

Selling Probate Property to Pay Claims

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In the Commonwealth of Virginia, the real estate “drops like a rock” to the devisee or heir when the decedent dies intestate. The instant of the death, the heirs have immediate possession and use of the property.

There are two exceptions to this rule: (1) Va. Code Ann. §64.1-181 *et seq.* provides that real estate is liable for debts where the personality is not sufficient, and (2) if the testator grants the executor power to sell.

The personal representative may petition the court to sell the real estate. The personal representative or the creditor may sue the heirs for payment of debts in an amount equal to the value of the property received. Va. Code Ann. §64.1-185 provides that the petition must show to the court that the personal assets are not sufficient to satisfy all of the claims against the estate. The creditor will need to file a notice of lis pendens. Finally the claim must be at least \$20¹. Please note that this proceeding does not affect any lien by judgment or otherwise, acquired during the lifetime of the decedent².

The personal representative is not required to claim assets that were held jointly unless, within six month for the date of the initial qualification ...” an interested person requests it in writing³.

¹ Va. Code Ann. §64.1-186

² Va. Code Ann. §64.1-187

³ Va. Code Ann. §64.1-140