Janet L. Schmidt
Spokesperson for Neighbors
In Opposition to Application 18651 of Peter Fitzgerald



March 10, 2014

Lloyd J. Jordan, Esq
Chairperson, Board of Zoning Adjustment
441 4th Street NW, Suite 210
Washington, DC 20001

**RE: Unresolved Ownership and Standing Issue of Peter J. Fitzgerald to file a BZA Application for Zoning Variance Related to Square 786 Lot 827 Lot 22 in Application 18651**

Dear Chairman Jordan and Members of the Board

As the Chairman and Members will recall, Ms. Schmidt on behalf of neighbors made a motion to dismiss Mr. Fitzgerald's application based on a lack of standing to file the BZA application because there is no evidence that the trust which has purported title to the above properties was ever created in compliance with the Virginia Code Virginia Code controls because the trust was created under a will administered in Fairfax County. The Chairman determined that is was appropriate to take the motion to dismiss under advisement and directed that Ms. Schmidt would brief the issue of ownership and that Applicant would respond.

Ms. Schmidt is admitted to practice law in Virginia and holds an LL M in Estate Planning (University of Miami 1992) and an LL.M. in Taxation (Georgetown Law 1994) She practices estate law and knows how the establishment of testamentary trusts is supposed to occur in Virginia. She noted in her brief to the BZA what documents Mr. Fitzgerald would need to provide to the Board to overcome a motion to dismiss based on a lack of standing As the Board is no doubt aware, controlling jurisprudence of the DC Superior Court shifts the burden of proof to the party having to respond to a motion to dismiss based on a lack of standing.

Mr Brown's response for Applicant has only served. to raise further questions about Applicant's lack of standing because it offered no proof that Applicant ever established the Virginia testamentary trust. In Mr. Brown's response for Applicant, he provided a title opinion from Red Rock Title for each of the parcels in question. Those opinions made clear in examiner's note 3 thereof that there was no documentation that could be found in the public record that the trust was created. The title opinions stated that more information was needed to determine if there was clear and marketable title in Applicant as Trustee and whether applicant even had authority to convey title as personal representative of his late father's esate. This title opinion was provided by Mr. Brown with his brief but numerous attachments referenced in the two title opinions were not provided or intentionally deleted.

Ms Schmidt in a letter to Mr. Brown which is attached as Exhibit A hereto, asked Mr. Brown to correct these deficiencies without the intervention of the Board Having received no response from Mr. Brown and in the absence of his providing the Board with true, correct and complete documentation that he received from Red Rock Title, Ms. Schmidt brings this matter to the attention of the Board. Ms. Schmidt asks that the Board take an adverse inference from Applicant's refusal to produce complete documents and because Applicant has failed to establish the existence of the trust he purports is the owner of the property

Ms Schmidt has attached hereto as Exhibit B Official Commonwealth of Virginia Circuit Court forms that are required to be completed to establish a trust before it can be created pursuant to the terms of a will It is noted that a trust is not created and a trustee is not qualified or appointed until approved by the Virginia Circuit Court that has jurisdiction over the probate of the decedent's will that purportedly creates a trust. If a trust had been created Mr. Fitzgerald could supply the Board with his court appointment from the Fairfax Circuit Court. The absence of such documentation to the BZA at this late stage is stunning when Applicant's standing to even bring his application hangs in the balance Also, Mr. Fitzgerald would have been able to provide the required Inventory showing what assets were contributed by the estate to the testamentary trust upon its creation by order of the Circuit Court of Fairfax County if the trust had actually been created. He has apparently been unable to do so Also, he could have established proof that the trust was actually created and ongoing by filing with the Board copies of the annual accountings a trustee is required to file as to a testamentary trust with the Circuit Court's Commissioner of Accounts Finally, Applicant could have provided the Board with a 2012 Federal trust return if his purported trust really exists.

The contents of Exhibit B fully exhibit the various documents which must exist for a trust to have been validly created and to be ongoing in Virginia None of these completed and approved forms have been brought forth by Applicant Those forms make clear that out of state property such as the two subject parcels must be listed on the trust inventory form.

Applicant's filing of the Red Rock Title reports demonstrates that at this time that he is unable to conclusively confirm marketable title. He thus has no right to seek a variance as to such property because he cannot show he is the rightful owner. Because the Fairfax Virginia estate of the late owner of Lot 827 and Lot 22 was never concluded, is still open, and the personal representative has not been discharged by order of the court, the title to the properties can be reversed by interested parties to that estate which include individuals who would have a substantial economic interest to attempt to reverse the transfer of the above properties and seek to have title vest in their names.

Applicant does not explain why he did not respond to letters and summons from the Circuit Court in 2005 as to why he had not filed inventories and accountings for the estate. The estate of the property owner remains open because a Virginia estate cannot be closed without a final accounting which was not done in this probate case.

