

CHAPTER ~~6~~ 5.

PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES.

Article 1.

Appointment and Qualification.

~~§ 64.1-116 64.2-500. When and to whom~~ Grant of administration, with the will annexed, ~~may be granted.~~

~~A. If there be no executor appointed by the will~~ does not name an executor, ~~or if all the executors therein~~ executor ~~named refuse the executorship or fail~~ refuses to accept, ~~fails~~ fails to give bond ~~when required, which shall amount to such refusal, or having qualified die, resign or are~~ dies, resigns, or is removed from office, the court or clerk may grant administration with the will annexed to a person who is a residual or ~~a~~ substantial legatee under the will, or his designee, ~~and upon the failure of any or if~~ such person so fails to apply for administration within ~~thirty~~ 30 days, to a person who would have been entitled to administration if there had been no will, ~~upon his taking such oath and giving such bond; provided that administration.~~

B. Administration shall not be granted to any person unless he takes the required oath and gives bond, and the court or clerk is satisfied that he is suitable and competent to perform the duties of his office. Administration shall not be granted to any person under a disability as defined in § 8.01-2.

C. If any beneficiary of the estate objects, ~~no husband, wife~~ a spouse or parent who has been barred from all interest in the estate because of desertion or abandonment as provided under ~~§ 64.1-16.3 shall be suitable to~~ 64.2-308 may not serve as an administrator of the estate ~~of the deceased spouse or child, as the case may be.~~

Drafting note: Technical changes. The “when required” language that qualified the giving of a bond was eliminated since in all cases a personal representative is required to give his bond (though not necessarily post surety). Language regarding eligibility of persons under a disability to serve as administrator with the will annexed was added to proposed subsection B to mirror language in existing § 64.1-118 dealing with administrators of intestate estates.

~~§ 64.1-117 64.2-501. Oath of executor or~~ such administrator with the will annexed.

~~The oath of an~~ An executor or ~~of an~~ administrator with the will annexed shall ~~be take an~~ oath that the writing admitted to record contains the true last will of the ~~deceased~~ decedent, so far as he knows ~~or believes~~, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, vice-president, secretary, treasurer, or trust officer.

Drafting note: Technical changes.

~~§ 64.1-118 64.2-502. What clerk or court to appoint administrator~~ Grant of administration of intestate estate; ~~who to be preferred.~~

A. The court or the clerk who would have jurisdiction as to the probate of a will, if there were a will, ~~shall have the~~ has jurisdiction to hear and determine the right of administration of the estate in the case of a person dying intestate. Administration shall be granted as follows:

1. During the first ~~thirty~~ 30 days following the ~~intestate's decedent's~~ death, the court or the clerk may grant administration ~~(i)~~ to a sole distributee, or his designee, or ~~(ii)~~ in the absence of a sole distributee, to any distributee, or his designee, who presents written waivers of the right to qualify from all other competent distributees.

2. After ~~thirty~~ 30 days have passed since the ~~intestate's decedent's~~ death, the court or the clerk may grant administration to the first distributee, or his designee, who applies ~~therefor, without either waiting for any further period of time, or requiring the consent or waiver of any other distributee,~~ provided, ~~however,~~ that if, during the first ~~thirty~~ 30 days following the ~~intestate's decedent's~~ death, more than one distributee notifies the court or the clerk of an intent to qualify after the ~~thirty-day~~ 30-day period has elapsed, the court or the clerk shall not ~~appoint~~ grant administration to any distributee, or his designee, until the court or the clerk has given all such distributees an opportunity to be heard.

3. After 45 days have passed since the ~~intestate's decedent's~~ death, the court or the clerk may grant administration to any nonprofit charitable organization that operated as a conservator or guardian for the decedent at the time of his death; ~~however, (i) if such organization certifies that it has made a diligent search to find an address for any sole distributee and has sent notice by certified mail to the last known address of any such distributee of its intention to apply for administration at least 30 days before such application, or, that it has not been able to find any address for such distributee. However,~~ if, during the first 45 days following the ~~intestate's decedent's~~ death, any distributee notifies the court or the clerk of an intent to qualify after the 45-day period has elapsed, the court or the clerk shall not ~~appoint~~ grant administration to any such organization ~~administrator~~ until the court or the clerk has given all such distributees an opportunity to be heard, ~~and (ii) such organization certifies that it has made a diligent search to find an address for any sole distributee and has given not less than 30 days notice by certified mail of its intention to apply for administration to the last known address or addresses of the distributee discovered or, alternatively, that it has not been able to find any such address.~~ Qualification of such nonprofit charitable organization is not subject to challenge on account of ~~a~~ the failure to ~~have made~~ make the certification ~~herein~~ required by this subdivision.

4. After ~~sixty~~ 60 days have passed since the ~~intestate's decedent's~~ death, the court or the clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or ~~other~~ person other than a distributee certifies that he has made a diligent search to find an address for any sole distributee and has ~~given not less than thirty days sent~~ notice by certified mail ~~of his intention to apply for administration~~ to the last known address ~~or addresses~~ of ~~the any such~~ distributee ~~discovered of his intention to apply for administration at least 30 days before such application,~~ or ~~alternatively,~~ that he has not been able to find any ~~such~~ address for such distributee. Qualification of a creditor or person other than a distributee is not subject to

challenge on account of ~~a the~~ failure to ~~have made~~ make the certification ~~herein~~ required by this subdivision.

~~5. The court may appoint administrators under the same conditions as herein provided for the clerk, and when~~ B. When granting administration, if the court determines that it is in the best interests of ~~an intestate's~~ a decedent's estate, the court may depart ~~therefrom~~ from the provisions of this section at any time and ~~appoint~~ grant administration to such person as the court, ~~in the exercise of its discretion,~~ deems ~~most~~ appropriate.

C. The court or clerk may admit to probate a will of the decedent after a grant of administration. If administration has been granted to a creditor or person other than a distributee, the court or clerk may grant administration to a distributee who applies for administration and who has not previously been refused administration after reasonable notice has been given to such creditor or other person previously granted administration. Admission of a will to probate or the grant of administration pursuant to this subsection terminates any previous grant of administration.

~~BD.~~ The court or clerk shall not grant administration to any person unless satisfied that he is suitable and competent to perform the duties of his office. ~~A Administration shall not be granted to any~~ person under a disability as defined in § 8.01-2 ~~is not eligible to qualify.~~

~~CE.~~ If any beneficiary of the estate objects, ~~no husband, wife~~ a spouse or parent who has been barred from all interest in the estate because of desertion or abandonment as provided under ~~§ 64.1-16.3 is suitable to~~ 64.2-308 may not serve as an administrator of the estate of the deceased spouse or child, ~~as the case may be.~~

Drafting note: Technical changes. The last sentence of existing § 64.1-119 has been relocated to proposed subsection C with technical changes.

~~§ 64.1-119~~ 64.2-503. Oath and bond of administrator; ~~when grant to cease of intestate estate.~~

~~Before any grant of administration, as~~ An administrator of the estate of an intestate estate; ~~the person to whom it is granted shall, in the court or before the clerk granting it,~~ give bond and take an oath that the ~~deceased~~ decedent has left no will, so far as he knows, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, a vice-president, secretary, treasurer, or trust officer. ~~If a will of the decedent be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person, in like manner as if the former grant had not been made; and the former grant shall thereupon cease.~~

Drafting note: Last sentence has been relocated to subsection C of proposed § 64.2-502. There are also technical changes.

~~§ 64.1-120~~ 64.2-504. ~~Penalty of bond~~ Bond of executor or administrator.

A. Except as provided in subsection B, every bond of an executor or administrator shall be ~~in a penalty equal~~, at the least, in an amount equal to (i) the full value of the personal estate of the ~~deceased decedent~~ to be administered; ~~and when there is a~~, or (ii) if the will ~~which~~ authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, ~~the bond shall be in a penalty equal, at the least, to~~ the full value ~~both~~ of the personal estate and ~~of~~ such real estate, or the rents and profits thereof, as the case may be.

B. Upon the request of an executor or administrator, the clerk shall redetermine the penalty amount of the bond in light of any reduction in the current market value of the estate in the executor's or administrator's possession or subject to his power, whether such reduction is due to disbursements, distributions, or valuation of assets, if such reduction is reflected in an accounting that has been confirmed by the court or an inventory that has been approved by the commissioner of accounts and recorded in the clerk's office. This provision shall not apply to any bond set by the court.

Drafting note: Technical changes.

~~§ 64.1-121~~ 64.2-505. When security not required.

~~If all~~ A. The court or clerk shall require a personal representative to furnish security. However, the court or clerk shall not require a personal representative to furnish security if:

1. All distributees of a decedent's estate or all beneficiaries under the decedent's will are personal representatives of that decedent's estate, whether serving alone or with others who are not distributees or beneficiaries, ~~the court or clerk shall not require security~~; however, if all personal representatives of a testate decedent are entitled to file a statement in lieu of an accounting under ~~§ 26-20.1~~ 64.2-1314, the security shall be required only upon the portion of their bond given in connection with the property passing to beneficiaries who are not personal representatives; ~~and no security shall be required of an executor when or~~

~~the~~ 2. The will waives security of an executor nominated therein. ~~However, in any case, upon the application of any~~

B. Notwithstanding subsection A, upon the motion of a legatee, devisee, or distributee of an estate, or any person who has a pecuniary interest ~~or upon motion of in an estate~~, the court ~~or clerk, such fiduciary may be required to provide~~ require that the personal representative furnish security in an amount deemed sufficient. If at any time any person with an interest, or a legatee, devisee or distributee of an estate files with the court a motion in writing suggesting that surety upon the bond should be required of a fiduciary for the protection of the estate, a A copy of such motion shall be served upon the fiduciary personal representative. The court shall ~~hear the matter~~ conduct a hearing on the motion and may require the fiduciary personal representative to furnish surety upon his bond security in the an amount it deems ~~necessary sufficient~~ and, ~~in addition,~~ may award ~~to~~ the movant reasonable attorney's attorney fees and costs which shall be paid out of the estate.

