

# HOOK

## LAW CENTER

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## SPECIAL REPORT: Duties of an Executor

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Hook Law Center Offices:

295 Bendix Road, Suite 170, Virginia Beach, Virginia 23452  
5806 Harbour View Blvd., Suite 203, Suffolk, Virginia 23434  
[www.hooklawcenter.com](http://www.hooklawcenter.com)

Tel: 757-399-7506  
Fax: 757-397-1267

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Proper administration of a decedent's estate involves a variety of steps. An executor is typically appointed in a Will to handle the administrative tasks of the estate. In the absence of a Will, known as an intestate estate, an administrator is appointed, however, regardless of title, the personal representative of the estate is legally responsible to ensure that all necessary steps are taken to comply with the laws regarding creditors, taxation, and distribution of assets to beneficiaries. We recommend that you consult with an attorney regarding the administration of an estate to avoid any personal liability.

**As executor or administrator, you have the following duties under the Code of Virginia:**

- You must take prompt possession of all of the assets of the decedent. In case of bank accounts, the decedent's accounts should be closed and all funds should be deposited into one or more separate accounts, in your name as executor or administrator. These must be kept separate and apart from your own funds. You will need to obtain a new tax I.D. Number from IRS for the Estate. You may need to use a bank account that will return the actual original cancelled checks.
- Except for minimal amounts needed to pay current obligations and to avoid checking account charges, you must invest all funds in an interest-bearing account or in other assets which produce income.
- You must inquire about safe deposit boxes and accounts maintained by the decedent at all financial institutions with which you have any reason to believe the decedent did any business.
- You may sell the decedent's real estate only if the decedent's Will granted you the specific power to sell real estate or by a Court Order. If the decedent left no Will, his or her real estate passed at death by operation of law to the heirs, and they become the only parties who may sell it.
- If you do not have sufficient cash or other assets which can be converted to cash to pay all allowances and claims against the estate or if the estate is solvent but you have question relative to allowances and claims, you should consult with an attorney regarding the statutory priorities of a surviving spouse, minor children and creditors. You may have personal liability to creditors if these statutory requirements are not followed exactly.
- You have the duty to file all Federal and Virginia income tax returns due by the decedent including those due for the year of death. You may also be required to file gift tax returns for the decedent.

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- If the assets of the decedent were sufficient to require the filing of a Federal Estate Tax Return, you have the duty to file on time that return and a Virginia Estate Tax Return. You should consult with an attorney on your obligation to file these returns.
- You have the obligation of keeping a full record of all receipts and disbursements of the funds of the decedent and all the original vouchers evidencing payment of those disbursements. You should preserve copies of all bills paid and promissory notes paid off, and obtain original cancelled checks.
- Within four (4) months after your qualification, you must file an Inventory of the assets of the estate with the Commissioner of Accounts.
- Not later than sixteen (16) months after qualification, you must file an Account of receipt and disbursements with the Commissioner of Accounts. If the first Account is not a final Account, you must file an additional Account each twelve (12) months thereafter, until all assets are distributed and a final Account is filed. A fee will be charged by the Commissioner of Accounts and by the Clerk for each Account. When your first Account is settled, you will receive the statement for services. Before making final distribution of the estate assets, you should ask in advance for quotation of a final fee by the Commissioner's Office.
- The Clerk will assign a Commissioner of Accounts when you qualify. You will file the inventory and any accountings with this Commissioner of Accounts.
- There is a preferred format of Account, which contains all of the following:
  - Whether a first, interim, annual, or a final Account;
  - The period covered (dates);
  - The exact name and title of the Fiduciary;
  - The name of the estate;
  - All receipts, describing the item in detail, with the amount of each item thereof and with a separate Principal and Income Account for trusts;
  - All disbursements or expenditures in detail, supported by proper vouchers and original cancelled checks and the amount thereof;

- Transactions separately stated for sales and purchases of investment by the fiduciary;
  - On first and interim Accounts, a summary of the assets and Balance on hand at the end of the accounting period (there can of course, be no balance on hand in a final Account);
  - The Account must be signed by the fiduciary, but need not be notarized;
  - The decedent left a Will, a copy of the Will and all codicils must accompany the first Account together with any copies of Orders entered by the Court;
  - If a United States Tax Return and Virginia Estate Tax Return are required to be filed, the appropriate tax clearance letter and certificate of tax paid should be appended to the Account in which they are shown paid; and
  - You are required to give Notice to beneficiaries according to law and file an Affidavit of Notice in the Clerk's Office.
- If the executors or administrators of an estate are the same people who receive all its assets under the decedent's will or by law, a Statement under Oath may, in certain circumstances, be filed with the Commissioner of Accounts in lieu of a formal Account.

For more information, please contact Hook Law Center. Hook Law Center has been assisting fiduciaries, acting as fiduciaries, and managing estates and trusts for more than 25 years.

#### **ABOUT THIS HANDOUT**

This guide is provided as a courtesy to help you recognize potential estate planning issues. It is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent elder law attorney. While every precaution has been taken to make this explanation accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this explanation.

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LAW CENTER

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Hook Law Center focuses its practice on estate and tax planning, planning for long-term care and aging, retirement and investment advice, trust and estate administration and probate, guardianships for those unable to make sound decisions, and the unique situations associated with special needs.

Learn more about the Hook Law Center at [www.HookLawCenter.com](http://www.HookLawCenter.com).

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