Applicant has never shown that he received a certificate from the DC Probate Court authorizing him to transfer the subject properties that are located in DC. Such was required for decedents dying after 1981 as did the property owner in this case That is a document that would be maintained by the trustee of a trust with the trust records. It is telling that this has not been produced

Applicant's response to Ms Schmidt's motion to dismiss based on lack of standing, and by extension his inability to demonstrate injury from the purported lack of economic value of the subject property, did not show by a preponderance of the evidence that the trust exists and is ongoing. In the alternative, Ms. Schmidt requests that the Board draw an adverse inference from Applicant's filing of a title opinion that did not contain exhibits it explicitly referenced, and because the Board has never personally heard from the purported trustee of the trust whose whereabouts and mental state are unknown, and the trustee has failed to provide documentation from the Virginia estate which should be in his possession and control if he was ever appointed trustee of the trust and the trust was validly created

Respectfully Submitted,

/s/Janet L Schmidt
Janet L. Schmidt
Spokesperson for Neighbors

Certificate of Service

I hereby certify that the foregoing was served on John Patrick Brown, counsel for applicant via email on March 10, 2014.

/s/Janet L. Schmidt

EXHIBIT A
March 6 Letter to
Applicant's Counsel
Requesting he file true, correct
and complete documents to
support his contention
regarding ownership

March 6, 2014

VIA EMAIL

John Patrick Brown
Greenstein DeLorme and Luchs
1620 L Street NW
Suite 900
Washington, DC 20036

Dear Mr. Brown,

RE: Missing documentation in your March 4 response to opponent's brief on ownership (BZA Application number 18651)

This is in reference to your response to my brief in opposition to ownership which you filed with the BZA on March 4, 2014. The copies I received of Exhibits A and B to your response are not complete and I can only assume that the copies of those exhibits that you furnished to the Board are incomplete as well.

Your characterization of Exhibit A, the Red Rock Title report regarding Square 786 Lot 827 states that the report attached as Exhibit A "verifies" that title is vested in Applicant's name as trustee under the will of Joseph Fitzgerald Jr.. Exhibit A, on its face, fails to do what you have claimed it does. Examiner's note 3 of the title report for Lot 827 makes clear that the examiner would need to have "a copy of the estate of Joseph Fitzgerald, Jr." in order to verify that Applicant, as grantor of the vesting deed to this property, had the power to act as personal representative and that Applicant, as grantee, was empowered as trustee to acquire the property.

Despite this examiner's note, which would be the basis of an exception to clear title on any title insurance policy issued from this exam, you have failed to provide the BZA and me with the documentation from the Virginia probate and ancillary DC probate of Joseph Fitzgerald, Jr.'s estate that the title examiner has stated he would need in order to verify that title rests with Applicant. Please provide me the necessary estate documentation required to verify that Applicant was appointed personal representative of an ancillary probate of the property in question in DC and that Applicant received court appointment as trustee of a trust holding the property described in A and was authorized to receive the property. In addition, note 2 of the title examination contained in Exhibit A states that two documents are attached thereto as part of the title examination, specifically the docket sheets for DC probate administration cases1976 ADM 0001716 and 1988 ADM 041314. These documents are not included in the Exhibit A that you furnished me. Please forward them immediately. Likewise, examiner note 2 references attachment of the docket sheet for a DC foreign administration file number 99-82. Such docket sheet was not included in the Exhibit A you furnished me. Please forward it to me immediately as well.

Your characterization of Exhibit B, the Red Rock Title report regarding Square 786 Lot 22 likewise states that the report attached as Exhibit B "verifies" that title is vested in Applicant's name as trustee under the will of Joseph Fitzgerald Jr.. Exhibit B, on its face, fails to do what you have claimed it does. Examiner's note 3 of the title report for Lot 22 makes clear that the examiner would need to have "a copy of the estate of Joseph Fitzgerald, Jr." in order to verify that Applicant, as grantor of the vesting deed to this property, had the power to act as personal representative and that Applicant, as grantee, was empowered as trustee to acquire the property.

This examiner's note 3 in both Exhibits A and B does not "verify" that title currently rests with Applicant as you claim. To the contrary, these notes constitute an exception to clear title on any title insurance policy that might be issued on the two properties in question and would preclude a grantee from acquiring clear and marketable title to them. I have briefed the Board on the possibility that just such a title exception as appears in the title reports you commissioned would have prevented Applicant from being able to convey clear title of these properties to himself as trustee. Despite bringing forth these title exams, which mirror my contention of unclear title, you have failed to provide the BZA and me with the documentation from the Virginia probate and ancillary DC probate of Joseph Fitzgerald, Jr.'s estate that the title examiner has stated he would need in order to verify that title of the two properties rests with Applicant. Please provide me the necessary estate documentation required to verify that Applicant was appointed personal representative of an ancillary probate of the property in question in DC and that Applicant received court appointment as trustee of a trust holding the property and was authorized to receive the property.

Finally, the title report that you furnished as Exhibit B indicates in examiner note 4 that a previous title search for Lot 22 is attached to the report. A copy of that report was not included in the title report you furnished me in Exhibit B. Please forward it to me immediately.

Since it is apparent from the two title reports that you were provided with the above requested attachments, I would expect that you will be able to furnish them to me and the BZA immediately. Also, it is not appropriate for Applicant to withhold the estate information that your title examiner has stated is necessary to establish clear title to the properties that are the subject of the BZA application.

