

INFORMATION FOR FIDUCIARIES

*Furnished to Fiduciaries by:
Clerk, Circuit Court of Fauquier County
29 Ashby Street, Warrenton, VA 20186*

WHAT IS A FIDUCIARY? For the purpose of these notes, a **fiduciary** can be thought of as a person who is appointed by the Court to handle someone else's estate or property. Some of the types of **fiduciaries** are Executors, Administrators, Curators, Guardians, Conservators, Committees, Trustees. **Fiduciaries** have the duty to administer and account to the Court for assets under their **fiduciary** control by filing Inventories and Accounts with the Commissioner of Accounts at the following address.

**GARY M. PEARSON
COMMISSIONER OF ACCOUNTS
FOR THE CIRCUIT COURT OF FAUQUIER COUNTY**
9 Culpeper Street
Warrenton, VA 20186
Telephone: 540-347-2660
Hours: 8:30 a.m. - 4:30 p.m.

Although a fiduciary is not required to retain an attorney or an accountant to assist the fiduciary in administering an estate, there are many rules and regulations to deal with. The Court, the Clerk's Office, and the Commissioner of Accounts Office cannot be the fiduciary's reminder system, prepare the fiduciary's documents, or be the fiduciary's lawyer or accountant. For legal or accounting advice, a fiduciary should seek the advice of an attorney and/or an accountant. Consulting with professionals proficient in fiduciary and estate administration matters can avoid many problems that an inexperienced fiduciary faces, and it is generally less expensive to do things correctly with proper professional advice the first time. We put this subject of getting proper advice first in these notes because we have found that proper professional advice is the single most important aid to a fiduciary in administering an estate. Professional advice can be expensive, but reasonable costs for their advice are legitimate expenses and can often be paid from the estate assets, Consulting professionals usually saves time and money to the Estate and also to the fiduciary personally. This "INFORMATION FOR FIDUCIARIES" document is merely an aid, and it is NOT a substitute for professional help.

On the day that fiduciaries qualify before the Clerk:

1. The Clerk gives all fiduciaries a hard copy of "Top Rules for Fiduciaries" (found at the following website)
<http://www.fauquiercounty.gov/government/departments/circuitcourt/index.cfm?action=willsandestates>
2. The Clerk also gives all fiduciaries hard copies of the Inventory form and the applicable Instructions for Inventory and Instructions for Account from the Virginia

Judicial System's website for "Circuit Court Fiduciary Forms" found at <http://www.courts.state.va.us/forms/circuit/fiduciary.html>

Note. At the Virginia Judicial System's website, you will find separate instructions for the specific type of fiduciary or case that you have. You can also bring up forms and fill them out online if you wish. However, make sure that you click the button at the top of the form that says, "**Print form**" or "**Print for Submission to Court**". If you do not click that button, your product will have grayed fields. The Court will not accept documents that have gray or other colored fields because they will not reproduce properly for archiving purposes.

3. The Clerk gives all fiduciaries a hard copy of the first two pages of this "INFORMATION FOR FIDUCIARIES", which contains further information about fiduciary duties. The full "INFORMATION FOR FIDUCIARIES" can be accessed online, as shown in the box below.

How to access "INFORMATION FOR FIDUCIARIES" on the Internet

Go to www.fauquiercounty.gov.

Click "Citizen Services"

Under "Courts", click "Clerk of the Circuit Court"

Under "Miscellaneous Forms", click "Commissioner of Accounts Instructions"

That will take you to "INFORMATION FOR FIDUCIARIES" where you can find information on such things as:

Procedures for certain aspects of administration,

Compensation for Fiduciaries,

Compensation for Clerks,

Compensation for Commissioners of Accounts,

Sample filled-in accounts, and

Direction to many other sources of information.

Note. If you do not have access to the Internet and would like a copy of any forms, instructions, samples, or this "INFORMATION FOR FIDUCIARIES", just call the Commissioner of Accounts' office (540-347-2660), and the Commissioner's office will be glad to mail you any of those items that you request.

The notes below are offered only as the very broadest, general, and by no means complete, outline of some of the matters that you and your advisors will want to take into account in administering and accounting for the estate that comes under your control as a fiduciary.

TABLE OF CONTENTS

- I. Newspapers for Publishing Legal Notices
- II. Affidavit of Notice
- III. Inventory
- IV. Payment of Debts, Funeral Expenses, Administration Expenses, Taxes and Other Obligations
- V. Accountings
- VI. Statement in Lieu of Settlement of Accounts
- VII. Hearing to Receive Proof of Debts & Demands
- VIII. Compensation to Fiduciaries
- IX. Compensation to Clerk and Commissioner of Accounts
- X. Distributions to Beneficiaries
- XI. Bond and Surety
- XII. Investment of Assets
- XIII. General Information

See the following attachments at the end of this "INFORMATION FOR FIDUCIARIES":

1. Tax Certification form
2. Guidelines for Fiduciary Compensation (for all fiduciaries except Trustees under Deeds of Trust)
3. Guidelines for Fiduciary Compensation (for Trustees under Deeds of Trust)
4. July 31, 2008 Court order setting Commissioners of Accounts Fees
5. Instructions and sample filled-in **Account for Decedent's Estate**
6. Instructions and sample filled-in **Account for Trust**
7. Instructions and sample filled-in **Account for Incapacitated Adult**
8. Instructions and sample filled-in **Account for Minor**

I. NEWSPAPERS FOR PUBLISHING LEGAL NOTICES

The three newspapers that are thus far approved for publishing any notice that needs to be reviewed or approved by the Commissioner of Accounts are:

The Fauquier Times
The Culpeper Star-Exponent
The Washington Post

II. AFFIDAVIT OF NOTICE

Virginia Code §64.2-508 requires the personal representative (Executor, Administrator, or Curator) of a decedent's estate or the proponent of a Will to (a) give a form of "Notice" of probate and/or qualification to specified persons, and (b) file with the Clerk of the Circuit Court an "Affidavit of Notice" stating that the required "Notices" were given. The Clerk gave you forms for these two documents when you qualified as fiduciary. You must file the "Affidavit of Notice" with the Clerk within four months of the date of probate or qualification.

