In the Circuit Court of
Fairfax, Virginia

The Administration of Estates

The purpose of this booklet is to inform the public of procedural matters involved in the probate and administration of estates. I hope that this information will provide some basic answers to commonly asked questions about probate procedures.

This booklet is not intended to be construed as legal advice about estate distribution or taxes. Please call the Clerk's Office Probate Division at (703) 246-4153 for answers to specific *procedural* questions or to schedule an appointment. If you have questions about laws regarding estate distribution or taxes, I suggest contacting an attorney licensed in the Commonwealth of Virginia. Both the Fairfax Bar Association and the Virginia State Bar have lawyer referral services. The phone number for the Fairfax Bar Association's lawyer referral service is: (703) 246-3780. The phone number for the Virginia State Bar's lawyer referral service is: 1-800-552-7977.

Sincerely,
John T. Frey, Clerk
Circuit Court of Fairfax

Fairfax Circuit Court
4110 Chain Bridge Road, Suite 401
Fairfax, Virginia 22030
(703) 246-4153 – Probate Section
http://www.fairfaxcounty.gov//

LAWS ARE SUBJECT TO CHANGE ANNUALLY. IT IS YOUR RESPONSIBILITY TO DETERMINE IF AMENDMENTS HAVE BEEN MADE TO ANY STATUTES REFERENCED IN THIS GUIDE FROM THE DATE OF ITS LAST REVISION.

Fairfax County is committed to a policy of nondiscrimination in all county programs, services and activities and will provide reasonable accommodations upon request. To request special accommodations call the ADA Coordinator for the Circuit Court at (703) 246-2221 or TTY 711 (Virginia Relay Center). Please allow seven working days in advance of the event in order to make the necessary arrangements.

Commonly-Asked Questions

Q. What is probate?

A. Probate is the official proving and recording of a will as the authentic and valid last will and testament of the deceased. The will should be probated where the decedent was last known to reside; or if none, where the decedent owned any real estate; or if none, where the decedent died or has any estate. If the decedent died in a nursing home or similar institution, then that person's residence is presumed to be where he or she resided **prior** to becoming a patient at such home.

Q. When is it necessary to probate and/or qualify on an estate?

A. An estate must be probated when the decedent has solely-held assets that do not have a joint or co-owner with rights of survivorship, a beneficiary (not in the will but actually on the account or security), or a payable-on-death designee. Assets include real property and personal property. Personal property includes bank accounts, stocks and bonds, retirement accounts, life insurance policies and other types of securities, as well as personal belongings and vehicles.

A personal representative must qualify to file a wrongful death suit or to continue a pending suit when one of the parties dies before the conclusion of the suit.

Q. Where should I go to qualify as a personal representative for an estate?

A. To the clerk's office of the circuit court of the jurisdiction:

1. where the decedent was last known to reside, (this includes assisted living facilities) if none, then;

2. where the decedent owned real estate; if none then

3. where the decedent died or had any estate.

4. For persons residing in a nursing home/convalescent home, pursuant to §64.2-443 of the 1950 Code of Virginia, as amended, the place of legal residence of such person shall be presumed to be the same as it was **before** such person became a patient; however, that presumption may be rebutted in court by competent evidence.

Q. Where is the Fairfax Probate Office?

A. Fairfax County Courthouse
(next to the Massey Building)
4110 Chain Bridge Road, Suite 401
Fairfax, Virginia 22030

Office hours are 8:00 a.m. to 4:00 p.m., Monday through Friday. Please call (703) 246-4153 for an appointment to probate or qualify as a personal representative. The appointment takes approximately 45 - 60 minutes.

Please arrive at least 45 minutes prior to your scheduled appointment to allow for parking and to go through security. If you arrive early there is a chance you will be seen early. If you are more than 15 minutes late, we will make every effort to accommodate you; however, we reserve the right to cancel your appointment.

Q. What are the fees associated with probate?

A. The Code of Virginia mandates fees for probate. The statutes may change annually; therefore, check with the Probate Division for updates.

Q. What does dying "testate" or "intestate" mean?

A. A person dies testate if he/she left a valid will. A person dies intestate if he/she did not leave a valid will. If a person dies intestate, then the laws of the Commonwealth of Virginia, in effect at the time of death, determine who the heirs are and hence who receives the decedent's property.

