

PROBATE AND FIDUCIARY PROCEEDING RULES
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NOTICE: These draft rules have not been reviewed by the **Advisory Committee on Rules of Court** and have not been reviewed or approved by the **Virgin Islands Supreme Court**. They are being published in preliminary form, with permission of the Court, for comment by the Bench and Bar of the Virgin Islands.

PLEASE SEND ALL COMMENTS AND SUGGESTIONS BY NOVEMBER 19, 2018 to the Advisory Committee on Rules of Court, c/o Professor Kent Sinclair at this e-mail address:

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PART A: PROBATE PROCEEDINGS

Rule 1. Scope of rules

In probate, guardianship, trust and other fiduciary proceedings, the Virgin Islands Rules of Civil Procedure apply so far as practicable and to the extent that matters of procedure are not specifically provided for by law or these Probate and Fiduciary Proceedings rules, which supplement the Virgin Islands Rules of Civil Procedure and are to be construed in harmony therewith.

Rule 2. Magistrate judges

As provided in 4 V.I.C. § 123(a)(4), a magistrate judge may hear all probate matters. Appeal from any final order or judgment of the magistrate judge in a probate proceeding must be taken to the Appellate Division of the Superior Court.

Rule 3. Probate of wills and appointment of executors or administrators *cum testamento annexo* (C.T.A.); testate petition

PROBATE AND FIDUCIARY PROCEEDING RULES

(a) The initial step in the administration of the estate of a deceased person who died testate or left a will is the filing of the petition for probate of a will and for letters testamentary or letters of administration *cum testamento annexo* (C.T.A.).

(b) A petition for the probate of a will and for letters testamentary or letters of administration C.T.A. of an estate shall be in writing setting forth in numbered paragraphs:

- (1) the residence and citizenship of the petitioner and by what right the petitioner makes application;
- (2) the date of death of the deceased person and the deceased's last domicile;
- (3) the location, character, and estimated value of the estate of the deceased as nearly as the petitioner can estimate, listing separately the total value of real property and the total value of personal property;
- (4) the total amount of the debts of the deceased person as nearly as the petitioner can estimate;
- (5) the names and addresses of the heirs and next of kin of the deceased, known to the petitioner, entitled to a share of the deceased's estate under the laws of intestacy and descent and distribution of this jurisdiction; the relation of each such person to the deceased; the proportion of the estate due each such heir or kin, and whether each such person is an adult or a minor;
- (6) a reference to the tendered will and the names of all heirs and next of kin that have signed a waiver or waivers consenting to the probate of the tendered will and to the issuance of letters testamentary or letters of administration C.T.A., which waiver(s) of consent shall be affixed to the petition;
- (7) the amount of bond required of the executor (or administrator C.T.A.), unless the will provides that no bond shall be required;
- (8) the requirements of the deceased's spouse and children of the deceased for support from the estate, if any.

(c) A petition filed pursuant to this rule may also contain the following requests to the court:

- (1) for citation against such heirs or next of kin for whom signed waivers have not been obtained prior to the filing of the petition;
- (2) for appointment of a guardian or guardian *ad litem* for such heirs or next of kin as may be minors, persons with disabilities, incapacitated persons or protected persons, if necessary;
- (3) for admission of the will to probate;
- (4) for the issuance of letters testamentary or letters of administration C.T.A.;
- (5) for the fixing or waiving of bond;
- (6) for support of the deceased's spouse and children, if necessary;
- (7) for such other special or general requests as the exigencies of the particular case may require.

(d) The following documents shall be annexed to the petition:

- (1) the will of the deceased identified in the petition;

- (2) an original or certified copy of the death certificate; and
- (3) an unsworn declaration made under penalty of perjury, or a notarized affidavit, signed by an attorney or a relative of the deceased or some other interested person in the form substantially as follows:

On this ____ day of _____, _____, personally appeared _____, who on oath says that s/he does not know of any will or codicil of _____, the deceased, other than the instrument in writing hereto annexed, said instrument dated _____, _____; that s/he received the same from _____, and upon information and belief, the deceased died on or about _____, _____.

Signature and Printed Name

Rule 4. Intestate petition; appointment of administrators

- (a) If the deceased died intestate, the initial step toward administration of the estate is the filing of a petition for administration and for letters of administration.
- (b) A petition for administration of an estate pursuant to this rule shall be in writing setting forth in numbered paragraphs:
 - (1) the residence and citizenship of the petitioner and by what right the petitioner makes application;
 - (2) the date of death of the deceased person and the deceased's last domicile;
 - (3) a statement that the deceased died intestate and left no will;
 - (4) the location, character, and estimated value of the estate of the deceased as nearly as the petitioner can estimate, listing separately the total value of real property and the total value of personal property;
 - (5) the total amount of the debts of the deceased person as nearly as the petitioner can estimate;
 - (6) the names and addresses of the heirs and next of kin of the deceased, known to the petitioner, entitled to a share of the deceased's estate under the laws of intestacy and descent and distribution of this jurisdiction; the relation of each such person to the deceased; the proportion of the estate due each such heir or kin, and whether each such person is an adult or a minor;
 - (7) the names of all heirs and next of kin that have signed a waiver or waivers consenting to the probate of the deceased's estate and to the issuance of letters of administration to the petitioner, which waiver(s) of consent shall be affixed to the petition;
 - (8) the amount of bond required of the administrator, if any.
- (c) A petition filed pursuant to this rule may also contain the following requests to the court:
 - (1) for citation against such heirs or next of kin for whom signed waivers have not been obtained prior to the filing of the petition;

- (2) for appointment of a guardian or guardian *ad litem* for such heirs or next of kin as may be minors, persons with disabilities, incapacitated persons or protected persons, if necessary;
- (3) for the issuance of letters of administration;
- (4) for the fixing or waiving of bond;
- (5) for support of the deceased's spouse and children, if necessary;
- (6) for such other special or general requests as the exigencies of the particular case may require.

