust, loyalty and impartiality. You may not place your personal interests ahead those of the estate, its' beneficiaries, or the creditors of the estate. You may not place the interests of any beneficiary ahead of another beneficiary's interests or ahead of the creditors' interests.

You were chosen to serve in this capacity because of your (i) integrity/honesty, (ii) capabilities, (iii) intelligence, and (iv) ability to follow directions and complete tasks on a timely basis. Further, you made an oath in the Circuit Court Clerk's Office swearing to uphold the duties of executor/administrator.

If your address, telephone number or email changes, you **must** notify the Commissioner of Account's Office, in writing within thirty (30) days of that change.

B. After Qualification² - Notice Regarding Estate (Form CC-1616) and Affidavit of Notice Regarding Estate (Form CC-1617).

1. **Within thirty (30) days after qualification**, the personal representative shall complete, sign and send by first class U.S. mail a Notice Regarding Estate (Form CC-1616) ***to all of the following individuals and entities***: (i) the surviving spouse of the decedent, if any, (ii) the decedent's heirs-at-law, and (iii) all beneficiaries of the estate. These individuals and entities are entitled to receive this Notice regardless of whether they are entitled to receive anything from the estate.

² "Qualification" is the process of becoming the executor or administrator. You qualified as executor or administrator on the date you went to the Clerk's Office of the Circuit Court and swore an oath to uphold the duties of executor/administrator. The date of your qualification is on the Certificate of Qualification provided to you by the Clerk's Office at your qualification.

You received Form CC-1616 from the Clerk of the Circuit Court's Office when you qualified.

2. **Within four (4) months after qualification**, the personal representative shall complete the Affidavit of Notice Regarding Estate (Form CC-1617). The personal representative shall sign this completed form before a Notary Public and send/deliver the form along with an \$18 check made payable to "Clerk of Court" to:

Clerk of the Circuit Court of Henrico County
c/o Probate Division

Mailing Address:

P. O. Box 90775
Henrico, VA 23273-0775

Hand-Delivery Address:

4309 E. Parham Road
Courthouse Bldg., Rm 240
Henrico, VA 23228

The proper completion, signing and delivery of this Affidavit of Notice Regarding Estate (Form CC-1617) to the Clerk of the Circuit Court represents your sworn affirmation that you have sent the required Notices Regarding Estate (Form CC-1616) to all of the proper individuals and entities.

You received Form CC-1617 from the Clerk's Office when you qualified. If you fail to timely file this Form with the Clerk's Office (along with a check to the Clerk of Court for \$18), the Commissioner of Accounts cannot approve the Inventory or any Account filed by you, and the Commissioner is **required by statute to issue a Summons to you** requiring your compliance.

Planning/Efficiency Tip: Send the Affidavit of Notice Regarding Estate (Form CC-1617) to the Clerk's Office (with the required filing fee) immediately after you send the required Notices Regarding Estate (Form CC-1616) to the required individuals and entities. There is no reason to wait to file the Affidavit of Notice Regarding Estate (Form CC-1617) with the Clerk's Office.

C. The Inventory (Forms CC-1670 and CC-1670 INST).

1. *When To File and Filing Fees.* **Within four (4) months after qualification**, the personal representative shall complete, sign, and send or hand-deliver the *Inventory For Decedent's Estate* (Form CC-1670) along with a single check for the Commissioner of Account's fees and the Clerk of the Court's filing fee to:

Commissioner of Accounts of Henrico County
4114-A East Parham Road
Henrico, Virginia 23228

Forms CC-1670 and CC-1670 INST (Instructions) were given to the personal representative when he or she qualified as executor or administrator. **Carefully read and follow the detailed instructions on Form CC-1670 INST.** In addition, the Commissioner's Website has detailed instructions regarding the preparation of the Inventory and when an Inventory needs to be amended. The Commissioner's Website also has an auto-fill Inventory form that the personal representative may use. Please consult the Commissioner's Website.