C. This section shall be deemed to permit qualification without security ~~in situations~~ where the personal representative ~~or personal representatives are~~ is the only ~~distributees~~ distributee or only ~~beneficiaries~~ beneficiary by virtue of one or more instruments of disclaimer filed prior to, or at the time of, such personal representative's qualification.

Drafting note: Technical changes to modernize language.

~~§ 64.1-122 64.2-506. Letters~~ When letters of administration and order for obtaining probate in due form ~~unnecessary; how made out when are~~ required.

~~A copy of the order whereby~~ The court or clerk may issue a certificate ~~is granted of qualification~~ to any personal representative for obtaining probate or letters of administration, which shall be ~~as effectual~~ given the same effect as the probate or letters made out in due form. ~~Nevertheless the~~ The clerk ~~of the court by which such order is made shall~~, when required by any personal representative, shall make out such probate or letters in due form. ~~The same, when so made out, that~~ shall be signed by the clerk, sealed with the seal of the court, and certified by the judge to be attested in due form.

Drafting note: Technical changes.

~~§ 64.1-122.1 64.2-507.~~ Clerks to deliver statement of responsibilities.

The clerk of any court in which any person qualifies as executor or administrator of an estate shall deliver to such person, at the time of qualification, a statement in at least the following form: "As an executor or administrator of an estate, you are charged with the responsibility of filing any income, inheritance or estate tax returns required by state or federal law and an accounting of your handling of the estate."

Drafting note: No change.

~~§ 64.1-122.2 64.2-508.~~ Written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties.

A. Except as otherwise provided in this section, a personal representative of a decedent's estate or a proponent of a decedent's will when there is no qualification, ~~for estates of persons dying on or after January 1, 1994,~~ shall provide written notice of qualification or probate, and notice of entitlement to copies of wills, inventories, accounts, and reports, to the following persons:

1. The surviving spouse of the decedent, if any;
2. All heirs at law of the decedent, whether or not there is a will;
3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under ~~§ 64.1-64.1 64.2-418,~~ and beneficiaries of any trust created by the will; and
4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided (i) when the known assets passing under the will or by intestacy do not exceed \$5,000 or (ii) to the following persons:

1. A personal representative or proponent of the will;

2. Any person who has signed a waiver of right to receive notice;
 3. Any person to whom a summons has been issued pursuant to ~~§ 64.1-79 or § 64.1-80~~ 64.2-446;
 4. Any person who is the subject of a conservatorship, guardianship, or committee ship, if notice is provided to his conservator, guardian, or committee;
 5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;
 6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;
 7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or person in loco parentis;
 8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in either case the beneficiary is not an heir at law and the value of the bequest is not in excess of \$5,000; and
 9. Any unborn or unascertained persons.
- C. The notice shall include the following information:
1. The name and date of death of the decedent;
 2. The name, address, and telephone number of a personal representative or a proponent of a will;
 3. The mailing address of the clerk of the court in which the personal representative qualified or the will was probated;
 4. A statement as follows: "This notice does not mean that you will receive any money or property";
 5. A statement as follows: "If personal representatives qualified on this estate, they are required by law to file an inventory with the commissioner of accounts within four months after they qualify in the clerk's office, to file an account within ~~sixteen~~ 16 months of their qualification, and to file additional accounts within ~~sixteen~~ 16 months from the date of their last account period until the estate is settled. If you make written request therefor to the personal representatives, they must mail copies of these documents (not including any supporting vouchers, but including a copy of the decedent's will) to you at the same time the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an heir at law in a case where all of the decedent's probate estate is disposed of by will, or (ii) your gift has been satisfied in full before the time of such filing. Your written request may be made at any time; it may relate to one specific filing or to all filings to be made by the personal representative, but it will not be effective for filings made prior to its receipt by a personal representative. A copy of your request may be sent to the commissioner of accounts with whom the filings will be made. After the commissioner of accounts has completed work on an account filed by a personal representative, the commissioner files it and a report thereon in the clerk's

office of the court wherein the personal representative qualified. If you make written request therefor to the commissioner before this filing, the commissioner must mail a copy of this report and any attachments (excluding the account) to you on or before the date that they are filed in the clerk's office"; and

6. The mailing address of the commissioner of accounts with whom the inventory and accounts must be filed by the personal representatives, if they are required.

D. Within ~~thirty~~ 30 days after the date of qualification or admission of the will to probate, a personal representative or proponent of the will shall forward notice by delivery or by first-class mail, postage prepaid, to the persons entitled to notice at their last known address. If the personal representative or proponent does not determine that the assets of the decedent passing under the will or by intestacy exceed \$5,000 until after the date of the qualification or admission of the will to probate, notice shall be forwarded to the persons entitled thereto within ~~thirty~~ 30 days after such determination.

E. Failure to give the notice required by this section shall not ~~of itself~~ (i) affect the validity of the probate of a decedent's will, ~~nor or~~ (ii) render any person required to give notice, who has acted in good faith, liable to any person entitled to receive notice. In determining the limitation period for any rights that may commence upon or accrue by reason of such probate or qualification in favor of any entitled person, the time that elapses from the date that notice should have been given to the date that notice is given shall not be counted, unless the person required to give notice could not determine the name and address of the entitled person after the exercise of reasonable diligence.

F. The personal representative or proponent of the will shall record within four months in the clerk's office where the will is recorded an affidavit stating (i) the names and addresses of the persons to whom he has mailed or delivered notice and when the notice was mailed or delivered to each or (ii) that no notice was required to be given to any person. ~~A~~ The commissioner of accounts shall not approve any settlement filed by a personal representative until the affidavit described in this subsection has been recorded. If the personal representative of an estate, or the proponent of a will, is unable to determine the name and address of any person to whom notice is required after the exercise of reasonable diligence, a statement to that effect in the required affidavit shall be sufficient for purposes of this subsection. Notwithstanding the foregoing provisions, any person having an interest in an estate may give the notice required by this section and record the affidavit described in this subsection. If this subsection has not been complied with within four months after qualification, the ~~Commissioner~~ commissioner of ~~Accounts~~ accounts shall issue, through the sheriff or other proper officer, a summons to such fiduciary requiring him to comply, and if ~~he shall the fiduciary does~~ he shall the fiduciary does not comply, the ~~Commissioner~~ commissioner shall enforce the filing of the affidavit in the manner set forth in § ~~26-13~~ 64.2-1215.

G. The form of the notice to be given ~~hereunder~~ pursuant to this section, which shall contain appropriate instructions regarding its use, shall be provided to each clerk of the circuit

court by the Office of the Executive Secretary of the Supreme Court and each clerk shall provide copies of such form to the proponents of a will or those qualifying on an estate.

Drafting note: Technical changes.

Article ~~3~~ 2.

~~Appraisal~~, List of Heirs and Affidavit of Real Estate.

~~§ 64.1-133.~~

Drafting note: Repealed by Acts 1998, c. 610.

~~§ 64.1-134~~ 64.2-509. List of heirs.

A. Every ~~(i)~~ personal representative of a decedent, whether ~~such the~~ decedent died testate or intestate, shall, at the time of his qualification, and ~~(ii) every~~ proponent of a will where there is no qualification of a personal representative, ~~when shall, at the time~~ the will is presented for probate, ~~shall furnish the court or clerk where he qualifies and the clerk of the circuit court of the city or county where real estate that is an asset of the decedent's estate is located,~~ a list of heirs under oath in accordance with a form provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof to the court or clerk where the personal representative qualifies and to the clerk of the circuit court for the jurisdiction where any real estate that is part of the decedent's estate is located.

B. If there has been no qualification of a personal representative within 30 days following the decedent's death, a list of heirs, made under oath in accordance with the form provided to each clerk or a computer generated facsimile thereof, may be filed by any heir at law of a decedent who died intestate.

C. The clerk shall record ~~such the~~ list of heirs in the will book and index the list in the name of the decedent and the heirs. ~~Such A list so of heirs~~ made under oath and recorded pursuant to this section shall be prima facie evidence of the facts ~~therein stated~~ contained in the list. The cost of recording ~~such the~~ list shall be deemed a part of the cost of administration and be paid out of the estate of the decedent. ~~Such~~

D. The personal representative shall not receive any compensation for his services until ~~such the~~ list of heirs is filed unless he files an affidavit before the commissioner of accounts that the heirs are unknown to him and that after diligent inquiry he has been unable to ascertain their names, ages, or addresses, as the case may be.

E. The list of heirs filed pursuant to this section shall reflect the heirs in existence on the date of the decedent's death. If there are any changes as to who should be included on the list of heirs, an additional list of heirs shall be filed that includes such changes.

Drafting note: Technical changes.

~~§ 64.1-135~~ 64.2-510. Affidavit relating to real estate of intestate decedent.

~~Upon the death intestate of a person owning real estate, any~~ A. Any person having an interest ~~therein in real estate that is part of an intestate decedent's estate,~~ including a personal representative who has qualified, may execute an affidavit, on a form provided to each clerk of

the court by the Office of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof, setting forth briefly (i) a description of the real estate owned by the decedent at the time of his death situated within the ~~city or county~~ jurisdiction where ~~such the~~ affidavit is to be recorded; (ii) that the ~~intestacy~~ decedent died intestate; and (iii) the names and last known addresses of the decedent's heirs at law. The clerk of the circuit court of the ~~county or city in which deeds are admitted to record and in which jurisdiction where~~ such real estate or any part thereof is located, shall, ~~upon the payment of the fees provided by law~~, record and index the same affidavit as wills are recorded and indexed in the name of the decedent and the heirs.

