

PROTECTING TRUSTEES AND EXECUTORS FROM LIABILITY THROUGH SUITS FOR AID AND DIRECTION

Virginia has long permitted suits for aid and direction to guide fiduciaries in their administration of estates and trusts. These suits are filed by a trustee, or an executor or administrator of an estate, to seek guidance from their local circuit court as to how the fiduciary should carry out his responsibilities in relation to specific issues that have arisen in the trust or estate administration. While the fiduciary is not permitted to seek such guidance and protection from the court related to all decisions to be made, when there is genuine doubt and difficulty confronting the fiduciary in ascertaining the identity and relationship of beneficiaries or interpreting a will or trust document, the fiduciary is allowed to petition the court to give him guidance.

As the venerable Virginia judge and commentator, Brockenbrough Lamb wrote in his 1957 treatise on Virginia probate practice:

Such a fiduciary is not required to act at his peril; he need not eat the doubtful vegetable in order to ascertain if it is a wholesome mushroom or a poisonous toadstool...

In such cases of doubt or difficulty the expense instant to instituting and conducting such a suit, including an allowance by the court of proper compensation to the fiduciary's counsel, is to be borne by the estate, not by the personal representative out of his own pocket or out of his compensation or commissions.¹

Generations of Virginia attorneys have advised executors, administrators and trustees that it is prudent for these fiduciaries to seek the aid and guidance of a court to obtain the correct interpretation of documents before them when they are susceptible of differing interpretations. By the filing of a suit for aid and direction, the executor or trustee provides the court with all relevant facts known to him and provides the court with copies of any documents which the

¹ Virginia Probate Practice (Lamb, 1957) §133, p. 238

fiduciary is requesting the court interpret in providing guidance for administration. This pleading the fiduciary files should be neutral in its presentation and should avoid reflecting any bias in favor of a particular beneficiary or a particular interpretation. The point of the suit for aid and direction is not to obtain a particular or favored answer from the court but, rather, to obtain its best guidance possible so that the trustee or executor is protected from claims of bias or improper conduct by handling the issue in question to the benefit of one beneficiary and to the detriment of another. Thus, the fiduciary must provide the court with all relevant information and make a neutral presentation to the court or the entire purpose of the aid and direction suit is defeated and its protections from liability for claims of improper conduct will be lost.

Since it is not at all uncommon for trustees or beneficiaries of estates to be confronted with ambiguities in the trust or will they have been charged with carrying out, the suit for aid and direction is an indispensable tool for protecting them from law suits by disappointed beneficiaries who disagree with interpretations or decisions made by them that benefit someone else to that beneficiary's detriment. To go forward as a trustee or executor and to act without such guidance in the face of such potential liability is wholly unnecessary, highly misguided and inviting litigation.

*****Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**