III. INVENTORY

A. General. In general, an Inventory is merely a detailed list of assets and their values at the time of the decedent's death if you are an Executor or Administrator. The values are as of the time the assets come into your hands if you are a Trustee, Conservator, Committee, or Guardian. An Inventory is **not** an Accounting of what happened to those assets. Virginia Code §64.2-1300 requires fiduciaries to file an Inventory of the assets of the Estate with the Commissioner of Accounts within four months from the date of the fiduciary's qualification, with the exception of a trustee of a trust under a Will who must file an Inventory within four months after any asset is received by the Trustee, and with the exception that Trustees under Deeds of Trust are not required to file Inventories. The Clerk gave you a form for the Inventory when you qualified as fiduciary. The Inventory form should be typed or printed legibly in black ink. The Clerk's recording fee will normally have been paid at the time of qualification. The Inventory must be signed by all fiduciaries, and filed with the Commissioner of Accounts in duplicate together with a check payable to "Commissioner of Accounts" for the Inventory fee based on the value of the assets under fiduciary control (including the value of real estate over which you have the power of sale).

<u>Value of Assets</u>	<u>Fee</u>
0 - \$ 50,000.....	\$100.00
50,001 – 200,000.....	\$150.00
200,001 – 500,000.....	\$200.00
Above 500,000.....	\$250.00

The following information about preparing Inventories is an outline of general rules for Inventories filed by personal representatives of decedent's estates. We recommend that you seek professional advice on how the general rules apply to the specific assets in the Estate for which you are fiduciary.

B. Assets should be itemized in detail and listed at their fair market values as of the following dates:

1. If you are an Executor or Administrator, list the fair market value as of the date of death.
2. If you are a Trustee under a Will, the *Manual for Commissioners of Accounts* states that the Inventory should report assets at the fair market value as of the date the trust receives the assets. However, most Testamentary Trustees find that it makes more sense and prefer that their Inventories and Accounts continue to report the same cost basis (carrying values) that the assets had in the Personal Representatives'

hands. The Commissioner of Accounts for Fauquier County allows the preferred practice of Trustees continuing to use the former carrying values in their Inventories and Accounts rather than requiring that new carrying values be set up when the assets are received by the Trustees.

3. If you are a Conservator or Guardian, list the fair market value as of the date of your qualification.
4. If additional assets are discovered after you have filed the Inventory, or if you discover that you filed an Inventory containing erroneous information, you should file an Amended or Additional Inventory, in duplicate, with the Commissioner of Accounts within four months of the time new assets or error are discovered.

The following are general guidelines for preparing Inventories for decedent's estates. It is recommended that you seek professional advice on how the general rules apply to the specific assets in the estate for which you are fiduciary. One general rule that is applicable to all parts of the Inventory is that, where available, all values should be shown in dollars and cents. Do not round off to the nearest dollar.

C. Part 1. of Inventory for Decedent's Estate. "The decedent's personal estate under your supervision and control, valued at the date of death."

INCLUDED on Part 1. is all assets, other than real estate, that are owned in decedent's name alone. The following are some examples:

1. **Tangible personal property.** Tangible personal property can be thought of as things you can touch. Some examples would be furniture and other household effects, machinery, tools, vehicles, boats, coin collections, livestock. All assets must be included in the Inventory, whether or not they are worth over \$500. Each asset that is (a) worth over \$500 or (b) specifically bequeathed in the Will should be listed separately with its own separate description and value.

Where to list it.

- a. If the tangible personal property is owned by the decedent alone, enter it on Part 1. of the Inventory for Decedent's Estate.
- b. If the tangible personal property is owned jointly by the decedent and another **without** rights of survivorship, specify the percent of the decedent's interest and enter the value of that percent on Part 1. of the Inventory for Decedent's Estate.
- c. If the tangible personal property is owned jointly by the decedent and another **with** right of survivorship, do not enter it anywhere on the Inventory.
- d. If the tangible personal property is owned by the decedent and the decedent's surviving spouse as tenants by the entirety, do not enter it anywhere on the Inventory for Decedent's Estate.

2. **Bank accounts, credit union accounts, checking accounts, money market accounts, savings accounts, certificate of deposit accounts, payable on death (POD) accounts, transfer on death (TOD) accounts, Totten trusts (another form of POD account).**

Where to list it.

- a. If the account is owned by the decedent alone, enter the names of the financial institutions, the types of accounts (such as checking”, “savings”, “money market”, “certificate of deposit”, etc.) and the balances in the accounts on the date of death on Part 1. of the Inventory for Decedent’s Estate.
- b. If the account is owned jointly by the decedent and another **without** rights of survivorship **and it does not contain** any payable on death provision (POD, TOD, Totten Trust), specify the percent of the decedent’s interest and enter the value of that percent on Part 1. of the Inventory for Decedent’s Estate. The respective interests of the decedent and others will normally be determined by the proportion of the net contributions made by each one to the value at the decedent’s death, except that an account or deposit between persons married to each other will normally be treated as belonging to them equally.
- c. **Note.** When these types of accounts are part of a brokerage account, the brokerage account itself is not the asset. The asset is the checking account, money market account, or other type of account that is held in the brokerage account. Each separate asset in the brokerage account must be listed in the Inventory and accounted for separately. Information listed on the Inventory for Decedent’s Estate should show separate description and value for each separate asset.

3. **Stocks, bonds, and other securities.** When assets are held in a brokerage account, the brokerage account itself is not the asset. The brokerage account is merely a receptacle that holds assets. The name of the brokerage account is like the name of a bank in the following regard. The bank itself is not the asset. The assets are the separate individual checking accounts, money market accounts, Certificate of Deposit accounts, and various other accounts that are held in the bank. Like banks, the brokerage account itself is not the asset. The assets are the separate individual stocks, bonds, other securities, money market funds, and other assets that are held in the brokerage account. Each such separate asset in a brokerage account must be listed and accounted for separately - not merely by reference to a brokerage account. The Inventory should show the following information for each separate stock, bond, or other security whether or not the asset is in a brokerage account.