The above requested information as to whether Applicant was ever appointed personal representative in the DC ancillary probate of these properties and whether he ever received the requisite court order appointing him trustee of the trust under the ninth provision of the will from the Fairfax County Circuit Court in order to own these properties in the manner now claimed by Applicant is still missing from your reply Given the title examiners notation that no documentation of the existence of this trust can be found and the other questions he raises regarding ownership, this documentation is a critical and necessary requirement of your response to my brief on ownership and should be produced to me and the Board immediately. Otherwise, it will be necessary for me to seek the Board's intervention given the fact that it is scheduled to meet on and consider this matter in just two business days.

I find it interesting to note that your attempt to commission title reports to substantiate Applicant's claimed ownership of the two Lots in question has been met with a request by your title examiner for the same Virginia probate materials that I requested in my brief on ownership, including documentation confirming whether or not the Virginia probate is still open and whether the trust that purportedly holds the properties in questions was ever created in the Virginia probate. As you know, the testamentary trust provision of a will does not convey ownership of property to a trust, it only authorizes the Fairfax Circuit Court sitting in probate to issue an order appointing a trustee and creating the trust. This has apparently never occurred with respect to the properties that are the subject of Applicant's BZA request.

This are the exact issues raised in my brief on ownership issues and they have still not been addressed and answered by your response. In view of your incomplete response, one can only assume that Applicant is unable to provide documentation rebutting my claims that the Virginia probate has never been completed by Applicant, and that he has never obtained the necessary authorizations from the Virginia probate court that would allow him to implement the testamentary trust referred to in Joseph Fitzgerald's will or legally act as its trustee.

Sincerely,

*/s/ Janet L. Schmidt*

Janet Schmidt

cc: Chairman Jordan under separate cover

# EXHIBIT B

Virginia Circuit Court Form Documents Required to be Completed and Filed by Trustees to Establish the Existence of a Trust and Confirm its Ongoing Nature

## INSTRUCTIONS — TRUST INFORMATION FORM

**GENERAL:** This form provides the Clerk of Court with the information necessary to qualify trustees This sheet contains special instructions to help you fill out this form. If you have any questions, 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.

**Line 1.** If this is a trust created by a will, state the decedent's full name, followed by the word "Deceased." If this is an *inter vivos* trust created by a person who was living at that time, state that person's full name, followed by the word "Settlor." If this is a trust created or augmented by court order (or authorized by court order to be created or augmented by an individual or organization) as a part of the settlement of a legal action, put the word "Court" on this line.

**Line 7.** This can be the same as the person making the request.

**Lines 11-14.** These lines are used to identify co-trustees, if there is more than one

**Line 15.** Because of the difficulty in determining exact values at the time of qualification, the Clerk will accept a reasonable estimate of the maximum value of assets to be held in the trust. If you do not know the actual value of the trust's real property, you may use the value assessed for local real estate tax purposes.

**Lines 18-20.** These questions must be answered by the person(s) who wishes to be qualified as trustee by the Clerk. 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.

**TRUST INFORMATION FORM** Court File No.

COMMONWEALTH OF VIRGINIA

VA CODE § 64 2-1409

(For appointment/qualification of a trustee including court-ordered trusts and structured settlements.)

Circuit Court of

1. Name of Estate or Settlor
2. Is this a trust created by a will? yes no. If yes, will is recorded in Book Page
   or Clerk's Instrument No Date of Instrument
3. If court-ordered trust, date of order and case number
4. Name of person making request
5. Mailing address
6. Basis for request: __ trustee named in will __ other (specify)
7. Name of person seeking appointment
8. Day telephone . Night telephone
9. Residence address
10. Mailing address, if different
11. Name of additional person seeking appointment
12. Day telephone . Night telephone
13. Residence address
14. Mailing address, if different
15. The maximum value of assets to be held in the trust is estimated as follows:
    (a) Personal Property $
    (b) Real Property $
    TOTAL VALUE OF TRUST $ 0 00
16. Name of assisting attorney, if any Telephone
17. Attorney's mailing address

I hereby certify that to the best of my knowledge and belief this is an accurate statement of facts, and I acknowledge a continuing legal duty to report any later discovered errors or inconsistencies to the Clerk of Court.

DATE PRINTED NAME OF REQUESTING PERSON SIGNATURE OF REQUESTING PERSON

## INFORMATION TO BE FURNISHED BY EACH PERSON SEEKING APPOINTMENT

18. Have you ever been convicted of a felony? yes no. (If yes, explain the details on a separate sheet of paper )
19. Have you ever filed for bankruptcy? yes no. (If yes, explain the details on a separate sheet of paper.)
20. Are you now, or have you ever been, an attorney at law in Virginia or elsewhere? yes no. (If yes, and you do not now possess an active license from the Virginia State Bar, explain the details on a separate sheet of paper.)

I (we) hereby certify that to the best of my (our) knowledge and belief this is an accurate statement of facts, and I (we) acknowledge a continuing duty to report any later discovered errors or inconsistencies to the Clerk of Court.