B. The clerk of the circuit court of the ~~county or city~~ jurisdiction where ~~such the~~ affidavit is recorded shall transmit an abstract of ~~said the~~ affidavit to the commissioner of the revenue of ~~said county or city as in the case of deeds conveying real estate such jurisdiction~~. Upon receipt ~~thereof by said of the affidavit, the~~ commissioner, ~~such real estate may be transferred~~ transfer the real estate upon the land books and ~~assessed~~ assess the real estate in accordance therewith.

Drafting note: Technical changes to modernize language. The provisions for recording and indexing the affidavit have been amended to parallel those in proposed § 64.2-509. The language requiring the payment of fees before recordation was eliminated as unnecessary. For example, § 58.1-1717.1 requires a \$25 recordation fee for both existing §§ 64.1-134 and 64.1-135, but only existing § 64.1-135 expressly notes that this fee must be paid.

Article ~~4~~ 3.

Authority and General Duties.

§ ~~64.1-136~~ 64.2-511. Powers of executor before qualification.

~~No~~ A person ~~appointed by~~ named in a will as executor ~~thereof~~ shall ~~have not exercise~~ the powers of executor until he qualifies as such by taking an oath and giving bond in the court ~~in which~~ or before the clerk ~~by whom~~ where the will or an authenticated copy thereof is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

Drafting note: Technical changes.

§ ~~64.1-136.1~~ 64.2-512. Funeral expenses.

Subject to the provisions of § ~~64.1-157~~ 64.2-528, reasonable funeral and burial expenses of a decedent shall be considered an obligation of the decedent's estate, which shall be liable for such expenses to: (i) the funeral establishment, (ii) the cemetery, (iii) any third-party creditor who finances the payment of such expenses, or (iv) any person authorized to make arrangements for the funeral of the decedent who has paid such expenses. A person who is authorized to make arrangements for the funeral of the decedent shall have the authority to bind the decedent's estate for such expenses and may execute, on behalf of the estate, any necessary instruments.

Drafting note: Technical changes.

§ ~~64.1-137~~ 64.2-513. ~~Death~~ Effect of death, resignation, or removal of sole executor; ~~his executor has no authority~~.

~~The executor of an executor shall have no authority as such to administer the estate of the first testator, but, on~~ Upon the death, resignation, or removal of the sole surviving executor ~~of under~~ any last will, administration of the estate of the ~~first~~ testator, not already administered, may be granted, with the will annexed, to ~~such any~~ person ~~as the court shall think fit to appoint~~ deems appropriate.

Drafting note: Technical changes.

~~§ 64.1-138. Effect of marriage of female personal representative.~~

~~When an unmarried woman who is a personal representative, either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right and the marriage shall not operate as an extinguishment of her authority.~~

Drafting note: Section eliminated as an anachronism.

~~§ 64.1-139~~ 64.2-514. Duty of every personal representative.

Every personal representative shall administer, well and truly, the whole personal estate of his decedent.

Drafting note: No change.

~~§ 64.1-140~~ 64.2-515. Duty of fiduciaries as to joint accounts.

~~A.A. Except as provided in subsection B, a fiduciary charged with the administration of the estate of a decedent shall be under no obligation unless requested in writing by someone in interest, within six months from the date of the initial qualification on the estate, is not required to assert a claim on behalf of the decedent's estate to any funds which may, at the time of his death, be on deposit in any financial institution in a joint account held, at the time of the decedent's death, in the name of said the decedent and one or more other persons when the terms of the contract of deposit, or the laws of the state in which such funds are deposited, permit such financial institution to pay (1) the funds to (i) either any of such persons in whose name the account is held, whether the other, or others, be are living or not, or (2) to (ii) a named survivor or survivors.~~

B. The fiduciary shall assert a claim to such funds if he receives a request in writing from any person interested in the estate within six months from the date of the initial qualification of the estate. The fiduciary, or his attorney, shall acknowledge in writing receipt of such request in writing within ten 10 days of receipt of such notice, and if the fiduciary be the same person as is the surviving cotenant of such funds, said the fiduciary shall segregate such funds, and place same such funds in an interest-bearing account, awaiting an appropriate decree court order concerning the ultimate disposition of same, and said fiduciary cotenant such funds. The fiduciary shall not use such funds for his own personal account. If However, if the fiduciary-eotenant fiduciary accedes to the request that such funds be treated as estate funds, said the fiduciary may distribute same the funds according to law without any decree of court referred to above order.

Drafting note: Technical changes to modernize language.

§ ~~64.1-141~~ 64.2-516. Duties of fiduciaries ~~with respect as~~ to certain obligations of the United States.

~~Personal representatives and other fiduciaries shall be under no obligation unless requested in writing by someone in interest.~~ A. Except as provided in subsection B, a fiduciary charged with the administration of the estate of a decedent is not required to assert a claim to or seek to recover the whole or any part of funds arising from the redemption or payment of bonds of the United States ~~of America, which that~~ are paid or payable to others under the applicable laws of the United States or rules and regulations of the ~~Treasury U.S.~~ Department of the ~~United States made pursuant thereto~~ Treasury.

B. The fiduciary shall assert a claim to such funds if he receives a request in writing from any person interested in the estate within six months from the date of the initial qualification of the estate. The fiduciary, or his attorney, shall acknowledge in writing receipt of such request within 10 days, and if the fiduciary is the co-owner of such funds, the fiduciary shall segregate such funds and place such funds in an interest-bearing account, awaiting an appropriate court order concerning the ultimate disposition of such funds. The fiduciary shall not use such funds for his own personal account. However, if the fiduciary accedes to the request that such funds be treated as estate funds, the fiduciary may distribute the funds according to law without any court order.

Drafting note: Technical changes to modernize language. Six-month period and requirement that fiduciary acknowledge receipt of the request and segregate funds are new provisions and were added to proposed subsection B to parallel subsection B of proposed § 64.2-515.

§ ~~64.1-142~~ 64.2-517. Exercise of discretionary powers by surviving executors or administrators with the will annexed.

A. When discretionary powers are conferred upon the executors ~~of~~ under any will ~~heretofore or hereafter executed~~ and some, but not all, ~~of such the~~ executors die, resign, or become incapable of acting, the executors or executor remaining shall ~~thereafter~~ continue to exercise the discretionary powers ~~given in such~~ conferred by the will, unless ~~it be the will expressly provided in such will~~ provides that the discretionary powers cannot be exercised by ~~any number less~~ fewer than all of the original executors named in the will.

B. When discretionary powers are conferred upon the executors ~~of~~ under any will ~~heretofore or hereafter executed~~ and all of the executors ~~named in such will die, resign or become incapable of acting, or when there is only one executor named and such sole executor or the sole executor if only one is named in the will~~ dies, resigns, or becomes incapable of acting, ~~then in such event the administrators with the will annexed or the~~ administrator with the will annexed appointed by the court shall exercise the discretionary powers ~~vested in~~ conferred by the will upon the original executors or executor, unless the will expressly provides that the discretionary powers ~~in such will are by express language limited or restricted to~~ can only be exercised by the executors or executor named ~~therein~~ in the will.

Drafting note: Technical changes.

§ ~~64.1-143~~ 64.2-518. When personal representative may renew ~~note, etc., obligation~~ of decedent.

~~In all cases when~~A. When a decedent is ~~the maker or one of the makers, a surety or one of the sureties or an endorser or one of the endorsers of~~ obligated on any note, bond, or other obligation for the payment of money, ~~which that~~ is due ~~or past due~~ at the ~~death time~~ of the ~~decedent~~ decedent's death, or ~~shall thereafter become~~ becomes due prior to the settlement of the ~~decedent's~~ estate of the decedent, the decedent's personal representative may execute ~~as such personal representative, in the same capacity as the decedent was obligated,~~ a new note, bond, or other obligation for the payment of money, ~~in the same capacity as the decedent was obligated,~~ for no more than the same amount ~~or less but not greater than as~~ the sum due, ~~principal and interest,~~ on the original obligation, including both principal and interest, which shall be in lieu of the obligation of the decedent, whether made payable to the original holder or another. ~~And such representative may renew such note, bond or other obligation for the payment of money from time to time, and such~~ Any note, bond, or other obligation ~~so~~ executed by the personal representative shall be binding upon the estate of decedent to the same extent and in the same manner ~~and with the same effect that as~~ the original note, bond, or other obligation ~~so~~ executed by the decedent ~~was binding upon his estate;~~

B. The personal representative may renew such note, bond, or other obligation for the payment of money from time to time, provided, that the time for final payment of the note, bond, or other obligation ~~for the payment of money, or any renewal thereof by the personal representative,~~ shall not ~~extend beyond a period of exceed~~ two years from the qualification of the original personal representative ~~as such upon the estate of the decedent, except upon the order of unless otherwise ordered by~~ a court of competent jurisdiction.

~~The execution of any~~C. The personal representative is not personally liable for any note, bond, or other obligation for the payment of money ~~by the personal representative mentioned in the first paragraph of executed pursuant to~~ this section ~~shall not be held or construed to be binding upon the personal representative personally.~~

Drafting note: Technical changes to modernize language.

§ ~~64.1-144~~ 64.2-519. Suits upon judgment and contracts of decedent and actions for personal injury or wrongful death.

A personal representative may sue or be sued (i) upon any judgment for or against ~~or the decedent,~~ (ii) upon any contract of or with ~~his the~~ decedent, ~~including, but not limited to, suits or~~ (iii) in any action for personal injury or wrongful death against or on behalf of the estate.

Drafting note: Technical changes.

