



VIRGIN ISLANDS
BAR ASSOCIATION

Legislation & Law Reform Committee

October 22, 2026

The Honorable Carla J. Joseph
Chair, Committee on Rules and Judiciary
36th Legislature of the Virgin Islands
St. Thomas, U.S. Virgin Islands 00804

Re: Comments of the Virgin Islands Bar Association on Bill No. 36-0277 (Comprehensive Probate Code)

DISCLAIMER: These comments are submitted by the undersigned as a member of the Virgin Islands Bar Association Board of Governors and designee of VIBA President Shari D'Andrade. They are provided for informational purposes to assist the Legislature in its consideration of Bill No. 36-0277. These positions not formally adopted by the Board of Governors should not be construed as official positions of the Virgin Islands Bar Association. Any references to the "Bar" or "Committee" should be construed as the positions of the VIBA legislation and law review committee.

Dear Senator Joseph:

On behalf of the Virgin Islands Bar Association, I appreciate the opportunity to provide comments concerning Bill No. 36-0277, the proposed comprehensive probate legislation. The following comments are submitted for the Committee's consideration.

VIBA Legislation and Law Reform Committee Position

The Committee recommends that the Legislature consider targeted amendments to the existing Probate Code as an alternative to adopting Bill No. 36-0277 in its current form. The current law has been adapted to Virgin Islands practice, although improvements remain necessary. These recommendations may be incorporated into the existing Code or, where appropriate, into the proposed legislation.

Background: What the Bill and Amendment Address

Bill No. 36-0277 proposes a comprehensive revision based on the Uniform Probate Code. Amendment 36-926 addresses certain concerns, including higher small-estate thresholds. The Committee asks that the Legislature consider the cost of transition, the Judiciary's existing workload, and whether focused amendments can achieve the same practical results without unnecessary disruption.

The Committee's Recommendations

Recommendation One — Raise the Court-Supervised Summary Threshold to \$400,000 [Committee Rec.]

What the Committee recommends: Provide a simplified, court-supervised procedure for estates valued up to \$400,000, particularly where the principal asset is the family home. Proposed §3-1205 and Amendment 36-926(a)(15) provide a possible legislative location. Do not automatically apply this \$400,000 ceiling to an unsupervised personal-property affidavit under §3-1201.

Why this matters: A \$100,000 ceiling for a supervised home-centered procedure may exclude many ordinary family residences. A higher court-supervised limit, with notice, valuation, creditor protection, and judicial review, could reduce the expense of administering modest estates.

Recommendation Two — Give Heirs a Choice When the Estate Closes [Bar Rec.]

What the Bar recommends: Add an optional, plain-language, check-the-box ownership-election form to the final probate process. When the estate closes, heirs may choose how to hold inherited property going forward, subject to informed written consent, applicable law, creditor rights, and protection of minors and other interested persons:

- Joint tenancy with right of survivorship — where legally available and validly established, a deceased co-owner's interest passes to the surviving joint tenant(s) without a new probate of that interest.
- Assignment or transfer to a trust — through legally sufficient instruments, property is held and managed under the terms of a properly established trust.
- Tenancy in common — each heir owns a separate undivided interest that ordinarily passes through that heir's estate at death. This remains the default when no valid alternative election is made and can contribute to further fractionation.

The check-the-box form should explain, in plain language and with practical examples, the legal effect, consequences, advantages, and disadvantages of each option so heirs can make an informed decision. This is especially important when real property is owned by multiple heirs: the form should explain how each election affects ownership, survivorship, future transfers, decision-making among co-owners, and the potential need for probate in later generations. Heirs should be advised that an election may have lasting legal consequences and that they may seek independent legal advice before consenting.

The selected ownership arrangement should be reflected in legally sufficient, recordable instruments filed with the Recorder of Deeds as appropriate. A disclaimer is not interchangeable with an assignment or transfer, and no election may alter another heir's rights without the required consent.

Why this matters: Fractionated title—a single parcel divided into dozens or hundreds of fractional interests after generations of inheritance without planning—is a major barrier to marketable title in the Virgin Islands. This proposal will not undo existing fractionation, but it gives families an informed choice before fragmentation repeats in the next generation. As stated in the Bar’s testimony, it is “the single most direct means of stopping fractionated ownership before it restarts.” The election would document the family’s lawful decision as part of closing the estate, rather than leaving heirs unaware of the long-term consequences of the default ownership structure.

Recommendation Three — Create a Short-Form Vehicle Transfer [Committee Rec.]

What the Committee recommends: Establish an expedited vehicle-only transfer procedure using a short application, proof of death, affidavit of heirship, title and lien information, and valid consents, assignments or disclaimers where appropriate. Coordinate implementation with the Bureau of Motor Vehicles and refer contested matters to the Court.

Why this matters: Families should not need a full estate administration solely to transfer an uncontested vehicle, while secured creditors and other heirs remain protected.

Recommendation Four — Coordinate Judicial Rulemaking and Plain-Language Forms [Bill Position / Committee Rec.]

What the Committee recommends: Correct any bill language assigning procedural rulemaking to the Superior Court where that authority belongs to the Virgin Islands Supreme Court under the applicable rulemaking framework. The Legislature and Judiciary should coordinate implementation, respecting separation of powers. Request that the Supreme Court consider probate forms with clear instructions, completed examples, and checklists for self-represented (pro se) litigants.