DATE PRINTED NAME OF PERSON SEEKING APPOINTMENT SIGNATURE OF PERSON SEEKING APPOINTMENT

DATE PRINTED NAME OF PERSON SEEKING APPOINTMENT SIGNATURE OF PERSON SEEKING APPOINTMENT

# MEMORANDUM OF FACTS — TRUST

Court File No. ......................................

COMMONWEALTH OF VIRGINIA

For Official Use Only

Circuit Court of ..........................................................................................................

Estate of ............................................................................................................, Deceased

or

Inter Vivos Settlor's name ..........................................................................................

or

Court created (or augmented) trust for ..........................................................................

Date of Trust Instrument/Date of Will ... ........................................................................

Name of Trustee qualified ...........................................................................................

Residence address ......................................................................................................

Mailing address, if different ........................................................................................

Name of Co-Trustee qualified .........................................................................................

Residence address .......................................................................................................

Mailing address, if different .........................................................................................

Name of Agent for Service of Process .............................................. Telephone Number ......................

Agent's address for Service of Process ............................................................................

Power of sale over realty: ☐ yes ☐ no. Amount of fiduciary bond: $ .................... ☐ secured ☐ unsecured.

Surety is ☐ waived by document ☐ waived by court ☐ waived by statute (§ ................. ) or ☐ not waived

Type of surety: ☐ corporate ☐ cash ☐ property ☐ other (specify) ..............................................

Name of corporate surety ............................................ Telephone number ...............................

Agent of corporate surety ..............................................................................................

Mailing address ..........................................................................................................

Description of security ..................................................................................................

Clerk's additional comments:

FEES COLLECTED

| | | |
|---|---|---|
| Qualification Fee | $ ........................ | |
| Record Will / Order | $ ........................ | |
| Bond | $ ........................ | |
| Certificate(s) of Qualification | $ ........................ | |
| Transfer Fee | $ ........................ | |
| State Library Fee | $ ........................ | |
| Copies | $ ........................ | |
| TOTAL FEES COLLECTED | | $ ........................ |

Date: ............................... By ________________________________ Clerk/Deputy Clerk

FORM CC-1663 (w) (MASTER) 7/98 PC
VA CODE §§ 26-1.2, -7.1, -9, -59;
26-46 through -58

## INSTRUCTIONS FOR INVENTORY — TRUST

**GENERAL:** You are required by law to file an inventory with the Commissioner of Accounts within four months after the first date that any assets are received by you, unless (a) you are serving as a trustee under a will that waives your duty to file accounts with the Commissioner of Accounts, and (b) you have complied with the statutory requirements for waiver prior to the due date of the inventory. This inventory must include all of the real and personal estate under your supervision and control. You must report the assets as they existed on the date of their receipt by you, even though they have changed form or are not in existence on the date the inventory is prepared.

If you receive any other assets after you file your inventory, you must make an additional report to the Commissioner of Accounts by (i) filing an amended inventory showing all assets of the trust, (ii) by filing an additional inventory showing only the after-received assets, or (iii) with the permission of the Commissioner of Accounts, by showing the after-received assets on the trust's next regular accounting. The filing must be made, or the permission of the Commissioner of Accounts must be obtained, within four months after you receive the assets.

**VALUATION**: The value to be placed on assets listed on the inventory is their fair market value as of the date of receipt, and not the date the inventory is prepared. When available, you should use exact dollar and cent values; do not round off specific values to a higher or lower amount. Real estate may be listed at its value as assessed for local real estate taxes. For all other property, fair market value is normally "the price at which the property would change hands between a willing buyer and a willing seller in the retail market, with neither one being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." An explanation must be attached if any other method is used to value an asset. Do not reduce the gross value of property by the amount of any outstanding mortgage, loan, lien, or other claim against the property. Special valuation rules that apply to certain assets are mentioned later. If you have a question about determining the fair market value of any asset you should seek assistance from an accountant, a lawyer, any other appropriate professional, or the Commissioner of Accounts. Any reasonable expenses incurred in determining the values to place on estate assets, such as appraisals, are allowable as an administrative cost of the estate.

**Part 1. Trust assets excluding real estate under your supervision and control.** Assets should be clearly identified, listed in reasonable detail, and valued as of the date of receipt (not the date the inventory is prepared). Groupings of similar property, such as personal effects and household property, may be listed together; however, if any article is specifically mentioned in a will or is worth over $500 it should be listed separately. Articles that have a higher value as a collection (stamps, coins, or other collectibles) should be valued as a collection and not individually. Motor vehicles and water craft should include make, model and year. Checking, savings, and other accounts or deposits should include the institution's name, type of account, account number, any accrued interest and any maturity date. Stocks and mutual funds, whether held in certificate form, book account form or in a brokerage account, must be listed separately and should include company name, number of shares, and price per share. Bonds and promissory notes should include the issuer's name, face amount, interest rate, and maturity date for each item.

A sole proprietorship is not a separate entity like a partnership, corporation, or limited liability company, but rather an accumulation of assets that a person uses in a business, and thus the name of the proprietorship should be listed as a heading with the various personal assets which comprise it listed thereunder. (Proprietorship real estate should be listed in Parts 2, 3 or 4.) Leases of real estate are personal property to be listed on this part. If, in unusual circumstances, there are assets for which there is no recognized market value, such as some partnership interests, stock in closely held corporations or legal claims against others, they may be valued at $1.00 or an estimate of value until better information is obtained.