The personal representative is required to file **two original copies (each original copy having original signatures)** of the Inventory with the Commissioner of Accounts, along with a check for the appropriate Commissioner's fee plus Clerk's filing fee (combined in a single check made payable to "Commissioner of Accounts"). A schedule for the Commissioner's fee for auditing the Inventory was given to the personal representative at the time the personal representative qualified and is available on the Commissioner's Website. The Clerk of Court's filing fee for the Inventory is generally \$18, but may be more if the Inventory exceeds 10 pages. If so, please consult the Commissioner's Website for Clerk's filing fee.

2. *Requirements of the Inventory.*

The Inventory is a snapshot in time. The Inventory lists the decedent's assets and corresponding asset values **as of the date of the decedent's death**. The Inventory will also serve as the starting point for the annual accountings as described below.

Use exact figures on Inventory valuations. Do not round off figures. **Use date of death values**, not the values on the day the Inventory is completed. Do not give full bank accounts numbers. Give the bank name, type of account and the **last four (4) numbers of the account** (example: Bank of America, checking account, 4532).

You must use the appropriate fiduciary forms available on the Commissioner's Website, the Clerk of Court's website, or the Virginia Supreme Court's website. The Inventory must be printed legibly in **black or blue ink** or typewritten (**No Pencil**) or use the auto-fill form on the Commissioner's Website. Paper size should be 8 ½" x 11". Type face must be at least 10 point pica or larger; or 12 point elite or larger. If not typed, all data must be legible. The reason this format is required is because the Court will digitally scan the Inventory into the public records. The Court will not accept an Inventory that does not meet these requirements.

The Inventory must be signed in **blue or black ink** by **ALL** personal representatives.

If you are having difficulty preparing and filing the Inventory in a timely manner, you should seek assistance from an experienced estate attorney or an experienced CPA or other professional. The Commissioner and his/her staff audit your Inventory and therefore cannot prepare your Inventory.

Failure to timely file a proper Inventory may result in the issuance of a **Summons** to appear before the Commissioner with the required documents. If a Summons fails to resolve the delinquency, an **Order to Show Cause** will be served upon the delinquent personal representative requiring you to appear before a Judge of the Henrico Circuit Court. All of these actions result in substantial fees and costs to be paid by **YOU personally** (and not by the estate).

3. *Additional Persons/Entities Entitled to Receive Copy of Inventory.*

If requested in writing by a person/entity to whom you gave Notice Regarding Estate (Form CC-1616), the personal representative must mail a copy of the Inventory to such persons and entities at the same time the personal representative files the Inventory with the Commissioner. Such persons/entities are also entitled to receive a copy of the Will, Codicils and Accountings. See Form CC-1670 INST to determine which persons/entities are required to receive a copy of the Inventory at the same time the Inventory is sent to the Commissioner.

Inventory Planning/Efficiency Tip: Prepare and send/deliver the Inventory For Decedent's Estate (Form CC-1670) to the Commissioner of Accounts (with the required fees) early. Don't wait until the last minute. Gathering this information takes time. Try to complete this task three months after qualification.

D. Annual Accounts.³

1. *When To File and Filing Fees.* **Within sixteen (16) months after qualification**, the personal representative shall complete, sign, and send or deliver the *first* annual Account For Decedent's Estate (Form CC-1680) along with a single check for the Commissioner of Account's fees and the Clerk of the Court's filing fee to:

Commissioner of Accounts of Henrico County
4114-A East Parham Road
Henrico, Virginia 23228

Forms CC-1680 and CC-1680 INST (Instructions) were given to the personal representative when he or she qualified as executor or administrator. **Carefully read and follow the detailed instructions in Form CC-1680 INST.** In addition, the Commissioner's Website has specific and detailed instructions regarding the preparation of an Account. The Commissioner's Website also has an auto-fill Account For Decedent's Estate (Form CC-1680) that the personal representative may use. Please consult the Commissioner's Website.

