

**CONSIDERATIONS FOR COLLECTING THE ASSETS,
PREPARING THE INVENTORY AND HANDLING CLAIMS
AGAINST THE ESTATE**

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A. Practical Procedures for Opening Estate Accounts

There are several reasons the personal representative of a decedent's estate should open an estate account with a financial institution. First, the personal representative will need to use the account to pay the debts of the decedent that were outstanding at his or her date of death, as well as to pay for estate expenses.¹ The personal representative also will deposit funds payable to the decedent into the account, and withdraw from the account any monetary distributions to beneficiaries specified in the decedent's Last Will and Testament.² In addition, it is important that the personal representative keep his or her

* GANDERSON LAW, P.C. also acknowledges the assistance of Rebecca L. Ennis, Esquire, in the preparation of this article.

¹ VIRGINIA CLE PUBLICATIONS, THE VIRGINIA LAWYER: A DESKBOOK FOR PRACTITIONERS ¶ 8.2102B (2d ed. 2004 & Supp. 2006) [hereinafter DESKBOOK].

² *Id.*

personal funds separate from the funds of the estate, and to keep the probate estate assets separate from any nonprobate estate assets. Accordingly, an estate account should be opened by the personal representative as soon as possible after the date he or she qualifies.³ Such estate account should be in a federally insured and interest bearing account.

In order to open an estate account, the applicable financial institution will often require certain paperwork and information, including the personal representative's letter of qualification, a certified copy of the death certificate for the decedent, and the tax identification number for the estate.⁴ Section B of this article will discuss obtaining the tax identification number for an estate in more detail.

Once the estate account is open, the personal representative should ensure that there are no outstanding checks or other withdrawals on the bank accounts owned solely by the decedent, and not held jointly with right of survivorship with another or payable on death to another. Once this is complete, the personal representative should then transfer the balances of such accounts into the estate account.⁵ After the transfer of funds into the estate account, the first checks written from the estate account should be to reimburse any estate expenses that were paid by others before the personal representative qualified, such as funeral expenses and probate fees that have been paid to the clerk's office, so long as such reimbursements were authorized under the decedent's Last Will and Testament.⁶

The personal representative should strive to keep detailed and accurate records of each transaction flowing through the estate account. In many cases, the personal representative will be required to account for such transactions to the commissioner of accounts designated to oversee the administration of the decedent's estate. For purposes

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

of such accounting requirement, the personal representative should maintain all cancelled checks so that the personal representative can submit such cancelled checks as a voucher for distributions made out of the estate account.

B. Obtaining Tax Identification Number and Title to Assets

1. Tax Identification Number

It is important for a personal representative to obtain a tax identification number for an estate so that any income earned by the estate during the administration period can be properly reported to the Internal Revenue Service. There are several ways to apply for and obtain a tax identification number for an estate (the following information is further detailed in the July 2007 revision of the Internal Revenue Service's Instructions for Form SS-4, Application for Employer Identification Number [hereinafter referred to as "Instructions"]). The personal representative of the estate (or a third party designee of the personal representative) can apply for the tax identification number online, by visiting the website www.irs.gov/businesses and clicking on the link "Employer ID Numbers" on the left-hand side of such website. Alternatively, the personal representative (or a third party designee of the personal representative) can apply for the tax identification number by telephone, at 1-800-829-4933. However, if applying by telephone, the personal representative or his or her third party designee should still complete the Internal Revenue Service Form SS-4, Application for Employer Identification Number (hereinafter referred to as "Form SS-4"). The telephone operator will request that the completed form be sent via facsimile to the Internal Revenue Service during the telephone conversation. The third method for obtaining the tax identification number for the estate is via facsimile. The personal representative can complete Form SS-4 and send it via facsimile to the Internal Revenue Service at the applicable facsimile number set forth on page two of the Instructions. The personal representative will need to provide the Internal Revenue Service with his or her facsimile number so that an Internal Revenue Service representative can send the tax identification number via facsimile back to the personal representative, usually within four (4) business days. The last method for obtaining the

tax identification number is by mail. The personal representative can complete Form SS-4 and mail it to the Internal Revenue Service at the applicable address listed on page two of the Instructions. The personal representative will then receive the tax identification number by return mail within four (4) to five (5) weeks.

