

## MULTI-STATE PROBATE ISSUES FOR VIRGINIA REAL PROPERTY ASSETS

1. Personal property assets located in Virginia are generally accessible to foreign P.R. without need of probate in Virginia.
2. Probate of Copy of will proved outside the Commonwealth; authenticated copy.  
*Virginia Code §64.2-450*

“A Will relative to an estate within the Commonwealth has been proved in another jurisdiction, an authenticated copy of the will and the certificate of probate of the will may be offered for probate in” Virginia. A rebuttable presumption stands that the will was duly executed and admitted as a will of personal estate in the primary probate jurisdiction. If the will admitted to probate in another jurisdiction was executed as to be a valid will of real estate in Virginia it may be admitted a will of real estate too. “An authenticated copy of any will which has been self-proved under the laws of another state” will be admitted as a will of personal and real estate in Virginia when offered with its authenticated certificate of probate.

3. Validation of certain conveyances by foreign executor.  
*Virginia Code §64.2-524*

An executor or trustee of a testamentary trust established in a will probated according to the laws of another state prior to conveyance of the real estate in Virginia is valid to pass the title of such real estate if the executor or testamentary trustee duly qualified according the laws of the state where the will was probated and the will under which the executor or testamentary acts was executed according to Virginia law as a valid will with power to convey real estate conferred upon the executor or testamentary trustee and an authenticated copy of the will has been admitted to probate in Virginia in the county or city in which the real estate or any part of it is situated.

3. Real estate of decedent as assets for payment of debts  
*Virginia Code §64.2-532*

If personal estate insufficient to satisfy, all real estate are assets for payments of decedent’s debts and demands against his estate.

4. Liability of heir or devisee for value of real estate sold and conveyed; validity of premature conveyances  
*Virginia Code §64.2-534*

Any heir or devisee who sells and conveys R.E. within one year after death of decedent is liable to creditors of such decedent except as per 64.2-535

5. When sale and conveyance within one year valid against creditors; proceeds paid to special commissioner; bond to obtain proceeds.  
*Virginia Code §64.2-535*

6. Conveyance to beneficiaries vs. P.R. sale

R.E. “drops like a stone” directly to beneficiary(ies) or heirs at law and no sale is made by P.R. unless directed by Will or R.E. asset needed to pay debts of decedent. Beneficiaries or heirs may sell inherited property.

If Will directs P.R. to sell real estate, P.R. can do so and Proceeds of sale of R.E. in VA will be paid to foreign P.R. to account as required by primary probate jurisdiction. No separate accounting with Virginia court is required.

7. Deed not required to convey R.E. if devised by Will since Will makes conveyance. Many record Deeds of Confirmation for clarity and ease of title search.

6. Affidavit of real estate of intestate decedent  
*Virginia Code §64.2-510*

Any person with an interest in R.E. that is part of intestate decedent’s estate, including the qualified personal rep., may execute an affidavit on a form provided to each clerk of court by the OES of the Supreme Court or a computer-generated facsimile ... form no.?

The clerk of the circuit court where the affidavit is recorded shall transmit an abstract of the aff. To the commissioner of revenue of such jurisdiction. To transfer the real estate upon the land books and assess the r.e. in accordance with

Suit in equity by foreign P.R against heirs or devisees required if R.E. must be sold to pay debts and P.R. of intestate decedent or if beneficiaries sell R.E. before administration is complete. File notice of *lis pendens* at commencement of suit.

### **Creditors Claims:**

Generally, creditor claims are handled by foreign P.R. through exercise of authority granted under will.

If Virginia. R.E. must be sold to pay debts, foreign P.R. must file suit in equity against heirs to intestate or if Will does not to give P.R. authority over real property sufficient under Va. law. P.R. should file Notice of *lis pendens* at commencement of suit.

If P.R. does not honor a claim, there is no clearly specified remedy. However a creditor could file an action at law against the P.R. and the beneficiaries and heirs. Again filing a notice of *lis pendens* at commencement of action can prevent sale during pendency of action.

A creditor may succeed in qualifying as Administrator for an estate under certain circumstances including those described in the following two statutes:

#### **§ 64.2-502. Grant of administration of intestate estate.**

4. After 60 days have passed since the decedent's death, the court or the clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or person other than a distributee certifies that he has made a diligent search to find an address for any sole distributee and has sent notice by certified mail to the last known address of any such distributee of his intention to apply for administration at least 30 days before such application, or that he has not been able to find any address for such distributee. Qualification of a creditor or person other than a distributee is not subject to challenge on account of the failure to make the certification required by this subdivision.

#### **§ 64.2-500. Grant of administration with the will annexed.**

A. If the will does not name an executor, or the executor named refuses to accept, fails to give bond, or dies, resigns, or is removed from office, the court or clerk may grant administration with the will annexed to a person who is a residual or substantial legatee under the will, or his designee, or if such person fails to apply for administration within 30 days, to a person who would have been entitled to administration if there had been no will.

## **Tax matters re. sale of realty by foreign P.R.:**

Brokers and other R.E. reporting persons per Sec. 6045 of IRC are required to complete form R-5 for each nonresident Client who receives income from rental or sale of Virginia real estate and to file the form with VA Dept. of taxation. Nonresident estates and trusts are included. (sample attached)

### **8. Definitions of Child in determining inheritance rights:**

Adopted children take same as biological children unless a Contrary Intent appears in Will, Trust or Deed. This definition of child also applies to terms “issue” and “descendants” and similar terms.

Biological children born out of wedlock take same as those born to marriage if certain requirements and rules are met

*Virginia Code §20-31.1 annotations after statute*

### **9. Common Law spouse:**

Virginia does not recognize a common law marriage formed in Virginia because a common law marriage formation is invalid in Virginia. However, Virginia will recognize as valid a common law marriage formed in accordance with the laws of another state which recognizes common law marriages as valid.

*Offield v. Davis, 100 Va. 250 (1902); Hewitt v. Hewitt, 77 Ill.2d 49, 394 N.E.2d 1204 (1979) also Reynolds v. Reynolds, Fairfax Circuit Court, CH 17823, December 13, 2002*