This first annual account of the estate is an accounting of the estate's assets and financial activity (beginning assets, receipts, disbursements, distributions and ending assets) for the period beginning with the personal representative's date of qualification and ending twelve months later (plus the financial activity taking place between the decedent's date of death to the date of qualification). For example, if the decedent died on February 15, 2020, and you qualified on March 3, 2020, your first account for the period March 3, 2020 – March 2, 2021, would be due in the Commissioner's Office on or before July 3, 2021. **The accounting period is limited to twelve (12) months.**

If the last account filed is not a final account, you must file additional annual accounts with the Commissioner of Accounts. The second and subsequent accounts will cover the next twelve (12) month (or shorter) period beginning with the ending date of the prior account. ***Each subsequent account is due within sixteen (16) months from the ending date of the prior account.*** For example, if the first account ended March 2, 2021, then the second account would begin March 3, 2021 and end with March 2, 2022, and would be due to the Commissioner of Accounts (along with the required fees) on July 3, 2022.

The requirement for annual accounts ends when all estate assets are collected, debts and expenses are paid, and the remaining assets are distributed to the beneficiaries according to

³ You may be able to avoid having to prepare a full accounting if all distributees of a decedent's intestate estate or all residuary beneficiaries under a decedent's will are also personal representatives of that decedent's estate. In this situation, the personal representatives, in lieu of preparing and filing a full accounting, may file with the Commissioner of Accounts a Statement in Lieu of Settlement of Account (available on the Commissioner's Website) stating that all known debts and charges against the estate have been paid and that the residue of the estate has been delivered to the distributees or beneficiaries. See below for a more detailed description of the Statement in Lieu of Settlement of Account.

Virginia law. A final account **must show ZERO assets on hand**. No assets may be held in escrow by the fiduciary or attorney.

The personal representative is required to file each account **in triplicate (one original and two copies)** with the Commissioner of Accounts, along with a check for the appropriate Commissioner's fee plus Clerk's filing fee (combined in a single check made payable to "Commissioner of Accounts"). A schedule for the Commissioner's fee for auditing the account was given to the personal representative at the time the personal representative qualified and is available on the Commissioner's Website. A schedule for the Clerk of Court's filing fee was given to the personal representative at the time the personal representative qualified and is available on the Commissioner's Website.

Before making final distributions of the estate assets to beneficiaries, you should ask for a quote of the final Commissioner of Account's fee from the Commissioner's office. In order to obtain the final fee quote, it will be necessary that you furnish a draft of the accounting to the Commissioner of Account's Office. We do not, however, pre-approve accounts.

If you are having difficulty preparing and filing the *Account For Decedent's Estate* (Form CC-1680) in a timely manner, you should seek assistance from experienced legal counsel or an experienced CPA or other professional. The Commissioner and his staff of professionals audit your annual account and cannot prepare it for you.

2. *Requirements of Each Account.*

a. The first annual account begins with assets listed on Parts 1. and 3. of the Inventory. Each subsequent account begins with the ending balance of the previous account.

b. Every account **must balance**. We are not permitted to send an unbalanced account to Court.

c. You must use the appropriate fiduciary forms available on the Commissioner's Website, the Clerk of Court's website, or the Virginia Supreme Court's website. The account must be printed legibly in **black or blue ink** or typewritten (**No Pencil**) or use the auto-fill form on the Commissioner's Website. The minimum and preferred paper size is 8 ½" x 11". Paper size cannot exceed is 8 ½" x 14". Make sure margins are 1 inch on all four sides. Type face must be at least 10 point pica or larger; or 12 point elite or larger. If not typed, all data must be legible. The reason this format is required is because the Court will digitally scan accounts into the public records. The Court will not accept accounts that do not meet these requirements.

d. Every account must be signed in **blue or black ink** by **ALL** personal representatives.

e. File your first and each subsequent annual account with the Commissioner of Accounts, in **triplicate (i.e., one original plus two photocopies)** along with a check for the appropriate Commissioner's fee plus Clerk's filing fee (combined in a single check made payable to the "Commissioner of Accounts"). A schedule for the Commissioner's fee for filing an Account was given to you at the time you qualified and is available on the Commissioner's Website. A schedule for the Clerk's filing fee for an Account was given to you at the time you qualified and is available on the Commissioner's Website.

f. Failure to timely file a proper Account will result in the issuance of a **Summons** to appear before the Commissioner with the required documents. If a Summons fails to resolve the delinquency, an **Order to Show Cause** will be served upon the delinquent personal representative requiring the personal representative to appear before a Judge of the Henrico Circuit Court. All of these actions result in substantial fees and costs to be paid by **YOU, the personal representative, personally** (and not by the estate).