The completion of Form SS-4 is relatively simple. However, some of the information requested thereon can be confusing when applied to an estate. Note that the Social Security number listed on line 7B of Form SS-4 should be that of the decedent, not the personal representative. The box next to “Other” on line 10, “Reason for applying,” should be checked, and “Death” written to specify the reason. For line 11, the “Date business started or acquired” is the decedent’s date of death. For line 13, zero employees should be listed. The box next to “Yes” should be checked on line 14 to show that the employment tax liability is expected to be \$1,000 or less in a full calendar year. The box next to “Other” on line 16 should be checked, and “Estate” should be written to specify the principal activity of your business. Though this paragraph sets forth practical instructions for the completion of Form SS-4, the Instructions referenced above are a more complete source of information regarding the completion of Form SS-4.

2. Title to Assets

In addition to ensuring that all of the cash funds of the decedent are placed in an estate bank account, as discussed more fully in Section A of this article, the personal representative should also take care to transfer certain other assets of the decedent into the name of the estate. To the extent that any securities are held in the name of the decedent only and without a beneficiary designation, such securities may be transferred into the name of the estate at the request of the personal representative. The transfer agent will likely request certain information and documents from the personal representative, including the letter of qualification, a certified copy of the decedent’s death certificate, the properly endorsed stock certificate, and the tax identification number for the estate.⁷ The personal representative may need to check with the bank(s) in which the decedent

⁷ *Id.* ¶ 8.2105B.

had a safe deposit box in order to access any stock certificates or bonds that the decedent may have stored in such safe deposit box.

In addition, title to the tangible personal property of the decedent is deemed to automatically transfer to the personal representative of the decedent's estate. As such, and because most items of tangible personal property have no formal document of title at all, no written transfer of title is required, and the personal representative merely has to take possession of such property.⁸ However, the personal representative will need to take additional steps to transfer title to tangible personal property which does have a formal document of title, such as an automobile.

It should be noted that with regard to real property, the title to same passes directly to the beneficiary(ies) under the decedent's will, subject to the possibility of the personal representative exercising his or her power of sale, if any, during the administration of the estate.⁹ Until the personal representative exercises such power of sale, if any, the beneficiary(ies) is entitled to possession and exclusive use of the real estate. Therefore, the title to the property is not typically transferred into the name of the estate. However, the personal representative should ensure that any real property is properly maintained, that any outstanding mortgages on real property are paid, and that any real property is properly insured until it is distributed to the beneficiary(ies) of such real property.¹⁰

C. Cancelling Utilities and Credit Cards

For any real property that was owned solely by the decedent, the personal representative should be sure to cancel all non-essential utilities. This may include telephone service, Internet service, cable service, and/or trash service. However, certain

⁸ *See id.* ¶ 8.2105A.

⁹ *See id.* ¶ 8.2105C.

¹⁰ *See id.*

utilities should be maintained for practical purposes, such as electricity and water.

The personal representative should contact the credit card companies for any credit cards utilized by the decedent prior to his or her date of death in order to inform such companies of the decedent's death and cut off future use of the credit cards. If there are sufficient funds in the estate to satisfy the balances of the credit cards, the personal representative should do so, and cancel such paid-off credit cards after ensuring that there are no outstanding automatic withdrawals being made from such accounts.

If the personal representative is not certain of what credit card accounts the decedent maintained, or would like to check for additional accounts, he or she should examine the decedent's bank statements and check ledgers. Such statements and ledgers may show to which credit card companies the decedent regularly made payments, or which credit card companies regularly made automatic withdrawals from the decedent's bank account(s). The personal representative can then contact the identified credit card companies in order to cancel such accounts.

D. Best Strategies for Preparing the Inventory

Unless an exception applies, the personal representative is required to file an inventory for the estate of the decedent within four (4) months of his or her qualification as personal representative.¹¹ The inventory is set forth on a standardized form, entitled "Inventory for Decedent's Estate" (hereinafter referred to as the "inventory form"), which can be obtained from the applicable clerk's office, or from the website for the Virginia judicial system, www.courts.state.va.us. It is important to note that the personal representative is required to sign the inventory form under oath, representing that the assets listed thereon are an accurate and complete inventory of the estate as of the decedent's date of death; he or she must exercise due diligence in order to ascertain every asset owned by the decedent as of his or her date of death. Moreover, the personal representative is required by the Code of Virginia, 1950, as amended, to provide notice of