- a. **Stocks and mutual funds.** List each stock and mutual fund separately and show the following information for each separate stock and mutual fund.
 1. Name of the company
 2. Number of shares
 3. Price per share
 4. Total value
 - b. **Bonds and Promissory Notes.** List each bond and promissory note separately and show the following information for each separate bond and promissory note.
 1. Issuer's name
 2. Face amount
 3. Interest rate
 4. Maturity date
 5. Total value
 - c. **Cash or money market funds in the account.** List amount of the balance.
 - d. **Other assets in the account.** List all details of each asset.
4. **Life insurance policies, IRAs, pensions, annuities, or other arrangements** that are owned by the decedent and are payable to the Estate or to you in your capacity as personal representative of the Estate should be listed on Part 1, of the Inventory for Decedent's Estate. All of such items that are payable to anyone other than the Estate or you in your capacity as personal representative of the Estate need not be included anywhere on the Inventory.

D. Part 2. of Inventory for Decedent's Estate. "The decedent's interest in multiple party accounts and certificates of deposit in banks and credit unions, valued at the date of death."

INCLUDED on Part 2. are the decedent's interest in accounts that are with banks and credit unions (such as checking, money market, savings, certificates of deposit) and that are owned:

1. by the decedent and another or others jointly with right of survivorship, or
2. by the decedent and payable on death (POD) or transfer on death (TOD), or
3. by the decedent and constitute a Totten trust (held in the decedent's name in trust for someone else - another form of POD).
4. **What information to list.**
 - a. Names of institutions.
 - b. Types of accounts.
 - c. Names of all of the persons in whom the accounts are registered.
 - d. How titled - such as JTWROS (which stands for joint tenants with right of survivorship), POD (which stands for payable on death), TOD (which stands for transfer on death) etc.

e. Values or balances at the date of death.

NOT INCLUDED on Part 2. or anywhere else on the Inventory are real estate, brokerage accounts, and stock certificates, or mutual funds or other assets owned by the decedent jointly with another with right of survivorship, or held by the decedent and the decedent's spouse as tenants by the entirety, or other assets passing by way of a survivorship or POD or TOD provision (except that there must be listed on Part 2. the limited types of multiple party accounts and certificates of deposit stated above as **INCLUDED on Part 2.**)

E. Part 3. of Inventory for Decedent's Estate. "The decedent's real estate in Virginia over which you have a power of sale, valued at the date of death."

INCLUDED on Part 3. are the decedent's interests in real estate over which you have power of sale. If the Will gives you power to sell real estate, list Virginia real estate on Part 3. Real Estate should be described by number of acres, location, and PIN (parcel identification number), which is found on the real estate tax bills. Real estate may be listed on the Inventory for the decedent's estate at the assessed value shown on the real estate tax bills.

NOT INCLUDED on Part 3. or anywhere else on the Inventory are

The decedent's interests in real estate (1) that the decedent owned jointly with one or more others **AND** (2) that passes to one or more other joint owners by right of survivorship.

F. Part 4. of Inventory for Decedent's Estate. "The decedent's other real estate in Virginia, valued at the date of death."

INCLUDED on Part 4. are the decedent's interests in real estate over which you do not have a power of sale, and which do not pass to one or more joint owners by right of survivorship. Real Estate should be described by number of acres, location, and PIN (parcel identification number), which is found on the real estate tax bills. Real estate may be listed on the Inventory for the decedent's estate at the assessed value shown on the real estate tax bills.

NOT INCLUDED on Part 4. or anywhere else on the Inventory are

The decedent's interests in real estate (1) that the decedent owned jointly with one or more others **AND** (2) that passes to one or more other joint owners by right of survivorship.

G. Part 5. of Inventory for Decedent's Estate. "The decedent's non-Virginia real estate, valued at the date of death."

INCLUDED on Part 5. are the decedent's interests in real estate located outside of Virginia that do not pass to one or more joint owners by right of survivorship. Real Estate should be described by number of acres, location, and PIN (parcel identification number), which is found on the real estate tax bills. Real estate may be listed on the Inventory for the decedent's estate at the assessed value shown on the real estate tax bills.

NOT INCLUDED on Part 5. or anywhere else on the Inventory are:

The decedent's interests in real estate (1) that the decedent owned jointly with one or more others **AND** (2) which pass to one or more other joint owners by right of survivorship.

IV. PAYMENT OF DEBTS, FUNERAL EXPENSES, ADMINISTRATION EXPENSES, TAXES AND OTHER OBLIGATIONS

A. Determine whether the Estate is solvent to pay all debts, taxes, administration expenses, any other applicable obligations.

1. If the Estate is clearly solvent, you should pay all legal debts as soon as possible, subject to the terms of the Will, or the Court Decree, or other controlling law or documents.
2. The fiduciary has the duty to determine what obligations are proper for payment, and to pay all of the proper obligations, and to make sure not to pay anything that is not a proper obligation of the estate.
3. Claims of creditors that are proper must be paid in the proper amount or provided for before any assets become distributable to any beneficiaries. If you are unsure whether a claim is proper, you may request the Commissioner of Accounts to rule on the disputed claim.
4. Tax authorities should be treated as creditors. It is the duty of the fiduciary to ascertain whether any and all taxes are satisfied. This includes individual income taxes, personal property taxes, real estate taxes, business taxes, estate taxes, fiduciary taxes, etc. We recommend that the fiduciary consult with an attorney or accountant to determine the Estate's various tax liabilities. When filing accounts, you must make certain certifications about taxes. A copy of a form for that tax certification is attached at the end of these notes.
5. If there are sufficient assets to pay all obligations, but not enough to honor in full all bequests under a Will, you will need to abate the gifts to beneficiaries. You should consult an attorney qualified to guide you, as this is a very complex procedure.
6. If the Estate is insolvent, do not pay any debts, and do not make any distributions until you have consulted with an attorney who is qualified to guide you through the handling of an insolvent estate (Virginia Code §64.2-528 is one of the code sections involved cases where the assets are less than the obligations). Handling an insolvent estate is very complex, and if you do it incorrectly, you will be personally liable for amounts misspent. Remember that costs of administration receive first priority under the insolvent statute. Attorneys' fees, therefore, will be paid prior to the payment of any debts or taxes.

V. ACCOUNTINGS

An Accounting is a detailed statement of all receipts of principal and income that have come into your hands as fiduciary, all disbursements that you made to pay estate obligations, and all distributions that you made to beneficiaries. Unless you are Trustee

under a Will that waives Trustee accountings, or are permitted to file a “Statement in Lieu of Settlement of Accounts” as described below, you must account in detail for all assets received, disbursed, and distributed by filing accountings with the Commissioner of Accounts. Accountings must be typewritten or printed legibly in black ink and signed by each fiduciary. Accounts should include the “Itemized lists” called for on the cover page of the Account. Each entry in the accounting should show the date of the transaction, the source or payee, a description of the source of the receipt or what the payment was for, and the amount.