**GENERAL INSTRUCTIONS FOR REAL ESTATE:** Include in the description of each piece of real estate (or partial interest therein) a street address, if there is one, and the city or county in which the real estate is located. If an appraisal has been obtained, use that value, otherwise use the value as assessed for local real estate taxes, and state which value is used. The real estate's gross value is not to be reduced by the amount of any outstanding mortgage, loan, lien, or other claim against the property. Interests in condominiums and cooperatives are real estate, but leases of real estate are personal property and should be listed on Part 1.

**Part 2. Real estate in Virginia over which you have a power of sale.** List in this part all of the Virginia real estate or partial interests in real estate over which you have a power of sale, whether that power of sale is specifically mentioned in the governing document or is included by the governing document's reference to Virginia Code § 64.2-105.

**Part 3. Other real estate in Virginia.** List in this part all of the trust's Virginia real estate or partial interests in real estate that are not listed in Part 2.

**Part 4. Non-Virginia real estate.** List in this part all of the trust's real estate or partial interests in real estate not situated in Virginia, whether or not the real estate is located in the United States

# INVENTORY FOR TRUST
COMMONWEALTH OF VIRGINIA
VA CODE §§ 64.2-1300, 64 2-1308

Court File No.

Circuit Court of

Name of Trust Beneficiary(ies)

Name of Decedent, if trust under will

Trustee(s) Name(s)

Date of Trustee(s)' qualification Date of creation of Trust

This is the first inventory an inventory showing after discovered assets an amended inventory restating all assets.
The Trustee(s) filing this inventory is/are Trustee(s) under will Trustee(s) under Court Settlement other.

Total value of assets listed in Parts 1 and 2 (value for bond) $ 0.00

Total value of assets listed in Parts 1-4 (gross value of trust) $ 0.00

ATTACH ADDITIONAL SHEETS IF NEEDED

**Part 1. Trust assets, not including real estate, under your supervision and control.**

| DESCRIPTION OF PROPERTY | VALUE |
|---|---|
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| **TOTAL VALUE OF PART 1:** | 0.00 |

**Part 2. Real estate in Virginia, over which you have a power of sale.**

| DESCRIPTION OF PROPERTY | VALUE |
|---|---|
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| **TOTAL VALUE OF PART 2:** | 0.00 |

**Part 3. Other real estate in Virginia.**

| DESCRIPTION OF PROPERTY | VALUE |
|---|---|
| | |
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| | |
| | |
| | |
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| | |
| **TOTAL VALUE OF PART 3:** | 0.00 |

**Part 4. Non-Virginia real estate.**

| DESCRIPTION OF PROPERTY | VALUE |
|---|---|
| | |
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| | |
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| | |
| | |
| | |
| **TOTAL VALUE OF PART 4:** | 0.00 |

## CERTIFICATE OF ACCURACY AND COMPLETENESS

[Must be signed by each Trustee.]

I (we) hereby certify and affirm under penalty of law, that to the best of my (our) knowledge and belief this is an accurate and complete inventory of this trust made in accordance with my (our) responsibilities under Virginia law.

Date ______________ Trustee ______________

Address ______________

Telephone No.: ______________

Date ______________ Trustee ______________

Address ______________

Telephone No.: ______________

Date ______________ Trustee ______________

Address ______________

Telephone No.: ______________

## CERTIFICATE OF COMMISSIONER

The Commissioner of Accounts has not independently verified the value of the items on the inventory, or the fact that they are the only assets of the Trust.

Inspected, found to be in proper form, and approved on ______________

______________
Commissioner of Accounts

Received in the Clerk's Office and admitted to record on ______________

______________
Clerk



FORM CC-1673 MASTER 11/99

# INSTRUCTIONS FOR ACCOUNT FOR TRUST

## I. GENERAL

A. Accounts required by law to be filed must be filed with the Commissioner of Accounts. Ask the Commissioner of Accounts how many copies are required to be filed.

B. Accounts required by law to be filed must be signed by each of the Trustees.

C. Unless the Trustee qualified prior to July 1, 1993 or unless one trustee is a corporation under Va. Code § 6.2-1001, then the following rules apply:

1. The first account must cover the period beginning with the date the Trustee qualified and ending on December 31 of the same year.
2. Second and later accounts must cover the calendar year.
3. All trust accounts are due by May 1 of the following year, and no less frequently than annually thereafter.

D. Appropriate documentation to prove the account (as set forth below) must accompany the account. Whenever these instructions refer to a receipt, statement, invoice, etc., you must furnish the original of the document in question to the Commissioner. If you seek to use a photocopy of a check as a voucher or receipt, a copy of both sides of the canceled check shall be sufficient, or a copy of the front side of the canceled check, and the periodic statement from the financial institution showing the check number and amount that coincides with the copy shall be sufficient, provided such copy was made in the regular course of business in accordance with the admissibility requirements of Va. Code Section 8.01-391, and provided further that the Commissioner of Accounts may require a fiduciary to exhibit a proper voucher for a specific payment or for distributions to beneficiaries.

