

OFFICE OF CLERK OF CIRCUIT COURT

City of Williamsburg and County of James City
5201 Monticello Avenue, Suite 6
Williamsburg, Virginia 23188



(757) 564-2242 – Fax (757) 564-2329

Mona A. Foley, Clerk

TO MAKE AN APPOINTMENT FOR PROBATE

As you are going through this difficult time, I am hopeful that my office and I will be able to provide assistance when you most need it. All probates are done by appointment. If there is a will, the executor(s) named in the will need to be present during the appointment and should be the one calling for information.

If there is no will, the heirs (next of kin as determined by Va Code Section 64.2-200) will need to be determine who will serve as the administrator. The administrator will need to take the attached oath. If you answer yes to the second paragraph and are NOT the sole distribute you will NOT be able to qualify.

You will need to determine residency of the deceased (Va Code Section 64.2-443).

Please use the Probate Packet to assist you in preparing for your appointment.

You will need:

WILL
DEATH CERTIFICATE
LAND ASSESSMENT
COMPLETED PROBATE PACKET

Please contact Mary Fountain, Probate Clerk, at 757-564-2379 or Elizabeth O'Connor, Alternate, at 757-564-2243 to schedule your appointment.

Sincerely,

Mona A. Foley, Clerk

GENERAL INSTRUCTIONS FOR ADMINISTRATION OF ESTATES

1. **PROBATE WILL** with Clerk of Circuit Court where deceased has residence:
 - a. Original Will, copies not acceptable and the Clerk will retain the will.
 - b. Death certificate
 - c. Executor or Administrator must appear before the Clerk
 - d. List of heirs: name, address and age (Va Code 64.2-100)
 - e. Estimate of value of probate assets:
 - Real Estate
 - Bank accounts, stocks, investments, automobiles, etc.

DO NOT INCLUDE:

- Items with beneficiaries (unless the estate is named)
- Jointly owned items
- Payable on death or survivor accounts

YOU WILL PAY PROBATE TAX ON THE ESTIMATE PROVIDED:

\$1.00 per \$1,000.00 example \$100,000.00 is \$100.00

FEE TO PROBATE/OR QUALIFY CONSISTS OF PROBATE TAX ESTIMATE AND RECORDING AND COPY FEES

2. **QUALIFY AS EXECUTOR OR ADMINISTRATOR:**
 - a. Sign oath and bond
 - b. Surety on bond (if not waived by a Will or Va Code) or you live out of state
 - c. Receive instruction packet
 - d. Receive Certificates of Qualification

3. **ADMINISTRATION OF ESTATE (Collect assets, pay debts, distribute):**
 - a. Send notices to heirs and beneficiaries
 - b. Obtain Tax ID (IRS SS-4)
 - c. Open estate account, all probate funds **MUST** go through this account
 - d. File inventory within 4 months with Commissioner of Accounts. Exact values as of date of death
 - e. Distribute special bequests in Will, including listed tangible personal property
 - f. Liquidate balance if directed, otherwise distribute
 - g. Special rules for real estate (no Will, you need approval from the Court to sell)
 - h. File tax returns, individual and fiduciary, income and inheritance
 - i. File annual accountings with Commissioner of Accounts and pay required fee
 - j. After determining all bills/debts are paid, distribute to heirs/beneficiaries
 - k. Special considerations if insufficient assets
 - l. Compensation
 - m. File final accounting and pay required fee

OATH OF PERSON SEEKING APPOINTMENT AS ADMINISTRATOR

WILL FILE _____

STATE OF VIRGINIA, Williamsburg, to-wit:

I, _____, do hereby appear before the Clerk of the Circuit Court of Williamsburg/James City County requesting appointment as Administrator of the estate of _____, deceased, and do hereby solemnly swear that

___ I am not under a disability as defined under Code of Virginia § 8.01-2, and regardless of whether my civil rights have been restored, I have not been convicted of a felony offense of (i) fraud or misrepresentation or (ii) robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, perjury, bribery, treason, or racketeering.

OR

___ I have been convicted of one or more of the above listed felony offenses, and I am the sole distributee of the above named estate.

Subscribed and sworn to before me this the _____ day of _____, 20__.

Clerk/Deputy Clerk

PROBATE TAX RETURN (CONFIDENTIAL)

Court File No.

COMMONWEALTH OF VIRGINIA VA. CODE §§ 58.1-1713, -1714

This return must be filed with the Clerk of Circuit Court at the time a will is offered for probate or the grant of administration is sought in such court when the estate exceeds fifteen thousand dollars (\$15,000) in value.