Why this matters: Plain-language forms can help families identify heirs, assets, debts and required attachments correctly and can help court personnel review pro se filings more consistently. The Legislature cannot compel the Supreme Court to promulgate specific procedural rules or forms; judicial adoption must proceed through the Court’s independent process.

Recommendation Five — Protect Surviving Spouses Without Forcing a Sale [Bill Position]

What the Bill does: Section 2-102 gives a surviving spouse a guaranteed floor of \$150,000 from the estate before other heirs receive anything.

What the Bar recommends: Retain the existing statute, Section 84. Under Section 84, the spouse receives a fraction of the actual estate value—not a fixed dollar floor:

- 1/3 of the estate where there are children
- \$5,000 plus half the remainder where the heirs are parents
- \$10,000 plus half the remainder where the heirs are siblings

Why this matters: Most estates in the Virgin Islands hold no liquid \$150,000. The primary asset is the family home. To satisfy Section 2-102’s \$150,000 floor, the property may have to be sold.

Families generally cannot afford to buy it back at current market values of \$400,000 or more. The result is a forced transfer of generational property out of the family—precisely the outcome probate reform should prevent.

Section 84 avoids this. The spouse receives a share of actual value; no floor drives a liquidation.

If the Committee retains Section 2-102, the Bar recommends adding two protections:

1. A homestead election allowing the surviving spouse to take the primary marital residence at its appraised value in satisfaction of the preferential share, rather than requiring a cash payment.
2. A statutory life estate or right of occupancy—with a purchase option at appraised value—for the surviving spouse in the primary marital home where children from a prior relationship inherit outright. Section 2-102(4) does not currently protect the spouse's right to remain in that situation.

Recommendation Six — Review Emergency Family Protection [Committee Rec. — Further Study]

What the Committee recommends: Examine whether existing law and proposed §§2-402–2-405 provide timely court-supervised protection for a surviving spouse or dependent children while appointment of a personal representative is pending. If a gap exists, consider a narrowly tailored emergency-motion procedure with notice, judicial findings and creditor safeguards. Do not authorize automatic withdrawals or distributions of estate funds.

Why this matters: Families may need temporary protection, but premature payments can affect creditors and the final distribution. The proper scope of any new remedy should be reviewed before statutory language is adopted.

Recommendation Seven — Address Deceased and Missing Heirs [Bar Rec.]

The problem — Missing heirs: When an heir cannot be located, the absence of a sufficiently clear, uniform procedure for search, notice, representation, and protection of that heir's share can delay closure of the estate.

The problem — Deceased heirs: When an heir dies before the principal estate closes, practice in St. Thomas may require a separate probate proceeding for that heir's estate before the principal estate can be resolved. St. Croix has used a more streamlined approach to representation within the principal proceeding where legally permissible.

What the Bar recommends: (1) Establish a uniform territorial procedure permitting the Probate Court, where legally appropriate, to address deceased-heir interests within the principal proceeding without automatically requiring a separate probate case. Distinguish heirs who died before the decedent from heirs who survived the decedent but died before administration was completed, and preserve the rights of successors, beneficiaries, and creditors. (2) Establish clear missing-heir procedures requiring documented diligent searches, legally sufficient notice, and protection of absent heirs' shares, without indefinitely preventing estate administration.

Why this matters: This procedural gap prevents resolution of longstanding probate matters involving buildings and inherited real property in our towns. Over generations, large families

have acquired fractional interests in the same properties, while some heirs have died and others cannot be located. Separate proceedings, unresolved heirship, and inconsistent procedures increase costs and delay, making it difficult to establish clear title, maintain, finance, improve, or transfer these properties. Uniform procedures would help resolve multigenerational estates while protecting the lawful interests of all heirs and creditors.

Implementation Responsibilities

Proposed change	Legislative role	Judicial / agency coordination
\$400,000 supervised procedure	Define eligibility and safeguards	Supreme Court considers rules and forms; Superior Court administers
Ownership elections	Authorize permitted options and protections	Judicial forms and review; Recorder of Deeds confirms instruments
Vehicle-only transfer	Authorize simplified transfer	BMV develops administrative requirements
Deceased and missing heirs	Define notice, representation and rights	Judicial procedures for searches, appointments and protected shares
Pro se instructions	Support accessible administration	Supreme Court independently considers examples, checklists and forms

Additional Legislative Clarifications

Legislative counsel should reconcile the bill's provisions governing creditor claims, the extent of an heir's liability for estate debts, surviving-spouse elections, proof of death under 15 V.I.C. §1-107, surviving statutory cross-references, and any cost-of-living adjustment. These technical corrections should be reviewed whether the Legislature adopts targeted amendments or a broader revision.

Requested Legislative Action

The Committee requests consideration of targeted amendments; preservation of the Supreme Court's independent rulemaking authority; coordinated planning with the Judiciary and relevant agencies before implementation; and sufficient preparation time for forms, public guidance and court administration. The objective is a probate system families can understand and the courts can administer consistently throughout the Virgin Islands.

Thank you for the opportunity to participate in the legislative review. Please do not hesitate to contact me with any questions.

Respectfully,

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Designee of President Shari D'Andrade