3. *What is submitted with all accounts?*

In general, you must supply beneficiary receipts, copies of checks and the bills, invoices and statements representing all disbursements. Together these are called "vouchers." Vouchers are required to be **originals**, with the exception of cancelled checks. Vouchers should be organized in the same order as they appear on the account. **Documentation supporting an account does not need to be filed in triplicate (just one set is sufficient).** Below is a more detailed description of vouchers that are required to support each annual account.

- a. A copy of all bank statements;
- b. A copy of both sides of all cancelled checks drawn on the estate account unless images are included on the bank statements;
- c. Invoices for all payments of debts and expenses;
- d. Copies of paid funeral bills shall be provided with the account even if prepaid or paid by a third party; and
- e. Signed notarized receipts and/or both sides of the cancelled check for each distribution shown on the account.
- f. If a disbursement is made to a party (including yourself) to reimburse that party for expenditures paid on behalf of the estate, you must furnish the bills for those expenditures **and** documentation showing that the party actually paid the bills. Note the account must reflect the expenditures being reimbursed.

g. Original signed **notarized** receipts for any distribution to a beneficiary such as cash, stocks, cars, jewelry, household furnishings, etc., are required. The receipt should acknowledge the asset received, its value and be notarized. Please review Commissioner's Website for distributions to minors.

h. Signed settlement statements (HUD-1) for any sale of real estate.

i. Verification of each asset that remains on hand at the end of the account is required. All accountings, other than the final accounting, must contain an itemized list of and documentation for the assets remaining in the hands of the personal representative as of the ending date of the accounting. For bank accounts, the original monthly bank statements, reconciled to agree with your ending account balances in the account, must be provided.

j. Original brokerage account statements for the entire account period must be supplied to verify dividends, interest, capital gains and the stocks, bonds and other securities held at the end of the account. If you hold securities in certificate form, you may be requested to exhibit the original certificates to the Commissioner of Accounts.

k. Titles for cars, boats, etc., should be retained in your file.

l. Original promissory notes may be requested by Commissioner. If an agency is handling the collection of the notes a statement from the collecting agency certifying the identity of the holder and the principal balance as of the ending date of the account will be accepted.

m. A **Tax Certificate** certifying the payment of all taxes owed by the estate must be filed with the final account. This form was provided to you by the Clerk of Court at the time of qualification. You may also obtain an additional copy from the Commissioner's Website.

4. *Additional Persons/Entities Entitled to Receive Copies of Accountings.* If requested in writing by a person/entity to whom you gave Notice Regarding Estate (Form CC-1616), the personal representative must mail a copy of all Accountings (not including supporting documents) to such persons and entities at the same time the personal representative files the accounting with the Commissioner. As stated above, such persons/entities are also entitled to receive a copy of the Will, Codicils and Inventory.

5. *Death of Personal Representative Before Completion.* If an executor or administrator dies before filing a final account, the personal representative of the deceased fiduciary must file accountings for that fiduciary through the date of the deceased fiduciary's death unless a successor fiduciary makes the required filing. Virginia Code §64.2-1312.

6. *Insolvency of Estate.* If the estate is insolvent (debts and expenses exceed assets), you should seek legal counsel. There is a very complex method of how creditors should be paid.

