

002655784

HOUSE BILL NO. 949

Offered January 24, 2000

A BILL to amend and reenact §§ 26-1, 31-6, 31-7, 49-12, 64.1-119 and 64.1-120 of the Code of Virginia, relating to bonds given by fiduciaries, trustees, guardians and administrators of estates.

Patrons—Jackson, Armstrong and Tate

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-1, 31-6, 31-7, 49-12, 64.1-119 and 64.1-120 of the Code of Virginia are amended and reenacted as follows:

§ 26-1. How trustee required to give bond; when to be removed and another appointed.

After reasonable notice to a trustee, whether appointed by will, deed or other writing, the circuit court of the county, or any court which would have jurisdiction in equity to administer the trust, or a judge thereof in vacation, may, on motion of any person interested, if it deem the same proper for the security of the trust estate, order such trustee to give bond with surety before such court, or before the clerk thereof, within a reasonable time and in a penalty to be prescribed by such court or judge, for the faithful execution of the trust, and may, if such order be not complied with, or whenever for any cause it appears proper, remove such trustee and appoint another in his place.

The court may, at any time, require proof of payment of the bond's premium. Such proof of payment shall be made by filing with the court the written certification of any surety (if surety is required) or fidelity company duly authorized to do business in the Commonwealth certifying (i) that there is in effect such an executed bond, (ii) the term of the bond, noting the execution and expiration dates, and (iii) that the premium has been paid in full for the stated term of the bond.

§ 31-6. Guardians to give bond; surety thereon.

Before the appointment of any guardian for the estate of a minor, the person seeking appointment shall, in the court or before the clerk, take an oath that he will faithfully perform the duties of his office to the best of his judgment and give his bond in an amount at least equal to the value of the minor's personal estate coming under his control.

Every guardian for the estate of a minor shall provide surety upon his bond unless it is waived pursuant to § 26-4 or, in the case of a testamentary guardian, the testator's will waives surety; however, the court or clerk, on its or his own motion or the motion of another, may at any time, require surety upon a guardian's bond. Every order appointing a guardian shall state whether or not surety is required.

When the same guardian qualifies upon the estate of two or more wards who are members of the same family, only one qualification and one guardianship bond shall be required.

The court or clerk, as the case may be, may require proof of payment of the premium of the bond as provided under § 49-12.

§ 31-7. When court may appoint temporary guardians; bond; powers and duties.

Until a guardian appointed by the court or clerk has given bond, or while there is no guardian, the court or clerk may, from time to time, appoint a temporary guardian, who shall give bond as aforesaid, and during the continuance of his guardianship have all the powers and perform all the duties of a guardian, and be responsible in the same way.

The court or clerk, as the case may be, may require proof of payment of the premium of the bond as provided under § 49-12.

§ 49-12. Provisions and conditions; acknowledgment and recordation; duty of clerk when taken in pending cause.

Every bond required by law to be taken or approved by or given before any court, board or officer, unless otherwise provided, shall be made payable to the Commonwealth of Virginia, with surety deemed sufficient by such court, board or officer. Every such bond required of any person appointed to or undertaking any office, post or trust, and every bond required to be taken of any person by an order or decree of court, unless otherwise provided, shall be with condition for the faithful discharge by him of the duties of his office, post or trust. When such bond is required to be taken or approved by or before the Governor, a court or the clerk of a court, it shall be proved or acknowledged before the Governor or court or clerk, as the case may be, and recorded by the Secretary of the Commonwealth in the first case, or by the clerk of the court in the other cases. When the bond is taken under an order or decree in a pending cause a certified copy thereof shall be filed in the cause by the clerk and charged as costs therein, and upon his failure to file such copy, he shall be fined ten dollars. Every such bond shall contain, as to the respective obligors, such a waiver as is provided for in § 34-22. In any such bond the

INTRODUCED

HB949

60 liability of the surety or sureties may be limited to such sum or sums as they may respectively require.

61 *The person or entity requiring such bond may, at any time, require proof of payment of the bond's*
62 *premium. Such proof of payment shall be made by filing with the person or entity, as the case may be,*
63 *the written certification of any surety (if surety is required) or fidelity company duly authorized to do*
64 *business in the Commonwealth certifying (i) that there is in effect such an executed bond, (ii) the term*
65 *of the bond, noting the execution and expiration dates, and (iii) that the premium has been paid in full*
66 *for the stated term of the bond.*

67 § 64.1-119. Oath and bond of administrator; when grant to cease.

68 Before any grant of administration, as of the estate of an intestate, the person to whom it is granted
69 shall, in the court or before the clerk granting it, give bond and take an oath that the deceased has left
70 no will, so far as he knows, and that he will faithfully perform the duties of his office to the best of his
71 judgment. Such oath may be taken on behalf of a corporation by its president, a vice-president,
72 secretary, treasurer or trust officer. If a will of the decedent be afterwards admitted to record, or if, after
73 administration is granted to a creditor or other person than a distributee, any distributee who shall not
74 have before refused shall apply for administration, there may be a grant of probate or administration,
75 after reasonable notice to such creditor or other person, in like manner as if the former grant had not
76 been made; and the former grant shall thereupon cease.

77 *The court or the clerk, as the case may be, may require proof of payment of the premium of the*
78 *bond as provided under § 49-12.*

79 § 64.1-120. Penalty of bond of executor or administrator.

80 A. Except as provided in subsection B, every bond of an executor or administrator shall be *given in*
81 *court or before the clerk and be* in a penalty equal, at the least, to the full value of the personal estate
82 of the deceased to be administered; and when there is a will which authorizes the executor or
83 administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty
84 equal, at the least, to the full value both of the personal estate and of such real estate, or rents and
85 profits, as the case may be.

86 B. Upon the request of an executor or administrator, the clerk shall redetermine the penalty of the
87 bond in light of any reduction in the current market value of the estate in the executor's or
88 administrator's possession or subject to his power, whether such reduction is due to disbursements,
89 distributions or valuation of assets, if such reduction is reflected in an accounting that has been
90 confirmed by the court or an inventory that has been approved by the commissioner of accounts and
91 recorded in the clerk's office. This provision shall not apply to any bond set by the court.

92 *The court or clerk, as the case may be, may require proof of payment of the premium of the bond as*
93 *provided under § 49-12.*