## II. BEGINNING ASSETS

A. Use total from Parts 1, 2, 3 and 4 of the Inventory (including Amended or Supplemental Inventory) if this is a First Account.

B. Use total Assets on Hand from prior account if this is a second or later account.

## III. RECEIPTS

### A. PRINCIPAL RECEIPTS

Itemize in chronological order all principal receipts received during the account period. Generally, principal receipts are capital gains distributions and principal distributions from the estate. You may group principal receipts by payor.

B. INCOME RECEIPTS

1 Itemize in chronological order all income receipts received during the account period. Generally income is interest, dividends, rental income, refunds and income distributions from the estate. You may list all receipts from each payor in the same place, so long as each receipt is separately stated.

2. Show each item of income separately. For example, show each quarterly dividend from XYZ Stock rather than showing a lump sum for the year.

IV. GAINS ON ASSET SALES

A. For securities sold by a broker, show net proceeds less carrying value of asset sold. In all other cases show total sales proceeds less costs of sale and less carrying value of asset sold.

B. Provide original broker's statement or signed settlement sheet as verification.

V. ADJUSTMENTS

Show any corrections to items reported on a prior account, e.g. where the value of an asset or the number of shares was incorrectly reported.

VI. PRINCIPAL AND INCOME DISBURSEMENTS FOR EXPENSES

A List all disbursements from principal in chronological order. You may group principal disbursements by payee.

B. Income taxes on capital gains are generally principal disbursements.

C. List all disbursements from income in chronological order. You may group income disbursements by payee.

D. Trustee fees and filing fees must be allocated between principal and income. Effective January 1, 2000, Virginia law provides that Trustee fees and filing fees shall be allocated one-half to income and one-half to principal, unless the terms of the trust provide otherwise.

E. A proper voucher or a signed invoice or receipt from each payee must be provided in support of each disbursement and they must be organized in the same order as they appear on the account.

F. Where a reimbursement is made to the Trustee or another person for expenses paid on behalf of the trust, evidence of the expenses paid must be provided. The Commissioner may also require evidence that the obligation paid was a debt or expense of the trust.

**NOTE: Instruction VI. does not include all requirements for the allocation of disbursements between principal and income. See Virginia Code Sections 64.2-1024 – 64.2-1029.**

## VII. LOSSES ON ASSET SALES

A. Show carrying value of assets sold less total sales proceeds.

B. Provide copy of broker's statement or signed settlement sheet as verification.

## VIII. PRINCIPAL AND INCOME DISTRIBUTIONS TO BENEFICIARIES

A. All principal distributions should be listed in chronological order stating the name of the beneficiary and the amount paid.

B. All income distributions should be listed in chronological order stating the name of the beneficiary and the amount paid.

C. A proper voucher or signed receipt from each beneficiary must be provided. Canceled checks must be endorsed on the back by the beneficiary.

## IX. ASSETS ON HAND

A Itemize each asset remaining on hand at its carrying value as of the ending date of this account.

B. Where the market value of the asset is not equal to its carrying value, show the market value in parentheses within the asset description, or attach a separate itemized list.

C. Provide verification of the existence of each asset, i.e., bank statements (reconciled to agree with your account balance), broker's statements or original stock certificates, original notes, copies of K-1 forms.

## X FORMAT

A. The use of the Account Summary form is strongly encouraged. If this format is not used, the information required by this form must be summarized on one page.

B. The itemized lists attached to the Account Summary form must comply with these Instructions and the accompanying Sample Account, or else you must make a complete accounting that complies with the provisions of Virginia Code Sections 64.2-1206 and 64.2-1308

## ACCOUNT FOR TRUST

COMMONWEALTH OF VIRGINIA
VA CODE §§ 64 2-1206, 64 2-1308, 64 2-1306

Court File No

Circuit Court of

Name of trust beneficiary(ies)

Name of decedent, if trust under a will

Name of trustee — Day telephone

Mailing address

Name of other trustee — Day telephone

Mailing address

Name of other trustee — Day telephone

Mailing address

This is account number [ ] one [ ] two [ ] three or [ ] — Is this a final account? [ ] yes [ ] no

From (date of qualification or end of last account) to (end of this account)

### ACCOUNT SUMMARY

| | | | |
|---|---|---|---|
| 1. Beginning Assets (from Parts 1, 2, 3 & 4 of the inventory or balance from the prior account) | $ | 600,000 00 | |
| 2. Principal receipts (attach itemized list) | $ | 100,000.00 | |
| 3. Income receipts (attach itemized list) | $ | 11,087 48 | |
| 4. Gains on Asset Sales (attach itemized list) | $ | 2,117 50 | |
| 5. Adjustments (attach itemized list) | $ | 0 00 | |
| 6. Total of 1, 2, 3, 4 & 5 (must equal Total on Line 13) | | | $ 713,204.98 |
| 7 Principal Disbursements (attach itemized list) | $ | 2,906 50 | |
| 8. Income Disbursements (attach itemized list) | $ | 2,306.50 | |
| 9. Losses on Asset Sales (attach itemized list) | $ | 0.00 | |
| 10. Principal Distributions (attach itemized list) | $ | 0.00 | |
| 11 Income Distributions (attach itemized list) | $ | 7,500.00 | |
| 12 Assets on Hand (attach itemized list) | $ | 700,491 98 | |
| 13 Total of 7, 8, 9, 10, 11 & 12 (must equal Total on Line 6) | | | $ 713,204.98 |
| Market Value of Assets on Hand | $ | 730,491.98 | |

I (We) certify that this is a true and accurate accounting of the assets of this trust for the period described and that to the best of my (our) knowledge all taxes have been paid or provided for.