(d) The following documents shall be annexed to the petition:

- (1) an original or certified copy of the death certificate; and
- (2) an unsworn declaration made under penalty of perjury, or a notarized affidavit, signed by an attorney or a relative of the deceased or some other interested person in a form substantially as follows:

On this _____ day of _____, _____, personally appeared _____, who on oath says that s/he does not know of any will or codicil of _____, the deceased, and upon information and belief, the deceased died on or about _____, _____.

Signature and Printed Name

Statutory References

Allegations in application to prove a will or for appointment of executor, or administrator, see 15 V.I.C. § 232; Disposition of estates without administration, see 15 V.I.C. § 191 et seq.; Proof of wills, see 15 V.I.C. § 231; Wills which may be proved, see 15 V.I.C. § 16.

Rule 5. Citation to heirs at law and next of kin; waiver and notice

(a) If the deceased died testate, there may be filed with the petition for probate of the will, a waiver or waivers consenting to the probate and for the issuance of letters testamentary or letters of administration C.T.A., signed by the heirs and next of kin who, in the absence of a will, would be entitled to a share of the deceased's estate under the laws of intestacy and descent and distribution of this jurisdiction, or by so many of them as will sign. Waivers should be substantially in the form as follows:

I, the undersigned, being one of the adult heirs at law and next of kin of _____, deceased, having read and being fully acquainted with the contents of the will of said deceased, said will dated _____, _____, and having read and being fully acquainted with the contents of the petition to probate the will and for letters testamentary (or letters of administration C.T.A.) and for other purposes, do hereby waive

citation or publication of advertisement, and do hereby consent to the probate of the will and request that the said will be admitted to probate and be recorded as the will of _____, the deceased, and of deceased's real and personal estate; that _____ be appointed as executor(s) (or administrator(s) C.T.A.) of the estate of _____, deceased; and that the court act upon and grant all the requests of said petition without further notice to me.

Signature and Printed Name

(b) If any living heirs or next of kin shall not have signed a waiver, the petitioner or petitioner's attorney shall, upon request to the court, cause to be issued by a judge or magistrate judge of the Superior Court or the clerk of the court, a citation to each such living heir or next of kin for such heir or kin to show cause, if any, why the petition and letters testamentary (or letters of administration C.T.A.) should not be granted.

(c) An issued citation may be served by the petitioner or by petitioner's attorney or agent, or by the marshal in the same manner as service of process generally is served. If service is made by a person other than the marshal, acknowledgment of service must be endorsed upon the original citation by the person served and the original endorsed citation shall be filed with the clerk of the Superior Court. If the person served is outside the jurisdiction, service may be made by certified mail and proof of such service shall be established by an affidavit of mailing, which shall be filed with the clerk of the Superior Court.

(d) For each issued citation, a copy of the petition shall be attached to the citation and the citation, along with a copy of the petition, shall be served within 30 days of its issuance. Proof of service of the citation and copy of the petition shall be filed with the court prior to the appearance required by the citation, which shall not occur before the expiration of 40 days from the issuance of the citation or more than 60 days from the issuance of the citation.

(e) The citation herein provided for shall be in form substantially as follows:

To: _____

Greetings,

If you have any cause to show why the document, dated the ____ day of _____, _____, purporting to be the last will and testament of _____, deceased, should not be admitted to probate and record, and why Letters Testamentary (or Letters of Administration C.T.A.) should not be granted to _____, the executor(s) named therein (or the administrator(s) C.T.A.), you shall appear and make such cause known before the Superior Court of the Virgin Islands at _____, on _____, _____.

PROBATE AND FIDUCIARY PROCEEDING RULES

DATED, ATTESTED AND SEALED on this ___ day of _____, _____

Hon. _____
Judge/Magistrate Judge
Superior Court of the Virgin Islands

Clerk of the Court
Superior Court of the Virgin Islands

(f) If actual notice cannot be given to any living heirs or next of kin as herein provided, any judge or magistrate judge of the Superior Court, upon the request of the petitioner or petitioner's attorney, shall issue an order directing notice to be published once a week for three consecutive weeks in a newspaper of general local circulation in the judicial division and jurisdiction in which the deceased last lived or owned assets. The petitioner shall file proof of publication with the court within 21 days from the date of last publication. The publication notice shall be in the form substantially as follows:

Application having been made to the Superior Court of the Virgin Islands for probate of the last will and testament of _____, the deceased, and for letters testamentary (or letters of administration C.T.A.) of said estate, it is ordered this ___ day of _____, _____, that _____ and all others concerned are directed to appear before the Superior Court of the Virgin Islands on _____, at _____, to show cause why such application should not be granted.