A word about brokerage accounts. If there are assets in brokerage accounts, you must account for each such assets separately in your Accounting. Brokerage accounts are usually not assets themselves, but are usually merely receptacles that hold other assets. You must account separately in your Accounting for each transaction with respect to each of the separate assets held in any brokerage account. Brokerage statements can not be used in lieu of the Accountings that must be filed with the Commissioner of Accounts. Such statements are merely supporting documents that provide information to help you prepare accounting and help the Commissioner review accountings.

The Accounts and the tax certification form that are attached at the end of these notes must be filed with the Commissioner of Accounts, together with receipts, vouchers, bank statements, brokerage statements, and any other documentation that supports all of the entries in your Accounting. An Account should be filed **in duplicate**, but you need file **only one set** of supporting documents.

A. First Accountings.

1. First accounts should begin on the date that the fiduciary qualified as such.
2. Executors and Administrators must file a First Accounting with the Commissioner of Accounts within 16 months from the date of their qualification, and the first accounting should cover a period of twelve months from the date of qualification (Virginia Code §64.2-1310). An accounting for a period of less than a year will be permitted if the account is filed with the Commissioner of Accounts before four (4) months after the end of the shorter accounting period.
3. Trustees of Trusts under Wills, where accountings are not waived, must file a First Accounting with the Commissioner of Accounts by May 1, of the year following initial funding of the trust. (Virginia Code §64.2-1310)
4. Conservators, Guardians of Minors Estates, Committees, Trustees under §64.2-2016 must file a First Accounting with the Commissioner of Accounts within six months from the date of their qualification. (Virginia Code §64.2-1303)
5. Curators should check with the Commissioner of Accounts regarding the date that their First Accounts are due.

6. Trustees under Deeds of Trust must file their First and Final Accounting within six months from the date of sale.

B. Second and subsequent accountings must be filed with the Commissioner of Accounts within 16 months from the ending date of the prior account, and should cover 12 months. Any Account may cover fewer than 12 months, as long as the Account is filed with the Commissioner of Accounts within four months after the ending date of the period that the Accounting covers.

C. Final accountings must show ZERO assets remaining in the fiduciary's hands.

D. All accountings.

1. Values should be shown in dollars and cents. Do not round off to the nearest dollar.
2. Separate itemized lists should be provided for every line specified on the account Cover Page. Those itemized lists must show the separate details of each of the transactions included in the totals on the Cover Page.
3. Forms, instructions, and sample filled-in sample accountings for most types of cases are found at:

<http://www.courts.state.va.us/forms/circuit/fiduciary.html>

At the time that this document is prepared that site does not include a sample filled-in Account for Decedent's Estate, so a sample filled-in Account for Decedent's Estate is attached at the end of this document.

E. Fees to Clerk and Commissioner of Accounts. If you are filing an account that is not a final accounting, the Commissioner of Accounts will send you a bill for Clerk's and Commissioner's fee after the account has been reviewed. If you are filing a final accounting, be sure to contact the Commissioner of Accounts office to find out the final Clerk's and Commissioner of Accounts fees before you distribute the estate.

VI. STATEMENT IN LIEU OF SETTLEMENT OF ACCOUNTS

A. Virginia Code §64.2-1314 permits certain fiduciaries who are the sole residual beneficiaries of estates of decedents to file a Statement in Lieu of Settlement of Accounts. Such a statement may be filed after six months have passed from the date the personal fiduciary qualified, and after all debts, funeral expenses, administration expenses, taxes and bequests have been satisfied, and the residue has been delivered to the residual beneficiaries.

B. If administration of the Estate has not been completed when a Statement in Lieu of Settlement of Accounts is due, the fiduciary(ies) may file instead either an interim account, or a written Notice of Intent to File a Statement In Lieu of Settlement of Accounts.

C. Statements In Lieu of Settlement of Accounts (or Notices of Intent to file same) are due on the same schedule as full detailed accountings. Statements in Lieu of Settlement of Accounts (and Notices of Intent to file same) must be signed by each fiduciary before a notary public, and filed with the Commissioner of Accounts in duplicate along with the appropriate filing fee and receipts showing satisfaction of any bequests other than residual bequests.

VII. HEARING TO RECEIVE PROOF OF DEBTS AND DEMANDS

A. A Debts and Demands hearing is not required by law, but you may want to consider asking the Commissioner of Accounts to hold a Hearing to receive Proof of Debts and Demands (Virginia Code §64.2-550). You may then wish to proceed to obtain an Order of Distribution from the Court in accordance with Virginia Code §64.2-556.

B. If you decide to request a Debts and Demands Hearing, you must submit a written request to the Commissioner of Accounts to hold the Hearing, for which there is a Commissioner's fee and Clerk's fee, plus the cost of the newspaper advertisement. Virginia Code §64.2-550 requires you to give written notice to known creditors and claimants whose claims are disputed. Disputed claims will be heard and the Commissioner of Accounts will file a report with the Court stating his findings on the disputed claims. Any party may file with the Circuit Court exceptions to the Commissioner's report.

VIII. COMPENSATION TO FIDUCIARIES

A. Virginia Code §64.2-1208 provides for fiduciaries to receive "reasonable" compensation. The Commissioner of Accounts determines what is reasonable. Fiduciaries should write to the Commissioner of Accounts when requesting approval of a certain compensation and stating why that compensation is considered reasonable. Make this request in advance of paying any compensation, in case the compensation is not approved.

B. Different types of fiduciaries (Executors, Administrators, Trustees, Conservators, Guardians, etc.) have their compensation calculated differently. The Judicial Council of Virginia has promulgated through the Virginia Supreme Court "Guidelines for Fiduciary Compensation", which are not mandatory or conclusive evidence of reasonable compensation; they are merely guidelines. The Commissioner of Accounts decides what is reasonable compensation in each case, and may award more or less compensation than provided in the "Guidelines", with the final arbiter in case of dispute being the Circuit Court. The "Guidelines" are attached at the end of this "INFORMATION FOR FIDUCIARIES". The "Guidelines" are also found in the *Manual for Commissioners of Accounts* referenced below.