¹¹ VA. CODE § 26-12(A) (2009).

entitlement to a copy of the completed inventory form to certain persons; therefore, the inventory form also requires that the personal representative certify that he or she mailed the completed inventory form to any person who requested a copy of same.¹²

A court may waive the requirement that an inventory be filed if all of the following conditions are satisfied: (i) the total value of the probate estate is not more than \$15,000, (ii) an heir, beneficiary, or creditor whose claim exceeds the value of such probate estate seeks qualification, and (iii) the person seeking qualification would not have the power of sale over any real estate.¹³

The inventory form contains five categories: (i) personal estate, (ii) interests in multiple party accounts and certificates of deposit in banks and credit unions, (iii) real estate subject to a power of sale, (iv) other real estate in Virginia, and (v) non-Virginia real estate. The probate personal estate includes tangible personal property, bank accounts in the decedent's sole name, and life insurance that is payable to the estate.¹⁴ Interests in multiple party accounts and certificates of deposit include those that are held in the name of the decedent and another individual with the right of survivorship, or that have a payable on death beneficiary designation.¹⁵ However, interests in multiple party accounts and certificates of deposit do not include multiple party accounts with survivorship maintained in a mutual fund or brokerage account.¹⁶ Though the funds in multiple party accounts and certificates of deposit will pass outside of the estate, the accounts are included on the inventory form because of "the statutory authority of personal representatives and creditors in certain circumstances to seek these assets to pay

¹² See *id.* § 64.1-122.2(A).

¹³ *Id.* § 26-12.3.

¹⁴ DESKBOOK, *supra* note 1, at ¶ 8.2103C.

¹⁵ *Id.*

¹⁶ *Id.*

debts, taxes, and expenses of administration.”¹⁷

The instructions for the inventory form provide that specific descriptions are required for particular types of assets listed on the inventory form. The following are some examples of the specific descriptions required for particular assets of the estate: (i) motor vehicles and water craft should include the make, model, and year of such property, (ii) checking, savings, and other accounts or deposits should include the institution’s name, type of account, account number, any accrued interest, and any maturity date, (iii) stocks and mutual funds should list the stock separately and include the company name, number of shares, and price per share, and (iv) bonds and promissory notes should include the issuer’s name, face amount, interest rate, and maturity date for each bond and promissory note.¹⁸

Each asset is listed on the inventory at its fair market value as of the decedent’s date of death using exact dollar and cents amounts. The instructions for the inventory form provide that specific values should not be rounded off to either a higher or lower amount.¹⁹ Such instructions also define fair market value for all property, except real estate, as “the price at which the property would change hands between a willing buyer and a willing seller in the retail market, with neither one being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.”²⁰ The expenses incurred to determine the value of any particular asset are considered allowable costs of administration for the estate.²¹ Therefore, the personal representative may have valuable

¹⁷ *Id.*

¹⁸ *See* INSTRUCTIONS FOR INVENTORY – DECEDENT’S ESTATE (which can be obtained from the applicable clerk’s office, or from the website for the Virginia judicial system, www.courts.state.va.us) [hereinafter INSTRUCTIONS].

¹⁹ INSTRUCTIONS, *supra* note 18.

²⁰ *Id.*

²¹ VA. CODE § 26-12(D) (2009).

items of tangible personal property, such as artwork, professionally appraised, so long as he or she requests that the appraiser assign the value that the property would have had as of the decedent's date of death. Similarly, a professional experienced in business valuation may be employed to appraise the decedent's interest in a closely-held corporation.

Real estate appraisers may also be utilized to determine the value of real property. However, the instructions for the inventory form provide that if an appraisal has not been obtained, real estate may be listed at its local tax assessed value as of the decedent's date of death.²² The personal representative should state on the inventory form whether an appraisal or local tax assessed value was used.²³ The value of any real estate listed on the inventory form should not be reduced by the amount of any outstanding mortgage, loan, lien, or other claim against the property.²⁴

The personal representative is required to disclose certain real estate owned by the decedent at his or her date of death on the inventory form. Such real estate is listed in one of the three following categories: (i) decedent's real estate in Virginia over which the personal representative has a power of sale, (ii) decedent's other real estate in Virginia, and (iii) decedent's non-Virginia real estate. "The primary purpose of listing these interests in real property is to permit the commissioner of accounts to track the payment of certain expenditures related to such real estate, such as real estate taxes and repair and utility bills incurred before the decedent's death."²⁵ No disclosure is required on the inventory form for any real estate owned by the decedent at the date of his or her death which was held in survivorship form by the decedent and another individual, or held in a

