

private client services update

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VIRGINIA COMMISSIONERS OF ACCOUNTS AND THE UPDATED MANUAL FOR COMMISSIONERS

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Virginia has a unique probate and fiduciary accounting system. The Virginia Circuit Courts have jurisdiction over decedents' estates, testamentary trusts, minor guardianships, conservatorships for incapacitated persons, foreclosure trustee accountings and certain other fiduciary matters. Virginia law also provides for the Judges of the various Circuit Courts to appoint Commissioners of Accounts with general supervision over the review of estate inventories, auditing and settlement of accountings and enforcement for these various fiduciary matters. Virginia law preserves the rights of parties having an interest in these matters to come before the Court if they take exception to a Commissioner's findings. The Commissioners and their staff relieve the court of the administrative burdens of probate oversight and provide a source of information and guidance for fiduciaries, most of whom are unfamiliar with the fiduciary administration and accounting process. The Commissioner of Accounts system is also financially self-sustaining in that Commissioners support the operation of their respective offices from the filing fees established by the Courts for their services, rather than from state tax dollars. Under this system the vast majority of estate and fiduciary matters are resolved and settled without the need for direct involvement by the Courts.

In January 1993 the Judicial Council of Virginia established the "Standing Committee on Commissioners of Accounts," with one of its primary charges being continuing efforts to promote and enhance uniformity of practice and procedure for Virginia Commissioners of Accounts ("COA"). One of the most effective projects of the Committee has been the preparation of and revisions to a Manual for Commissioners of Accounts. The Standing Committee recently completed a 2009 revision of the Manual, which is published by Virginia CLE, and should be available for distribution in early November. The COA Manual is an excellent resource for Commissioners, lawyers, CPA's and others that assist fiduciaries with estate and fiduciary accounting. The revised Manual will include changes in the law since the 2006 edition. A couple of those changes dealing with common issues are illustrated below.

a) Joe, a widower, passed away July 20, 2009 and under his will he left his home worth \$300,000 to his son, Jim, and his investment accounts, worth \$200,000, to his son, John. There was a deed of trust lien against the home for the amount of \$100,000. Jim claims the lien is an estate debt and directs the executor to pay off the lien from the personal property assets (investment accounts) of the estate.

Va. Code § 64.1-157.1 was added in 2007 to provide that, 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. Prior to this change, Virginia had followed the long standing right of exoneration, which would have required the executor to follow Jim's direction, resulting in Jim getting the home worth \$300,000 free and clear, and John receiving only \$100,000 after payment of the lien.

b) Jane's mother passed away in February, 2009. Jane arranged and paid \$12,000 for her mother's funeral. Jane later learned that her mother's estate was insolvent due to large medical bills and insufficient assets to pay all claims. Jane asked the executor to reimburse her for the funeral bill.

Va. Code § 64.1-157 provides the priority and limitations for payment of administrative expenses, taxes and creditor claims against insolvent estates. This Section was amended in 2008 to increase the priority for payment of funeral expenses from \$2,000 to \$3,500. Jane should be entitled to be reimbursed \$3,500 prior to payment of other general creditors, but she will have to share any remaining estate assets pro-rata with the other general creditors on the balance of her claim.

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