



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

November 20, 2014

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Brenda S. Hamilton
Clerk of Court
Circuit Court of the City of Roanoke
315 Church Avenue, S.W.
Post Office Box 2610
Roanoke, Virginia 24010

Dear Ms. Hamilton:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire regarding the authority of a circuit court clerk, under § 64.2-1302 of the *Code of Virginia*, to waive inventory and settlement filing requirements associated with the administration of a decedent's estate. You specifically ask whether heirs, beneficiaries, and creditors, in order to qualify for the filing waiver, all must have claims that exceed the value of an estate. You further ask what proof is required to show that a person has a claim that exceeds the value of the estate.

Response

It is my opinion that only the claims of a creditor seeking qualification for the filing waiver must exceed the value of the estate in order for the exemptions provided in § 64.2-1302 to apply. Further, it is my opinion that what constitutes sufficient proof of a claim exceeding the value of the estate is a matter within the discretion of the clerk.

Applicable Law and Discussion

Generally, as part of qualifying as a personal representative or other fiduciary responsible for the administration of a decedent's estate, the person seeking qualification must file an inventory of the decedent's assets¹ and a settlement of the account.² The General Assembly, however, has provided an exemption from these filing requirements for estates below a certain value. Specifically, § 64.2-1302 of the *Code of Virginia* provides that

When a decedent's personal estate passing by testate or intestate succession does not exceed \$25,000 in value and an heir, beneficiary, or creditor *whose claim exceeds the value of the estate* seeks qualification, the clerk of the circuit court shall waive the

¹ See VA. CODE ANN. § 64.2-1300 (2012).

² See § 64.2-1206 (2012).

inventory under § 64.2-1300 and the settlement under § 64.2-1206. This section shall not apply if the decedent died owning any real estate over which the person seeking qualification would have the power of sale.^[3]

You first ask whether any named class of person seeking qualification, whether heir, beneficiary, or creditor, must have a claim that exceeds the value of the estate. A 1987 Opinion of this Office directly addresses this question.⁴ That Opinion construed identical language contained in a predecessor statute to § 64.2-1302. In interpreting the earlier statute, this Office stated that, “[w]hile the statute is ambiguous on its face, it must be afforded that interpretation which gives it a rational and sensible effect.”⁵ The Opinion then reasons that, because neither an heir nor a beneficiary can claim more than the entire value of a decedent’s estate, “the phrase ‘whose claim exceeds the value of the estate’ applies only to a creditor.”⁶ I similarly conclude that the language cannot apply to heirs and beneficiaries. Moreover, although the provision at issue has been recodified since the issuance of the 1987 Opinion, the General Assembly otherwise has not amended the operative language to warrant a different conclusion.⁷ Thus, for estates valued under \$25,000, waiver of the inventory and settlement filing requirements is available to heirs and beneficiaries irrespective of the value of their share of the estate, but a creditor must have a claim that exceeds the value of the estate.

You next ask what proof the creditor must present in order to establish that his claim exceeds the value of the estate.⁸ The 1987 Opinion also provides guidance with respect to this inquiry. Although the Opinion discusses the proof required to establish that the estate, rather than a claim, does not exceed the statutory limit,⁹ the conclusions of the prior opinion are restated here. Because the statute does not direct what proof the creditor must offer, it is my opinion that such required evidence is a matter within the discretion of the clerk, and should consist of whatever is reasonable and credible under the circumstances.¹⁰

Conclusion

Accordingly, it is my opinion that only a creditor seeking qualification must have a claim exceeding the value of the estate in order for the exemptions provided in § 64.2-1302 to apply. Further, it

³ Section 64.2-1302 (Supp. 2014) (emphasis added).

⁴ 1987-88 Op. Va. Att’y Gen. 360 (construing former § 26-12.3, predecessor statute to § 64.2-1302).

⁵ *Id.* at 360 (citing *Whitlock v. Hawkins*, 105 Va. 242, 267, 53 S.E. 401, 409 (1906)).

⁶ *Id.*

⁷ “The legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view.” *Beck v. Shelton*, 267 Va. 482, 492, 593 S.E.2d 195, 200 (2004) (quoting *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157, 161-62, 300 S.E.2d 603, 605-06 (1983)). The only substantial change to the statute since the issuance of the prior Opinion is the value of the estate that triggers the waiver. Former § 26-12.3 applied to estates valued at no more than \$5,000. *See* 1987-88 Op. Va. Att’y Gen. 360. In 2014, the amount was raised from \$15,000 to \$25,000. 2014 Va. Acts ch. 532.

⁸ Because I conclude that only a creditor can have a claim that exceeds the value of the estate, only a creditor would be required to provide proof that the claim actually exceeds the value of the estate.

⁹ 1987-88 Op. Va. Att’y Gen. at 361.

¹⁰ *See id.* (suggesting a sworn statement from an heir concerning the value of the estate may be acceptable as proof of the value of the estate).

Honorable Brenda S. Hamilton

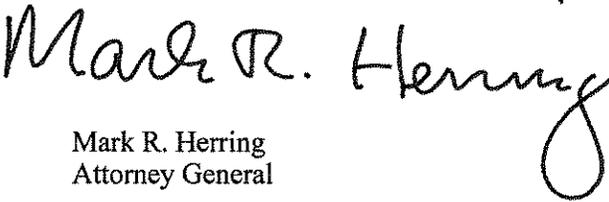
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is my opinion that what constitutes sufficient proof of a claim exceeding the value of the estate is a matter within the reasonable discretion of the clerk.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and a long, sweeping "g".

Mark R. Herring
Attorney General