²² INSTRUCTIONS, *supra* note 18.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

living trust created by the decedent having beneficiaries following the decedent's death.²⁶

The personal representative is required to list all assets owned by the decedent on the date of death of the decedent as they existed on such date of death even though such assets may have changed form or no longer be in existence at the time the inventory form is filed. Before the inventory form can be prepared, the personal representative must identify and locate all of the decedent's assets which are required to be listed on the inventory form. There are several strategies for doing so, including interviewing the surviving relatives and friends of the decedent, reviewing the decedent's federal and state income tax returns for recent years, examining the decedent's bank account statements, examining the contents of the decedent's safe deposit box, and searching the decedent's residence.²⁷ In addition, if necessary, the personal representative can "[m]ail letters of inquiry to all banks, savings and loan associations, and stock brokerage firms serving the area of the decedent's residence."²⁸

If the personal representative discovers additional assets owned by the decedent subsequent to filing the inventory, there are procedures for reporting such additional assets to the court. The personal representative may file an amended inventory form showing all the assets of the estate, file an additional inventory form showing only the after discovered assets, or show the after-discovered assets on the next estate accounting (with the permission of the commissioner of accounts).²⁹ Regardless of the method chosen, the additional assets must be reported within four (4) months of the personal representative's discovery or receipt of same.³⁰

²⁶ *Id.*

²⁷ FRANK O. BROWN, JR., VIRGINIA PRACTICE: PROBATE HANDBOOK § 3:3 (2008-2009 ed.) [hereinafter PROBATE HANDBOOK].

²⁸ *Id.*

²⁹ VA. CODE § 26-12(E) (2009).

³⁰ *Id.*

If the personal representative does not file the inventory form in a timely fashion, the commissioner of accounts is authorized to issue a summons to the personal representative, requiring him or her to file the inventory form.³¹ If the personal representative still does not file the inventory form within thirty (30) days after the summons is served upon him or her, the commissioner of accounts is to report the matter to the court (and the Virginia State Bar if the personal representative is an attorney licensed in Virginia).³² The court, in turn, will issue another summons to the personal representative requiring the personal representative to appear.³³ Upon his or her appearance before the court, the personal representative will be fined not more than \$500, unless excused for a sufficient reason.³⁴ If the personal representative still fails to file the inventory form within the time prescribed by the court, he or she will be held in contempt of court.³⁵

E. Medicare, Insurance Claims and Public Assistance: Understanding the Paperwork Involved

1. Medicare

The process of settling final medical bills with Medicare after the death of a Medicare beneficiary may take up to several months. To begin the process of settling any final medical bills, Social Security should be notified as soon as possible after the death of a Medicare beneficiary. In addition, the personal representative may contact a local Social Security office for assistance in filling out any necessary paperwork.

³¹ *Id.* § 26-13.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

A personal representative may need to seek a refund of premiums or settlement of claims for benefits on behalf of the deceased Medicare beneficiary. For example, if a Medicare beneficiary dies, and premiums were paid with respect to such individual for Medicare Part A or Part B for any months after the month of death, such premiums shall be refunded to the person who paid such premiums (or to the personal representative for the estate of the decedent if the decedent paid such premiums).³⁶ In addition, if a Medicare beneficiary received services prior to death for which payment may be made by Medicare, and the Medicare beneficiary died before any payment due through Medicare was completed, payment of the amount due shall be made to the person who paid for such services (or to the personal representative for the estate of the decedent if the decedent paid for such services).³⁷

2. Life Insurance

The specific procedure for filing a claim for life insurance proceeds after the death of an insured may vary by insurance company. However, the general process for filing such claims is similar. If the life insurance proceeds are payable to the estate, the personal representative of the estate should file a claim for such proceeds, and the proceeds will be listed on the inventory form and handled as probate assets. If the life insurance proceeds are payable to a beneficiary other than the estate, then such beneficiary may file a claim for such proceeds, and the proceeds will not be included in the decedent's probate estate.

Before filing a claim for life insurance proceeds, an applicant should obtain several certified copies of the death certificate.³⁸ The death certificate is the primary documentation evidencing the death of the insured. After obtaining certified copies of the

³⁶ 42 U.S.C.S. § 1395gg(g) (2009).