E. *Statement in Lieu of Settlement of Account (sometimes called a Statement Under Oath).*

1. If all distributees of a decedent's intestate estate or all residuary beneficiaries under a decedent's will are also personal representatives of that decedent's estate, whether serving alone or with one or more others who are not distributees or residuary beneficiaries, the personal representatives, in lieu of an account, may file with the Commissioner of Accounts a **Statement in Lieu of Settlement of Account (also called Statement Under Oath)** (available on the Commissioner's website) that all known taxes, debts and charges against the estate have been paid and that the residue of the estate has been delivered to the distributees or beneficiaries.

2. The Statement in Lieu of Settlement of Account shall be accompanied by proper notarized receipts showing payment or delivery of all bequests in the will.

3. The Statement in Lieu of Settlement of Account shall be accompanied by a proper Tax Certificate.

4. If the Statement in Lieu of Settlement of Account cannot be filed within the time required for the filing of an accounting, the personal representative (s), within that time, shall provide to the Commissioner either an interim account or a **Statement of Intent Under Oath** (available on the Commissioner's Website) indicating a Statement in Lieu of Settlement of Account will be filed when the estate is settled. The Statement of Intent Under Oath must state the reason why the Statement in Lieu of Settlement of Account cannot be filed, **which reason must be satisfactory to the Commissioner of Accounts**. Second and subsequent Statements of Intent Under Oath shall be filed annually until the Statement in Lieu of Settlement of Account is filed.

5. A Statement in Lieu of Settlement of Account may NOT be filed if:

a. the residuary beneficiary under a will is a trust, whether testamentary or *inter vivos*, even if the trustees and/or the beneficiaries of the trust are the personal representatives; or

b. the estate is insolvent, in which case a full account must be filed.

F. *Testamentary Trusts as Beneficiaries under a Will.* A "testamentary trust" is a trust created under the provisions of a will (as opposed to a separate stand-alone trust agreement (also called "living trust" or "*inter vivos*" trust). If you have qualified as trustee of a trust established under the decedent's will, you will have additional filing and accounting duties as

trustee. Sometimes accounting requirements for testamentary trusts and trustees are waived under the will or by statute. **IN ORDER TO MAKE THAT WAIVER EFFECTIVE, YOU MUST COMPLY WITH §64.2-1307, Code of Virginia, which sets forth the procedures and important deadlines for compliance.** The Commissioner's Office will not advise you on compliance with the waiver provisions. Consult an experienced estate attorney for advice on proper compliance.

Miscellaneous Responsibilities and Considerations

A. *General Duties and Considerations of a Personal Representative.* As executor or administrator, you should consider the following among your general duties:

1. Take possession of the assets of the decedent. The decedent's personal bank accounts should be closed and the funds should be deposited in an **interest bearing estate account** in the name(s) of the executor(s) or administrator(s). For example: An estate bank account would be titled "*Jonathan J. Jones, Executor of the Estate of Mary M. Jones.*"

2. You **shall not** co-mingle the decedent's funds in accounts which contain the funds of another, including your own. Estate assets may only be held in estate accounts until disbursed or distributed.

3. The estate must have its own federal tax identification number (TIN) (also called an Employee Identification Number (EIN)) which you or your accountant or lawyer need to obtain. You may obtain a Federal Tax Identification Number at the Internal Revenue Service website (www.irs.gov). **Caution:** Only use the IRS website. The IRS does not charge a fee for a TIN/EIN. If you are being charged a fee, you are not on the IRS website and you are giving your personal information to a stranger.

4. You should maintain a ledger listing all assets, receipts and disbursements by date, payer or payee, amount and reason for payment.

5. You must keep for presentation to the Commissioner all documents including original bills, bank and brokerage statements, receipts and copies of cancelled checks, if copies are not provided with your bank statements.

6. You should have the decedent's mail forwarded to your address, check for safe deposit boxes and accounts maintained by the decedent at all financial institutions where the decedent did business.

B. *Real Estate.*

1. You may sell the decedent's real estate **only** if decedent's will or a Court Order grants you the power to sell real estate. If you have the power to sell real estate, you only have the right to sell the real estate under certain circumstances. You should see the discussion on the Commissioner's Website or seek the advice of an attorney before real estate is sold.