§ ~~64.1-145~~ 64.2-520. Action for goods carried away, or for waste, destruction of, or damage to estate of decedent.

A. Any action ~~at law~~ for damages for the taking or carrying away of any goods, or for the waste, destruction of, or damage to any estate of or by the decedent, whether such damage be direct or indirect, may be maintained by or against the decedent's personal representative.

B. An action ~~at law~~ for damages, including future tax liability, to the grantor, his estate or his trust, resulting from legal malpractice concerning an irrevocable trust shall accrue upon completion of the representation in which the malpractice occurred. The action may be maintained pursuant to § 8.01-281 by the grantor, or by the grantor's personal representative or the trustee if such damages are incurred after the grantor's death. An action for damages pursuant to this section in which a written contract for legal services existed between the grantor and the defendant shall be brought within five years after the cause of action accrues. An action for damages pursuant to this section in which an unwritten contract for legal services existed between the grantor and the defendant shall be brought within three years after the cause of action accrues. Notwithstanding this section, no such action shall be based upon damages that may reasonably be avoided or that result from a change of law subsequent to the representation upon which the action is based.

C. Any action pursuant to this section shall survive pursuant to § 8.01-25.

Drafting note: Technical changes.

Article ~~5~~ 4.

Power with Respect to Real Estate.

§ ~~64.1-146~~ 64.2-521. ~~Representatives~~ Personal representatives to sell real estate devised to be sold, and to receive certain rents.

Real ~~A. If the will devises real~~ estate ~~devised~~ to be sold ~~shall, if and~~ no person other than the ~~executors be executor is~~ appointed ~~for the purpose, be sold and conveyed and to sell such real estate, the executor has the power to sell and convey such real estate and to receive the proceeds of sale or the~~ rents and profits of any real estate ~~which that the~~ executors are authorized by the will to receive ~~shall be received by the executors who qualify, or the survivor of them.~~

~~If none qualify,~~ B. Unless a contrary intent is clearly set out in the will, if no executor qualifies, or those qualifying die, resign, or are removed before the trust is executed or completed, the, an administrator with the will annexed ~~shall~~ has the power to sell or convey the ~~lands so~~ real estate devised by the will to be sold and to receive the proceeds of sale, or the rents and profits ~~aforesaid, as an executor might have done of any real estate.~~

Drafting note: Technical changes. Current § 64.1-147 is incorporated into proposed subsection B with technical changes.

~~§ 64.1-147. Administrator with will annexed may sell real estate.~~

~~When any will heretofore or hereafter executed gives to the executor or executors named therein power to sell the testator's real estate and such executor or executors die, resign or become incapable of acting and an administrator or administrators with the will annexed are~~

~~appointed, such administrator or administrators with the will annexed may sell such real estate unless it is expressly provided to the contrary in such will.~~

Drafting note: Relocated to subsection B of proposed § 64.2-521.

~~§ 64.1-151~~ 64.2-522. ~~Executor, etc.,~~ Personal representatives to pay over sale proceeds and rents to persons entitled.

~~It shall be one of the duties of an~~ An executor or administrator, ~~by virtue of his office, and as such embraced by his official bond, shall~~ faithfully ~~to~~ pay the rents and profits or proceeds of sale of real estate ~~which may that~~ lawfully come ~~to~~ into his ~~hands~~ possession, or ~~to~~ into the ~~hands~~ possession of any person for him, to such persons ~~as are~~ entitled thereto.

Drafting note: Technical changes.

~~§ 64.1-148~~ 64.2-523. ~~Representative~~ Personal representative may execute deed pursuant to written contract of ~~deceased~~ decendent.

When any ~~deceased person shall have~~ decendent has executed and delivered a bona fide written contract of sale, purchase option, or other agreement binding such deceased person, his heirs, personal representatives, or assigns, to convey any real property or any interest therein, his personal representatives may, ~~upon full compliance by the purchaser with the terms and conditions of such contract, option or agreement~~ execute a deed and do all things necessary to effect the transfer of title to such real property or any interest therein to the purchaser ~~and such upon the purchaser's full compliance with the terms and conditions of such contract, option, or agreement.~~ Such transfer shall be as effective as if it had been made by the ~~deceased obligor decendent~~. The contract, option, or agreement shall be attached to any deed executed by a personal representative pursuant to this section and the clerk shall record such contract, option, or agreement ~~shall be spread upon the records in the deed book~~. Any personal representative, duly qualified in any other state, ~~or in the District of Columbia,~~ upon ~~making~~ taking an oath that the decendent owed no debts in ~~this~~ the Commonwealth and posting bond upon such terms and in such amount as may be fixed by the clerk, but not less than the value of the decendent's interest to be conveyed, may convey real property or any interest therein under the provisions of this section without ~~ancillary administration qualifying in the Commonwealth~~.

Drafting note: Technical changes.

~~§ 64.1-149~~ 64.2-524. Validation of certain conveyances by foreign executor.

A. Every conveyance of real estate within ~~this the~~ the Commonwealth made prior to June 30, 1986, by the executor ~~of~~ under a will ~~which that~~, prior to such sale, has been probated according to the laws of another state ~~shall~~, without the qualification of the executor in ~~this the~~ the Commonwealth, shall be as valid and ~~effectual~~ effective to pass the title of such real estate as if the executor ~~named in such will and making such conveyance~~ had qualified in ~~this the~~ the Commonwealth, ~~in every case in which provided that~~ (i) the will under which the executor acted was duly executed according to the laws of this the Commonwealth as a valid will and, (ii) the will confers upon the executor the power to convey the real estate ~~so conveyed,~~ and (iii) an

authenticated copy of such will has been admitted to probate in ~~this~~ the Commonwealth in the county or city in which the real estate or any part thereof is ~~situated~~ located.

B. Every conveyance of real estate within the Commonwealth made on or after June 30, 1986, by an executor described in subsection A shall be valid and effective to pass the title of such real estate if (i) the executor complies with the conditions set forth in subsection A, and (ii) an ancillary administrator upon the estate of the decedent who shall sign and acknowledge the deed by which such real estate is conveyed has been appointed and qualified in the Commonwealth

Drafting note: Technical changes. Current § 64.1-150 is incorporated into proposed subsection B with technical changes.

~~§ 64.1-150. When similar conveyances in future valid.~~

~~Every such conveyance of real estate within this Commonwealth as is mentioned in § 64.1-149 made on or after June 30, 1986, by such executor shall be likewise valid and effectual to pass the title of such real estate if the conditions set forth in § 64.1-149 are complied with and in addition thereto an ancillary administrator upon the estate of such decedent has been duly appointed and qualified who shall sign and acknowledge the deed by which such real estate is conveyed.~~

Drafting note: Relocated to subsection B of proposed § 64.2-524.

Article ~~6~~ 5.

~~Assets and~~ Liability of Personal Estate to Debts.

Drafting note: Technical changes.

~~§ 64.1-152~~ 64.2-525. Debtor's appointment as executor.

The appointment of a debtor of the estate as executor shall not extinguish ~~the~~ his debt to the estate.

Drafting note: Technical changes.

~~§ 64.1-153~~ 64.2-526. What personal estate ~~not~~ to be sold; use of proceeds.

A. Subject to the provisions of Article 2 (§ 64.2-309 et seq.) of Chapter 3 and excluding personal estate that the will directs not to be sold, the personal representative shall sell such assets of the personal estate where the retention of such assets is likely to result in an impairment of value. In conducting such a sale, the personal representative may give reasonable credit and take bond with good security.

B. If, after the sale pursuant to subsection A, the personal estate is not sufficient to pay the funeral expenses, charges of administration, debts, and legacies, the personal representative shall sell so much of the remaining personal estate as is necessary to pay such obligations. In conducting such a sale, the personal representative shall give as much consideration as practicable to preserving specific bequests in the will and to the provisions of Article 2 (§ 64.2-309 et seq.) of Chapter 3.

C. Unless ~~it be~~ necessary for the payment of funeral expenses, charges of administration, or debts, the personal representative shall not sell personal estate ~~which that~~ the will directs not to be sold.

Drafting note: Technical changes. Existing §§ 64.1-154 and 64.1-155 have been relocated to proposed subsections A and B, respectively.

~~§ 64.1-154. What goods personal representative to sell; when and how.~~

~~Of the goods not mentioned in § 64.1-153, the personal representative shall, subject to the provisions of Article 5.1 (§ 64.1-151.1 et seq.) of this chapter, sell, as soon as convenient, at public auction or private sale, such as are likely to be impaired in value by keeping, giving a reasonable credit except for small sums, and taking bond with good security.~~

Drafting note: Relocated to subsection A of proposed § 64.2-526.

~~§ 64.1-155. When to sell other goods.~~

~~If the goods so sold be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell at public auction or private sale so much of the other goods and chattels as may be necessary to pay the same, having regard to the privilege of specific legacies and to the provisions of Article 5.1 (§ 64.1-151.1 et seq.) of this chapter.~~

Drafting note: Relocated to subsection B of proposed § 64.2-526.

~~§ 64.1-156~~ 64.2-527. Estate held for another's life, ~~assets;~~ inclusion in personal estate.

Any estate for the life of another shall go to the personal representative of the party entitled to the estate ~~and be assets in his hands~~, and shall be applied and distributed as the personal estate of such party.

Drafting note: Technical changes.

~~§ 64.1-157~~ 64.2-528. Order in which debts and demands of decedents to be paid.