Hon. _____
Judge/Magistrate Judge
Superior Court of the Virgin Islands

Clerk of the Court
Superior Court of the Virgin Islands

(g) If the deceased died intestate, and the person seeking letters of administration for the estate is a person entitled to such letters under the provisions of the Code, no waiver or citation is required. If several persons have equal right to administer an estate, the petition for administration shall be endorsed with a declaration of consent or acknowledgment of notice signed by the other person or persons equally entitled to administer the estate. If such consent cannot be obtained, or if the petitioner is a creditor, notice shall be given to the living heirs and

next of kin pursuant to subsection (f) of this rule. In all instances, a copy of the petition for administration shall be delivered personally or by registered mail to the surviving spouse, children and any other next of kin of the deceased. Proof of such delivery shall be made by declaration under penalty of perjury, or notarized affidavit, which shall be filed with the clerk of the Superior Court.

Rule 6. Minors, persons with disabilities or incompetent heirs or next of kin

(a) Pursuant to the request made in a petition for probate of a will or administration under these rules, or upon separate petition of any interested person, the court may appoint a guardian *ad litem* for any minor, person with disability/disabilities, or incompetent heir or next of kin. When such a petition is filed, the person with custody of the minor, if within the Virgin Islands, and the minor, if 14 years of age or older and within the Virgin Islands, shall appear before a judge or magistrate judge of the Superior Court for examination concerning the appointment of a guardian *ad litem*, which appointment shall be within the discretion of the court. Persons with disabilities or incompetent heirs or next of kin and their custodian, legal representative, or agent may be summoned to appear before a judge or magistrate judge of the Superior Court for examination concerning the appointment of a guardian *ad litem*, which appointment shall be within the discretion of the court.

(b) Where appointment is made by the court, the guardian *ad litem* shall make careful investigation of the rights of the ward or wards, examining the contents of the petition, and all attachments thereto. The guardian *ad litem* then shall file a verified response to the original petition for probate of a will or administration. This response, designated "Answer of Guardian *Ad Litem*," shall reflect the consent or objection of the guardian *ad litem* on behalf of the ward or wards to the petition and admission of the will to probate and to the issuance of letters testamentary (or administration C.T.A.), for a testate petition, or to the administration of the estate and the issuance of letters of administration, for an intestate petition. The answer, if consenting, shall state the actual steps taken by the guardian *ad litem* as satisfaction that the interests of the ward or wards will not be prejudiced.

Rule 7. Will contests; procedure

(a) Any person claiming any interest in an estate may, at any time before final order of distribution, file within the probate proceeding a pleading designated "Declaration of Contest," setting forth an interest in the estate and the nature and basis of objection to the document or documents offered as the will of the testator. A copy the Declaration of Contest shall be properly served on the proponent of the will and/or the court-approved executor of the will, in accordance with the applicable rules of civil procedure, and an affidavit of this service shall appear at the end of the Declaration of Contest when it is filed.

(b) An answer to the Declaration of Contest shall be made in the same manner and within the same time period as a complaint in a civil action. There shall appear at the end of the Declaration of Contest and upon the copy served on the proponent and/or court-approved executor of the will, a notice directed to the proponent and/or the court-approved executor, signed by the person filing the Declaration of Contest, indicating the time within which an answer is required.

(c) The contest shall be placed on the calendar within 30 days and shall come on for an evidentiary hearing in the same manner as a civil action.

Rule 8. Proof of wills

(a) Upon compliance with all of the formal requirements preliminary to the granting of letters testamentary, the petitioner or proponent of the will shall file with the court a declaration under penalty of perjury, or a notarized affidavit, setting forth that the petitioner or proponent of the will has submitted to the court the original will of the deceased and that the will was executed with the formalities required by law. Thereafter, the proponent may present for the signature of the judge an order for probate.

(b) The court may, in its discretion, require such proof of the proper execution of the will be made by sworn testimony of one or more of the attesting witnesses appearing personally before the magistrate judge, by deposition of one or more attesting witnesses taken wherever they may be located or by affidavit of the subscribing witnesses, executed at or subsequent to the execution of the will in accord with the provisions of 15 V.I.C. § 22. Such affidavits of the subscribing witness or witnesses shall be admissible to establish the contents thereof related to the execution of the will, but the weight to be accorded such affidavits shall be determined by the court.

Rule 9. Safe keeping of wills; procedure for release

(a) Any Last Will held by the Superior Court for safe keeping shall be released in the manner prescribed:

- (1) delivered only to the testator appearing in person upon request; or
- (2) delivered to a person or persons other than the testator upon the testator's written request, duly proved by affidavit; or
- (3) delivered to the person or persons named in the indorsement on the packaging of such will, if any such indorsement be present thereon.

(b) Any Last Will that has been sealed, recorded and indorsed for safe keeping at the Superior Court pursuant to 15 V.I.C. §§ 22 and 23, and which has not already been delivered pursuant to 15 V.I.C. § 24, after the death of the testator, shall publicly be opened by the clerk of the court in accordance with 15 V.I.C. § 25. The clerk shall examine and make known the contents of the Last Will, the original which shall thereafter be filed in the clerk's office until it has been duly proved according to the Code, at which time the will shall be delivered to the person entitled to the custody thereof, or until required by the authority of some competent court to produce the will before it.