C. Fiduciaries are compensated for the complete handling of the administration of an estate. Therefore, if a fiduciary retains professionals or others to assist him, the fees paid for such assistance are charged against the commission permitted

the fiduciary, if the services could otherwise have been performed by the fiduciary. However, attorney fees for legal work over and above the normal fiduciary functions, e.g., to defend or initiate a law suit or seek Court Orders, may be paid from the estate directly and not charged against the fiduciary's commission. In addition, accountants' fees for tax return preparation, or audits for periods prior to the decedent's death, may be paid from the estate directly and not charged against the fiduciary's commission.

D. Generally, in decedent estates, real estate passes on death directly to the heirs or beneficiaries, and the Executor or Administrator has no control over the real estate. As a result, the commission to Executors and Administrators generally does not consider the value of the real estate. However, if the Will directs the Executor to sell real estate, or if the beneficiaries direct the Executor to sell real estate, or if it is necessary for the Executor or Administrator to sell real estate to pay creditors or beneficiaries, then an Executor's or Administrator's commission based upon the sales price may be allowed by the Commissioner of Accounts. The comments in this paragraph are intended for Executors and Administrators of a decedent's estate, and may or may not be applicable to other types of fiduciaries.

IX. COMPENSATION TO CLERK AND COMMISSIONER OF ACCOUNTS

A. **Compensation to the Clerk of the Court.** Virginia Code § 17.1-275.A.2. specifies fees to the Clerk of the Court for recording the documents that you file with the Commissioner of Accounts. The Clerk's fees are based on the number of pages to be recorded as follows.

1. **Compensation to the Clerk for recording Inventories.** Virginia Code § 17.1-275.A.2. specifies fees that are payable to the Clerk of the Court for recording the Inventories that you file with the Commissioner of Accounts. In most cases, the Clerk collects a \$16.00 Clerk's fee for recording one Inventory at the time the fiduciary qualifies. If the original Inventory does not include more than ten (10) pages there is no extra Clerk's fee at the time the original Inventory is recorded. If the Inventory is more than 10 pages or is a second or subsequent Inventory, the Clerk's fee for recording the Inventory is calculated on the number of pages constituting the Inventory, as follows:

10 or fewer pages including the Inventory form and any itemized lists.....	\$16.00
11 to 30 pages including the Inventory form and any itemized lists.....	\$30.00
31 or more pages including the Inventory form and any itemized lists.....	\$50.00

Checks for Clerk's fees, if any, should be payable to "**Clerk of the Court**", but should be sent to the Commissioner of Accounts.

2. **Compensation to the Clerk for recording Accounts.** Virginia Code § 17.1-275.A.2. specifies fees to the Clerk of the Court for recording the

Accounts that you file with the Commissioner of Accounts. The Clerk's fees are based on the number of pages being recorded, which are (1) the Cover Pages of the Account, and (2) the itemized lists that are called for on the Cover Page. Bank statements, bills, and other documents that you submit in support of your Account will not be recorded, so you do not count those supporting documents when figuring the Clerk's recording fee for Accounts. Because the Commissioner of Accounts will add a page for his Report to the Court, the amount of the Clerk's recording fee should be calculated as follows.

9 or fewer pages including the account Cover Page form and the separate itemized lists	\$16.00
10 to 29 pages including the account Cover Page form and the separate itemized lists	\$30.00
30 or more pages including the account Cover Page form and the separate itemized lists	\$50.00

Checks for Clerk's fees should be payable to "**Clerk of the Court**", but should be sent to the Commissioner of Accounts.

B. Compensation to Commissioner of Accounts. Fees to the Commissioner of Accounts are provided by statute and by Court order. Attached is a copy of the July 31, 2008 order specifying the compensation for the Commissioner of Accounts.

X. DISTRIBUTIONS TO BENEFICIARIES

A. Early distributions. Distributions by a Personal Representative of a decedent's estate (usually an Executor or Administrator) cannot be compelled until six months after the date of appointment of the fiduciary and there are provisions for the beneficiaries to provide bond with surety before distribution. (Virginia Code §64.2-554)

B. Interest on pecuniary amounts. Virginia Code §64.2-425. and § 6.1-330.53 provide that interest on pecuniary amounts payable to beneficiaries under Wills and trusts begins to run after a certain time. As an example, if a pecuniary bequest under a Will is not paid to the beneficiary within one year from the date of decedent's death, the fiduciary must pay the beneficiary the amount of the pecuniary bequest **plus interest from the date** that is one year from the decedent's date of death **to the date** that the bequest is paid to the beneficiary.

C. Death of beneficiary before distribution. When a beneficiary dies after he or she becomes entitled to receive a distribution from a fiduciary, the fiduciary should distribute the deceased beneficiary's share to the Personal Representative (usually an Executor or Administrator) of the deceased beneficiary's estate. The fiduciary should not distribute the deceased beneficiary's share to the deceased beneficiary's heirs or beneficiaries unless the fiduciary has requested and received prior written approval from the Commissioner of Accounts.

XI. BOND AND SURETY

A. Bond is the promise of the fiduciary that the fiduciary will discharge his fiduciary duties as required by law, and that the fiduciary will properly account for all money and property under fiduciary control, or else be personally liable up to the amount of the bond. Surety is the security given or a guarantee by an insurance company that a fiduciary will perform the fiduciary duties. The Court or Clerk fixes the initial amount of the bond and determines initial requirement for surety.

B. Whenever an Inventory or Accounting is filed, and at any other time, depending on circumstances, the Commissioner of Accounts reports to the Court whether bond or surety is sufficient, or whether the bond or surety should be adjusted.

C. A reduction of the amount of bond can be requested by a fiduciary when an Inventory or Accounting is filed that shows assets on hand, plus anticipated income, are less than the amount of the current bond.

XII. INVESTMENT OF ASSETS

A. Fiduciaries are required to invest the assets under fiduciary control, and must make such investments within four months from the time the fiduciary receives the assets (Virginia Code §64.2-1501).

B. Virginia Code §2.2-4519 *et seq* provide lists of securities that fiduciaries may invest in.

C. Virginia Code §64.2-781 *et seq* define the standards of care for investments known as the “Prudent investor rule”.

D. Virginia Code §64.2-1415 deals with liability of fiduciaries for loss of assets, and Virginia Code §55-277.1 *et seq*, deal with the “Uniform Principal and Income Act”.