³⁷ *Id.* § 1395gg(e).

³⁸ Insurance Information Institute, *How Do I File an Insurance Claim*, <http://www.iii.org/individuals/life/help/fileaclaim/> (accessed Jan. 7, 2009).

death certificate, the applicant should contact the life insurance agent of the decedent.³⁹ The life insurance agent will be able to guide the applicant with regard to the paperwork that is required to be completed. If the applicant does not know the identity of the insurance agent of the decedent, the applicant may contact the insurance company for further information.

If the applicant is unable to locate the life insurance policy(ies) of the decedent, the applicant should search for any information that might aid in finding the lost policy(ies) (if any such policy[ies] exists).⁴⁰ The applicant should search through files and storage boxes of the decedent for any insurance related documents. If the applicant is able to find at least one life insurance policy, the attached application for such policy will list any other life insurance policies owned by the decedent at the time of application.⁴¹ In addition, an insurance agent or insurance company who sold automobile or homeowners insurance to the decedent may be aware of the existence of a life insurance policy. Therefore, the applicant should contact any insurance agent or insurance company found in the personal address or telephone book(s) of the decedent for more information.

The applicant also should review bank statements and cancelled checks of the decedent for any premium payments made to life insurance companies.⁴² In addition, the applicant may review income tax returns of the decedent for interest income from and interest expenses paid to life insurance companies.⁴³ If the applicant believes the decedent may have had a life insurance policy through his or her employer, the applicant

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² American Council of Life Insurers, *Missing Policy Inquiry*, <http://www.acli.com/ACLI/consumers/Life+Insurance/Locating+a+Missing+Policy/default.htm> (accessed Jan. 7, 2009).

⁴³ *Id.*

may contact the employee benefits office at the previous place of employment of the decedent.⁴⁴

Unless the policy provides otherwise, the applicant may choose how the life insurance proceeds will be distributed. Distributions may be in the form of a lump sum payment or payments over a period of time. A lump sum payment provides the most flexibility because the applicant may spend or invest such proceeds as the applicant believes appropriate. Alternatively, the applicant may wish to receive distributions of income for life from the policy, or a specified distribution of both interest and principal over a predetermined schedule.

3. Social Security

A family member or personal representative of the decedent should notify the Social Security Administration as soon as possible after the decedent's death.⁴⁵ Sometimes the funeral director will handle this task.

If the decedent was receiving Social Security benefits prior to death, the personal representative may be required to return any Social Security benefits of the decedent received for the month of death or any later months.⁴⁶ If Social Security benefits were paid by direct deposit, the personal representative should contact the bank or financial institution where such deposits were made and request that any funds received for the month of death or later be returned to the Social Security Administration. If the Social Security benefits were paid by check, the personal representative should not cash any checks received for the month of death or any later months, and should instead return the checks to the Social Security Administration as soon as possible.

The surviving spouse of a fully or currently insured individual is entitled to a one-

⁴⁴ *Id.*

⁴⁵ Social Security Administration, *How Social Security Can Help You When a Family Member Dies*, SSA Publication No. 05-10008 January 2008, <http://www.ssa.gov/pubs/10008.pdf> (accessed Jan. 7. 2009).

⁴⁶ *Id.*

time payment of \$255 if he or she was living with the decedent at the decedent's time of death (or, if living apart, was receiving certain Social Security benefits on the decedent's record).⁴⁷ If there is no surviving spouse, such payment shall be made to a child who was eligible for benefits on the decedent's record in the month of death.⁴⁸

In addition to the Lump Sum Death Benefit, certain family members may be eligible for monthly survivor's benefits. Individuals qualified to receive such monthly benefits include the following: (i) a surviving spouse age sixty (60) or older,⁴⁹ (ii) a surviving spouse at any age who is caring for a child of the decedent under age sixteen (16) or disabled,⁵⁰ (iii) an unmarried child of the decedent who is younger than age eighteen (18),⁵¹ (iv) an unmarried child of the decedent who is age eighteen (18) or older with a disability that began before age twenty-two (22),⁵² (v) parents age sixty-two (62) or older who were dependent on the decedent for at least half of their support,⁵³ and (vi) a surviving divorced spouse age sixty (60) or older, if the original marriage lasted at least ten (10) years and any remarriage occurred after age sixty (60).⁵⁴

The amount of the survivor's benefit will depend on the earnings of the decedent, the age of the survivor, and the survivor's relationship to the decedent.⁵⁵ For example, a surviving spouse is eligible to receive up to one hundred percent (100%) of the

⁴⁷ 42 U.S.C.S. § 402(i) (2009).

