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HOUSE BILL NO. 1007

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 11-9.1 and 37.1-134.16 of the Code of Virginia, relating to guardians, conservators or attorneys-in-fact.

Patron—McDonnell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 11-9.1 and 37.1-134.22 of the Code of Virginia are amended and reenacted as follows:**

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability; exception.

Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney-in-fact or other agent, shall contain the words "This power of attorney (or his authority) shall not terminate on disability of the principal" or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney-in-fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law. All acts done by the attorney-in-fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefit of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any conservator or committee shall thereafter be appointed for the principal, the attorney-in-fact or agent shall, during the continuance of such appointment, account to such conservator or committee as he would otherwise be obligated to account to the principal.

The appointment of a conservator or committee pursuant to Title 37.1 shall not of itself revoke or limit the authority of the attorney-in-fact or other agent. However, in a proceeding in which the attorney-in-fact or other agent is made a party, the court which appointed the conservator or committee may revoke, suspend, or otherwise limit such authority. Furthermore, where no conservator or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-134.22, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate. *The court may order the adult protective services unit of the local social services department of the city or county where the principal resides or is located to determine whether the principal is abused, neglected or exploited and such other appropriate relief.*

§ 37.1-134.16. Petition for restoration, modification or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator or any other person, or upon motion of the court, the court may declare the incapacitated person restored to capacity, modify the type of appointment or the areas of protection, management or assistance previously granted or require a new bond, terminate the guardianship or conservatorship, order removal of the guardian or conservator as provided in § 26-3 or order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 37.1-134.10. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person as alleged in the petition to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court, and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 37.1-134.10 and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification or termination may be ordered upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or

59 conservator;

60 2. The extent of protection, management or assistance previously granted is either excessive or
61 insufficient considering the current need therefor;

62 3. The incapacitated person's understanding or capacity to manage the estate and financial affairs or
63 to provide for his or her health, care or safety has so changed as to warrant such action; or

64 4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is
65 insufficient.

66 D. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the
67 evidence that the incapacitated person has, in the case of a guardianship, substantially regained his
68 ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it
69 shall declare the person restored to capacity and discharge the guardian or conservator.

70 In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a
71 preponderance of the evidence that it is in the best interests of the incapacitated person to limit or
72 reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and
73 convincing evidence that it is in the best interests of the incapacitated person to increase or expand the
74 powers of the guardian or conservator, it shall so order.

75 The court may order a new bond or other appropriate relief upon finding by a preponderance of the
76 evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or
77 of the estate. *The court may order the adult protective services unit of the local social services*
78 *department of the city or county where the incapacitated person resides or is located to determine*
79 *whether the incapacitated person is abused, neglected or exploited.*

80 E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of
81 the guardian or conservator or upon the termination of the guardianship or conservatorship.

82 A guardianship or conservatorship shall terminate upon the death of the incapacitated person, or if
83 ordered by the court following a hearing on the petition of any interested person.

84 F. The court may allow reasonable compensation from the estate of the incapacitated person to any
85 guardian ad litem, attorney or evaluator appointed pursuant to this section. Any compensation allowed
86 shall be taxed as costs of the proceeding.