XIII. GENERAL INFORMATION

A. **Use separate bank accounts and do not commingle funds.** You must not commingle any of your funds or anyone else’s funds with estate funds. That is, for all transactions that you conduct as fiduciary, you must not use any personal account of your own or anyone else’s, or any pre-existing individual or joint account that shows the decedent or incapacitated person as an owner. You should open new and completely separate bank accounts in your name showing your capacity as fiduciary. All receipts, disbursements, and distributions that have to do with the property under your fiduciary care should be through such separate bank accounts in your name as fiduciary.

B. **Filing documents with the Commissioner of Accounts.** You can file any documents with the Commissioner of Accounts by mail, Federal Express, United

Parcel Service, any other carrier, or by personal delivery. You can always file any documents by just dropping them through the mail slot in the Commissioner's front door any time, day or night, weekdays, weekends, or holidays, whether or not the office is open. From time to time the Commissioner's office is closed for short periods for staff and Commissioner trips to the Court, Clerk's Office, bank, Post Office, etc. So, if you plan to come to the Commissioner's office and talk with staff, it is best to call before coming to be sure that the office will be open and that staff will be on hand to help you when you come.

C. Limited Nature of These Notes. These notes are provided as a courtesy of Fauquier County, and it is emphasized that they are merely the broadest outline of some very general and limited aspects of fiduciary administration. Every estate is different, and there are always exceptions and additions to the notes outlined above, as well as much more to consider than that which is outlined above. It is your responsibility as a fiduciary to find out how to administer the estate. The Court, the Clerk's Office, and the Commissioner of Accounts Office cannot be your legal counsel or your accountant. Past experience has shown that, although it costs something to have professional help, it usually saves time and money to seek professional help in administering property as a fiduciary.

D. Additional sources of information. Some of the many additional sources of information other than these notes are:

1. **Help from professionals.** While it can be expensive to have professional help, it usually saves both time and expense to seek professional help if you are not regularly engaged in handling fiduciary matters.
2. **Clerk of the Circuit Court.** The Clerk of the Circuit Court of Fauquier County provides a page on the Fauquier County government's web site titled "Wills and Estates". To reach that page, go to www.fauquiercounty.gov.
Then click "Government"
Then click "Citizen Services"
Under "Courts", click "Clerk of the Circuit Court"
In the side bar click "Wills and Estates"
3. ***Manual for Commissioners of Accounts.*** This three-ring volume is a most valuable resource. It is found in the offices of many professionals, and bank Trust Departments and Wealth Management Departments, and in Commissioner of Accounts offices. The *Manual* is prepared by
**THE STANDING COMMITTEE ON COMMISSIONERS OF
ACCOUNTS OF THE JUDICIAL COUNCIL OF VIRGINIA**
C/O Executive Secretary
Supreme Court of Virginia
100 N. 9th Street

Richmond, Virginia 23219

The **Manual** is available for purchase by anyone from:

Virginia Committee on Continuing Legal Education

PO Box 4468

Charlottesville, VA 22905

Telephone: 800-979-8253

4. **Forms and Instructions and Sample Documents.** One free source of forms for Inventories, Accounts, Statements in Lieu of Settlement of Accounts, instructions, sample accounts showing the minimum detail required, etc., is the official “Virginia Judicial System” website showing Circuit Court Fiduciary Forms and instructions. It is located at: <http://www.courts.state.va.us/forms/circuit/fiduciary.html>
 - a. **Filling out forms.** At the Virginia Judicial System website, you can bring up forms and fill them out online, if you wish. But make sure that you click the button at the top of the forms that says something like, “**Print for Submission to Court**”. If you do not click that button your printed form will have grayed fields, and the Court will not accept such forms.
 - b. **Separate Itemized Lists.** Make sure that you prepare and attach as part of your accountings the separate itemized lists that the account forms specifically call for. Those separate itemized lists should show the details of every transaction. For examples of how this is done, see the sample accounts for your type of case at the website just mentioned. If a sample account for your type of case is not found at this site, you can find a sample in the *Manual for Commissioners of Accounts* mentioned above.

5. **Guardians for Incapacitated Adults.** Some small additional information about the duties of guardians for incapacitated adults and conservators for incapacitated adults is available at the following website: <http://www.courts.state.va.us/forms/circuit/fiduciary.html>

6. **Statutes.** If you are interested in looking at statutes, a website that contains Virginia statutes in searchable form is: <http://leg1.state.va.us/000/src.htm>

7. **A few of the numerous other websites with valuable information.**
 - a. The Fairfax County Commissioner of Accounts’ site is: <http://www.fairfaxcommissionerofaccounts.org>
 - b. The Henrico County Commissioner of Accounts’ site is: <http://www.henicocommissionerofaccounts.com/about>
 - c. If you are an Executor, Administrator, or Curator of a decedent’s estate, another source of general information is The Virginia Bar Association’s publication titled A Guide to Administration of Decedents’ Estates in Virginia at:

<http://216.230.13.18/adminguide.pdf>

8. **Hard copies of certain documents.** If you do not have access to the Internet and would like a copy of any forms, instructions, samples, or this “**INFORMATION FOR FIDUCIARIES**”, just call the Commissioner of Accounts’ office (540-347-2660), and the Commissioner’s office will be glad to mail you any of those items that you request.

E. Important - Get the right help. Various statutes and court orders provide that failure to timely file proper documents or pay fees in a timely manner can result in issuance of summons, report of delinquency to the Court, additional fees and charges to the estate and also to the fiduciary personally, forfeiture of fiduciary commissions, removal of the fiduciary, and other consequences. Fees are due when billed, and failure to pay fees within thirty (30) days of the date billed results in the documents to which the fees relate being considered incomplete, additional fees attaching, and the matter being reported to the Court for action by the Court. Getting professional advice can help you avoid such consequences.

