

Lines of Business

LOB #175:

PROBATE DIVISION

Purpose

Because all functions of the Clerk's office are mandated by the Code of Virginia, the primary purpose is to observe all Code-mandated duties related to the probate of wills and guardianships. Title 64.2 of the Code of Virginia, titled "Wills, Trusts & Fiduciaries," sets out 447 pages of mandated practice and procedure for Virginia Inheritance Law, and for the establishment of Guardianships over Minors & Incapacitated Adults.

Description

Virginia is unusual in that it has established "Administrative Probate," where the Office of the Clerk of the Circuit Court actually handles the probating of all testate (there is a Will & Testament) and intestate (no will exists) estates. As custodian of the permanent record, the Clerk is also empowered by Code of Virginia to hold original Wills for safekeeping, even during the Testator's life. In this way, the Probate Division of the Clerk's Office serves both the register of Wills, and serves a quasi-judicial function for the orderly distribution of assets. Upon the death of any resident of Fairfax, the family will schedule an appointment with the Clerk's Office and will present pertinent documents to support the probating of the Will and the appointment/qualification of an Executor. If there is no written Will, the Clerk's Office will apply the Code of Virginia intestate succession laws and establish the Heirs at Law, based on the family's structure. This is a difficult time for most customers, and it involves highly-personal and financial information, like bank account information for various assets of the decedent, the identification of complex family relationships, as well as asset valuations and bond-related financial stewardship inquiries. The Clerk's Office reviews the assets, and generates a List of Heirs at Law, which sets the scope of the estate to be probated and which recites all the heirs who are eligible to take under the devise, and collects the probate taxes.

The Clerk's Office administers the court process for Guardianship of minors, as well as for adults adjudicated incapacitated, giving care-providers and family the legal authority they need to address medical, education, and critical needs of the most vulnerable of Fairfax. The Code of Virginia also allows for a Conservator to be appointed by the Circuit Court in order to protect the financial assets of any incapacitated person, from exploitation or unreasonable depletion. In addition to processing these delicate family matters, the Clerk's Office is mandated to report these Orders to Department of Motor Vehicles, the State Board of Elections, Virginia State Police, and to the Commissioner of Accounts (if a conservator is appointed) and the Department of Family Services (if a guardian is appointed).

Benefits

As a Constitutional Officer, the Clerk of Court is mandated to perform its court administrative duties under §64.2 of the Code of Virginia (Probate) in order to protect the Constitutional rights of the citizens of Fairfax and to provide the statutory remedies available regarding inheritance, guardianship and conservatorship. Through a strict observance of the law of Virginia (state-mandates) the Court offers access to efficient and responsible distribution of assets and a consistent application of Virginia inheritance law, resulting in the lawful devise of real and personal property. By swiftly and accurately administering Guardianship and Conservator petitions, the Court protects mentally- or physically-incapacitated adults from exploitation, and create safe communities for minors.

Circuit Court and Records

Mandates

As mentioned above, Title 64.2 of the Code of Virginia, titled “Wills, Trusts & Fiduciaries,” sets out 447 pages of mandated practice and procedure for Virginia Inheritance Law, and for the establishment of Guardianships over Minors & Incapacitated Adults.

Trends and Challenges

With America’s largest generation aging and with Fairfax’s ‘Age in Place’ initiatives, the Court expects a substantial increase in the number of cases involving incapacitated adults. Incapacitated Adult cases have doubled in the past 10 years (120 in 2005 up to 238 in 2014). Over the same period, the agency has seen a 15 percent increase in the number of written Wills probated and a 20 percent increase in all Fiduciary cases filed (2,096 filed in 2005 up to 2,519 in 2014). The number of Probate cases received will continue to increase over the next ten years, in lockstep with local demographic trends. Moreover, with the substantial increase in property values over the past 20 years, the agency expects the complexity of asset valuations at probate, to increase as well.

Resources

Category	FY 2014 Actual	FY 2015 Actual	FY 2016 Adopted
LOB #175: Probate Division			
FUNDING			
<u>Expenditures:</u>			
Compensation	\$421,400	\$411,664	\$434,440
Operating Expenses	215,595	242,552	220,647
Total Expenditures	\$636,995	\$654,216	\$655,087
General Fund Revenue	\$222,763	\$299,570	\$262,924
Net Cost/(Savings) to General Fund	\$414,232	\$354,646	\$392,163
POSITIONS			
Authorized Positions/Full-Time Equivalents (FTEs)			
<u>Positions:</u>			
Regular	8 / 8	8 / 8	8 / 8
Total Positions	8 / 8	8 / 8	8 / 8

Metrics

Metric Indicator	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Probate Appointments Scheduled (per day)	20	21	22	22	22
Wait for a Probate Appointment (in weeks)	3	4	1	1	1

Over the past three years, the Probate Division has been able to increase its appointment schedule. In FY 2015 the average was 22 appointments per day. Relatedly, the wait-time for scheduling an appointment in the Probate Division is now down to one week, or less.