

## **CHAPTER 30.1-12 GENERAL PROVISIONS**

### **30.1-12-01. (3-101) Devolution of estate at death - Restrictions.**

The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to the person's property, are subject to the restrictions and limitations contained in this title to facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

### **30.1-12-02. (3-102) Necessity of order of probate for will.**

Except as provided in section 30.1-23-01, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate or an adjudication of probate by the court.

### **30.1-12-03. (3-103) Necessity of appointment for administration.**

Except as otherwise provided in chapters 30.1-24 and 30.1-25, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court, qualify, and be issued letters. Administration of an estate is commenced by the issuance of letters.

### **30.1-12-04. (3-104) Claims against decedent - Necessity of administration.**

No proceeding to enforce a claim against the estate of a decedent or the decedent's successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by chapters 30.1-12 through 30.1-23. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 30.1-21-04 or from a former personal representative individually liable as provided in section 30.1-21-05. This section has no application to a proceeding by a secured creditor of the decedent to enforce the secured creditor's right to the secured creditor's security except as to any deficiency judgment which might be sought therein.

### **30.1-12-05. (3-105) Proceedings affecting devolution and administration - Jurisdiction of subject matter.**

Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in chapters 30.1-12 through 30.1-23 and may petition the court for orders in formal proceedings within the court's jurisdiction, including those described in chapters 30.1-12 through 30.1-23. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended, and distributed, including actions to determine title to property alleged to belong to the estate and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

### **30.1-12-06. (3-106) Proceedings within the exclusive jurisdiction of court - Service - Jurisdiction over persons.**

In proceedings within the exclusive jurisdiction of the court where notice is required by this title or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this

state by notice in conformity with section 30.1-03-01. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

**30.1-12-07. (3-107) Scope of proceedings - Proceedings independent - Exception.**

Unless supervised administration as described in chapter 30.1-16 is involved, each proceeding before the court is independent of any other proceeding involving the same estate. Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of chapters 30.1-12 through 30.1-23, no petition is defective because it fails to embrace all matters which might then be the subject of a final order, proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives, and a proceeding for appointment of personal representative is concluded by an order making or declining the appointment.

**30.1-12-08. (3-108) Probate, testacy, and appointment proceedings - Ultimate time limit.**

No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings.
2. Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.
4. An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceeding concerning the succession or estate administration has occurred within the three-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 30.1-18-09 beyond that necessary to confirm title to the assets in the successors to the estate and claims other than expenses of administration may not be presented against the estate.
5. A formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under subsection 1 or 2, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

**30.1-12-09. (3-109) Statutes of limitation on decedent's claim for relief.**

No statute of limitation running on a claim for relief belonging to a decedent which had not been barred as of the date of the decedent's death applies to bar a claim for relief surviving the

decedent's death sooner than four months after death. A claim for relief which, but for this section, would have been barred less than four months after death is barred after four months unless tolled.