

## **CHAPTER 30.1-21 CLOSING ESTATES**

### **30.1-21-01. (3-1001) Formal proceedings terminating administration - Testate or intestate - Order of general protection.**

1. A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and, after receiving satisfactory evidence of payment of any estate tax due, directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.
2. If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

### **30.1-21-02. (3-1002) Formal proceedings terminating testate administration - Order construing will without adjudicating testacy.**

A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 30.1-21-01.

### **30.1-21-03. (3-1003) Closing estates - By sworn statement of personal representative.**

1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate

by filing with the court a verified statement stating that the personal representative, or a prior personal representative whom the personal representative has succeeded, has:

- a. Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and by distributing the assets of the estate to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or the statement must state in detail other arrangements that have been made to accommodate outstanding liabilities.
- b. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

If the personal representative has published and mailed notice to creditors as provided by section 30.1-19-01, the personal representative may not file the verified statement until three months after the date of the first publication and mailing.

2. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

#### **30.1-21-03.1. Estate closing - Procedures.**

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed. The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of the order to show cause, the date of the hearing, and of their right to participate in the hearing proceedings.
2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a time frame for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment adviser, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

#### **30.1-21-04. (3-1004) Liability of distributees to claimants.**

After assets of an estate have been distributed and subject to section 30.1-21-06, an undischarged claim, not barred, may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property,

homestead or family allowances, or for amounts in excess of the value of the distributee's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who has failed to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the distributee's right of contribution against other distributees.

**30.1-21-05. (3-1005) Limitations on proceedings against personal representative.**

Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

**30.1-21-06. (3-1006) Limitations on actions and proceedings against distributees.**

Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or unless otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

1. Three years after the decedent's death.
2. One year after the time of distribution thereof.

This section does not bar an action to recover property or value received as the result of fraud.

**30.1-21-07. (3-1007) Certificate discharging liens securing fiduciary performance.**

After the personal representative's appointment has terminated, the personal representative, the personal representative's sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the court that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**30.1-21-08. (3-1008) Subsequent administration - Fee.**

If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. Any person filing a petition under this section shall pay to the clerk of district court a filing fee as prescribed in section 27-05.2-03. If a new appointment is made, unless the court orders otherwise, the provisions of this title apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.