Testate Procedures

Q. What is the procedure to probate an estate with a will?

A. The executor named in the will **must schedule an appointment** with the Probate Division to probate the will and qualify as executor. The named executor should be a Virginia resident; however, statutes will allow out-of-state residents to qualify. When the named executor is not a resident of Virginia; a Virginia resident must accompany the executor to the Probate Office to either co-qualify or be appointed as a resident agent.

Q. What if the named executor does not wish to serve?

A. The named executor must prepare a **notarized** statement renouncing the appointment. Priority goes to any alternates named in the will. If no alternates are named, or if any alternate executor renounces the right to serve (following the same procedure as the first named executor), then an "administrator c.t.a." will need to be appointed and qualify as such. (See §64.2-500 of the 1950 Code of Virginia, as amended. Also see the definition at end of this booklet.)

Q. What if the named executor is deceased?

A. The alternate executor or administrator c.t.a. must present a certified copy of the death certificate of the deceased executor at the probate appointment.

Q. What if the named executor wishes to be removed as such after qualifying?

A. Only the court may remove a qualified personal representative. It may be necessary to have another personal representative ready to be appointed at the time the original personal representative is removed. The executor, like any other qualified personal representative, must present a petition for removal, a praecipe/notice form to set the matter on the court's motions day docket and present a proposed court order for the judge's signature. A filing fee is required. The circuit court motions day is Friday. You must file these documents, along with the filing fee, at least one week prior to the hearing date at the Civil Intake counter of the Circuit Court. A civil action case file will be opened. Also, reference the fiduciary case number on the documents, if applicable.

Q. What if an in-state executor or any other personal representative residing in Virginia moves out-of-state after qualification and the estate is still open?

A. The personal representative must then serve with a surety bond and have a resident agent appointed, or he/she may petition the court to have an in-state resident co-qualify. Please call the Probate Division to discuss this situation with a probate clerk.

Intestate Procedures

Q. How is qualification as an administrator determined?

A. §64.2.502 of the 1950 Code of Virginia, as amended determines the order of preference when appointing an administrator.

Qualifying as an administrator does not automatically make one a beneficiary to the decedent's estate. The beneficiaries in an intestate estate are the legal heirs at law. Heirs at law are set forth by statute. (See §64.2.-200 of the 1950 Code of Virginia, as amended.)

General Information

Q. What should the prospective executor/administrator bring to the probate appointment?

A.

1. A Virginia resident to accompany a nonresident prospective executor or administrator. The Virginia resident will need to provide valid photo identification.
2. The original will and codicil(s) if any, (for testate estates).
3. A certified copy of the death certificate.
4. Approximate dollar value (as of the date of death) of any solely held personal assets.
5. Approximate fair market value (as of the date of death) of real estate in Virginia deeded solely to the deceased or the value of the percentage owned by the deceased when the real estate is deeded as tenants-in-common.
6. Names, ages and addresses of heirs at law. These are individuals who are legally entitled to receive an estate when there is no will, pursuant to §64.2-200 of the 1950 Code of Virginia, as amended. This list is still required if the person died with a will (testate).
7. A check, cash or credit card (Visa or MasterCard only) to pay fees calculated during the probate appointment. The check must include your name, address, phone number, and Virginia Bar number if you are an attorney. The clerk's office does not accept starter checks. There will be an additional **4% service charge** on each credit card transaction. Fees are based upon the estate value.
8. Valid photo identification.

Q. What are the basic duties of an executor/administrator?

A.

1. Giving notice of probate to interested parties and filing an affidavit of notice.

2. Filing an inventory no later than four months after qualification date and filing a settlement of accounts or statement in lieu of accounts no later than 16 months after qualification date of the personal representative with the Commissioner of Accounts Office (not the Probate Division of the Circuit Court Clerk's Office), until the estate is closed.

3. Filing income, inheritance, or estate taxes with the federal or state government.

4. Notifying the Commissioner of Accounts, John H. Rust, Jr., of any change in the personal representative's address.

   The address for the Commissioner of Accounts is:

   10555 Main St., Suite 500
   Fairfax, Virginia 22030
   Phone: (703) 667-4900
   http://www.fairfaxcommissionerofaccounts.org

5. Paying all probate taxes due to the Clerk of the Circuit Court.

6. Payment of debts in the order set forth by law. (See §64.2-528 of the 1950 Code of Virginia, as amended.)

7. Disbursement of remaining assets either according to the will or according to intestate law.

Q: Are bonds required?

