

STATE OF VERMONT
VERMONT SUPREME COURT
_____, TERM, 2022

Order Promulgating Amendments to Rule 66 of the Vermont Rules of Probate Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 66 of the Vermont Rules of Probate Procedure be amended to read as follows (new matter underlined; deleted matter struck through):

RULE 66. INVENTORY AND ACCOUNTS

(a) **Inventory: Filing; Notice.**

(1) The inventory of an executor or administrator, when required, shall be filed within 60 days after appointment. The inventory of a guardian, when required, shall be filed within 30 days after appointment. Copies shall be served on all parties entitled to notice. On motion of the executor, administrator, or guardian, the time for filing the inventory may be extended by the court for good cause.

(2) If an executor or administrator learns of the existence of property not included in the original inventory, or learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the executor or administrator shall make and file and serve on all parties entitled to notice a supplemental inventory, with the new item, the revised value or description, or any other newly discovered information.

(b) **Inventory: Standards.**

(1) Estates. Unless waived by the court for good cause, estate inventories shall include a description and value of the various assets owned solely by the decedent and the following items and information if applicable:

(A) If the inventory includes real property, a copy of the deed or other transfer of title document showing title is in the name of the decedent. If the real property is not appraised, the inventory shall include a copy of the most recent property tax bill showing the assessed value of the property.

(B) If the inventory includes a mobile home, a copy of the mobile home bill of sale or other transfer of title document showing title is in the name of the decedent. If the mobile home is not appraised, the inventory shall include a copy of the most recent property tax bill showing the assessed value of the mobile home.

(C) If the inventory includes motor vehicles, a copy of the most recent title document or registration. The inventory shall include the name of the make, model, year, VIN number, and fair market value of the motor vehicle.

(D) If the inventory includes any other item or collection of items the value of which exceeds five thousand dollars, a description of the item or items, the fair market value of the item or items, and such other information as the court requires.

(E) If the inventory includes accounts with financial institutions, the name and address of the financial institution, the last four digits of the account number, and the value of the account as of the date specified on the inventory.

(2) *Guardianships.* Guardianship Inventories shall be prepared under the same standards as inventories for estates except that the guardianship inventory shall also list all jointly owned real and personal property and all other property over which the person under guardianship has a beneficial interest, including but not limited to life estates, remainders in life estates, and beneficial interests in trusts and the associated values therewith. The inventory shall include the name and address of all other beneficial owners.

(3) *Trusts.* Trust inventories shall be prepared under the same standards as inventories for estates.

(c) **Accounts; notice and hearing.** The account of an executor, administrator, or guardian shall be filed in accordance with law. Copies shall be served on persons entitled to notice. The notice of hearing upon the account shall inform each recipient of the obligation to file a written objection in order to contest an account. If a decree of distribution is to follow upon allowance of an account, the notice shall so state.

(e d) **Accounts; form.** The account of an executor, administrator, or guardian shall include the following elements:

(1) Inventory value of the estate at the beginning of the accounting period.

(2) Transactions during the accounting period for receipts and disbursements of principal and income, including: ordinary income, sale of assets, contribution of assets, disbursements or distributions for debts and expenses, distributions to beneficiaries, and the purchase of assets. Transactions should include unrealized gains and losses if that information is readily available and the ending inventory value reflects unrealized gains and losses. Transactions shall include a schedule of attorney's fees and fiduciary fees.

(3) Inventory value of the estate at the end of the accounting period. Ending inventory value should equal the sum of the beginning inventory value, plus receipts, less disbursements. Ending inventory shall include separate itemizations of historical cost and current value when current value information is readily available.

The court may require that additional information and schedules be included with the account. The account may be prepared in any appropriate form, unless the court, in its discretion, requires that the account be filed in a form substantially similar to an accounting form adopted pursuant to Rule 84. A trustee's fee shall be determined in accordance with the factors set forth in 14A V.S.A. § 708. Any other attorney's fees or fees of a fiduciary other than a trustee shall be justified in terms of the factors for determining the reasonableness of a fee contained in Rule 1.5(a) of the Vermont Rules of Professional Conduct.

(4) Except in the case of an insolvent estate, the final account of an executor or administrator shall include a statement under oath that there are no outstanding expenses of administration or unpaid or unsatisfied debts, obligations, or claims attributable to the decedent's death.

(e) Accounts: Standards.

