INSTRUCTIONS — PROBATE INFORMATION FORM

GENERAL: This form provides the Clerk of Court with information necessary to probate wills, and to appoint persons to carry out the terms of wills or to settle the estates of persons who have died without wills. Two other forms may also have to be filed with the Clerk. If the total value of a decedent's real and personal estate is more than $15,000, a Probate Tax Return is necessary and, if the Clerk probates a will, or appoints an administrator or executor, a List of Heirs is also required. Copies of these forms can be obtained from the Clerk's Office. This sheet contains special instructions to help you fill out this form. If you have any question, you should telephone the Clerk. If you are unable to complete this form, the Clerk will help you. You should telephone the Clerk's Office for an appointment before you go to the courthouse. Please complete as much of this form as possible before you see the Clerk.

REQUIREMENTS FOR PROVING A WILL: The Clerk cannot probate a will until certain matters concerning its execution are proved. In many cases this evidence will be contained in a writing attached to the will that is called a "self-proving affidavit." This is a writing that follows the signatures of the decedent and witnesses to the will itself, in which, after a notary public put them under oath, the decedent and the witnesses made certain statements about the execution of the will and then the decedent, the witnesses and the notary signed the writing. If a will has a self-proving affidavit, it is not necessary for any witnesses to come to the Clerk's Office. If the will does not have this writing, then you must bring at least one of the will's witnesses with you. If a will is written entirely in the handwriting of the decedent, then no witnesses' signatures on the will are required but you must bring two persons with you to the Clerk's Office who can testify (i) that they are familiar with the decedent's writing, and (ii) that the writing on the will is that of the decedent. These two persons who will testify that an unwitnessed will is in the decedent's handwriting must be disinterested persons, i.e., not relatives, beneficiaries or relatives of beneficiaries. If a witness to the will, or to the decedent's handwriting, is not a resident of Virginia or is unable to come to the courthouse because of sickness, age, legal confinement, or other cause, that witness' testimony may be given in a deposition before a notary public. The form for such a deposition can be obtained from the Clerk.

REQUIREMENTS FOR GIVING A SURETY BOND:
Unless waived by the will or by a specific Code provision, every executor and administrator must post surety with the Clerk. This is normally done by purchasing a surety bond from an insurance company and paying for it out of estate assets. Many wills contain a provision waiving this surety bond requirement, and this waiver is effective in most cases. If the will does not waive surety, or if there is no will, the Clerk will tell you if there is a Code provision for waiver.

Line 1. Include the decedent's full name, including any aliases and the maiden name of a married woman.

Line 2. Virginia law provides that "where any person has because of advanced age or impaired health either voluntarily or involuntarily become a patient in a nursing home, a

convalescent home, or a similar institution, the place of legal residence of such person shall be presumed to be the same as it was before he became such a patient; provided, however, that such presumption may be rebutted by competent evidence."

Line 5. Be sure to bring all originals of the will and any codicils with you when you come to the courthouse.

Line 6. An administrator is the person who settles the estate of a person who died without a will. An executor does this task if there is a will nominating the executor. Sometimes no work is necessary to settle an estate under a will but the will is probated and recorded to establish the identity of the persons who receive real estate and to serve as their title to this real property.

Line 9. If there is only on person entitled to inherit, he or she is called a "sole distributee."

Line 10. This can be the same as the person making the request, or another person nominated by the requestor. State law gives certain persons a right to appointment, but this right is conditioned upon who and how many persons request appointment, and upon how many days have elapsed since the death of the decedent..

Lines 14-17. These lines are used to identify a co-administrator, or co-executor, if there is one.

Line 20. This question is concerned only with the decedent's probate estate. Thus, do not include (i) any property that the decedent owned with another with the right of survivorship, (ii) life insurance unless it is payable to the decedent's estate, (iii) real estate transferred by a transfer on death deed, or (iv) any other property passing by contract or beneficiary designation from the decedent to another person. If the total value of the decedent's property exceeds $15,000 a Probate Tax Return must be filed with the Clerk.

Line 21. A person under a disability as defined in § 8.01-2 is not eligible to qualify. Va. Code § 64.2-502. You are considered to be under a disability if (1) you have been convicted of a felony and are still in prison; (2) you are under 18 years of age; (3) you are an incapacitated person as defined in Va. Code § 64.2-2000; (4) you are an incapacitated ex-service person under Va. Code § 64.2-2016; or (5) you are determined to be incapable of taking proper care of your person, incapable of properly handling and managing your estate, or otherwise unable to defend your property or legal rights because of age or temporary or permanent impairment, whether physical, mental, or both, including substance abuse as defined in Va. Code § 64.2-2000.

Lines 22-24. These questions must be answered by the person(s) who wishes to be the administrator or executor. A "yes" answer to any of these questions does not automatically disqualify a person from serving. Each case must be decided by the court based on its specific facts.