Date Trustee's signature ______________________

Date Trustee's signature ______________________

Date Trustee's signature ______________________

Note: Virginia law requires that every account be signed by all trustees

| | | | |
|---|---|---|---|
| **PRINCIPAL RECEIPTS:** | | | |
| Distributions form estate: | | | |
| 09/01/06 | Cash | 80,000.00 | |
| 10/15/06 | MNO Inc., 400 shares @$50/sh. | 20,000.00 | |
| | TOTAL PRINCIPAL RECEIPTS | | 100,000.00 |
| **INCOME RECEIPTS.** | | | |
| 09/01/06 | Cash distribution from estate | 8,012.59 | |
| 09/30/06 | XYZ dividend | 1,025.00 | |
| 09/30/06 | ABC money market interest | 235.66 | |
| 10/31/06 | ABC money market interest | 242.14 | |
| 11/30/06 | ABC money market interest | 258.71 | |
| 12/31/06 | ABC money market interest | 263.38 | |
| 12/31/06 | XYZ dividend | 1,050.00 | |
| | TOTAL INCOME RECEIPTS | | 11,087.48 |
| **GAINS ON ASSET SALES:** | | | |
| 09/16/06 | Proceeds of sale 400 sh. MNO | 22,117.50 | |
| | less carrying value | 20,000.00 | |
| | TOTAL GAINS | | 2,117.50 |
| **ADJUSTMENTS – none** | | | 0.00 |
| **PRINCIPAL DISBURSEMENTS** | | | |
| 12/31/06 | Commissioner of Accounts ½ of First Account filing fee | 306.50 | |
| 12/31/06 | Internal Revenue Service, estimated tax on capital gains | 500.00 | |
| 12/31/06 | Virginia Dept. of Taxation estimated tax on capital gains | 100.00 | |
| 12/31/06 | Mary Doe, Trustee commission | 1,000.00 | |
| 12/31/06 | Salle Doe, Trustee commission | 1,000.00 | |
| | TOTAL PRINCIPAL DISBURSEMENTS | | 2,906.50 |
| **INCOME DISBURSEMENTS:** | | | |
| 12/31/06 | Commissioner of Accounts, ½ of First Account filing fee | 306.50 | |
| 12/31/06 | Mary Doe, Trustee commission | 1,000.00 | |
| 12/31/06 | Sally Doe, Trustee commission | 1,000.00 | |
| | TOTAL INCOME DISBURSEMENTS | | 2,306.50 |
| **LOSSESS ON ASSET SALES – none** | | | 0.00 |
| **PRINCIPAL DISTRIBUTIONS – none** | | | 0.00 |
| **INCOME DISTRIBUTIONS·** | | | |
| 10/01/06 | John J. Doe, Jr. | 2,500.00 | |
| 11/01/06 | John J. Doe, Jr. | 2,500.00 | |
| 12/01/06 | John J. Doe, Jr. | 2,500.00 | |
| | TOTAL INCOME DISTRIBUTIONS | | 7,500.00 |
| **ASSETS ON HAND as of 12/31/06** | | | |
| ABC Money Market Account #2345678 | | 100,491.98 | |
| 6,000 Shares XYZ Stock @ carrying value of $100/share (Market value 12/31/06 @ $105/share = $630,000) | | 600,000.00 | |
| | TOTAL ASSETS ON HAND | | 700,491.98 |

**ACCOUNT FOR TRUST**
COMMONWEALTH OF VIRGINIA
VA CODE §§ 64.2-1206, 64.2-1308, 64 2-1306

Court File No. ..........

Circuit Court of ..........

Name of trust beneficiary(ies) ..........

Name of decedent, if trust under a will ..........

Name of trustee .......... Day telephone ..........

Mailing address ..........

Name of other trustee .......... Day telephone ..........

Mailing address ..........

Name of other trustee .......... Day telephone ..........

Mailing address ..........