(1) Estates. Unless otherwise ordered by the court, for the year of death the first day of the accounting period of the account shall be the date of the decedent's death. The last day of the accounting period shall be the last day of the month of the year immediately preceding the month of the decedent's death. Thereafter the first day of subsequent accounting periods shall be the first day of the decedent's death month. All accounts shall be presented on a cash basis. With each annual account, the fiduciary shall submit an updated inventory of all assets owned by the decedent. In addition, the inventory shall include all unpaid debts, claims or liens.

(2) Guardianships. In addition to the standards for accounts for estates, guardianship accounts shall include income from all sources, not just assets owned by the person under guardianship.

(3) Trusts. The standards for accounts for estates shall apply to accounts for trusts.

(d f) Interim accounts. Unless an executor, administrator, or guardian, or a party requests allowance or a party files a written objection, the court may file an interim account without allowing or disallowing it. Except for good cause shown, interim accountings in a guardianship proceeding shall be accompanied by a motion to allow the accounting each year. In decedents' estate proceedings, trust proceedings and guardianship proceedings in which good cause has been shown, the motion shall be filed no less frequently than every third year.

(e g) Accounts; necessity of a written objection. Unless the court directs otherwise, no party who fails to file a written objection to the allowance of an account, specifying the grounds of objection, at least 7 days before the hearing on the account shall be heard in opposition to the account. In the absence of any objections, the court may allow a verified account without hearing.

(f h) Appraisals. An executor, administrator, or guardian, may, but unless required by the court, need not, employ one or more disinterested persons to appraise a decedent's estate, or the property of a person under guardianship.

(i) Independent Review.

(1) Motion and Waiver. Upon motion of a party for good cause or upon motion by the court, the court may order any inventory or account to be prepared or certified by a licensed professional with experience in fiduciary accounting. The court may waive having any inventory or account prepared or certified by the licensed professional upon signed consents by all parties having a beneficial interest in the inventory or account whether or not the party has filed a notice of appearance. Consents may not be executed under a power of attorney where the holder of a person's power of attorney is also the fiduciary responsible for generating the inventory and/or account.

(2) *Hearing.* Upon motion of the court or of any party, the court may, after notice and hearing, appoint an independent licensed professional with experience in fiduciary accounting who, subject to Vermont Rule of Evidence 706, shall assist the court and the parties in the resolution of any accounting issues before the court. The court may apportion the fees of the independent licensed professional or the fees of a licensed professional retained by a party in such manner as the court deems just.

Reporter's Notes—2022 Amendment

Rule 66 is amended to reflect and clarify current practice regarding inventories and accounts.

Rule 66(b) is new. Rule 66(b)(1) contains a general requirement that, unless waived by the court for good cause, an estate inventory must contain a description and value of the decedent's assets. The rule sets forth specific requirements for the content of inventories in the areas of real property, mobile homes, motor vehicles, high value items, and financial institution accounts. In Rule 66(b)(1)(A), the requirement of a deed, rather than merely a description, of real estate is intended in part to facilitate a pending sale of the property. The provisions of Rule 66(b)(1)(D) requiring separate identification and description are necessary to prevent highly valuable items from being undervalued. "Fair market value" in that section means "the price that the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition that combine to give property a market value." 32 V.S.A. § 3481(1)(A); see 32 V.S.A. § 3618(a), 14 V.S.A. §§ 1051-1054.

The guardianship provisions of Rule 66(b)(2) are consistent with 14 V.S.A. §§ 2791-2798, 2921-2928.

Former Rules 66(b) and (c) are redesignated (c) and (d) without change. New Rule 66(e) provides accounting standards consistent with 14 V.S.A. §§ 1055, 1057. Former Rules 66(d)-(f) are redesignated (f)-(h) without change.

Rule 66(i) is new. It spells out a process that enables a judge to deal with an inadequately prepared or presented inventory or account or other failure to comply with the provisions of Rule 66(a)-(h) by providing for their preparation "by a licensed professional with experience in fiduciary accounting." It is based on the assumption that certain lawyers and other licensed practitioners, including CPAs, may have sufficient experience with the issues involved to advise and assist their clients and the court. Paragraph

(i)(1) provides that all parties may consent to waiver of this provision. Paragraph (i)(2) provides that in a more complicated case the court may hold a hearing to determine whether to appoint a licensed professional as an expert witness under and subject to Rule 706 of the Vermont Rules of Evidence to assist in resolving accounting issues. Rule 706 provides that the expert shall advise the parties of his findings, may be deposed, and may be called as a witness subject to cross examination.

2. That this rule is prescribed and promulgated effective _____, 2022. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2022.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice