

SUBTITLE IV.
FIDUCIARIES AND GUARDIANS.

TITLE 26-PART A.
FIDUCIARIES-GENERALLY.

Drafting note: Existing Title 26, with three exceptions, has been relocated to proposed Chapters 12 through 15 of Subtitle IV of Title 64.2. Proposed Subtitle IV collects the various provisions dealing with fiduciary relationships, including fiduciaries and commissioners of accounts.

Existing Chapters 6 (Conservators of Property of Absentees) and 7 (Uniform Power of Attorney Act) of Title 26 have been relocated to, respectively, proposed Chapter 24 in Subtitle V and proposed Chapter 16 of Part B of Subtitle IV. Existing Article 2 (Uniform Prudent Investor Act) of Chapter 3 of Title 26 has been relocated to proposed Article 9 of Chapter 7 of Subtitle III.

In addition to the relocation, the provisions of existing Title 26 have been substantially reorganized.

CHAPTER-12.
BONDS AND LIABILITIES OF FIDUCIARIES COMMISSIONERS OF ACCOUNTS.

Drafting note: Proposed Chapter 12 consolidates the provisions dealing with commissioners of accounts, including their appointment and their duties, in one chapter. The provisions dealing with bonds and liabilities of fiduciaries are now located primarily in proposed Chapter 14.

§ ~~26-8~~ 64.2-1200. Commissioners of accounts.

A. The judges of each circuit court shall appoint as many commissioners of accounts, as may be ~~requisite~~ necessary to carry out the duties of that office, ~~who shall be removable at pleasure and who~~. The commissioner of accounts shall have ~~a~~ general supervision of all fiduciaries admitted to qualify in ~~such the~~ the court or before the clerk ~~thereof of the circuit court~~ and shall make all ex parte settlements of ~~their the fiduciaries'~~ the fiduciaries' accounts. The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

B. In the event more than one ~~such~~ commissioner of accounts is appointed, each commissioner of accounts shall maintain his own office and keep his own books, records, and accounts. ~~He~~ Each commissioner of accounts shall retain the power of supervision over every account, matter, or thing referred to him until ~~his a~~ a final account is approved for such account, matter, or thing, unless he resigns, retires, or is removed from office, in which case his successor shall continue such duties.

C. ~~Each~~ For any given service performed, each commissioner of accounts shall have the authority, ~~for any given service he performs, either~~ to establish a lesser fee than that prescribed by the court, or to waive one or more fees.

Drafting note: Technical changes.

§ ~~26-10~~ 64.2-1201. Appointment of assistant commissioners of accounts, ~~their~~ duties and powers.

The judges of each circuit court ~~in this Commonwealth having jurisdiction of the probate of wills and granting administrations on estates of decedents~~ may appoint, in addition to ~~the commissioner or~~ commissioners of accounts, assistant commissioners of ~~account~~, accounts who shall perform all the duties and exercise all of the powers required of the commissioner of accounts in all cases in which the commissioner of accounts ~~from any cause~~ is so situated that he cannot perform the duties of his office, or in which the commissioner of accounts is of the opinion that it is improper for him to act, ~~and such assistant~~. Assistant commissioners of accounts may perform such duties and exercise such powers in any ~~other~~ case except cases in which he is so situated that he cannot act, or in which he is of the opinion it is improper for him to act. ~~The person so appointed shall be a discreet and competent attorney at law. On all fiduciary qualifications after June 30, 2001, assistant~~ Assistant commissioners of accounts shall act only in such cases ~~as that~~ the commissioner of accounts delegates to him. An assistant commissioner of accounts making a settlement of a fiduciary account under the provisions of this section shall, within 30 days, report the fact and date of ~~such the~~ settlement to the commissioner of accounts, who shall make an entry of the ~~same~~ settlement in his record books. The person appointed as an assistant commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

Drafting note: Language providing that assistant commissioners of accounts are removable at the pleasure of the court has been added to match similar language that applies to both commissioners of accounts (proposed § 64.2-1200) and deputy commissioners of accounts (proposed § 64.2-1202). There are also technical changes.

§ ~~26-10.1~~ 64.2-1202. ~~Deputy~~ Appointment of deputy commissioners of accounts in certain cities and counties; duties and powers.

In any city or county having a population in excess of 200,000, the commissioner of accounts ~~of each court having jurisdiction of the probate of wills and granting administrations on estates of decedents~~, with the approval of the ~~judge~~ judges of ~~such the~~ circuit court, may appoint a deputy commissioner of accounts who may discharge any of the official duties of ~~his principal or principals during the latter's continuance in office~~ the commissioner of accounts for such jurisdiction for so long as the commissioner of accounts continues to serve. The person ~~so~~ appointed as a deputy commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

~~Any~~ Before entering upon the duties of his office, any deputy commissioner of accounts, ~~before entering upon the duties of his office~~, shall take and subscribe an oath similar to that provided for ~~his principal~~ the commissioner of accounts. The oath shall be filed with the clerk of court and a record of ~~such the~~ appointment and oath shall be entered in the order book of such court. ~~Any such deputy shall be removable at the pleasure of the judge of said court.~~

Drafting note: Clarifies that the duties of the deputy commissioner are derivative of the authority of the commissioner. There are also technical changes.

~~§ 26-11.~~

Drafting note: Repealed by Acts 1973, c. 544.

~~§ 26-8.1 64.2-1203.~~ Subpoena powers of commissioners of accounts, assistants, and deputies; penalty.

Commissioners of accounts, assistant commissioners of accounts, and deputy commissioners of accounts shall have the power to issue subpoenas to require any person to appear before them and to issue subpoenas duces tecum to require the production of any documents or papers before them. ~~Such commissioners~~ Commissioners of accounts, assistants, and deputies shall not have the power to punish any person for contempt for failure to appear or to produce documents or papers, but may certify the fact of such nonappearance or failure to produce to the circuit court, which may impose penalties for civil contempt as if the court had issued the subpoena. ~~Such commissioners~~ Commissioners of accounts, assistants, and deputies may certify to the circuit court the fact of a fiduciary's failure to inform the clerk or commissioners of his nonresident status and new address pursuant to ~~§ 26-1.2 64.2-1409~~. The court, upon a finding of a violation of ~~§ 26-1.2 64.2-1409~~, may impose a \$50 civil penalty. Such penalties shall be paid to the state treasurer for deposit into the general fund.

Drafting note: Technical changes.

~~§ 26-2 64.2-1204.~~ Commissioners of accounts to examine and report on bonds and whether fiduciaries should be removed.

A. When any fiduciary, other than a sheriff or other officer, who is required to ~~do so has filed file~~ an inventory or an account with the commissioner of accounts has made such a filing, the commissioner of accounts shall examine whether the fiduciary has given ~~such~~ bond as the law requires, and whether ~~it is in a the~~ penalty; and ~~with sureties surety stated in the bond are~~ sufficient. At any time before a required filing is made by a fiduciary with the commissioner of accounts, upon the application of any interested person ~~who is interested or who appears as the~~ next friend of an interested infant ~~interested, and~~ after reasonable notice to ~~such the~~ fiduciary, ~~any the~~ commissioner of accounts for the circuit court ~~in which the order conferring authority on wherein~~ the fiduciary ~~was made qualified~~ shall investigate ~~any of such matters, or (i) the bond given and~~ inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it, ~~or whether, by reason of and (ii) whether it is improper to permit the estate of the decedent, ward, or other person to remain under the fiduciary's control due to the incapacity, or misconduct, or of the fiduciary, the~~ removal of ~~any the~~ fiduciary from ~~this the~~ Commonwealth, or for any other cause, ~~it is improper to permit the estate of the decedent, ward, or other person, to remain under his control~~. The commissioner of accounts shall report the result of every ~~such~~ examination and inquiry ~~shall be reported by the commissioner~~ to the court ~~by which he is appointed~~ and to the clerk of ~~such~~ court.

B. When any fiduciary of an estate has given a bond to the court and then absconds with or improperly disburses any or all of the assets of the estate, the commissioner of accounts may petition the court in which the order was made conferring his authority on the fiduciary; and ask the court to order that such bond be forfeited.

Drafting note: Technical changes.

§ ~~26-14~~ 64.2-1205. Commissioners of accounts to inspect and file inventories with clerks.

The commissioner shall inspect all inventories returned to him by fiduciaries; and see that they are in proper form; ~~and, within ten.~~ Within 10 days after ~~they are respectively~~ any inventory is received and approved by ~~him~~ the commissioner of accounts, he shall deliver ~~them~~ the inventory to the clerk of the circuit court; to be recorded as required by law.

Drafting note: Technical changes.

§ ~~26-17.3~~ 64.2-1206. Settlement of fiduciaries' accounts.

Every fiduciary referred to in this ~~chapter part~~ shall account before the commissioner of accounts of the jurisdiction wherein he qualified as ~~hereinafter~~ provided in this part. Every account shall be signed by all fiduciaries. A statement in a separate document, signed by the fiduciary and attached to an account, that a fiduciary has received, read, and agrees with the account shall, ~~if signed by the fiduciary~~, be treated as a signature to the account.

~~Forms for accounts containing instructions concerning their use shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide the appropriate form to every fiduciary who qualifies in the clerk's office.~~

~~An accounting may be made on the form provided by the clerk, on a computer-generated facsimile or in any other clear format.~~

Drafting note: The language in the last two paragraphs, dealing with court forms, has been relocated to proposed § 64.2-1308 and consolidated with other court form provisions. There are also technical changes.

§ ~~26-28~~ 64.2-1207. Settlement for year to include unsettled portion of preceding year.

When a commissioner of accounts has ~~before him for settlement~~ the account of a fiduciary for any year before him for settlement, ~~if there be~~ the settlement shall also include any time prior to such year for which the fiduciary has not settled, ~~the settlement shall be also for such time.~~

Drafting note: Technical changes.

§ ~~26-30~~ 64.2-1208. Expenses and commissions allowed fiduciaries.

~~The commissioner, in A.~~ In stating and settling the account, the commissioner of accounts shall allow the fiduciary any reasonable expenses incurred by him ~~as such~~; and ~~also~~, except in cases in which it is otherwise provided, a reasonable compensation; in the form of a commission on receipts; or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Chapter ~~10~~ 20 (§ ~~37.2-1000~~ 64.2-2000 et seq.) or Chapter ~~10.1~~ 21 (§ ~~37.2-1031~~ 64.2-2100 et seq.) ~~of Title 37.2~~ shall also be allowed reasonable compensation for his

services. If a committee or other fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation may also be allowed for the services rendered with regard to the real estate and the income ~~therefrom from~~ or the value ~~thereof of such real estate~~.

B. Notwithstanding ~~the foregoing provisions subsection A~~ or any provision under Chapter ~~31 7~~ (§ ~~55-541.01 64.2-700~~ et seq.) ~~of Title 55~~, where the compensation of an institutional fiduciary is specified under the terms of the trust or will by reference to a standard published fee schedule, the commissioner of accounts shall not reduce the compensation below the amount specified, unless there is sufficient proof that ~~i) (i) the settler settlor~~ or testator was not competent when the trust instrument or will was executed or ~~ii) (ii) such compensation is~~ excessive in light of the compensation institutional fiduciaries generally receive in similar situations.

Drafting note: Technical changes.

§ ~~26-29 64.2-1209~~. Who may insist or object before commissioner of accounts.

Any interested person ~~who is interested~~, or ~~appears as the~~ next friend ~~for another of an~~ interested ~~in any such account person~~, may, before the commissioner of accounts, insist upon or object to anything which could be insisted upon or objected to by ~~him, or for such other, such~~ interested person if the commissioner of accounts were acting under an order of a circuit court for the settlement ~~thereof, of a fiduciary's accounts~~ made in a suit to which ~~he or such other such~~ interested person was a party.

Drafting note: Technical changes.

§ ~~26-31 64.2-1210~~. Accounts, ~~etc., and debts and demands~~ to be reported.

~~Every~~ The commissioner of accounts shall report every account stated under this ~~chapter part~~, including a statement of the cash on hand and in bank accounts and the investments held by the fiduciary at the terminal date of the account, and, where applicable, reports of debts and demands under § ~~64.1-172 shall be reported 64.2-551~~, along with any matters specially stated deemed pertinent by the commissioner, of accounts or ~~which may be required by any that an~~ interested person interested to be so stated may require.

Drafting note: Technical changes.

§ ~~26-32 64.2-1211~~. Where filed; notice to certain parties.

The commissioner of accounts shall file the report in the office of the circuit court by which he is appointed as soon as practicable after its completion. On or before the date of filing a report on a personal representative's account, the commissioner of accounts shall send a copy of the report and any attachments, excluding the account, by first-class mail to every person who (i) was entitled to request a copy of the account pursuant to § ~~26-12.4 64.2-1303~~ and (ii) submits a written request therefor to the commissioner of accounts. The copy of the ~~commissioner's~~ report of the commissioner of accounts shall be accompanied by a statement advising the recipient that the report will stand confirmed by law ~~fifteen 15~~ days after the report is filed with the court in the absence of any objections being filed thereto.

Drafting note: Technical changes.

§ ~~26-33~~ 64.2-1212. Exceptions to report; examination, correction, and confirmation.

A. If no exceptions have been filed, the report shall stand confirmed on the day next following the expiration of the period of 15 days after the day on which the report was filed in the clerk's office.

The B. If objections have been filed, the circuit court, or judge in vacation, after fifteen 15 days from the time the report has been filed in its office, shall examine such exceptions as that have been timely filed. It The court shall correct any errors which that appear on the exceptions and to this end may (i) commit the report to the same or another commissioner of accounts, as often as it sees cause; or it may, (ii) cause a jury to be empaneled to inquire into any matter which, that in its opinion, should be ascertained in that way; or it may (iii) confirm the report in whole or in a qualified manner, and. The court shall certify in the order that it has made a personal examination of the exceptions.

If no exceptions have been filed, the report shall stand confirmed on the day next following the expiration of the period of fifteen days after the day on which the report was filed in the clerk's office.

Drafting note: Reordered paragraphs for clarity and also clarified that the commissioner of accounts only has to review exceptions that have been timely filed. There are also technical changes.

§ ~~26-34~~ 64.2-1213. Effect of confirmation of report.

The report, to the extent to which it ~~may be so~~ is confirmed by an order of the circuit court or judge upon exceptions filed; pursuant to subsection B of § 64.2-1212 or in whole when confirmed by lapse of time without exceptions pursuant to subsection A of § 64.2-1212, as provided in § 26-33, shall be taken to be correct, except so far as it may, in a suit, in proper time, be surcharged or falsified; ~~but~~ However, no person who was a party to exceptions filed to the report shall bring a suit to surcharge or falsify the report, and in such case the action of the court on the report shall be final as to such party, ~~but except that it~~ may be appealed from as in other suits in equity.

Drafting note: Technical changes.

§ ~~26-35~~ 64.2-1214. Recordation of report.

The clerk shall record every report so confirmed, whether by order of the circuit court or judge upon exceptions filed or by the lapse of the time ~~aforsaid~~ without exceptions filed, and note at the foot of it the order of confirmation or the clerk's certificate that no exceptions were filed, as the case may be, in ~~what is known as~~ the will ~~books~~ book or the book in which ~~is recorded~~ the fiduciary accounts in ~~his the clerk's~~ office are recorded and index it according to the provisions of § 17.1-249.

Drafting note: Technical changes.

§ ~~26-35.1.~~

Drafting note: Repealed by Acts 1962, c. 111.

~~§ 26-36.~~

Drafting note: Repealed by Acts 1994, c. 432.

~~§ 26-36.1.~~

Drafting note: Repealed by Acts 1997, c. 842.

~~§ 26-13 64.2-1215. Enforcing Power of commissioner of accounts to enforce the~~ filing of ~~such~~ inventories.