A. A bond is a promise to perform (or not perform) certain acts. A monetary penalty is set for the failure to act appropriately. Every personal representative must post a bond with the Clerk's Office, either with or without surety.

A surety bond is a written guarantee by a third party (an insurance company) that a personal representative performs their duties as required by law. If the personal representative fails to perform their duties, the surety company is directly and immediately liable for the debt.

A bond without surety is the personal promise of the person entering into the bond. This means that the bond is not underwritten by an insurance policy; therefore, there is no cost to the estate to obtain the bond. Surety may be waived in a Will or pursuant to the Virginia Code. See question entitled "How do I obtain a personal bond instead of a surety bond" for more information.

All bonds must at least equal the value of the assets in the personal representative's control. This amount may be subsequently reduced or increased, based on a reduction or increase in the value of the estate.

Q: How do I obtain a surety bond?

A. Surety bonds can usually be obtained during the probate appointment. A bond with surety requires you to purchase an insurance policy through an insurance agency. These types of bonds are specialized and are usually not available through normal insurance agents. Contact the Probate Division for a list of bonding companies and for more information on surety bonds.

Surety bonds are initially assigned a value of one and one-third times the value of the estate. If the value of the estate exceeds $750,000, pre-approval of the bond is recommended. Premiums are paid annually from assets of the estate until the estate is closed.

There may be many factors the insurance company considers before agreeing to write the bond. A few are listed below. **If you are unable to obtain a surety bond, you cannot serve as the personal representative.**

Insurance companies may consider the following before giving their approval:

- Applicant's place of residence. *(Bonds are not normally approved if the personal representative lives outside the U.S.)*
- Applicant's citizenship. *(Bonds may not be approved for non-citizens.)*
- No credit history.
- Poor credit history.
- Bankruptcy.
- The size of the bond. *(The implication of a low credit score and/or a bankruptcy may be less if the bond is for $25,000 versus a bond for $2,000,000.)*
- Employment status.
- Occupation.
- Whether the applicant is a beneficiary of the estate.
- Whether the applicant is represented by counsel. *(Hiring an attorney to assist the applicant through the probate process may help with bond approval.)*

Q. How do I obtain a personal bond instead of a surety bond?

A. A bond without surety, known as a personal bond, is the personal promise of the person entering into the bond. This means that the bond is not underwritten by an insurance policy; therefore, there is no cost to the estate to obtain the bond. Surety may be waived in a Will or pursuant to one of the following Virginia statutes:

- Assets of the estate are $25,000 or less in value. §64.2-1411
- A bank is qualifying as a fiduciary. §6.2-1085.
- The sole beneficiary or all the beneficiaries of a Will or the sole heir-at-law or all of the heirs-at-law of an intestate estate qualify as the personal representatives. §64.2-505

When the Clerk's Office is the appointing authority, the personal bond is initially set at two times the estate value.

Q. Can an out-of-state personal representative obtain a personal bond?

A. Perhaps. Pursuant to §64.2-1426, if the personal representative is not a Virginia resident, the bond must be with surety, regardless of the surety being waived in the Will or sections §6.2-1085 and §64.2-505 mentioned above. The only exceptions are if the value of the estate is $25,000 or less (§64.2-1411) or if the Will waives surety **and** the non-resident appoints a Virginia resident to serve as a co-personal representative.

Q. How long does it take after qualification to complete the probate process?

A. Finalization of an estate varies in time depending upon various circumstances. A personal representative must file an inventory within four months from the qualification date. A first accounting or statement in lieu of accounting must be filed within sixteen months from the qualification date. Personal representatives file these documents with the Commissioner of Accounts office.

Q. What if the only asset solely held by the decedent was real estate?

A. When there is a will, the named executor will make an appointment in the jurisdiction of probate (where the decedent resided at the time of death) to record the will without qualification (unless the will specifically directs the executor to sell the real estate). When there is no specific directive to sell, the statutes in the Commonwealth of Virginia do not require an executor to qualify. Once the will has been recorded, the real estate passes automatically, by operation of law, to the beneficiary of the real estate under the will.