When the assets of the decedent ~~in the hands of~~ his personal ~~representative~~ representative's possession are not sufficient ~~for the satisfaction of~~ to satisfy all debts and demands against him, they shall be applied ~~in the following order~~ to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;
2. The allowances provided in Article ~~5.1~~ 2 (§ ~~64.1-151.1~~ 64.2-309 et seq.) of ~~this chapter~~ Chapter 3;
3. Funeral expenses not to exceed \$3,500;
4. Debts and taxes with preference under federal law;
5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed \$400 for each hospital and nursing home and \$150 for each person furnishing services or goods;
6. Debts and taxes due ~~this the~~ the Commonwealth;

7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of ~~this the~~ Commonwealth; as personal representative, guardian, conservator, or committee; when the qualification was in ~~this the~~ Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;

8. Debts and taxes due localities and municipal corporations of the Commonwealth; and

9. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

Drafting note: Technical changes.

§ ~~64.1-158~~ 64.2-529. Creditors to be paid in order of their classification; class paid ratably; when representative not liable for paying debt ~~of inferior dignity~~.

No payment shall be made to creditors of any one class until all those of the preceding class ~~or classes shall be~~ have been fully paid; and ~~when if~~ the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after ~~twelve~~ 12 months from his qualification, pays a debt or demand of his decedent, ~~shall is~~ not ~~thereby be~~ personally liable for any debt or demand against the decedent of an equal or superior ~~dignity class~~, whether it ~~be is~~ of record or not, unless ~~before such payment~~ he ~~shall have had~~ notice of such debt or demand before making such payment.

Drafting note: Technical changes.

§ ~~64.1-159~~ 64.2-530. Lien acquired ~~in~~ during lifetime of decedent not affected.

~~Nothing contained in~~ The provisions of §§ ~~64.1-157~~ 64.2-528 and ~~64.1-158~~ 64.2-529 shall not affect any lien acquired ~~in~~ during the lifetime of the decedent.

Drafting note: Technical changes.

§ ~~64.1-157.1~~ 64.2-531. Nonexoneration; payment of lien if granted by agent.

A. Unless a contrary intent is clearly set out in the will, a specific devise or bequest of real or personal property passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator, without the right of exoneration. A general directive in the will to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated prior to passing to the legatee.

B. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator against any specifically devised or bequeathed real or personal property that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated. For the purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iii) an incapacitated person is one who is impaired by reason of mental illness,

mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest, or other lien granted by the agent on the specific property is thereafter ratified by the testator while he is not incapacitated, or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

C. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of the death of the testator against any specific devise or bequest of any real or personal property that was granted by a conservator, guardian, or committee of the testator. This subsection shall not apply if, after the mortgage, pledge, security interest, or other lien granted by the conservator, guardian or committee, there is an adjudication that the testator's disability has ceased and the testator survives that adjudication by at least one year.

Drafting note: Technical changes.

~~CHAPTER 7~~Article 6.

~~LIABILITY OF REAL ESTATE TO DEBTS~~Liability of Real Estate to Debts.

Drafting note: Existing Chapter 7 of Title 64.1 has been relocated to proposed Article 6 of proposed Chapter 5 in order to locate the provisions dealing with paying a decedent's debts out of the real property in the estate immediately after the provisions dealing with paying debts out of the personal property of the estate.

~~§ 64.1-181~~ 64.2-532. Real estate of decedent as assets for payment of debts.

~~All If a decedent's personal estate is insufficient to satisfy the decedent's debts and lawful demands against his estate, all~~ real estate of ~~any person who may hereafter die, as to which he may die intestate, or which, though he die testate, shall not by his will be charged with or devised subject to the payment of his debts, or which may remain the decedent, including such real estate that remains~~ after satisfying the debts with which ~~it may be so the real estate was charged or was subject to which it may be so devised under the decedent's will, shall be~~ are assets for the payment of the decedent's debts and all lawful demands against his estate. A decedent's real estate shall be applied to his debts and lawful demands against his estate in the same order in which that the personal estate of a decedent is directed to be applied pursuant to § 64.2-528.

Drafting note: Primarily technical changes to modernize language. Additional language was added to emphasize that the common law rule that a decedent's personal estate must be exhausted before his real estate may be used to satisfy his debts was not altered by the enactment of existing § 64.1-181 and its predecessors. See, e.g., *Fraiser v. Littleton*, 100 Va. 9, 12, 40 S.E. 108, 109 (1901) ("[T]he object of the statute was to . . . make the real as well as the personal estate of a decedent liable for the liquidation of all his debts. But it was not intended thereby to disarrange the order of liability of the assets of a decedent's estate, which by a long line of adjudications has become firmly engrafted upon the jurisprudence of the State.").

~~§ 64.1-182 64.2-533. How such Administration of assets administered for payment of debts.~~

~~Such assets, so far as they may be~~The circuit court in which a report of the accounts of a decedent's personal representative and of the debts and demands against the decedent's estate is or may be filed ~~may administer the real estate of the decedent in the hands possession of the decedent's personal representative of the decedent, may be administered by the court in the office whereof there is or may be filed, under Chapter 2 (§ 26-8 et seq.) of Title 26, a report of the accounts of such representative, and of the that is an asset for the payment of the decedent's debts and demands against the decedent's estate, or they may, in any case, be administered by a, or any circuit court of equity may administer such real estate.~~

Drafting note: Technical changes.

~~§ 64.1-183 64.2-534. When Liability of heir or devisee liable for value of real estate sold and conveyed; when purchasers not liable; when validity of premature conveyances to become valid.~~

~~A. Any heir or devisee who shall sell sells and convey conveys any real estate, which by this chapter is made assets, shall be that is an asset for the payment of a decedent's debts or lawful demands against his estate pursuant to § 64.2-532 is liable for the value of such real estate, with interest, to those persons entitled to be paid out of the assets, for the value thereof, with interest; in such case, real estate. However, the estate conveyed shall heir or devisee is not be liable if to such persons provided that (i) the conveyance was bona fide, and (ii) at the time of such conveyance, no suit shall have action has been commenced for the administration of the assets nor any real estate and no reports have been filed as aforesaid of the debts and demands of those entitled such creditors.~~

~~ButB. Notwithstanding the provisions of subsection A, no alienation sale and conveyance of such real estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be decedent is valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within such year decedent, except as otherwise provided in § 64.1-184 64.2-535.~~

~~C. Any sale and conveyance heretofore or hereafter made within one year after the death of a decedent shall, after the expiration of said year, be is valid to all intents and purposes against creditors as if it were made more than one year after the expiration of said year death of the decedent, if at the expiration of said year no such suit shall have action has been commenced for the administration of the real estate and no report of the debts and demands has been filed within one year after the death of the decedent.~~

Drafting note: Technical changes to modernize language.

~~§ 64.1-184 64.2-535. When sale and conveyance within one year valid against creditors; proceeds paid to special commissioner; bond to obtain proceeds.~~

~~A. For purposes of this section:~~

"Net proceeds" means the purchase price for the real estate, including money, deferred purchase money obligations, and other securities, remaining after the payment of the expenses of sale ordinarily paid by the seller in sales of such real estate and the discharge of indebtedness and encumbrances that the real estate is primarily liable for by law.

B. Any ~~alienation~~ sale and conveyance of such real estate that is an asset for the payment of a decedent's debts or lawful demands against his estate pursuant to § 64.2-532 made within one year after the death of the ~~testator or intestate shall be~~ decedent is valid against creditors of such ~~testator or intestate~~ decedent, if such real estate is sold and conveyed ~~under and~~ pursuant to ~~decrees a decree~~ of a court of competent jurisdiction in ~~a proper suit an action~~ for partition, sale of lands of persons under a disability, or other judicial sale, and the net proceeds of sale are paid to a special commissioner appointed by the court ~~for the purpose~~.

~~The net proceeds of sale shall be the purchase price for such estate including money, deferred purchase money obligations, and other securities, remaining after the payment of the expenses of sale ordinarily paid by the vendor in sales of such estates and the discharge of such indebtedness and encumbrances for which, by law, such estate is primarily liable.~~

C. The net proceeds so paid shall be held by the special commissioner ~~appointed by the court for the purpose~~, shall hold the net proceeds paid to him in lieu ~~and in place of such the real estate~~ subject to the claims of the decedent's creditors ~~of the testator or intestate~~ in the same manner and to like the same extent ~~in every respect~~ as such real estate would have been if not sold, ~~for a period ending no sooner than until at least~~ one year after the death of the ~~testator or intestate decedent~~. ~~Upon~~ If no claim has been asserted against the net proceeds, the special commissioner shall distribute the net proceeds to those creditors entitled thereto in proportion to their interest in the real estate upon (i) the expiration of the one-year period, or (ii) at any time within the one-year period upon the posting of a bond with such surety as may be prescribed by the court to secure any claims against the ~~property~~ real estate or net proceeds, if no claim has been made or asserted against the net proceeds, they shall be distributed by the special commissioner to those entitled thereto in proportion to the interest of each in such estate.

D. A purchaser of any ~~land so~~ real estate sold in conformity with the provisions of and conveyed in accordance with this section ~~shall is~~ not ~~be~~ required to see to the application of the purchase money.

E. The special commissioner who receives and holds such net proceeds or refunding bond shall give such bond as ~~may be~~ required by the court appointing him.

Drafting note: Technical changes.

§ ~~64.1-185~~ 64.2-536. ~~Heir Liability of heir or devisee liable in equity only; judgment against representative as evidence action by personal representative or creditor~~; recording notice of lis pendens; ~~showing as to personal assets evidence~~.

An heir or devisee may be sued ~~in equity~~ by the personal representative or any creditor to whom a claim is due for which the estate descended or devised is liable, or for which the heir or

devisee is liable ~~in respect with regard~~ to such estate; ~~and he shall not be liable to an action at law for any matter for which there may be redress by such suit in equity. And any~~ Any judgment ~~or decree~~ for such a claim ~~hereafter rendered entered~~ against the personal representative of the decedent ~~shall be~~ is prima facie evidence of the claim against the heir or devisee in ~~such a~~ suit ~~in equity against the heir or devisee by the personal representative or any creditor~~. In any suit by the personal representative or any creditor pursuant to this ~~chapter~~ article, he shall record a notice of lis pendens as required by § 8.01-268, at the time of filing such suit. The personal representative or creditor, ~~as the case may be, shall~~ has the burden to show to the satisfaction of the court that there ~~is are~~ not sufficient personal assets in the estate to satisfy all claims against the estate.

Drafting note: Technical changes. References that suits for claims had to be brought as a suit in equity and not an action at law have been deleted due to the elimination of the distinction between law and equity.

§ ~~64.1-186 64.2-537~~. ~~When suit in equity not to be brought~~ Action to enforce claim of less than ~~twenty dollars~~ \$20; notice.

No ~~suit in equity shall~~ action may be brought ~~for the recovery or enforcement of any such pursuant to this article where the amount of the claim the principal whereof does not exceed twenty dollars~~ \$20, unless, at least 30 days before the action was filed, the person ~~liable or whose estate that~~ is liable, ~~being a resident of this Commonwealth, shall have been notified, at least thirty days before the suit was brought has been given notice~~ that such ~~suit~~ action would be brought, if the amount of the claim was not paid within such time.

Drafting note: Technical changes. References that suits for claims had to be brought as a suit in equity have been deleted due to the elimination of the distinction between law and equity.

§ ~~64.1-187 64.2-538~~. Lien acquired ~~in~~ during lifetime of decedent not affected.

This ~~chapter~~ article shall not affect any lien, ~~by judgment or otherwise~~, acquired ~~in~~ during the lifetime of the decedent.

Drafting note: Technical changes.

Article 7.

Apportionment of Estate Taxes.

§ ~~64.1-160 64.2-539~~. Definitions.

For the purposes of this article:

"Gross estate" includes any property or interest that is required to be included in the gross estate of the decedent under the estate tax law of the United States, increased by any "adjusted taxable gifts" as defined in § 2001(b) of the Internal Revenue Code.

"Persons interested in the estate" includes all persons, firms, and corporations who may be entitled to receive or who have received any property or interest ~~which that~~ is required to be included in the gross estate of the decedent or any benefit whatsoever with respect to any such property or interest, whether under a will ~~or~~, by intestacy, or by reason of any transfer, trust,

estate, interest, right, power, or relinquishment of power, taxable under any estate tax law of the Commonwealth of Virginia, any other state, or the United States heretofore or hereafter enacted.

~~"Gross estate" includes any property or interest which is required to be included in the gross estate of the decedent under the estate tax law of the United States, increased by any "adjusted taxable gifts" as defined in § 2001 (b) of the Internal Revenue Code.~~

Drafting note: Technical changes.

~~§ 64.1-161~~ 64.2-540. Apportionment required.

A. Except as provided in subsection B ~~of this section~~, whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding that an executor, administrator, curator, trustee, or other person acting in a fiduciary capacity has paid an estate tax levied or assessed under the provisions of any estate tax law of the Commonwealth, any other state, or the United States ~~heretofore or hereafter enacted~~, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid, together with any interest and penalty required by the taxing authority to be paid, shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest, or benefit of each such person bears to the total value of the property, interests, and benefits received by all such persons interested in the estate. However, in making such proration each person shall have the benefit of any exemptions, deductions, and exclusions allowed by law in respect of the person or the property passing to him, and ~~in cases~~ where a trust is created, or other provision is made whereby any giving a person is given an interest in income, ~~or an estate for years, or an estate~~ for life, or any other temporary interest or estate in any property or fund, the tax on such temporary interest or estate shall be charged against and paid out of the corpus of such property or fund without apportionment between the temporary interests or estates and ~~remainders thereafter any remainder interests~~, and ~~the any~~ interest and penalty required by the taxing authority to be paid may be charged against either the temporary interest, estate, or corpus, or partially against the temporary interest, estate, or corpus, as determined by the fiduciary paying the tax, provided that this the determination ~~be is~~ made so as to fairly balance all interests in the property or fund.

B. The amount of tax paid ~~on~~ upon or with respect to property included in the decedent's gross estate under § 2044 of the Internal Revenue Code, as amended, or any successor provision relating to certain property for which the marital deduction was previously allowed, shall be the excess of (i) the total estate tax levied or assessed under the provisions of the estate tax laws of the Commonwealth, any other state, and the United States over (ii) the estate tax that would have been levied or assessed under those provisions if the § 2044 property had not been included in the gross estate. The tax paid upon or with respect to the § 2044 property shall be prorated according to subsection A ~~of this section~~ as if no other estate tax were payable under the laws of the Commonwealth ~~of Virginia~~, any other state, and the United States, and as if the § 2044

property constituted the entire gross estate; but it shall be prorated only among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit of such property accrues. The tax determined under clause (ii) above shall be prorated according to subsection A ~~of this section~~ as if no other estate tax were payable under the laws of the Commonwealth ~~of Virginia~~, any other state, and the United States, and as if the § 2044 property were not included in the gross estate. This subsection shall apply only to estates of persons dying on or after July 1, 1986.

C. The personal representative of an estate which for tax purposes includes § 2044 property owes a duty of good faith and fair dealing to all persons interested in the estate to whom or for whom the § 2044 property may be transferred or held. The duty of good faith includes, ~~but is not limited to~~ a duty to keep such persons or their designated representative reasonably informed as to the contents of the returns to be filed and as to all administrative and judicial proceedings that concern the taxes to be paid with respect to the § 2044 property, and to provide copies of the relevant portions of all returns to be filed with respect to such taxes. The designated representative of such persons shall be invited to attend any administrative conference or proceeding ~~wherein where~~ valuation issues may be discussed which would have a bearing on the taxes to be paid with respect to the § 2044 property. This subsection shall apply only to estates of persons for which a federal estate tax return is required to be filed on or after July 1, 1994.

Drafting note: Technical changes.

~~§ 64.1-162 64.2-541.~~ Recovery by executor when part of estate not in his ~~hands~~ possession.

~~In all cases in which~~ If any property required to be included in the gross estate ~~does is~~ not ~~come into in~~ the possession of the executor, administrator, or other fiduciary ~~as such~~, he shall ~~be entitled, and it shall be his duty to~~ recover from ~~whomsoever the person who~~ is in possession of such property, or from the persons interested in the estate, the amount of ~~such~~ tax payable by the persons interested in the estate ~~with which such persons interested in the estate are that is~~ chargeable to such persons under the provisions of this article.

Drafting note: Technical changes.

~~§ 64.1-163 64.2-542.~~ Transfers not required until tax ascertained or security given.

~~No~~ An executor, administrator, or other ~~person acting in a~~ fiduciary ~~capacity shall be is~~ not required to transfer, pay over, or distribute any fund or property ~~with respect subject to which~~ an estate tax ~~is~~ imposed by the Commonwealth ~~of Virginia~~, any other state, or the United States until ~~the amount of such tax or taxes due from~~ the devisee, legatee, distributee, or other person to whom such property is transferred ~~is paid to~~ pays such fiduciary the amount of such tax due, or, if the apportionment of tax has not been determined, furnishes adequate security ~~is furnished by the transferee~~ for such payment.

Drafting note: Technical changes.

~~§ 64.1-164.~~

Drafting note: Repealed by Acts 1986, c. 399.

§ ~~64.1-165~~ 64.2-543. Contrary provisions of will or other instrument to govern.

A. For purposes of this section:

"Includable beneficial interest" means any property, interest, or benefit included in a person's estate for estate tax purposes which passes pursuant to an instrument other than such person's will.

~~None of the foregoing~~B. The provisions of this article shall ~~in any way~~ not impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of ~~such~~ estate taxes and to designate the fund ~~or funds~~ or property out of which such payment shall be made. Such designated funds or property ~~which may be so designated~~ may ~~specifically include (~~ in addition to any property passing by testate or intestate succession), include any ~~property, interest or benefit included in such person's estate for estate tax purposes which passes pursuant to an instrument other than such person's will (an "includable beneficial interest").~~ Unless a larger amount is charged to a ~~particular~~ specific includable beneficial interest by the instrument creating the interest, the maximum amount of tax ~~with which that~~ each such includable beneficial interest may be charged shall be limited to its share, as ~~determined in the same manner provided in~~ pursuant to § ~~64.1-161~~ 64.2-540 for the apportionment of taxes.

Drafting note: Technical changes.

§ ~~64.1-165.1~~ 64.2-544. Construction of direction to pay all taxes imposed on account of testator's death.

A. A general direction in a will, trust instrument, or other document to pay all taxes imposed on account of a testator's or settlor's death or similar language shall not be construed to include the following taxes unless the testator or settlor expressly manifests an intention that such taxes be paid out of his estate, trust, or other property by reference to the particular chapter, title, or section of the Internal Revenue Code providing for such taxes ~~or otherwise~~:

1. Additional tax imposed upon disposition or cessation of qualified use by the qualified heir with respect to qualified use property under § ~~2032-A~~ 2032A;

2. Taxes on general power of appointment property includable in the estate of the testator or settlor under § 2041;

3. Taxes on qualified terminable interest property includable in the estate of the testator or settlor under § 2044;

4. Taxes payable under § ~~2056-A~~ 2056A, upon a taxable event with respect to a qualified domestic trust as defined in that section;

5. Any generation skipping transfer tax under Chapter 13 except direct skips occurring at death for estates of decedents dying on or after July 1, 1994; and

6. Taxes payable under § ~~4980-A~~ 4980A, on excess retirement accumulation.

B. Unless a contrary intention is manifest, such taxes shall be apportioned and charged to each item of funds or property generating them in the manner provided in this article.