A. If any fiduciary fails to make the return required by ~~§ 26-12 64.2-1300~~, the commissioner of accounts shall issue, through the sheriff or other proper officer, a summons to ~~such the~~ fiduciary; requiring him to make such return; ~~and if such. If the fiduciary fails to make the required~~ return ~~is not made~~ within 30 days after the date of service of the summons, the commissioner of accounts shall report the fact to ~~his the circuit~~ court. The court shall immediately ~~thereupon order issue~~ a summons to the fiduciary; requiring him to appear; and ~~shall~~ upon his ~~appearing unless excused for sufficient reason, he shall be fined by the court appearance, assess a fine against the fiduciary in a sum an amount~~ not to exceed \$500 ~~unless excused for sufficient reason~~. If, ~~after his appearance before the court~~, the fiduciary ~~still fails continues to fail~~ to make the required return within such time as the court may prescribe, ~~he the fiduciary~~ shall be ~~deemed guilty of punished for~~ contempt of court, ~~and be dealt with accordingly~~.

B. Whenever the commissioner of accounts reports to the court that a fiduciary, who is an attorney-at-law licensed to practice in the Commonwealth, has failed to make the required return within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.

Drafting note: Technical changes.

~~§ 26-18 64.2-1216.~~ Failure to account; enforcement.

A. If any ~~such~~ fiduciary required to account fails to make a complete and proper account within the time allowed, the commissioner of accounts shall either (i) proceed against ~~such the~~ fiduciary ~~by summons and report to the court as provided by in accordance with the procedures set forth in~~ ~~§ 26-13 64.2-1215~~ or (ii) file with the circuit court and ~~with~~ the clerk at such times as the court shall order, but not less than twice a year, a list of all fiduciaries who have failed to make a complete and proper account within the time allowed, excepting those fiduciaries to whom the commissioner of accounts has granted additional time. Upon the filing of this list, the clerk shall issue a summons against each fiduciary ~~shown thereon on the list~~, returnable to the first day of the next term of court, and the court shall take action against ~~such the~~ fiduciary in accordance with the procedures set forth in ~~§ 26-13 for failure to file inventories 64.2-1215~~.

B. Every commissioner of accounts shall file with the court and ~~with~~ the clerk at such times as the court shall order, but not less than quarterly, a list of all fiduciaries whose accounts

for any reason have been before the commissioner of accounts for more than five months. The commissioner of accounts shall note on ~~such the~~ list the fiduciaries who are deemed delinquent.

C. Whenever the commissioner of accounts reports to the court that a fiduciary, who is an attorney-at-law licensed to practice in the Commonwealth, has failed to make the required settlement within ~~thirty~~ 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.

Drafting note: Technical changes.

§ ~~26-19~~ 64.2-1217. ~~When fiduciaries to forfeit their~~ Forfeiture of fiduciary's commission; etc.

If ~~any such a~~ fiduciary wholly ~~fail fails~~ to ~~lay~~ file an account before ~~such the~~ commissioner of accounts containing a statement of all matters required in § ~~26-17.3~~ 64.2-1206, together with all other statements and items therein required for any year, within four months after ~~its the year's~~ expiration, ~~and or~~, though ~~a statement be laid~~ the fiduciary files an account before the commissioner of accounts, ~~yet if the commissioner of accounts finds~~ the fiduciary ~~be found is~~ chargeable for that year with any money or other property; not ~~embraced~~ included in the statement, ~~he the fiduciary~~ shall ~~have~~ receive no compensation for his services during such year; ~~nor or any~~ commission on such money or other property unless allowed by the commissioner of accounts for good cause shown; ~~the commissioner's. The circuit court shall review the commissioner of accounts' action in such case shall be subject to review by the court on upon the filing of timely~~ exceptions by any interested person. This section shall not apply to a ~~case in which a~~ fiduciary who has ~~laid filed~~ a statement of his accounts within such year before a commissioner in chancery who in a pending suit has been ordered to settle his account.

Drafting note: Technical changes.

§ ~~26-23~~ 64.2-1218. When fiduciaries personally liable for costs.

The costs of all proceedings against ~~fiduciaries failing, a fiduciary who fails~~ without good cause, to make the returns and exhibits required, shall be paid by ~~them him~~ personally, and ~~they~~ he shall receive no allowance for the ~~same costs~~ in the settlement of ~~their his~~ accounts.

Drafting note: Technical changes.

§ ~~26-24~~ 64.2-1219. Fees of commissioners of accounts.

Except as otherwise provided, the circuit court appointing a commissioner of accounts shall prescribe the fees of ~~commissioners such commissioner~~ of accounts ~~shall be prescribed by the court which appointed them~~.

Drafting note: Technical changes.

§ ~~26-26~~ 64.2-1220. Receipt for vouchers filed in settlement; effect thereof.

Any commissioner of accounts having before him the accounts of a fiduciary for settlement shall, on request, execute and deliver to ~~such the~~ fiduciary a receipt for all vouchers filed with ~~him, which the commissioner of accounts. The~~ receipt, if such vouchers ~~be afterwards~~ are subsequently lost or destroyed, shall, ~~in any suit or proceeding against such fiduciary~~, be

evidence of the delivery to ~~such~~ the commissioner of accounts of the vouchers ~~therein~~ mentioned in the receipt in any suit or proceeding against the fiduciary.

Drafting note: Technical changes.

§ ~~26-9~~ 64.2-1221. Report on fiduciaries' bonds; "record of fiduciaries."-

A. The clerk of each ~~such~~ circuit court shall furnish ~~his to the~~ commissioner ~~or~~ commissioners of accounts at the end of each month a list of the fiduciaries authorized to act as such under orders entered during that month and shall examine ~~as to whether~~ each fiduciary ~~whether he~~ has given such bond as the law requires, ~~and if. If it appear~~ appears that ~~he the~~ fiduciary has given no bond or that his bond is defective, the clerk shall immediately report ~~such this~~ fact to ~~his the circuit~~ court ~~forthwith~~.

B. The commissioner ~~or commissioners~~ of accounts shall ~~enter in separate columns in~~ keep a book or other proper record ~~to be kept by him and~~ called the "record of fiduciaries," in which the following shall be entered in separate columns:

- ~~(1)~~ 1. The name of every ~~such~~ fiduciary;
- ~~(2)~~ 2. The name of the decedent whose estate ~~he the fiduciary~~ represents or the name of the living person for whom he is acting in fiduciary capacity;
- ~~(3)~~ 3. The penalty of his bond;
- ~~(4)~~ 4. The names of his sureties;
- ~~(5)~~ 5. The date of the order conferring his authority;
- ~~(6)~~ 6. The date of any order revoking his authority;
- ~~(7)~~ 7. The date of the return of every inventory of the estate; and
- ~~(8)~~ 8. The date of each settlement of the accounts of the fiduciary.

The commissioner ~~or commissioners~~ of accounts shall index the ~~book or other proper~~ record of fiduciaries in the name of the decedent or person represented by the fiduciary.

C. The clerk ~~of the court~~ shall certify to the commissioner ~~or commissioners~~ within ten days of accounts the revocation of the authority of ~~every such~~ any fiduciary within 10 days of the revocation.

D. Any commissioner failing to make ~~such entry~~ entries pursuant to subsection B or any clerk failing to certify ~~such the~~ revocation ~~for ten days after the time herein prescribed of a~~ fiduciary's authority pursuant to subsection C shall ~~for every such failure~~ forfeit ~~twenty dollars~~ \$20 for every such failure.

Drafting note: Technical changes.

§ ~~26-27~~ 64.2-1222. Commissioners of accounts to post list of fiduciaries whose accounts are before them for settlement.

Every commissioner of accounts shall, on the first day of the term of ~~any the~~ circuit court ~~of his county or city that appointed him~~, or during the first week of each month, post at the front door of the courthouse of ~~such the~~ circuit court a list of the fiduciaries whose accounts are before him for settlement, ~~stating. The list shall contain (i)~~ the names of ~~such the~~ fiduciaries; ~~;~~ (ii) the

nature of their accounts, whether as a personal representative, guardian, conservator, curator, committee, or trustee; and (iii) the name of their decedents, or of the persons for whom they are guardians, conservators, curators, or committees; or under whose deed or other trust instrument ~~of trust~~ they are acting. ~~No~~ The commissioner of accounts shall not settle and approve the account of any fiduciary ~~shall be completed by any commissioner~~ until ~~ten~~ 10 days after posting the list containing the name of ~~such~~ the fiduciary as ~~aforsaid shall have been so posted~~ provided by this section.

Drafting note: Technical changes.