

CHAPTER 30.1-18

POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

30.1-18-01. (3-701) Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others if the acts would have been proper for a personal representative.

30.1-18-02. (3-702) Priority among different letters.

A person to whom general letters are issued first has exclusive authority under the letters until the appointment is terminated or modified. If, through error, general letters are afterward issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

30.1-18-03. (3-703) General duties - Relation and liability to persons interested in estate - Standing to sue.

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.
2. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described in this title.
3. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at the decedent's death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

30.1-18-04. (3-704) Personal representative to proceed without court order - Exception.

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but may

invoke the jurisdiction of the court, in proceedings authorized by this title, to resolve questions concerning the estate or its administration.

30.1-18-05. (3-705) Duty of personal representative - Information to heirs and devisees.

Not later than thirty days after appointment, every personal representative, except any special administrator, shall give information of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information must include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The information must state that the estate is being administered by the personal representative under this title without supervision by the court, but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The personal representative's failure to give this information is a breach of duty to the persons concerned but does not affect the validity of the appointment, the personal representative's powers, or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary first-class mail.

30.1-18-06. (3-706) Duty of personal representative - Inventory and appraisement.

1. Within six months after appointment, or nine months after the death of the decedent, whichever is later, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of the decedent's death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.
2. The personal representative may file the original of the inventory with the court and send a copy of the inventory only to interested persons who request it. If the personal representative elects not to file the inventory with the court, the personal representative must mail a copy of the inventory to each of the heirs in an intestate estate, or to each of the devisees if a will has been probated, and to any other interested persons who request it.

30.1-18-07. (3-707) Employment of appraisers.

The personal representative may employ a qualified and disinterested appraiser to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items the appraiser appraised.

30.1-18-08. (3-708) Duty of personal representative - Supplementary inventory.

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the

appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

30.1-18-09. (3-709) Duty of personal representative - Possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title thereto.

30.1-18-10. (3-710) Power to avoid transfers.

The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means which is in law void or voidable as against the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

30.1-18-11. (3-711) Powers of personal representatives - In general.

Until termination of the personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

30.1-18-12. (3-712) Improper exercise of power - Breach of fiduciary duty.

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of the personal representative's fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 30.1-18-13 and 30.1-18-14.

30.1-18-13. (3-713) Sale, encumbrance, or transaction involving conflict of interest - Voidable - Exceptions.

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent, or attorney, or any corporation, limited liability company, or trust in which the personal representative has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

1. The will or a contract entered into by the decedent expressly authorized the transaction; or
2. The transaction is approved by the court after notice to interested persons.

30.1-18-14. (3-714) Persons dealing with personal representative - Protection.

A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal

representatives which are endorsed on letters as provided in section 30.1-16-04, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

30.1-18-15. (3-715) Transactions authorized for personal representatives - Exceptions.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 30.1-20-02, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

1. Retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment.
2. Receive assets from fiduciaries or other sources.
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
 - a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - b. Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.
6. Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.
7. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings.
8. Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, or dedicate easements to public use without consideration.
9. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration.
10. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
11. Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.
12. Vote stocks or other securities in person or by general or limited proxy.
13. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.

14. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.
15. Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.
16. Borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate.
17. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.
18. Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate.
19. Sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation, limited liability company, or other business enterprise.
20. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.
21. Employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties, and act, without independent investigation, upon their recommendations. Instead of acting personally, the personal representative may employ one or more agents to perform any act of administration, whether or not discretionary.
22. Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties.
23. Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.
24. Continue any unincorporated business or venture in which the decedent was engaged at the time of death:
 - a. In the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;
 - b. In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
 - c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate.
25. Incorporate any business or venture in which the decedent was engaged at the time of death.
26. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
27. Satisfy and settle claims and distribute the estate as provided in this title.

30.1-18-16. (3-716) Powers and duties of successor personal representative.

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but shall not exercise any power expressly made personal to the executor named in the will.

30.1-18-17. (3-717) Corepresentatives - When joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with the corepresentative or if advised by the personal representative with whom they deal that the representative has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

30.1-18-18. (3-718) Powers of surviving personal representative.

Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

30.1-18-19. (3-719) Compensation of personal representative.

A personal representative is entitled to reasonable compensation for the personal representative's services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce the personal representative's right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

30.1-18-20. (3-720) Expenses in estate litigation.

If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative or nominee is entitled to receive from the estate necessary expenses and disbursements, including reasonable attorney's fees incurred.

30.1-18-21. (3-721) Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for that person's own services, including services rendered as attorney, may be reviewed by the court. If the amount of attorney's fees is based upon the value of the decedent's estate, the fee agreement must be in writing and mailed to all parties who are heirs of the estate pursuant to the last will and testament of the decedent. If the decedent died intestate, notice must be provided to all heirs of the estate in accordance with chapter 30.1-03. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.