⁴⁸ *Id.* § 402(i)(2).

⁴⁹ *Id.* §§ 402(e), 402(f).

⁵⁰ *Id.* § 402(g).

⁵¹ *Id.* § 402(d).

⁵² *Id.*

⁵³ *Id.* § 402(h).

⁵⁴ *Id.* §§ 402(e), 402(f), 416(d).

⁵⁵ 20 C.F.R. §§ 404.338, 404.342, 404.353, 404.373 (2009).

decedent's primary insurance amount,⁵⁶ but a parent is only entitled to receive up to eighty two and one-half percent (82.5 %) of the decedent's primary insurance amount.⁵⁷

A surviving spouse may switch into and out of survivor's benefits without prejudice. For example, a surviving spouse may claim reduced survivor's benefits at age sixty (60) and then later switch out to his or her own full retirement benefits without prejudice. Alternatively, if the surviving spouse receives early retirement benefits based on his or her own work, the surviving spouse may switch into full survivor's benefits at age sixty-five (65) or older without prejudice.

To receive benefits, an applicant may call the Social Security Administration or visit a local Social Security office. The Social Security Administration will require evidence of the date and place of death at the time a person applies for benefits on the record of a decedent.⁵⁸ The best evidence of proof of death is a certified copy of the decedent's death certificate.⁵⁹ In addition, the Social Security Administration may require the Social Security number of the decedent and of the applicant, the applicant's birth certificate, the applicant's marriage certificate, the applicant's divorce papers (if applying as a divorced surviving spouse), the dependent children's Social Security numbers and birth certificates, the decedent's Form W-2, Wage and Tax Statement, or Schedule SE of the decedent's Form 1040, U.S. Individual Income Tax Return, and/or the name of the applicant's bank and account number for direct deposit of benefits.

F. Priority of Concern: Following the Chain of Command in Allowances, Claims and Taxes

In Virginia, the order of priority for the payment of debts in the event of an

⁵⁶ *Id.* § 404.338.

⁵⁷ *Id.* § 404.373.

⁵⁸ *Id.* § 404.720(a).

⁵⁹ *Id.* § 404.720(b).

insolvent estate is set forth by statute, as follows: (i) costs and expenses of administration, (ii) family allowance, exempt property allowance, and homestead allowance, (iii) funeral allowance, not to exceed \$3,500, (iv) debts and taxes with preference under federal law, (v) medical and hospital expenses of the last illness, not to exceed \$400 for each nursing home and \$150 for each person furnishing goods and services, (vi) debts and taxes due to Virginia, (vii) debts due as trustee for persons under disabilities, as receiver or commissioner under a Virginia court decree, as personal representative, guardian, conservator, or committee, when the qualification was in Virginia and for money collected by anyone to the credit of another and not paid over, (viii) local and municipal taxes for Virginia, and (ix) all other claims.⁶⁰ Therefore, it is only after all of these claims are satisfied that the beneficiaries would receive any property or funds from the estate. Moreover, “[n]o 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.”⁶¹ Therefore, “when the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably.”⁶²

As set forth above, certain allowances may be taken as a matter of right by the immediate family members of the decedent, and an order of priority exists even between the various allowances. The family allowance can be paid to the decedent’s surviving spouse or a portion of the family allowance can be paid to another individual if the minor children of the decedent live with such individual.⁶³ The allowance can be paid in a lump sum of \$18,000 or twelve (12) monthly installments of \$1,500.⁶⁴ The family allowance can be paid to the recipient(s) in addition to any other sums paid by way of the decedent’s

⁶⁰ VA. CODE § 64.1-157 (2009).

⁶¹ *Id.*

⁶² *Id.* § 64.1-158.

⁶³ *Id.* § 64.1-151.1.