Circuit Court of

Decedent's name

Residence address at death (street, city, state)

Date of birth Date and place of death

VALUE OF DECEDENT'S PROBATE ESTATE

(a) Personal Property \$

(b) Real Property Located in Virginia \$

TOTAL VALUE OF DECEDENT'S PROBATE ESTATE \$

I (we), the undersigned, declare under penalty of law that I (we) have examined this Return and to the best of my (our) belief it is a true, correct, and complete Return.

..... DATE SIGNATURE OF PERSON OFFERING WILL FOR PROBATE OR SEEKING GRANT OF ADMINISTRATION

Mailing Address:

..... DATE SIGNATURE OF ADDITIONAL PERSON SEEKING GRANT OF ADMINISTRATION

Mailing Address:

INSTRUCTIONS

GENERAL. The probate tax is not an inheritance tax or an estate tax. It is a tax imposed on the probate of every will or grant of administration on every estate that exceeds fifteen thousand dollars (\$15,000). The state probate tax rate is 10¢ for every \$100, or fraction thereof, of the value of the decedent's estate. No one is permitted to qualify as executor or administrator until this tax is paid. Cities and counties are permitted to impose a probate tax in an amount equal to one-third of the state tax.

WHAT'S INCLUDED. The tax is imposed on the decedent's probate estate. Thus, do not include (i) any property that the decedent owned with another with the right of survivorship, (ii) life insurance unless it is payable to the decedent's estate, (iii) real estate transferred by a transfer on death deed, or (iv) any other property passing by contract or beneficiary designation from the decedent to another person. In addition, you should not include any of the decedent's real estate located in another state.

VALUATION METHOD. Because of the difficulty in determining exact values at the time of probate or qualification, the Clerk will accept a reasonable estimate of the value of the decedent's personal property. You should try to be as accurate as possible when making your estimate in order to eliminate the need to return to the Clerk's Office and pay additional tax and/or increase your bond at a later time. If you do not know the actual value of the decedent's real property, you may use its assessed value for local real estate tax purposes.

VALUATION DATE. All property is to be valued as of the date of the decedent's death.

PROBATE INFORMATION FORM
COMMONWEALTH OF VIRGINIA

Court File No.:

(For appointment of executor, administrator, curator, and/or probate of a will without qualification.)

Circuit Court of

- 1. Decedent's full name [] Married [] Single [] Divorced [] Widowed
- 2. Decedent's Residence address at death (street, city, state)
- 3. Date of birth Date and place of death
- 4. Proof of death: [] Death certificate [] Obituary [] Other (specify)
- 5. The decedent died: [] with a will [] without a will. Date of will (and codicils)
- 6. Requested action: appointment of [] administrator [] executor [] curator [] probate of will
- 7. Name of person making request
- 8. Mailing address
- 9. Basis for request: [] executor named in will [] sole distributee [] other distributee [] creditor
[] other
- 10. Name of person seeking appointment
- 11. Day telephone Night telephone
- 12. Residence address
- 13. Mailing address, if different
- 14. Name of any additional person seeking appointment
- 15. Day telephone Night telephone
- 16. Residence address
- 17. Mailing address, if different
- 18. Name of assisting attorney, if any Telephone
- 19. Attorney's mailing address
- 20. The total value of the decedent's real and personal estate [] did [] did not exceed \$15,000 on the date of death.

I hereby certify that to the best of my knowledge and belief this is an accurate statement of facts, and I acknowledge a continuing legal duty to report any later discovered errors or inconsistencies to the Clerk of Court.

..... DATE PRINTED NAME OF REQUESTING PERSON SIGNATURE OF REQUESTING PERSON

INFORMATION TO BE FURNISHED BY EACH PERSON SEEKING APPOINTMENT

- 21. Are you a person under a disability? [] yes [] no. (See Instructions for explanation.)
- 22. Have you ever been convicted of a felony? [] yes [] no.
- 23. Have you ever filed for bankruptcy? [] yes [] no.
- 24. Are you now, or have you ever been, an attorney at law in Virginia or elsewhere? [] yes [] no. (If yes, and you do not now possess an active license from the Virginia State Bar, explain the details on a separate sheet of paper.)

I (we) hereby certify that to the best of my (our) knowledge and belief this is an accurate statement of facts, and I (we) acknowledge a continuing duty to report any later discovered errors or inconsistencies to the Clerk of Court.

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