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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Ronald Vernon Hixson, Deceased
Fiduciary Number FI-2009-0000076

Commissioner's Report
of Debts and Demands

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To the Honorable Judges of the Circuit Court of Fairfax County, Virginia:

At the request of John E. Ritzert, Jr., attorney for the above estate, the undersigned gave the notice required under Virginia Code § 64.1-171, setting November 12, 2009, at 10:30 a.m. at the office of your Commissioner in Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Ronald Vernon Hixson. At the said time and place, no person appeared to offer proof of any debts or demands against said estate.

The Internal Revenue Service filed a claim against the estate with your commissioner in the amount of \$41,192.93. The estate notified the claimant of the hearing, which notice prompted the Internal Revenue Service to file a formal claim against the estate. The undersigned was unable to provide notice of the hearing to the claimant as its claim was filed only two days prior to the hearing. The estate does not dispute the claim; therefore, the claim is allowed.

Mr. Ritzert requests an allowance of \$15,396.50 in legal fees as an administrative expense. The fees were incurred assisting the fiduciary in the administration of the decedent's estate. Your commissioner finds that Mr. Ritzert and his firm provided the fiduciary and the estate with three distinct legal services. In addition to handling the typical duties of a fiduciary for an estate, Ritzert & Leyton provided the estate assistance in the preparation and filing of delinquent tax returns of the decedent. They also facilitated the sale of the decedent's residence, a non-probate asset of the estate. Your commissioner will independently address the propriety of charging the estate for each service.

Ritzert & Leyton incurred \$3,658.00 in fees for the preparation and filing of twelve years of delinquent tax returns of the decedent. The fiduciary for an estate has the responsibility to file taxes on behalf of the decedent and the estate, and to pay any taxes that may be due to the federal, state or local government. Virginia Code § 26-30 allows a fiduciary any reasonable expenses necessary to the administration of his estate. In your commissioner's opinion, fees to a professional for tax work that is beyond the capability of a lay fiduciary and that is reasonably necessary for the orderly administration and closing of an estate should be allowed under Virginia Code § 26-30 as a reasonable expense of administration. Your



John T. Frey

commissioner finds that the fees in connection with filing the delinquent tax returns are both reasonable and necessary to the closing of this estate; therefore, the fees incurred for such services should be allowed as an administrative expense of the same.

Your commissioner finds that an additional \$5,984.50 of legal fees accrued from facilitating the sale of property that is not a part of the decedent's probate estate. The decedent died intestate seized and possessed of a two-thirds interest in a parcel of real estate located at 14932 Greymont Dr., Centerville, Virginia 20120. The decedent was the sole obligor on a note secured by the property but his daughter Paige Cobb, who owns the remaining one-third interest, joined him in executing the deed of trust. The decedent's interest in the real estate passed outside of probate to the decedent's heirs-at-law and the administrator did not petition the court for power of sale over the property. Counsel explains that his firm assisted the heirs in selling the property to satisfy the mortgage, which was a debt of the decedent and a potential charge against the probate estate. The sale was complicated by the fact that the Internal Revenue Service placed a lien on the property and because Ms. Cobb continued to reside at the residence after the decedent's death. Mr. Ritzert and his firm negotiated with the Internal Revenue Service concerning the lien that was placed on the home, prepared an escrow agreement in order to successfully close the sale, and negotiated with the daughter who held a one-third interest to obtain her concurrence with the form of sale required by the Internal Revenue Service. A review of Fairfax County Land Records shows that Paige Cobb, together with the decedent's two other heirs-at-law, sold the property on June 22, 2009. Mr. Ritzert requests that his fees from facilitating the sale be allowed as an administrative expense of the estate.

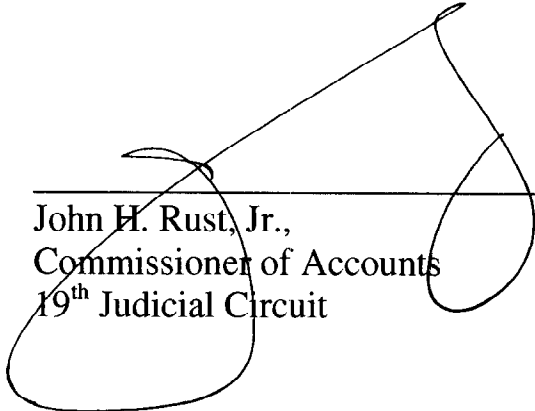
Your commissioner is of the opinion that expenses incurred in connection with a decedent's real estate, even when outside of probate, may in the proper circumstances be legitimate expenses of the estate.¹ In the instant case, the estate bore the responsibility to administer the decedent's entire estate, including the payment of the decedent's debts. The legal fees incurred in connection with selling the home were necessary to sell the home and satisfy the mortgage. As such, your commissioner is of the opinion that these fees are reasonable administrative expenses. Therefore, Ritzert & Leyton should be allowed legal fees in the amount of \$5,984.50, for facilitating the sale of the residence as an administrative expense of the estate.

¹ See, *Estate of Griffith*, 1993 WL 946049 (Loudoun); *Brown v. Hargraves*, 198 Va. 748, 96 S.E.2d 788 (1957).

Additionally, Mr. Ritzert requests the allowance of his firm's fees, in the amount of \$5,754.00, incurred handling typical matters of estate administration. Mr. Ritzert further seeks the allowance of another \$2,000.00 in fees that he anticipates in closing the estate. A review of the time records submitted by Ritzert & Leyton show that said fees accrued from administrative tasks of the estate such as marshalling the assets of the estate, preparing and filing an inventory and first and final accounting, ascertaining and negotiating with the decedent's creditors, appearing at a debts and demands hearing, and closing the estate. Such actions are generally the duty of the executor for which the executor is entitled to fiduciary compensation. Under the fiduciary fee guidelines that this Court has established, an executor is entitled to a fee of approximately \$1,156.39 when administering an estate this size. As the legal fees incurred in performing the routine duties of the fiduciary are greatly in excess of that amount, no fiduciary fee would be allowed in this matter. However, your commissioner is aware that administration of an insolvent small estate often requires a level of effort disproportionate to the size of the estate. A review of the time records of the law firm shows relatively few entries which are "routine administration." Therefore, your commissioner is of the opinion that the limitations imposed under fiduciary fee guidelines are not an appropriate limitation upon the estate's attorney fees in this matter. Nevertheless, your commissioner finds that the requested allowance of \$7,754.00 in additional legal fees to be excessive for this estate. Your commissioner will approve the payment of additional legal fees in the amount of \$5,000.00 to Ritzert & Leyton for their handling of the estate's administration.

Your commissioner finds that the estate is insolvent and is unable to pay all debts of the estate in full. Therefore, the debts should be satisfied pursuant to the priorities established by Virginia Code § 64.1-157. Pursuant to Virginia Code § 64.1-157(1), all administrative expenses, including the \$14,642.50 in legal fees allowed in this report, should be paid first as priority 1 claims. The claim of the Internal Revenue Service is accorded priority 4 treatment and should be satisfied with the balance of the estate.

Respectfully submitted this 2nd day of December, 2009.



John H. Rust, Jr.,
Commissioner of Accounts
19th Judicial Circuit

Commissioner's Fee for this Report	\$ 250.00	
<u>Publication costs</u>	<u>\$ 10.00</u>	
Total Amount Due	\$ 260.00	- UNPAID

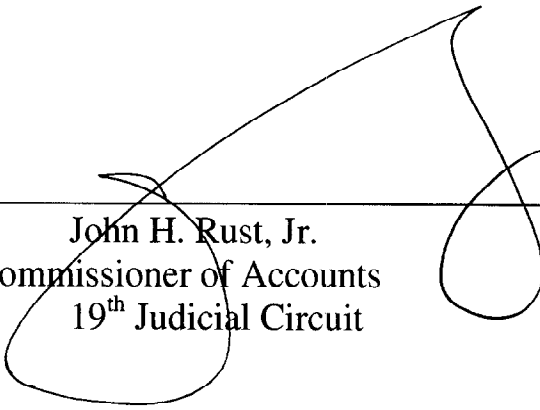
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2009, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

Matthew Bryce Hixson, Administrator
5030 7th Road South
Apt. 301
Arlington, VA 22204

John E. Ritzert, Jr., Esquire
Ritzert & Leyton, PC
11350 Random Hills Rd
Suite 400
Fairfax, VA 22030

Internal Revenue Service
Room 898, M/S 75
400 North Eighth Street
Richmond, Virginia 23219



John H. Rust, Jr.
Commissioner of Accounts
19th Judicial Circuit

I, JOHN T. FREY, Clerk of the Circuit Court of Fairfax County, Virginia, do hereby certify that the foregoing Account or Report has been filed in my office for more than fifteen days, and that no exceptions have been filed thereto, and the same is now recorded pursuant to the provisions of §§26-33 and 26-35 of the Code of Virginia, as amended.

Teste: JOHN T. FREY, Clerk

12-22-2009
Date

By: 
Deputy Clerk