Rule 10. Grant of letters; bond

(a) A petitioner for the probate of a will or for administration may present an order for probate or administration upon compliance with the prescribed preliminary procedures articulated under these rules. Letters Testamentary, Letters of Administration C.T.A. or Letters of Administration will be issued upon the basis of the order for probate or administration provided, however, letters shall not be issued until the appropriate bond is furnished or waived as hereinafter provided.

(b) The order for probate or administration shall recite the amount of the bond required, if any, of the executor or administrator. No executor or administrator may act as such until the appropriate bond and corresponding sureties, if applicable, are approved by the court. Bond will be waived where a testator has so directed or where within the discretion of the court, the waiver of the bond is permitted.

Rule 11. Grant of letters; notice to creditors

(a) Every executor and administrator shall, within 30 days of appointment, give notice of the appointment and instruction to all persons having claims against the estate to present, or deliver to the executor or administrator, their claim(s), verified by affidavit, to a place within the territory specified in the notice, within six months from the date of the notice, and that all persons indebted to the estate are required to make prompt payment to the executor or administrator. The notice to be published and posted shall be in substantially the following form:

Estate of _____, deceased.

Notice is hereby given that the undersigned has been appointed executor (or administrator) of the above estate. All persons having claims against the estate are required to present all claims within six months from the date of this notice, verified by affidavit, and all persons indebted to the estate to make payment, promptly, to _____.

Executor (or Administrator)

Attorney for the Estate

(b) Notice shall be given by publication in a newspaper of general circulation published within the territory, once a week for four consecutive weeks, in the judicial division and jurisdiction in which the deceased died or left assets. The notice shall also be posted in at least three public places in such judicial division and jurisdiction, one of which shall be at or as near as may be to the post office nearest the last known residence of the deceased, if the deceased resided in the territory, or nearest any assets within the territory owned by the deceased, which posting shall not conflict with local or federal law. Such newspapers and places of posting may be designated by the Superior Court of the Virgin Islands from time to time by standing order, pursuant to 15 V.I.C. § 391, and no special order of designation will be required for individual estates.

Statutory References

Bond of executor or administrator, see 15 V.I.C. § 239; Failure of executors to accept or qualify, see 15 V.I.C. § 234; Issuance of letters testamentary, see 15 V.I.C. § 233; Priority in appointment of administrators, see 15 V.I.C. § 236; Priority of husband as administrator, see 15 V.I.C. § 237;

Qualifications of executors and administrators, see 15 V.I.C. § 235; Special administrators, see 15 V.I.C. § 238.

Rule 12. Inventory; appraisal

(a) Within 14 days after the issuance of letters testamentary or of administration, the executor or administrator shall make request to the court and submit an order for the appointment of two disinterested and competent appraisers, who shall be named in the request, with affidavits attached thereto, from the appraisers indicating that they will honestly and impartially appraise the property exhibited to them according to the best of their knowledge and ability.

(b) Upon the entry of an order appointing the appraisers, the executor or administrator shall promptly make an inventory, verified by oath, of all real and personal property of the deceased, within the possession or knowledge of such executor or administrator, and shall deliver such inventory to the appraisers for appraisal.

(c) Within 30 days following appointment, unless the time be extended by the court upon request, the appraisers shall appraise each item contained in the inventory, separately, and record its value in accordance with the provisions set forth in 14 V.I.C. § 314(c). The appraisers shall date and execute in their own names such inventory and completed appraisal for delivery to the executor or administrator who shall, within 14 days after receipt of the executed inventory and appraisal, unless the time be extended by the court, file the inventory with appraisal with the clerk of the court along with an application for the payment of fees charged by the appraisers which, if approved by the court, shall be paid from the deceased's estate.

(d) The administrator or executor shall not be required to file a motion for the appointment of appraisers if the inventory contains no items of property requiring appraisal.

Statutory References

Inventory and appraisal, see 15 V.I.C. § 311 et seq.

Rule 13. Safe Deposit Box; inspection and inventory

(a) Prior to the appointment of an administrator or executor, any interested person may make application to the court, through the filing of a petition, for authority to open a safe deposit box located within the territory. Whenever it appears to the satisfaction of the court that a bank or other institution has leased to the deceased, either as an individual or joint lessee, a safe deposit box within the territory, the court may issue an order directing the bank or other institution to permit the person named in the order, within 21 days of the court's order, to open the safe deposit box and to examine the contents therein, in the presence of an officer or other authorized employee of the bank or other institution. No items contained in the safe deposit box other than a writing purporting to be a will/codicil shall be removed from the safe deposit box.

(b) A petition for authority to open a safe deposit box shall be in writing setting forth in numbered paragraphs:

- (1) the petitioner's name, address, relationship to the deceased and interest in the estate;
- (2) the deceased's name, address, date and place of death;

- (3) an original or certified copy of the deceased's certificate of death, if available;
- (4) the name and address of the bank or other institution holding a safe deposit box leased in the name of the deceased;
- (5) the name of any joint lessee, if known;
- (6) a statement that the petitioner believes that the deceased may have left a will or codicil in the safe deposit box.

