



COMMONWEALTH of VIRGINIA

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The Honorable Patricia S. Ticer
Member, Senate of Virginia
General Assembly Building
Richmond, Virginia 23219

Dear Senator Ticer:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether compliance with the law of another state may satisfy the requirements of § 64.1-130, which governs certain transfers of money and personal property belonging to nonresident decedents.

Response

It is my opinion that personal property of a nonresident decedent may be transferred to the decedent's personal representative or other appropriate recipient provided the requirements of Virginia law have been satisfied by comparable legal requirements of another state.

Applicable Law and Discussion

Section 64.1-130 provides that:

When any person, at the time of his death domiciled outside of this Commonwealth, owned stocks, bonds, securities, money or tangible personal property located in this Commonwealth or was entitled to any debts, choses in action or tangible personal property in this Commonwealth, such stocks, bonds, other securities, money, debts, tangible personal property and choses in action shall, for ninety days from the death of such decedent, be retained in the possession of the person, firm or corporation holding or owing the same. After the ninety-day period such portion thereof as to which the person, firm or corporation has not received legal notice of any lien or encumbrance, shall be paid over or delivered on demand to an executor or an administrator or other personal representative, qualified according to the laws of the decedent's domicile if the value of such stocks, bonds, securities, money, debts, tangible personal property and choses in action in this Commonwealth, to the knowledge of the person holding or owing the same, is less than \$15,000. When the value of such stocks, bonds, securities, moneys, debts, tangible personal property and choses in action is \$15,000 or more, such payment or delivery of such stocks, bonds, securities, money, debts, tangible personal property and

choices in action may be made upon the expiration of such ninety-day period after the transferor has given public notice of his intention to make such transfer by publication thereof once a week for four successive weeks in a newspaper of general circulation in the city, town or county wherein the transferor resides or has its principal place of business, and after the lapse of thirty days from the completion of such publication, and provided, in either case, that at the time of such payment or delivery, the transferor has no actual notice of the appointment, within this Commonwealth, of a personal representative for such decedent.

This section shall be construed as providing, as to the payment of money and the delivery of personal property belonging to nonresident decedents or their estates, optional methods of procedure in addition to those otherwise permitted or provided by law, and shall not as to such matters add any limitations or restrictions to existing law.
[Emphasis added.]

This is one of several provisions “designed to facilitate the transfer of specific kinds of property from the dead to the living without requiring the recipients to go through the probate process.”¹ The purpose of § 64.1-130, about which you inquire, is to permit the transfer of personal property belonging to a nonresident decedent.² The statute is permissive in nature, and a beneficiary cannot force any abbreviated probate process.³ However, § 64.1-130 provides protection for a transferor who elects to transfer property on behalf of a nonresident decedent by complying with the legal probate and notice requirements of such decedent’s state of domicile.⁴

Conclusion

Accordingly, it is my opinion that personal property of a nonresident decedent may be transferred to the decedent’s personal representative or other appropriate recipient provided any requirements of Virginia law have been satisfied by a comparable legal requirement of another state.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

¹ J. Rodney Johnson, *Wills, Trusts, and Estates*, 35 U. RICH. L. REV. 845, 855 (2001).

² *Id.*

³ *Id.* The statutory language related to nonresident decedents is somewhat confusing. In interpreting the provisions, I rely on general rules of statutory construction. “The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.” *Commonwealth v. Zamani*, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998). Further, “a statute should never be construed in a way that leads to absurd results.” *Meeks v. Commonwealth*, 274 Va. 798, 802, 651 S.E.2d 637, 639 (2007). In the case of nonresident decedents where other states govern probate, it seems logical to permit compliance with those laws to protect transferors in Virginia.

⁴ Johnson, *supra* note 1, at 855.