When real estate is in Virginia, but outside the county having jurisdiction of probate, the will is still recorded in the county having jurisdiction. Recording fees and probate tax are collected. A certified copy of the will, list of heirs and probate order are prepared for the person presenting the will to record in the county where the real estate is located. Also included is a certificate reflecting probate tax has been collected on real estate by the clerk's office having the original jurisdiction of probate.

If the probate jurisdiction is outside Virginia and real estate is solely held by the deceased in Virginia, exemplified (or triple sealed copies) of the probate documents are prepared by the jurisdiction of probate to record in the county in Virginia where the real estate is deeded. Recording fees and probate tax must be collected and a new list of heirs for Virginia must be recorded. Ancillary administration is not required in Virginia, unless it is a directive under the will to have the real estate sold by the executor. When this directive is absent, upon recording the will, the real estate passes automatically, by operation of law, to the beneficiary of the real estate in the will. The real estate may then be sold by the beneficiary, as a beneficiary (not as an executor).

For an intestate estate where real estate is the only solely held asset, the heirs would record a "List of Heirs/Real Estate Affidavit" (obtained from the Probate Office), and pay the proper recording fee. You would need to bring a certified copy of the death certificate, a list of the names, addresses and ages of the heirs at law, and the legal description of the real property to the appointment. The List of Heirs/Real Estate Affidavit must be signed by an heir an law, in the presence of a notary public.

Q. Suppose the only asset was a motor vehicle?

A. Probate may not be necessary in this case. Please contact the Division of Motor Vehicles at (800) 435-5137 or visit their website at www.dmv.state.va.us for further instructions.

Q. Is probate necessary in a small estate?

A. **Probate Estates Valued Between $25,001.00 - $50,000:** If an estate consists of personal assets totaling between $25,001.00 and $50,000.00, sixty days have passed since the date of death and no personal representative has qualified in any jurisdiction, a small estate affidavit may be issued to all of the heirs at law when there is no will, or to all of the beneficiaries of a will once the will and a list of heirs at law have been recorded. An appointment with the Probate Division is necessary for this procedure. A certified copy of the death certificate is also required.

Probate Estates under $25,000.00: Pursuant to §64.2-602, any person having possession of a small asset valued at $25,000 or less may pay or deliver the small asset to any successor provided that (i) at least 60 days have elapsed since the decedent's death; and (ii) no application for the appointment of a personal representative is pending or has been granted in any jurisdiction. Probate is not necessary.

Q. What constitutes a valid will?

A. When a will is presented for probate, the probate clerk will usually determine its validity. However, some instances require the Court to make the determination. (See §64.2-403 of the 1950 Code of Virginia, as amended.)

Q. What is a self-proved will?

A. A will that has an affidavit attached that contains specific language required by law. The presence of this clause eliminates the need to obtain witness depositions. When a will is presented for probate and does not contain the self-proving clause, a witness deposition form will be given to the individual presenting the will. This is to be completed by one of the subscribing witnesses to the will and is submitted to the probate clerk. (See §64.2-452 and §64.2-453 of the 1950 Code of Virginia, as amended.)

Q. Are holographic wills legal in Virginia?

A. A holographic will (those **entirely** in the decedent's handwriting) may be admitted to probate if it shows testamentary intent, the entire will is written in the handwriting of the testator, the will is signed by the testator and depositions of two disinterested parties who can identify the decedent's handwriting are submitted.

Q. Can a will be filed with the clerk's office prior to death?

A. Although not a requirement, the original will may be filed for safekeeping in the clerk's office in the county where the testator resides. The original is submitted with a $2.00 filing fee. The testator should ensure that all named executors know the location of the will. If the testator moves from the county where the will is filed, the will should be retrieved by the testator. Photo identification is required for the testator to remove the will from the clerk's office. The testator may give written, notarized consent for a designee to retrieve the will. The designee is required to show valid photo identification.

Q. Should a will be kept in a safe deposit box at a bank?

A. There is a Virginia statute that authorizes banks to allow a spouse, next of kin, or other person having an interest in locating a will access to a deceased person's safe-deposit box. This statute is **not** mandatory. As a result, many banks are reluctant to allow access due to fiduciary and privacy concerns (See §6.2-2302 of the 1950 Code of Virginia, as amended.)