(c) Where appointment of an administrator or executor has been made, said administrator or executor shall have full authority to open a safe deposit box held solely in the name of deceased, inspect the contents therein, and remove any or all contents. No person besides the administrator or executor need be present during the opening of the safe deposit box and for the inspection of the contents therein. Inspection of safe deposit boxes where the deceased is a joint lessee shall require the administrator or executor to open the box and inspect the contents therein, in the presence of an officer or other authorized employee of the bank or other institution. Where there is a joint lessee, no items contained in the safe deposit box other than a writing purporting to be a will/codicil shall be removed from the safe deposit box.

(d) For all safe deposit boxes opened pursuant to this rule, the administrator, executor or person authorized by the court shall create an inventory of the contents of the safe deposit box, which shall be signed by such persons. Such inventory shall include the location of the safe deposit box, the date and time the safe deposit box was opened and the names of those persons present, where applicable. Affixed to such inventory shall be any discovered writing purporting to be a will or codicil of the deceased, and the inventory and purported will or codicil shall be filed with the court within five days of inspection of the contents of the safe deposit box.

Rule 14. Support of deceased's spouse and children

Upon the filing of the inventory, or within 30 days thereafter, the executor or administrator shall present to the judge a request for an order, or the court in its discretion shall *sua sponte* order, as may be appropriate, the support of the deceased's spouse or children of the deceased. The use and occupation of property, or the expenditure of money, or both, will be authorized in proper cases. Interested parties may be required to appear before the judge or whenever such procedure seems necessary.

Rule 15. Quarterly accounts

(a) Every executor and administrator shall file successive, serially numbered quarterly accounts during the execution or administration of an estate for quarters ending March 31st, June 30th, September 30th, and December 31st of each year until the final account. The account for each quarter shall be filed on or before the last calendar day of the first calendar month following the end of the related quarter, unless the last calendar day is a holiday, in which event the account may be filed on the first business day after that holiday; *provided, however*, the first account of an executor or administrator need not be filed in the same quarter in which the inventory is filed, if the inventory is filed in the last month of the quarter, but shall be filed in the succeeding quarter and in the same manner prescribed by these rules.

(b) In every account, all assets which have come into the executor or administrator's possession, control or knowledge shall be identified, with the balance of monies brought forward

as shown by the last preceding account, together with any newly discovered assets and any income of the estate, and every other item that was part of the estate at any time during the period covered by the account. The executor or administrator shall itemize all debts, claims, and expenses approved and paid by the estate, and to whom, and all losses incurred by the estate during said period. All collections and every change in the form of any assets shall appear in the account. If transactions have been numerous, the account may be stated in the form of a summary with reference therein to attached schedules wherein the detail of each summarized entry is set forth.

(c) Every expenditure or other disposition of asset(s) must be supported by proper documentation, which shall be filed with the clerk together with the account. An executor or administrator must maintain all records in support of the accounts filed, which records must be readily available for review and inspection.

(d) To each account there may be attached, for the convenience of the court, a brief narrative statement signed by both the executor or administrator and such fiduciary's attorney of record, showing the progress made in the execution or administration of the estate during the account period, and if no substantial progress is shown, the reason for delay; the progress anticipated during the next period; and the anticipated date of the final account; *provided, however*, that such narrative shall not be required.

(e) Every account shall be subscribed by both executor or administrator and at least one attorney of record under penalty of perjury. An executor or administrator and the attorney or attorneys of record shall be equally responsible for the prompt filing of proper accounts.

Statutory References

Accounts of executors and administrators, see 15 V.I.C. § 561 et seq.

Rule 16. Failure to file inventory or account

Upon application of an heir or creditor or other person with an interest in the estate, the clerk shall issue a citation against, or the magistrate judge shall order, the executor or administrator and such fiduciary's attorney(s) to appear in open court within 30 days from the date of the issuance of the citation or order, to show cause why each of them should not be punished as for contempt of court. Each of the cited persons may file with the court a written and verified justification or excuse in response to the application for a citation. Such cited person(s) shall also appear personally in court, unless the appearance is excused by the court on the basis of the written justification.

Statutory References

Court order to appear and account, see 15 V.I.C. § 562.

Rule 17. Final account; notice and hearing

(a) When the estate has been fully executed or administered and is ready for distribution, the executor or administrator shall file a final account. The final account shall contain a detailed statement of the amount of monies received and disbursed during the execution or administration

of the estate, from whom received and to whom paid, with receipts or documentation for such payments attached thereto unless previously filed in an interim account. The final account shall also state the amount of money and property, if any, remaining unexpended or unappropriated and a proposed plan of distribution for same.

(b) The final account shall be subscribed by both executor or administrator and at least one attorney of record under penalty of perjury. An executor or administrator and the attorney or attorneys of record shall be equally responsible for the prompt filing of the final account.

(c) Upon the filing of a proper final account, the judge will order a hearing upon the account and the proposed distribution therein to occur within 60 days and that notice of the hearing be given in the same manner as publication and posting of the notice of the appointment of an executor or administrator. A copy of the notice shall be mailed to each heir, proposed distributee and to each creditor with unsatisfied claims. Before the time fixed for hearing, the executor or administrator shall file with the court a copy of the notice and proof of publication or posting and mailing. Any interested person, to include creditors, objecting to the final account or the proposed distribution therein, shall file a statement of their objections in writing and serve same upon the administrator or executor, prior to the final hearing. Objections will be placed on the calendar for hearing in the regular course.

Statutory References

Notice of filing final account, 15 V.I.C. § 564; Objections to final account, see 15 V.I.C. § 565.