⁶⁴ *Id.* § 64.1-151.4.

will, the elective share, or intestate succession, and such family allowance has priority over all claims against an estate except costs of administration.⁶⁵

Pursuant to the exempt property allowance, the surviving spouse of the decedent, or the minor children of the decedent if there is no surviving spouse, may select tangible property from the estate worth up to \$15,000.⁶⁶ Examples of property which might be used to satisfy the exempt property allowance include household furniture or other furnishings, automobiles, appliances, and personal effects.⁶⁷ The surviving spouse or minor children of the decedent can utilize the exempt property allowance regardless of the items or amounts they receive pursuant to the decedent's will, the elective share, or intestate succession.⁶⁸ This allowance has priority over all claims against the estate except the family allowance and costs and expenses of administration.⁶⁹

The final allowance is the homestead allowance. Pursuant to this allowance, the surviving spouse of the decedent is entitled to \$15,000.⁷⁰ If there is no surviving spouse, the minor children of the decedent may divide the \$15,000 homestead allowance in equal shares.⁷¹ The applicable statute further provides:

The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the will of the decedent or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the will of the decedent or by intestate succession is less than \$15,000, then the surviving spouse or minor children shall be entitled to a homestead allowance in an amount which,

⁶⁵ *Id.* §§ 64.1-151.1, 64.1-157.

⁶⁶ *Id.* § 64.1-151.2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* §§ 64.1-151.2, 64.1-157.

⁷⁰ *Id.* § 64.1-151.3.

⁷¹ *Id.*

when added to the property passing to the surviving spouse and minor children by the will of the decedent or by intestate succession, will equal the sum of \$15,000.⁷²

Also, if the surviving spouse claims an elective share of the decedent's estate, then he or she is not entitled to the homestead allowance.⁷³ Moreover, the homestead allowance has priority over all claims against the estate except the family allowance, the exempt property allowance, and costs and expenses of administration.⁷⁴

The statutory allowances referenced above may not be available to a spouse in every situation. For example, a surviving spouse who willfully deserted or abandoned the decedent is not entitled to any of the above referenced allowances.⁷⁵ In addition, a spouse may have waived the right to any of the allowances pursuant to the terms of a premarital or marital agreement.⁷⁶

For protection against personal liability for the payment of distributions of the estate before all claims have been made, a personal representative may request a debts and demands hearing from the commissioner of accounts.⁷⁷ After a personal representative requests a debts and demands hearing, the commissioner of accounts will designate a time and place to receive proof of debts and demands against the decedent or the estate of the decedent.⁷⁸ The personal representative is required to provide ten (10) days of written notice of such debts and demands hearing to any claimant of disputed

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* §§ 64.1-151.3, 64.1-157.

⁷⁵ *Id.* § 64.1-16.3.

⁷⁶ *Id.* § 64.1-151.6.

⁷⁷ PROBATE HANDBOOK, *supra* note 27, at §13:2.

⁷⁸ VA. CODE § 64.1-171 (2009).

claims known to the personal representative.⁷⁹ In addition, at least ten (10) days before the debts and demands hearing, the commissioner of accounts will post notice of such hearing at the courthouse and publish notice of such hearing in a newspaper of general circulation in the county or city where the personal representative qualified.⁸⁰

Within sixty (60) days of the time appointed for the debts and demands hearing, the commissioner of accounts will file a report of sufficiently proven debts and demands with the court.⁸¹ If such report shows unpaid debts or demands, the court will order that such debts and demands be paid.⁸²

Six (6) months after qualification, and if the commissioner of accounts has filed a report of accounts and a report of debts and demands, the personal representative may move for entry of an order directing any creditor or other interested person to appear on a designated date to show any reason why the court should not allow distribution of estate assets, otherwise known as a show cause order.⁸³ The show cause order must be published once a week for two (2) successive weeks in one or more newspapers as the court directs.⁸⁴ On or after the designated date in the show cause order, the court may order distribution to the legatees or distributees of some or all the estate assets not before distributed, with or without a refunding bond.⁸⁵

A personal representative will be fully protected against the demands of creditors and all other persons if the personal representative complies in good faith with the

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at § 64.1-172.

⁸² *Id.* at § 64.1-174.

⁸³ *Id.* at § 64.1-179.

⁸⁴ *Id.*

⁸⁵ *Id.*

statutory provisions concerning show cause and distribution orders, and if the personal representative distributes the estate in accordance with any such order(s).⁸⁶ The personal representative will not be protected by a court distribution order if the personal representative made distribution to an incorrect legatee or distributee.

⁸⁶ *Id.*