C. The reference ~~herein in subsection A~~ to any section or chapter is to the Internal Revenue Code of 1986, as amended, and shall be deemed to refer to any corresponding successor sections, chapters, or Code.

Drafting note: Technical changes.

Article 8.

Liability of Representatives; Administrators de Bonis Non.

§ ~~64.1-166~~ 64.2-545. Transfer of assets to administrator de bonis non; ~~effect thereof administration of assets.~~

A. ~~When If~~ the powers of a personal representative have ceased and there is an administrator de bonis non of the decedent's estate, ~~it shall be lawful, with the consent of the court in which or before whose clerk the administrator de bonis non qualified, for the personal representative to~~ may pay and deliver to such administrator de bonis non, with the consent of the court or clerk before which the administrator de bonis non qualified, the assets of the decedent, whether converted or not, for which such former personal representative is responsible; ~~but such. The court or clerk shall not consent shall not be given to the payment and delivery of such assets to the administrator de bonis non unless the administrator de bonis non has given, or gives, a bond sufficient to cover the additional assets; to be paid or delivered to him. The administrator de bonis non shall administer the same such assets paid or delivered to him as assets received in due course of administration and his. The administrator de bonis non shall provide a receipt therefor shall be for such assets in the form of a voucher in the settlement of the accounts of the former personal representative and shall exempt such. The former personal representative from all liability shall not be liable for the assets lawfully paid over and or delivered to the administrator de bonis non.~~

B. The administrator de bonis non ~~shall be authorized to~~ may bring suit an action against ~~such the~~ former personal representative or his estate for mismanagement or to compel the payment and delivery to ~~him the administrator de bonis non of such the~~ assets of the decedent ~~as that~~ were wrongfully converted by the former personal representative.

C. Nothing contained in this section shall ~~be construed as exempting such (i) limit the liability of the~~ former personal representative and his sureties ~~from liability~~ for any breach of duty committed by him with respect to ~~such the~~ assets of the decedent's estate before they were paid over and delivered to the administrator de bonis non by him, or ~~to (ii)~~ bar the beneficiaries, creditors, or any other parties in interest from bringing any action ~~which they might otherwise have~~ against the former personal representative ~~arising out of for~~ his acts or omissions while serving as the personal representative.

Drafting note: Technical changes.

~~§ 64.1-167 64.2-546. Suit~~ Action against representative of executor ~~in his own wrong, or rightful executor, etc.,~~ for waste.

~~A suit~~An action may be maintained for waste of a decedent's estate against (i) the personal representative of a person who, without any lawful authority, assumes to act as an executor ~~in his own wrong,~~ or (ii) the personal representative of a rightful executor or administrator ~~by whom any waste may have been committed.~~

Drafting note: Technical changes.

~~§ 64.1-168 64.2-547. When~~ Revival of judgment by administrator de bonis non ~~may have scire facias.~~

~~When a suit~~If an action is pending or a judgment ~~or decree~~ has been rendered in ~~this the~~ Commonwealth in favor of a personal representative upon a contract made during or for a cause of action ~~which that~~ accrued in the lifetime of the decedent, the administrator de bonis non of ~~such the~~ decedent may ~~sue forth a scire facias to have~~ petition for execution upon such judgment ~~or decree,~~ or to revive ~~and prosecute to judgment or decree the suit so~~ pending; action if the personal representative who brought ~~it the action~~ could have maintained the same.

Drafting note: The revised language enables the administrator de bonis non to revive judgments without use of the archaic writ of scire facias. The writ of scire facias was abolished in 1977 and replaced by either a direct action or motion. See Va. Code § 8.01-24. The writ of scire facias directed "a debtor to appear and show cause why a dormant judgment against him should not be revived." Black's Law Dictionary.

~~§ 64.1-169 64.2-548. When suit may be brought on bond~~ Action against surety of personal representative; procedure.

~~When~~A. An action may be brought against the surety of the personal representative for failure of the personal representative to discharge his duties faithfully if an execution on a judgment ~~or decree~~ against a personal representative is returned ~~without being satisfied, there may be forthwith brought and prosecuted an action against the obligors in any bond given by such personal representative for the faithful discharge of his duties~~ unsatisfied.

B. The surety may plead any pleas and offer any evidence that the personal representative could have made or offered in an action against the surety of the personal representative for a devastavit.

Drafting note: The second half of existing § 64.1-170 has been relocated to proposed subsection B. There are also technical changes.

~~§ 64.1-170 64.2-549. When~~ Liability of personal representative ~~and sureties not chargeable beyond assets; procedure in actions against them or his surety.~~

~~No~~The liability of a personal representative or ~~any his~~ surety ~~of his~~ shall ~~be chargeable beyond not exceed~~ the assets of the decedent by reason of any omission or mistake in pleading or false pleading ~~of by~~ such representative; ~~and in the action allowed by § 64.1-169 the defendants may plead any pleas and offer any evidence which would be admissible in an action against a personal representative suggesting a devastavit.~~

Drafting note: The second half of this section, which dealt solely with an action under existing § 64.1-169 has been relocated to subsection B of proposed § 64.2-548.

Article 9.

Settlement of Accounts and Distribution.

§ ~~64.1-171~~ 64.2-550. Proceedings for receiving proof of debts by commissioners of accounts.

~~Any~~A. A commissioner of accounts who has for settlement the accounts of a personal representative of a decedent shall, when requested to so do by a personal representative or any creditor, legatee, or distributee of a decedent, or may at any other time determined by the commissioner of accounts, even though no accounting is pending, ~~appoint a time and place conduct a hearing~~ for receiving proof of debts and demands against the decedent or ~~his the decedent's~~ estate. The commissioner of accounts shall publish notice ~~thereof once of the hearing at least 10 days before the date set for the hearing~~ in ~~some a~~ newspaper ~~of published or having~~ general circulation in the ~~county or city wherein~~ jurisdiction where the ~~fiduciary personal representative~~ qualified ~~at least ten days before the date set for the hearing. At least ten days before the date fixed for the hearing~~ the commissioner and shall also post a notice of the time and place of the hearing at the front door of the courthouse of the court of the ~~county or city wherein~~ jurisdiction where the ~~fiduciary personal representative~~ qualified. The commissioner of accounts may adjourn the hearing from time to time as necessary.

B. The ~~fiduciary, personal representative~~ shall give written notice, ~~in writing, by personal service or by regular, certified, or registered mail at least 10 days before the date set for the hearing~~ to any claimant of a disputed claim that is known to the ~~fiduciary personal representative~~ at the last address of the claimant known to the ~~fiduciary personal representative~~. ~~The notice may be by regular, certified or registered mail, or by personal service at least ten days prior to the date set for hearing.~~ The notice shall inform the claimant of his right to attend the hearing and present his case, ~~of his right to obtain another hearing date if the commissioner of accounts finds the initial date inappropriate, and of the fact that he the claimant~~ will be bound by any adverse ruling. The ~~fiduciary personal representative~~ shall also inform the claimant of his right to file exceptions with the judge circuit court in the event of an adverse ruling. ~~Evidence~~ The personal representative shall file proof of any mailing or service of notice ~~by the fiduciary shall be filed~~ with the commissioner of accounts.

C. The commissioner of accounts may ~~in a case deemed appropriate to him~~ direct the ~~fiduciary or personal representative~~, the claimant, or ~~either both~~ of them to institute a proceeding at law or in equity in the circuit court to establish the validity or invalidity of any claim or demand, ~~which he~~ that the commissioner of accounts deems not otherwise sufficiently proved.

Drafting note: Technical changes to modernize language. The authority of the commissioner of accounts to adjourn the hearing has been relocated from existing § 64.1-172 and incorporated into proposed subsection A.

~~§ 64.1-172~~ 64.2-551. ~~Report Account~~ of debts, ~~when and how made by commissioners of accounts.~~

The commissioner ~~may adjourn from time to time for receiving such proof and shall of accounts,~~ within ~~sixty~~ 60 days from the ~~time first appointed~~ date of the hearing for receiving ~~such proof of debts and demands against the decedent or the decedent's estate or the date of the~~ last adjournment of any ~~such~~ hearing thereon, ~~shall~~ make out an account of all such debts or demands as ~~may appear to him to be~~ have been sufficiently proved, stating separately ~~those the debts and demands~~ of each class.

Drafting note: The authority of the commissioner of accounts to adjourn the hearing has been relocated into subsection A of proposed § 64.2-550. There are also technical changes.

~~§ 64.1-173~~ 64.2-552. How claims filed before commissioners of accounts; ~~time within which statutes of limitation not to run~~ tolling of limitations period.

A. Any person ~~having any such~~ who seeks to prove that he has a debt or demand ~~and desiring to prove the same against the decedent or the decedent's estate~~ shall file his claim ~~or a written statement thereof before in writing with~~ the commissioner of accounts, who shall endorse ~~thereon upon it~~ the date of the filing and sign the endorsement in his official character.

~~The time that elapses between such filing and the termination of the proceedings commenced under § 64.1-171 shall not be computed as a part of the time within which, under any statute or rule of law, it may be necessary, in order to prevent a bar of the claim, to bring any action or institute any proceeding recommended~~ B. If the commissioner of accounts recommends in writing by the commissioner for the recovery or enforcement of such a claim for a debt or demand against the decedent or the decedent's estate, the filing of such claim with the commissioner of accounts pursuant to subsection A shall toll any limitations period that would otherwise bar an action for the recovery or enforcement of the claim or bar the filing of such claim until the termination of the proceedings commenced under § 64.2-550.

Drafting note: Technical changes to modernize language.

~~§ 64.1-174~~ 64.2-553. When court to order payment of debts.