Rule 18. Executors, administrators and attorneys; fees

(a) Simultaneously with the filing of the final account, an administrator, executor or attorney(s) shall make application to the court for an award of fees and costs, where appropriate, for services performed in the execution or administration of an estate. The fee petition shall clearly state the hourly rate or fee charged for services rendered; an explanation of the service(s) performed; and specific dates and times spent performing each service identified in the petition. The application shall be verified by oath and sworn to under penalty of perjury.

(b) An executor or administrator who is a member of the Virgin Islands Bar will not be allowed a fee for the employment of an attorney, except by order of the court upon motion showing necessity for the employment of counsel.

(c) Executors or administrators who are dilatory in administration, or who do not file accounts or other papers promptly at the time required by law, or by the rules of the court, shall forfeit all or such part of their fees as the court may determine and shall be subject to removal, and to such other penalties as may be prescribed by law. Whenever it shall appear that the delinquency of an executor or administrator has been caused by some fault of said fiduciary's attorney(s), the fee to be allowed for the attorney's services will be decreased accordingly.

Statutory References

Attorneys' fees, allowance to executors and administrators, see 15 V.I.C. § 568.; Compensation of executors and administrators, see 15 V.I.C. § 569.; Removal, death or resignation of executors and administrators, see 15 V.I.C. §§ 240 and 241.

Rule 19. Adjudication; distribution

(a) Not more than five days after the date of final hearing, if there shall have been no objection to the final account, or within five days after decision upon, or settlement of all objections to the said account, the executor or administrator shall file a petition for distribution. At the same time, cash or a check made payable to the Government of the Virgin Islands in the amount of the inheritance tax payable upon the estate shall be deposited with the clerk of the court along with all unpaid costs, including the fee for filing a final adjudication. There shall also be presented with the petition for distribution for the signature of the judge a final adjudication in duplicate.

(b) Distribution shall be made immediately after the entry of the final adjudication. Within 30 days after the entry of the adjudication, the executor or administrator shall file signed receipts for the distribution of the entire estate. Receipts shall be filed for all property, whether cash, other personal property, or real property. Receipts shall be in form substantially as follows:

_____ , the undersigned, hereby acknowledge to have received from _____ , _____ of the estate of _____ , deceased, the portion of the estate due _____ , consisting of _____ as shown by the final account filed by the said on _____ , _____ , and the final adjudication thereof by the Superior Court, and do hereby relieve, exonerate, and discharge the said _____ , from every action, claim or demand which might or could be prosecuted against for or on account thereof. likewise release the surety or sureties on the bond filed in said estate from all liability in connection therewith.

In testimony whereof have hereunto subscribed name and affixed seal this day of _____ , _____ .

Signature and Printed Name

Executor (or Administrator)

(c) If any person entitled to distribution is outside the jurisdiction, any money to which that person is entitled shall be transmitted by a postal office money order. A money order receipt issued by the post office, together with the executor's or administrator's affidavit that such monies has been mailed to the distributee, shall be acceptable as a receipt for distribution. If the distributee outside the jurisdiction is entitled to property other than money, the executor or administrator shall, during the course of execution or administration, and before final adjudication, obtain from the distributee a designation of a local agent to receive such property on the distributee's behalf. Such a designation, together with the agent's receipt, shall be acceptable as a receipt for distribution.

(d) Where the assets in an adjudication includes real property, it shall be the duty of the administrator or executor to file the same forthwith in the official records of the territory, and proof thereof shall be filed with the clerk of the court.

Statutory References

Allowance or disallowance of final account of executor or administrator, see 15 V.I.C. § 566.

Rule 20. Adjudication; recording

An adjudication or judgment recognizing persons entitled to a deceased's real property situated within the Virgin Islands and placing them in possession of it, shall describe in detail the subject real property. Registration of the adjudication or judgment in the office of the recorder of deeds of the proper judicial district of said adjudication or judgment shall, as provided in 15 V.I.C. § 195, be prima facie proof of title to said property in the persons named therein.

Rule 21. Discharge of executor or administrator

When administration and distribution shall have been completed and proved in the manner hereinabove provided, the clerk shall record the administration proceeding as closed and the sureties on the bond of the executor or administrator shall be exonerated without further order of the court.

Rule 22. Summary administration; estates under \$300

(a) Any estate where the value of the assets is less than \$300 may be administered in a summary manner by filing a petition for summary administration, in accordance with the procedure set forth 15 V.I.C. § 191; *provided, however*, that where the deceased died testate, the will shall be proved and the executor (or administrator C.T.A.) appointed as provided by law and the rules of court, except that the executor (or administrator C.T.A.) shall not be required to give a bond. In all instances, the petitioner or executor (or administrator C.T.A.) shall file an inventory as required by law and the rules of court, but may make any necessary appraisal without the appointment of appraisers by the court.

(b) Notice of the petition for summary administration shall be published, once a week for two consecutive weeks, in a newspaper of general circulation published within the territory, and in the judicial division and jurisdiction in which the deceased died or left assets. The notice shall require all persons having claims against the estate to present them within 30 days from the date of the notice and shall be in a form substantially as follows:

Notice is hereby given that a Petition for Summary Administration has been filed on behalf of the Estate of _____, deceased, and all persons having claims against the Estate are required to present them, verified by affidavit, and all persons indebted to the Estate to make payment promptly to the undersigned.