Q. May the clerk's office help someone write a will?

A. **No.** Court personnel are **prohibited** by state law from giving you legal advice or assistance. You may consult an attorney or you may prepare your own will. The law library, located in Suite 115, on the first floor of the Fairfax County Courthouse, is available to the public for the purpose of doing legal research. Please contact the law library for hours of operation at (703)246-2170 or e-mail them at liblawlibrary@fairfaxcounty.gov for additional information.

Q. Where may a copy of a death certificate be obtained in Virginia?

A. If the death occurred in Virginia, death certificates may be obtained from the Bureau of Vital Records in Richmond, Virginia. Call (804) 662-6200 for complete instructions.

For deaths occurring in Fairfax County or the City of Fairfax within the last five years, death certificates may be obtained from the Joseph Willard Health Center located at 3750 Old Lee Highway, Fairfax, (703) 246-7100.

The Clerk's office is **prohibited** by law from making certified copies of death certificates.

Q. Whom does one contact about estate taxes?

A. Contact the Virginia Department of Taxation at (804) 367-8031 or visit their website at http://tax.virginia.gov/. For questions pertaining to local real estate taxes contact Fairfax County Department of Tax Administration at (703) 222-8234. For federal estate tax questions contact the Internal Revenue Service.

Q. Is this all that I need to know about administering estates?

A. **No**. There are more than two hundred sections of the Code of Virginia pertaining to the administration of estates. This booklet answers only the most commonly asked procedural questions and is not intended as legal advice.

Definitions

Administrator: The person appointed by and qualified before the Clerk to administer the decedent's estate when there is no will.

Administrator C.T.A.: *Cum testamento annexo*, or, *with the will annexed.* An administrator of the estate other than named executor in a will. Serves when all named executors do not serve due to death, incapacity or renunciation of their right to serve.

Beneficiary: A person or organization entitled to receive a portion of the estate.

Bond: A written document in which the obligor formally recognizes an obligation to pay money in the event the obligor does not properly perform his or her duties.

Certificate of Qualification: The Certificate of Qualification, sometimes referred to as "Letters Testamentary", is the paper that the personal representative receives from the clerk at the time of qualification which states that a person has qualified as executor or administrator and has authority to act on behalf of the estate.

Certified Copy: A copy of a document or record, signed and certified as a true copy by the officer to whose custody the original is entrusted.

Codicil: A supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in an existing will.

Commissioner of Accounts: A person(s) appointed by the Court to monitor the reports and activities of personal representatives.

Creditor: A person or organization owed money by the decedent.

Decedent: A deceased person.

Estate: The decedent's property, including real estate, tangible and intangible personal property and all other assets owned or controlled by the decedent at the time of his/her death.

Executor: The person named in the decedents will to administer the estate. To validate the appointment the executor must qualify before the clerk.

Fiduciary: A person in a position of trust with respect to another's property; a general term used to refer to executor, administrator or trustee.

Heirs at Law: A person(s) who would inherit the decedent's estate if the decedent died without a will.

Holographic Will: A will written entirely by the testator with his own hand and not witnessed (attested).

Intestate Estate: An estate to be administered without a will.

Inventory: A detailed list of articles; a list or schedule of property, containing designation or description of such specific article.

Personal Representative: A term used to mean either the executor or the administrator of the decedent's estate. This term only applies to the person administering a testate or intestate estate and does not apply to any other type of fiduciary.

Probate: The procedure whereby a will is admitted to record in the Clerk's Office. Also, used to include the process of qualifying a person as an executor or administrator of an estate. It sometimes refers to the entire process of administering an estate.

Qualification: The procedure whereby a person is appointed by the clerk to serve as executor or administrator of a decedent's estate.

Self-Proved Will: A will that includes a notarized affidavit of the testator and attesting witnesses. See §64.2-452 and §64.2-453, of the 1950 Code of Virginia, as amended, for specific language.

Testator: One who dies leaving a will.

Testate Estate: An estate to be administered pursuant to a will.

Will: A written document that gives instructions on how a person wants his/her property distributed after death.