F. See the following attachments

1. Tax Certification form
2. Guidelines for Fiduciary Compensation (for all fiduciaries except Trustees under Deeds of Trust)
3. Guidelines for Fiduciary Compensation (for Trustees under Deeds of Trust)
4. July 31, 2008 Court order setting Commissioners of Accounts Fees
5. Instructions and sample filled-in **Account for Decedent’s Estate**
6. Instructions and sample filled-in **Account for Trust**
7. Instructions and sample filled-in **Account for Incapacitated Adult**
8. Instructions and sample filled-in **Account for Minor**

TAX CERTIFICATION BY THE FIDUCIARY

For the _____ Account
for the Estate of _____
Court File No. _____

Virginia Code § 58.1-22, 58.1-23, and 58.1-911 provide in substance that no Commissioner of Accounts shall file any report of a fiduciary's account until it shall be made to appear to the Commissioner that certain taxes have been paid or provided for. In accordance therewith, the undersigned fiduciary(ies) certify(ies) as follows.

Fiduciaries should fill in the applicable blanks below, and strike out any inapplicable tax paragraphs below.

1. I/we have read Virginia Code §§ 58.1-22, 58.1-23, and 58.1-911, and have made inquiry to both the Treasurer or the Director of Finance of the jurisdiction of Probate, and to the Virginia Department of Taxation with respect to any unpaid taxes and levies assessed against the decedent.
2. A Virginia Estate Tax Return was filed and \$ _____ tax was due and paid (Attach a copy of the closing letter from either the Virginia Department of Taxation or the Internal Revenue Service).
3. Decedent died (date) _____, and the value of all of decedent's assets, including jointly owned property, life insurance, retirement plans, lifetime taxable gifts, and the probate estate did not exceed the exemption equivalent amount of \$ _____; and that therefore, no Virginia Estate Tax Return was required to be filed.
4. I/we have ascertained that no taxes are chargeable against or payable by the undersigned as fiduciary(ies).
5. There remains in the estate a sufficient sum to pay all taxes chargeable against me/us as fiduciaries.
6. All taxes, whether state or local, assessed and chargeable upon the estate and/or its income, have been paid in full. **(Final Accounts must contain this paragraph's certification that all taxes have been paid in full.)**

Date: _____
Fiduciary's signature _____

Date: _____
Fiduciary's signature _____

GUIDELINES FOR FIDUCIARY COMPENSATION
(for all fiduciaries except Trustees under Deeds of Trust)

“Guidelines for Fiduciary Compensation” have been promulgated through the Virginia Supreme Court by the Judicial Counsel of Virginia. The “Guidelines can be found in the *Manual for Commissioners of Accounts* published go to page 82 for the “Guidelines for Fiduciary Compensation”. Those “Guidelines” are set out below for convenience in reference.

INTRODUCTION

In establishing the Standing Committee on Commissioners of Accounts in 1993, the Judicial Council of Virginia charged the Standing Committee with promoting uniformity of practice among commissioners of accounts. Mindful of the Supreme Court’s consistent holdings that the circumstances in each case determine the allowance of fiduciary compensation, the Standing Committee recommended to the Council for approval the following Guidelines for Fiduciary Compensation in order to promote a degree of uniformity among the Commissioners of Accounts in Virginia in their task of determining compensation to be allowed fiduciaries. The guidelines are not intended as a substitute for the analysis that the Commissioner must do to determine the statutory “reasonable compensation” in each case. The Judicial Council approved the Guidelines in December 2004.

A. DECEDENTS’ ESTATES

1. Where the Will clearly sets out compensation in a specific dollar amount or a specific percentage that the Executor is to receive, the will controls, and the Executor is entitled to the amount set out.
2. Where the Will states that the Executor shall receive for services the compensation set out in a referenced published fee schedule in effect at the time such services are rendered, fees as set out in the fee schedule shall be presumed to be reasonable, as that term is used in §64.2-1208. An objecting party has the burden of persuading the Commissioner that fiduciary compensation taken according to such a fee schedule is not reasonable. The Commissioner has the ultimate responsibility of determining the reasonableness of the compensation.
3. Paragraph 2. immediately above does not apply in the case where the Will is silent as to the Executor's compensation. In such a case, if the Executor (corporate or otherwise) uses a published fee schedule to determine compensation, the other guidelines set out herein apply. There is, however, no presumption that such a published fee schedule is not reasonable.

4. Where all parties affected by the amount of the compensation are (i) competent to contract (ii) understand the issues involved (i.e., can give "informed consent") and (iii) agree in writing as to the amount of the compensation to be paid, then the agreement should be honored by the Commissioner.

5. Unless determined as set out in paragraphs 1, 2, or 4 above, the fee to be allowed the Executor on all property in the decedent's probate estate (calculated on the inventory value, including amended inventories) is as follows:

- (a) 5% of first \$400,000.
- 4% of next \$300,000.
- 3% of next \$300,000.
- 2% over \$1,000,000.
- Over \$10,000,000. - by agreement with the Commissioner
(prior consultation is required).

AND

- (b) 5% of income receipts (not including capital gains).

6. The value of real estate will be included as property in the decedent's probate estate for fee purposes only if the Executor is given the power to sell real estate and (i) is instructed to sell real estate in the will, or (ii) is requested to sell real estate by all affected beneficiaries or devisees, or (iii) is required to sell real estate to pay taxes or other charges against the estate, or (iv) the Commissioner determines that such sale is clearly in the best interest of the Estate and the devisees or beneficiaries as a whole.

7. If the Executor employs an attorney or accountant to perform duties that should be performed by the Executor, the fees of those persons should be deducted from the compensation due the Executor. Note that this does not apply to reasonable fees paid to attorneys or accountants for tax work or litigation or other legal services reasonably necessary for the orderly administration of the estate.

8. If the Executor employs an investment advisor, the advisor's fees, if reasonable, should generally not be deducted from the Executor's compensation.

9. The Commissioner may also increase or decrease the otherwise allowable compensation in exceptional circumstances. Factors to be considered in determining the compensation include the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, the responsibilities assumed, the risks incurred and the results obtained. A consideration of these factors could result in a decrease or an increase of the compensation that would otherwise be determined using the standards set out elsewhere in these guidelines.

10. As a general rule, an Executor is not allowed compensation based on the value of assets not includable in the probate estate. The Commissioner may allow such compensation in circumstances where it is necessary for the Executor to assume some

responsibility for the asset. The Executor is advised to make separate fee arrangements with the beneficial owners of non-probate assets.

11. If, after examining these "Guidelines", the Executor has any questions about the fee to be taken in a specific estate he or she should be encouraged to consult with the Commissioner in advance of taking any fee.

NOTE: The use of the word Executor above includes all fiduciaries charged with administering decedent's estates. The words "fee" and "compensation" are used interchangeably.

B. TRUSTS

With respect to Trusts, the specific guidelines for compensation are:

1. Compensation should be taken on an annual basis, based on the fair market value of the trust assets (i.e, principal and undistributed income) at the beginning of the accounting period. Previously distributed income, of course, is not to be counted when determining compensation. Where the required accounting is for a period of less than one full year, (see, for example, §64.2-1306.A), the compensation should be pro-rated.

2. Paragraphs A.1. through A.4. apply to trusts as well.

3. Undistributed income and principal should be treated alike in determining the fair market value of the trust assets at the beginning of the accounting period. The fee schedule set out below applies to undistributed income and principal combined, with no compensation to be calculated on income received and distributed during the year.

4. The schedule of fees is as follows:
1% of the first \$500,000. (.01)
3/4 of 1% of the next \$500,000. (.0075)
½ of 1% over \$1,000,000. (.005)
\$10,000,000. or more - by agreement with the Commissioner
(prior consultation is required).

5. The guidelines set out in A. 7., 8., 9. and 11. above also apply to Trustees. In addition, the Commissioner may reduce the allowable compensation in certain circumstances, such as where the Trustee has delegated total investment responsibility to professionals, or is not making any discretionary distributions.

C. CONSERVATORS AND GUARDIANS

1. The same schedule of fees as set out for Trustees in B. 4. above should apply to both Conservators, Guardians of infants and Trustees of veterans under §64.2-

2016. The percentages should be applied annually to the principal amount as shown on the inventory (initial account) and on the beginning balance of accountings (subsequent accounts). However, an additional fee of 5% should be allowed on non-investment income received during the account period (for example, periodic payments such as retirement payments). Compensation should be pro-rated when the required accounting is for a period of less than one full year (see §64.2-1305.A.). In situations where the ward or incapacitated person dies within a short time after the qualification, the Commissioner could consider additional compensation, understanding that much of the fiduciary's work occurs at the beginning of the estate.

2. The guidelines set out in paragraphs A. 7., 8., 9. and 11., and B. 1. above shall apply where appropriate.

D. SUCCESSOR FIDUCIARIES

Where a fiduciary is succeeded by another, the annual fees (Trustees, Conservators and Guardians) shall be pro-rated. In the case of Executors, the fees shall be based on the guidelines, but the Commissioner should determine the amount to be allowed, based on the factors set out in A. 9. above. More than one full fee may be allowed, if the Commissioner determines this to be appropriate.

E. CO-FIDUCIARIES

1. Generally, one fee will be divided equally among the co-fiduciaries. The co-fiduciaries may agree among themselves on a different division.

2. The Commissioner can agree to an increased fee under all the circumstances of the matter, and considering the factors set out in A. 9. above. See also paragraph A. 11. above.

3. In case of a dispute concerning the division of the fee, the Commissioner may hold a hearing to resolve the dispute, but all of the fiduciaries should first agree to the use of this hearing procedure.

ENDNOTES:

(1) The time to take compensation: Executors no longer must wait to take their fees until the estate is closed; however, the time of taking should bear some relationship to the expected life of the estate, the work already done, and the work remaining to be done.

(2) Statutes: Nothing in these Guidelines is intended to alter any statute concerning fiduciary compensation. See especially §64.2-1217, headed "(w)hen fiduciaries to forfeit their commissions, etc."

(3) Monthly Fees: If the fiduciary's account is set up so that the assets are valued and the fee calculated on a monthly basis, the Commissioner, if requested, may approve the taking of fees on a monthly basis.

(4) Other matters: Reference to the *Manual for Commissioners of Accounts* is recommended where other questions occur. See in particular § 9.204 of the *Manual*, "Fiduciary Compensation and Attorney's Fees."

(5) Suggestions: Suggestions or questions about "Guidelines for Fiduciary Compensation" should be mailed to:

Chair, Standing Committee on Commissioner of Accounts
c/o Office of Executive Secretary
Supreme Court of Virginia
100 North 9th Street
Richmond, VA 23219

**GUIDELINES FOR FIDUCIARY COMPENSATION
FOR
TRUSTEES UNDER DEEDS OF TRUST**

This attachment is not applicable to fiduciaries who qualify before the Court or the Clerk of the Court because Trustees under Deeds of Trust do not qualify before the Court or the Clerk of the Court. The information below on compensation for Trustees under Deeds of Trust is included here for completeness only.

- a. **Amount.** Virginia Code § 55-59.4.(A)(3) provides for a “reasonable” Trustee commission. There are Circuit Court rulings that Trustee commission of a flat 5% of the sale price is not necessarily reasonable. Unless the Deed of Trust specifies a fixed amount or percentage for Trustee commission that is reasonable, the Commissioners of Accounts for Fauquier County will, in the absence of unusual circumstances, look initially to the “Interim Fiduciary Compensation Schedule Foreclosure Trustees” adopted June 27, 2008, by the Fairfax County Circuit Court to define reasonable Trustee commission. That guideline is in the *Manual for Commissioners of Accounts* and can also be accessed online at:

<http://www.fairfaxcommissionerofaccounts.org/open/page.htm?shortname=resource.fidcomp.foreclosurefidcomp>

That guideline typically allows a Trustee commission based upon the foreclosure sales price in accordance with the following schedule.

First \$200,000.00	5%
Next \$150,000.00	4%
Next \$150,000.00	3%
Balance over \$500,000.00	2%

Please keep in mind that the above is a guideline only, and that the final determination of reasonable Trustee commission in each case remains initially with the Commissioner of Accounts and ultimately with the Circuit Court. If you feel that a case warrants a higher Trustee commission than would be produced by the above guideline, it is recommended that you seek the Commissioner of Accounts’ approval before paying same.

- b. **Forfeiture of Trustee Commission.** Virginia Code §64.2-1309 contains certain specific requirements that must be complied with. That section specifies that “Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court.” Therefore, **note carefully** that unless all of the specific requirements of that Code section are timely met, including providing the Commissioner of Accounts with of all necessary supporting documents at the time the account is filed with the Commissioner of Accounts, the Commissioner of Accounts does not have authority to approve Trustee commissions.