*Petitioner or Executor
(or Administrator C.T.A.)*

Attorney for the Estate

(c) A final report of the administration along with a proposed distribution, where applicable, shall be filed within 30 days from the end of the period of publication or posting, and which shall reflect any expenses incurred or payments made on behalf of the estate and the persons by whom they were made.

(d) A final adjudication will be made when the final report has been filed and approved by the court.

Statutory References

Summary administration of estates under \$300, see 15 V.I.C. § 167.

Rule 23. Disposition of estates without administration; petition for settlement without administration

(a) Where a person dies, leaving no debts, or such debts as the heirs or legatees choose to assume and pay, the estate may be placed in the possession of the heirs without administration in accordance with the procedure provided by Chapter 13 of Title 15 of the Virgin Islands Code.

(b) Within 30 days of filing a petition for settlement without administration, the petitioner(s) shall cause to be published a notice of the petition for settlement without administration and instruction to all persons having claims against the estate to present, or deliver to the petitioner, such claim(s), verified by affidavit, to a place within the territory specified in the notice, within 30 days from the date of the notice, and that all persons indebted to the estate are required to make prompt payment to the petitioner. The notice shall be published, once a week for four consecutive weeks, in a newspaper of general circulation published within the territory, and in the judicial division and jurisdiction in which the deceased died or left assets and shall be in form substantially as follows:

Notice is hereby given that a Petition for Summary Administration has been filed on behalf of the Estate of _____, deceased, and all persons having claims against the Estate are required to present them, verified by affidavit, and all persons indebted to the Estate to make payment promptly to the undersigned.

Petitioner

Attorney for the Estate

(c) Within 14 days from the last date of publication, the petitioner(s) shall file proof of publication and affixed thereto shall be all claims against, and payments made to, the estate, if any, along with a proposed order for adjudication. The court may, upon receipt of the proof of publication, claims and payments, if any, and proposed order for adjudication, set the matter for a hearing to occur within 30 days from filing or the court may issue an adjudication without a hearing.

Rule 24. Ancillary administration petition; foreign wills

(a) A foreign will, or the will of a nonresident testator, wherein real or personal property, or both, or an interest therein, situated within the territory, has been devised or bequeathed by a nonresident testator may be admitted to probate or administration where:

- (1) the will was executed in conformity with the laws of the testator's domicile;
- (2) the will has been established or admitted to probate in the domiciliary jurisdiction of the deceased and has been filed or recorded pursuant to the laws thereof; and
- (3) a certified or authenticated copy of the will or a recorded copy of the will filed in the judicial division in which the deceased's property is situated is filed with the court.

(b) Devisees or legatees entitled under the will to receive property in the territory may apply to the court, as authorized by 15 V.I.C. § 198, to be recognized and placed in possession of such property. Such application may be made to the court by petition setting forth the information in substantial form as follows:

- (1) the name and residence of the testator;
- (2) the date of the testator's death;
- (3) the date of the testator's will and the date such will was established or admitted to probate in the testator's domiciliary jurisdiction;
- (4) the name(s) and address(es) of the domiciliary executor(s), administrator(s) or personal representative(s);
- (5) the date and judicial district within the territory in which the will was recorded;
- (6) the names and capacities of the devisees or legatees entitled under the will to the property in the Virgin Islands and the proportions due to each;
- (7) an unsworn declaration made under penalty of perjury from the petitioner stating there are no unpaid debts owing by the testator or that the petitioners choose to and do assume and will pay such debts as may be owing by the testator which may not be paid by the domiciliary executor or administrator and which are or might become a charge upon or payable out of such property; and
- (8) the amount of inheritance tax due, if any.

The petition shall end with a prayer that the petitioners be recognized as the persons entitled under the testator's will to the property in the Virgin Islands and that as such they be placed in possession of such property.

(c) The following documents shall be annexed to the petition for ancillary administration.

- (1) a true copy of the testator's will identified in the petition;

- (2) an original or certified copy of the death certificate;
- (3) a copy of the adjudication from the domiciliary probate, if available; and
- (4) an inventory and valuation of the testator's property in the Virgin Islands sworn to by two responsible persons, as provided in 15 V.I.C. § 192.

(d) Within 30 days of filing a petition for ancillary administration, the petitioner(s) shall cause to be published a notice of the petition for ancillary administration and instruction to all persons having claims against the estate to present, or deliver to the executor or administrator, their claim(s), verified by affidavit, to a place within the territory specified in the notice, within 30 days from the date of the notice, and that all persons indebted to the estate are required to make prompt payment to the executor or administrator. The notice shall be published, once a week for four consecutive weeks, in a newspaper of general circulation published within the territory, and in the judicial division and jurisdiction in which the deceased died or left assets and shall also be served on the domiciliary executor(s) or administrator(s) by certified mail. The notice shall be in form substantially as follows:

Notice is hereby given that a Petition for Ancillary Administration has been filed on behalf of the Estate of _____, deceased, and all persons having claims against the Estate are required to present them, verified by affidavit, and all persons indebted to the Estate to make payment promptly to the undersigned.

Petitioner

Attorney

(e) Within 14 days from the last date of publication, the petitioner(s) shall file proof of publication and proof of mailing along and affixed thereto shall be all claims against, and payments made to, the estate, if any, along with a proposed order for adjudication. The court may, upon receipt of the proof of publication, proof of mailing, claims and payments, if any, and proposed order for adjudication, set the matter for a hearing to occur within 30 days from filing or issue an adjudication without a hearing.