~~When~~ A. Upon confirmation of a report of the accounts of any personal representative and of the debts and demands against the decedent's estate ~~shall be confirmed as provided in pursuant to Chapter 2 12 (§ 26-8 64.2-1200 et seq.) of Title 26,~~ the court shall order ~~to be applied to the payment of such debts and demands that~~ so much of the estate in the ~~hands possession~~ possession of ~~such the personal~~ representative, ~~and to such creditors, as shall appear proper, reserving, when it seems to the as is proper be applied to the payment of such debts and demands. The court reasonable to do so, in its discretion, may order that a portion of the estate be reserved to meet pay all or a proportion of a claim of a surety for the decedent or any other contingent claim against the estate, the proof of which has to be deferred, or to meet pay all or a proportion of any other claim not finally passed upon, such sum as it may deem sufficient to pay it or a proportion~~

~~thereof equal to what is ordered to be paid to other provided that~~ creditors of the same class should the payment of it or such shall be paid in the same proportion afterwards appear proper.

B. For any claim allowed subsequent to any dividend where the court ordered that a portion of the estate be reserved to pay such a claim, the court shall order that the claim be paid from the estate in the possession of the personal representative, regardless of the existence of any debt or demand of superior dignity for which no reservation has been ordered. The claim shall be paid in the same proportion as creditors of the same class, provided, however, that whether there be enough reserved to pay the claim pursuant to this subsection shall not affect any dividend already paid.

C. If there are assets remaining in the possession of the personal representative after claims are paid pursuant to subsections A and B, or if further assets come into the possession of the personal representative, such surplus shall be divided among all the decedent's creditors who have proved debts and demands against the decedent's estate in the order and proportion in which they may be entitled.

Drafting note: Technical changes to modernize language. Existing §§ 64.1-175 and 64.1-176 have been relocated to proposed subsections B and C with technical changes.

~~§ 64.1-175. How sum reserved on contingent claim to be paid.~~

~~Upon any such claim being allowed subsequent to any dividend, there shall be ordered to be paid out of the estate remaining in the hands of the representative or under the control of the court, without regarding any debt of superior dignity for which there may have been no such reservation, the amount of such claim, or a proportion thereof equal to what shall have been paid to other creditors of the same class, if there be enough remaining to pay the same, or such proportion; but the former dividend shall not be disturbed.~~

Drafting note: Relocated to subsection B of proposed § 64.2-553

~~§ 64.1-176. How assets applied at subsequent dividends.~~

~~When at the time of any dividend the whole assets are not distributed or when further assets afterwards come to the hand of the personal representative, if, after paying such proportion as is mentioned in §§ 64.1-174 and 64.1-175 on any claim allowed subsequent to such dividend, there remain a surplus, it shall be divided among all the creditors who shall have proved debts and demands against the decedent's estate, in the order and proportions in which they may be entitled.~~

Drafting note: Relocated to subsection C of proposed § 64.2-553

~~§ 64.1-177~~ 64.2-554. When distribution may be required; refunding bond.

A personal representative shall not be compelled to pay any legacy ~~given by~~ made in the will or ~~make distribution of~~ to distribute the estate of ~~his the~~ decedent ~~until after~~ for six months from the date of the order conferring authority on the first executor or administrator of such decedent and, except when it is otherwise specifically provided for in the will, ~~he the personal representative~~ shall not ~~then~~ be compelled to make such payment or distribution until the legatee

or distributee ~~shall give him~~ gives a bond, executed by himself or some other person, with sufficient surety, ~~with condition~~ to refund a due proportion of any debts or demands ~~which may afterwards appear~~ subsequently proved against the decedent or the decedent's estate and of the costs ~~attending their~~ of the recovery of such debts or demands. Such bond shall be filed and recorded in the clerk's office of the court which may have decreed such payment or distribution or in which the accounts of such representative may be recorded.

Drafting note: Technical changes.

~~§ 64.1-178~~ 64.2-555. When fiduciaries are protected by refunding bonds.

If any personal representative ~~pay~~ pays any legacy ~~given by~~ made in the will or ~~distribute~~ distributes any of the estate of ~~his~~ the decedent and ~~there be filed in the proper clerk's office~~ a proper refunding bond for what is so paid or distributed, with ~~security therein~~ sufficient surety at the time ~~of taking it~~ was made, is filed and recorded pursuant to § 64.2-554, such personal representative shall not, ~~on account of what is so paid or distributed~~, be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within six months from his qualification or before such payment or distribution, he ~~shall have~~ had notice of such debt or demand; ~~but~~ However, if any creditor of the decedent ~~thereafter establish his~~ establishes a debt or demand against the decedent's estate by judgment ~~or decree~~ therefor or by ~~its being allowed in a commissioner's confirmation of a report which is confirmed of the commissioner of accounts that allows the debt or demand~~, a suit may be maintained on such refunding bond, in the name of the obligee, or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon to the same extent that would have been had if such obligee or his personal representative had satisfied such debt or demand.

Drafting note: Technical changes.

~~§ 64.1-179~~ 64.2-556. Order to creditors to show cause against distribution of estate to legatees or distributees; ~~their~~ of legatees or distributees to refund.

A. When a report of the accounts of any personal representative and of the debts and demands against ~~his~~ the decedent's estate has been filed in the office of a clerk of a court, whether under §§ ~~64.1-171~~ 64.2-550 and ~~64.1-172~~ 64.2-551 or in a civil action, the court, after six months from the qualification of the personal representative, may, on motion of the personal representative, or a successor or substitute personal representative, or on motion of a legatee or distributee of ~~his~~ the decedent, ~~make enter~~ enter an order for the creditors and all other persons interested in the estate of the decedent to show cause ~~on some the day to be~~ named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs; the costs of such publication shall be paid by the petitioner or applicant. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes. However, every legatee or

distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years ~~afterward~~ after such payment or delivery is made, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate ~~which that~~ have been finally allowed by the commissioner of accounts or the court, or ~~which that~~ were not presented to the commissioner of accounts, and the costs ~~attending their of the~~ recovery of such claim. In the event any claim ~~shall become~~ becomes known to the fiduciary after the notice for debts and demands but prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall be given notice in the form provided in § ~~64.1-171~~ 64.2-550 and the order of distribution shall not be entered until after expiration of 10 days from the giving of such notice. If the claimant ~~shall~~, within such 10-day period, ~~indicate~~ indicates his desire to pursue the claim, the commissioner of accounts shall schedule a date for hearing the claim and for reporting thereon if action thereon is contemplated under § ~~64.1-171~~ 64.2-550.

B. Any ~~such~~ personal representative who has in good faith complied with the provisions of this section and has, in compliance with or, as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands possession to ~~whomsoever any party that~~ the court has adjudged entitled thereto shall ~~be fully protected against the not be liable for any~~ demands of creditors and all other persons.

C. Any ~~such~~ personal representative who has in good faith complied with the provisions of this section and has, in compliance with, or as subsequently approved by, the order of the court, paid and delivered the money or other estate in his hands possession to ~~whomsoever any party that~~ the court has adjudged entitled thereto, even if such distribution shall be prior to the expiration of the period of one year provided in § ~~64.1-13~~ 64.2-302, ~~64.1-89~~ 64.2-313, 64.2-448, ~~64.1-96~~ or ~~64.1-151.5~~ 64.2-457, shall ~~be fully protected against the not be liable for any~~ demands of spouses, persons seeking to impeach the will or establish another will, or purchasers of real estate from the personal representative, provided that the personal representative ~~shall have~~ has contacted any surviving spouse known to it having rights of renunciation and ascertained that ~~he~~ the surviving spouse had no plan to renounce the will, such intent to be stated in writing in the case of renunciation under § ~~64.1-13~~ 64.2-302, and that the personal representative ~~shall has~~ has not ~~have~~ been notified in writing of any person's intent to impeach the will or establish a later will in the case of persons claiming under § ~~64.1-89~~ 64.2-448 or ~~64.1-96~~ 64.2-457 or under a later will.

D. In the case of such distribution prior to the expiration of such one-year period, the personal representative shall take refunding bonds, without surety, to the next of kin or legatees to whom distribution is made, to protect against the contingencies specified in this ~~and the preceding paragraphs section~~. ~~The cost of such publication shall be paid by the petitioner or applicant.~~

Drafting note: Technical changes.

§ ~~64.1-180~~ 64.2-557. Form for notice to show cause under § ~~64.1-179~~ 64.2-556.

Any notice to show cause published or posted in pursuance of the requirements of § ~~64.1-179~~ 64.2-556 may be substantially in the form following:

Virginia: In the Court of

the day of

Re:, deceased.

SHOW CAUSE ORDER

It appearing that a report of the accounts of, Personal Representative of the estate of, deceased, and of the debts and demands against (his) (her) estate has been filed in the Clerk's Office, and that six months have elapsed since the qualification, on motion of, (a distributee;) (a legatee;)

(the personal representative;) IT IS ORDERED that the creditors of, and all others interested in, the estate do show cause, if any they can, on the day of (before this Court at its courtroom,) ~~(before the Judge of this Court in vacation~~ at

..... against the payment and delivery of the Estate of, deceased, to (the distributees) (the legatees) (without requiring refunding bonds) (with or without refunding bonds as the Court prescribes).

A Copy - Teste:

.....

Clerk

....., p.q.

Drafting note: Technical changes.

§ ~~64.1-180.1~~ 64.2-558. ~~Payment of bequests, etc.,~~ Distribution to persons standing in loco parentis to certain beneficiaries.

Notwithstanding any provision of law to the contrary, a distribution to a person standing in loco parentis to an incapacitated person or an infant pursuant to authorization under subdivision ~~(1) (p)~~ B 17 of § ~~64.1-57~~ 64.2-105 or a comparable provision in a will or trust instrument may be approved by the commissioner of accounts without regard to the amount or value of the fund or property.

Drafting note: Technical changes.