2. If the decedent died without a will, his or her real estate automatically passes at death to the heirs-at-law of the decedent and the administrator does not have the power to sell the real estate unless the administrator obtains a Court Order granting the power to sell real estate.

3. Consult the Commissioner's Website or an estate attorney for further information regarding the sale of a decedent's real estate.

C. *Investment of Funds.*

1. Except for minimal amounts needed to pay current obligations and avoid checking account charges, **within four (4) months** of qualification, you should deposit all estate cash assets in an interest-bearing estate account. If cash is not properly and timely invested in an interest-bearing account, then the personal representative will be surcharged for the lost interest.

2. Banks located in Virginia should be used for estate accounts. Deposits in a single bank should not exceed the FDIC insurance limit (currently \$250,000). **Ask your banker what its insured deposit limit is at the time of deposit.**

3. **You may not lend estate funds or assets to anyone**, including yourself.

D. *Payment of Debts.*

1. If the estate has sufficient assets to pay all the decedent's debts and administrative expenses, you should pay all **legal** debts as soon as possible and before any beneficiary is paid. The fiduciary has the duty to pay all **legal** debts. If you are unsure whether a claim is legal, you may request the Commissioner of Accounts to rule on the disputed claim by asking for a Hearing for Proof of Debts and Demands (see below).

2. If the probate assets are insufficient to pay all legal debts and administrative costs, the estate is insolvent. **If the estate is insolvent, do not pay any debts. Seek the assistance of a highly experienced estate administration attorney** who can guide you through Virginia Code §64.2-528. Handling an insolvent estate is very complex, and if you do it incorrectly, you will be **personally liable** for amounts incorrectly disbursed.

3. If there are sufficient assets to pay all creditors, but not enough residuary assets to honor all bequests, you will need to abate the bequests. You should consult with an experienced estate attorney for guidance as this is a complex procedure.

E. *Debts and Demand Hearing.*

1. This procedure is not required in Virginia, but recommended. If the executor/administrator wishes to protect him/herself from liability from unknown creditors, disputed creditors, or others who may later claim an interest against the estate, the

executor/administrator may (First) request the Commissioner of Accounts to hold a “Hearing for Proof of Debts and Demands,” and (Second) commence a Show Cause Against Distribution proceeding with the Court and obtain a Order of Distribution.

2. Debts and Demands Hearing. To receive the protection of a Debts and Demands hearing, the following steps are required:

a. Make a written request to the Commissioner of Accounts to schedule a hearing for Proof of Debts and Demands. This request must be made either simultaneously with or after the Inventory is filed.

b. When you make the written request to the Commissioner, you must also provide written notice of all known and disputed claims you dispute to the Commissioner and to creditors and claimants as required by Virginia Code §64.2-550.

c. You do not need to appear at the first scheduled debts and demands hearing, but you must notify the Commissioner in writing in advance of the hearing of any bills or claims you dispute. Should a creditor or claimant of a disputed claim appear, the Commissioner will contact you and continue the hearing to a mutually agreed upon date and time for all concerned parties to convene in order to resolve the dispute.

d. The Commissioner of Accounts will file a written Report with the Court setting forth his ruling(s) on the issues presented at the Debts and Demands Hearing.

3. Show Cause Against Distribution Proceeding. To commence the Show Cause Against Distribution proceeding, you must have filed an accounting and it must be approved by the Commissioner before you may file a Motion for Show Cause Against Distribution Order. When you are notified by the Commissioner that your interim account has been approved and the debts and demands report filed with the Court, you may begin the Show Cause Against Distribution proceeding. The services of an experienced estate administration attorney in this Show Cause proceeding is necessary to prepare the Motion for Show Cause Against Distribution, Show Cause Against Distribution Order, Order of Distribution, arrange for publication in a local newspaper, and make any Court appearance. If no one appears or file claims in Court by the date set in the Show Cause Against Distribution Order, the Judge will sign the Order of Distribution and you are ready to close out the estate and file a final account.