This is account number one two three or .......... Is this a final account? yes no

From .......... (date of qualification or end of last account) to .......... (end of this account)

## ACCOUNT SUMMARY

| | | | |
|---|---|---|---|
| 1. | Beginning Assets (from Parts 1, 2, 3 & 4 of the inventory or from the prior account) | $ | |
| 2. | Principal receipts (attach itemized list) | | |
| 3. | Income receipts (attach itemized list) | | |
| 4. | Gains on Asset Sales (attach itemized list) | | |
| 5. | Adjustments (attach itemized list) | | |
| 6 | Total of 1, 2, 3, 4, & 5 (must equal Total on Line 13) | | $ 0.00 |
| 7. | Principal Disbursements (attach itemized list) | $ | |
| 8. | Income Disbursements (attach itemized list) | | |
| 9. | Losses on Asset Sales (attach itemized list) | | |
| 10. | Principal Distributions (attach itemized list) | | |
| 11. | Income Distributions (attach itemized list) | | |
| 12. | Assets on Hand (attach itemized list) | | |
| 13. | Total of 7, 8, 9, 10, 11 & 12 (must equal Total on Line 6) | | $ 0.00 |

Market Value of Assets on Hand $ ..........

I (We) certify that this is a true and accurate accounting of the assets of this trust for the period described and that to the best of my (our) knowledge all taxes have been paid or provided for.

Date .......... Trustee's Signature ______________________

Date: .......... Trustee's Signature ______________________

Date: .......... Trustee's Signature ______________________

**NOTE:** Virginia law requires that every account be signed by all trustees.

**MEMORANDUM OF FACTS — TRUST** Court File No ....................................
COMMONWEALTH OF VIRGINIA

For Official Use Only

Circuit Court of ..........................................................................................
Estate of .................................................................................., Deceased.

or

Inter Vivos Settlor's name ..............................................................................

or

Court created (or augmented) trust for ..................................................................
Date of Trust Instrument/Date of Will ...................................................................
Name of Trustee qualified ...............................................................................
Residence address .......................................................................................
Mailing address, if different ...........................................................................
Name of Co-Trustee qualified ............................................................................
Residence address .......................................................................................
Mailing address, if different ...........................................................................
Name of Agent for Service of Process ........................................ Telephone Number ......................
Agent's address for Service of Process ..................................................................
Power of sale over realty: ☐ yes ☐ no. Amount of fiduciary bond: $ ................. ☐ secured ☐ unsecured.
Surety is ☐ waived by document ☐ waived by court ☐ waived by statute (§ ................ ) or ☐ not waived
Type of surety: ☐ corporate ☐ cash ☐ property ☐ other (specify) ...........................................
Name of corporate surety ........................................ Telephone number ..............................
Agent of corporate surety ...............................................................................
Mailing address .........................................................................................
Description of security .................................................................................
Clerk's additional comments:

FEES COLLECTED

| | | |
|---|---|---|
| Qualification Fee | $ ...................... | |
| Record Will / Order | $ ...................... | |
| Bond | $ ...................... | |
| Certificate(s) of Qualification | $ ...................... | |
| Transfer Fee | $ ...................... | |
| State Library Fee | $ ...................... | |
| Copies | $ ...................... | |
| TOTAL FEES COLLECTED | | $ ...................... |

Date: ............................ By ________________________________ Clerk/Deputy Clerk

FORM CC-1663 (w) (MASTER) 7/98 PC
VA CODE §§ 26-1 2, -7 1, -9, -59,
26-46 through -58

# CERTIFICATE OF TRUST

## In Re: The Estate of ______________________________, Dec'd.

This Certificate of Trust is made by the following trustee(s) in accordance with Section 64.2-804, Code of Virginia, 1950, as amended, and certifies, under oath, as follows:

1. The name of the trust is The__________________________________________________, dated______________________________( herein the Trust).

2. The Trust was executed on ________________________, is presently in existence, and has not been revoked, modified or amended in any manner that would cause the representations contained in this Certificate to be incorrect.

3. The Settlor (Maker) of the Trust is/was ______________________________________.

4. The identity and address(es) of all of the currently acting Trustee(s) is/are as follows (include all authorized Trustees):

   ______________________________________________________________

   ______________________________________________________________

   ______________________________________________________________

5. The Trust is (irrevocable) or (revocable), and if revocable the name of the person having the power to revoke is ______________________________________.

6. The Trustee(s) has(have) all of the powers and authority granted under Section 64.2-105 of the Code of Virginia, 1950, as amended.

7. The undersigned Trustee(s) have the authority to sign this certificate on behalf of the Trust and to receipt for distributions made to the Trust.

8. Title to Trust property may be taken by deed, assignment or any other method recognized under the laws of the Commonwealth of Virginia.

The Trustee(s) acknowledges, as provided in Section 64.2-804, Code of Virginia, 1950, as amended, that any person who in good faith enters into a transaction in reliance upon the certifications made in this Certificate may assume the existence of the facts contained herein, without the necessity of inquiry or making demand for the trust instrument.

This Certificate is made for reliance by the Henrico County Circuit Court Commissioner of Accounts in the settling of the accounts of the above referenced estate.

WITNESS the signature of the Trustee(s) of the Trust:

______________________________
Trustee

______________________________
Trustee

______________________________
Trustee

STATE OF ______________,

City/County of ________________, to wit:

The foregoing Certificate of Trust was signed and acknowledged under oath before me this___day of ______________, by______________________________________________, Trustee(s) of The ______________________________ ,dated _______________.

______________________________
Notary Public

My commission expires: ______________

Registration No. ___________________

(SEAL)