(f) As part of the judgment herein, the court shall assess a fee of \$500 as costs, regardless of the valuation of the estate.

Rule 25. Inheritance tax obligations; exemptions

An inheritance is exempt from the payment of inheritance taxes under Title 33, Chapter 1, section 5 if the deceased, when living, would have been considered a 'nonresident not a citizen of the United States' under 26 U.S.C. § 2501(c), or if the deceased was a resident of the Virgin Islands or owned property situated in the Virgin Islands, at the time of his death. In accordance with this rule, no formal request for waiver or presentment to the Attorney General is required

where a petition for ancillary administration is filed or admitted to probate within the territory where the deceased died on or after September 19, 1984.

Rule 26. Judgments involving real property; recording

In the judgment recognizing the persons entitled to the property of the testator in the Virgin Islands and placing them in possession of it, the property, if real estate, shall be described in detail. A registration in the office of the recorder of deeds of the proper judicial division of said judgment shall, as provided in 15 V.I.C. § 195, be prima facie proof of title to said property in the persons named therein.

Rule 27. Disclaimer of interest in deceased estates

(a) A person or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this Rule. The right to renounce does not survive the death of the person having it. The instrument shall:

- (1) describe the property or interest renounced;
- (2) declare the renunciation and extent thereof; and
- (3) be signed by the person renouncing such interest.

(b) An instrument renouncing a present interest shall be filed not later than 12 months after the issuance of letters testamentary or letters of administration. An instrument renouncing a future interest may be filed no later than 12 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.

(c) The renunciation shall be filed in the Superior Court of the judicial division in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the deceased or donee of power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the Recorder of Deeds of the judicial division in which the real estate is situated.

(d) Unless the deceased or donee of power has otherwise provided, the property or interest renounced devolves as though the person renouncing did not survive the deceased, or if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as though the person renouncing did not survive the donee of power. A future interest that takes effect in possession or enjoyment after the termination of the state or interest renounced takes effect as though the person renouncing had not survived the deceased or the donee of the power. A renunciation relates back for all purposes to the date of the death of the deceased or the donee of the power.

(e) The right to renounce property or an interest therein is barred by:

- (1) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;
- (2) a written waiver of the right to renounce;
- (3) an acceptance of the property or interest or benefit thereunder, or
- (4) a sale of the property or interest under judicial sale made before the renunciation is effected.

(f) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(g) A renunciation or a written waiver of the right to renounce is binding upon a person renouncing or person waiving and all persons claiming through or under the renouncing person.

(h) This Rule does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any statute applicable to the Virgin Islands.

(i) This Rule is applicable only to those probate actions filed subsequent to the date of enactment of this Rule.

PART B: FIDUCIARY PROCEEDINGS

Rule 28. Guardians; procedure

The procedure for the appointment of guardians for minors, incapacitated persons and protected persons and for the filing and settlement of their accounts, shall conform, so far as practicable, to the procedure prescribed in Article 5 of Title 15 of the Virgin Islands Code.

Rule 29. Guardians; inventory

Every guardian and every trustee, within 30 days after appointment to take possession of the property held in the name of a ward or trust, shall file in the office of the clerk an inventory, under oath, showing by items all the property of the ward or trust which shall have come into the guardian's or trustee's possession or knowledge. In the case of a non-testamentary trust, the trustee shall also file a copy of the instrument creating the trust, a list of the names, addresses and dates of birth of known living beneficiaries, and a description of any possible unborn or unascertained beneficiaries. If the inventory contains items of property other than money, which have not theretofore been appraised, they shall be appraised at their true cash value by two appraisers to be appointed and sworn as provided in 15 V.I.C. § 314, and the appraised value shall be set out in the inventory.

Statutory References

Trust inventories, see 15 V.I.C. §§ 1161 and 1191.

Rule 30. Guardians and trustees; intermediate accounts

At the expiration of one year after the date of appointment, and annually thereafter for the duration of appointment, each guardian and trustee shall file in the office of the clerk an intermediate account of all account transactions for the preceding year, setting forth in detail the

information required by 15 V.I.C. § 1162, upon which proceeding shall be had as provided by law.

Rule 31. Guardians and trustees; final accounts, hearing, distribution and discharge

(a) When a minor, under guardianship, arrives at the age of 21 years, or when for any reason a guardianship or trust terminates, the guardian or trustee shall file a final account under oath, showing for the period since the filing of the last intermediate account the facts required by 15 V.I.C. § 1163, and the distribution of the trust property which the guardian or trustee proposes to make.

(b) At least 20 days before the day fixed for hearing of any final account, the guardian or trustee shall deliver to each beneficiary, creditor or interest person, a copy of the account and a notice of the time and place of hearing, which shall be not earlier than 30 days and not more than 60 days after the account was filed. The notice shall also state the amount of compensation to be requested by the guardian or trustee and attorney, if applicable.

(c) If the court approves the final account, an order of distribution will be entered. The guardian or trustee shall thereupon make distribution in accordance with the order and within 30 days file a distribution account of the trust property which has been distributed and the receipts of the distributees. An order may then be entered discharging the guardian or trustee.