F. *Taxes.*

1. It is your duty to determine if any taxes are due by the decedent and/or the decedent’s estate, and to pay all taxes due. This includes individual income taxes, personal property taxes, real estate taxes, business taxes, estate taxes and fiduciary income taxes.

2. A statement certifying that all taxes have been paid or provided for is required to be filed with every estate accounting (a Tax Certificate affidavit was given to you when you qualified and is available on the Commissioner’s Website).

3. Additional probate tax may be assessed against the estate if the Inventory or an Accounting reflects a larger value or probate assets than the values reported at qualification. If so, you will receive a bill from the Clerk of Court for the additional probate tax.

G. *Commissions of Executor/Administrator.*

1. Unless the will provides otherwise, Virginia Code §64.2-1208 provides for fiduciaries to receive “reasonable compensation” for their fiduciary services. In determining what is reasonable, the Commissioner of Accounts will use the “Guidelines for Fiduciary Compensation” as established by the Judicial Council of Virginia. A more complete discussion of fiduciary compensation is available **on the Commissioner’s Website, which should be consulted.**

2. To the extent a personal representative uses the services of another person or company to assist in the duties as executor or administrator, the executor or administrator’s fiduciary compensation will be reduced by fees paid to such other professionals for tasks an ordinary lay fiduciary could reasonably be expected to have done on their own. For example, if an accountant was hired to prepare the inventory or annual accounting, the fees paid to the accountant would reduce the executor’s compensation. However, if an accountant was hired to prepare a tax return, then the tax return preparation fees would not reduce the executor’s fees because tax return preparation is usually done by an experienced tax professional.

H. *Distributions.* Legal issues may affect disbursements to creditors or distributions to beneficiaries. Seek an experienced estate attorney if these or other questions arise:

1. A pecuniary bequest (a sum of money) must be **paid within twelve (12) months of the decedent’s death, otherwise interest accrues on the bequest thereafter;**

2. Filing of any exemptions and allowances under Virginia Code §64.2-309 through 313:

- a. Family Allowance;
- b. Exempt Property; or
- c. Homestead Allowance.

3. Marriage or divorce of the decedent after date of decedent’s will;

4. Distributions to minors and incapacitated persons;

5. Desertion or abandonment by the surviving spouse of the decedent;

6. Claim of an elective share by a surviving spouse (augmented estate election);

7. Disclaimers;
8. Probate of a more current will;
9. Need for legal interpretation of decedent's will, suit for aid and guidance, or beneficiary contesting will or administration;
10. Assistance in identifying and locating heirs-at-law, including potential unacknowledged children, grandchildren, and other class beneficiaries;
11. Death of a beneficiary prior to death of the decedent;
12. Death of an heir or beneficiary after the decedent's death, but prior to distribution (distribution must be made to the qualified personal representative of the deceased beneficiary's estate);
13. Children born after the writing of the will, but not mentioned in the will;
14. Ademption: The bequest was prepaid by the decedent or the subject of the bequest is no longer in existence;
15. Advancements (distributions in life that should reduce a beneficiary's share);
16. Abatement: Insufficient estate assets to fund all specific bequests.
17. Distributions in estates without a will (intestacy) can present special problems for an Administrator. **Determination of the proper Heirs at Law is critical** and often requires analysis of family genealogies and the application of complex legal rules of interpretation and construction. Often experts must be employed to locate and/or determine the proper beneficiaries of an estate. Frequently suits must be filed with the Circuit Court to have the Court enter an order determining the proper distributees.
18. Insolvency: **Consult an estate attorney for guidance before paying any bills or making any distributions.**

I. *Bond and Surety.*

1. Every fiduciary is required to give a personal bond at the time of qualification. The amount is determined by the Clerk of Court and is reviewed periodically by the Commissioner. Surety on the bond may be required by law or the will.

2. You will be advised by the Commissioner if your bond or surety is insufficient.

Office of the Commissioner of Accounts

Revised 2/23/2021