

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 269

An Act to amend and reenact § 6.1-332.1 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 1 of Title 11 a section numbered 11-9.7, and by adding a section numbered 54.1-2989.1, relating to limited access to safe-deposit box; possession of advance medical directives; possession of powers of attorney.

[H 2648]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-332.1 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 1 of Title 11 a section numbered 11-9.7, and by adding a section numbered 54.1-2989.1 as follows:

§ 6.1-332.1. Limited access to safe-deposit box.

A. Upon the death of a sole lessee of a safe-deposit box, the company or bank may permit limited access to the box by the spouse or next of kin of the deceased lessee or by a court clerk or other interested person for the limited purpose of looking for a will or other testamentary instruments. Access shall be under the supervision of a designated officer or employee, and nothing shall be removed from the box except the will or testamentary instrument for transmission to the appropriate clerk. If the box is co-leased, the company or bank may permit entry into the box by the spouse or next of kin or court clerk or other interested person for the purpose of looking for testamentary instruments and subject to the limitations above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box. *The company or bank may require such proof of death as it deems necessary.*

B. ~~Upon the incapacity of a receiving a letter from a licensed physician that in his professional opinion an individual, who is the sole lessee of a safe-deposit box, is incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of another, the company or bank may permit limited access to such box by the spouse or next of kin of the incapacitated lessee or by a court clerk or other interested person for the limited purpose of looking for a power of attorney executed by the lessee that relates to the management of his property or financial affairs. Such access shall be limited to the lessee's spouse, next of kin, and persons asserting a knowledge or belief that they are named as an agent in such a power of attorney believed to be in the box. Access shall be under the supervision of a designated officer or employee, and nothing shall be removed from the box except the power of attorney for transmission to a person named as agent therein. If the box is co-leased, the company or bank may permit entry into the box by the spouse or next of kin or court clerk or other interested person for the limited purpose of looking for a power of attorney and subject to the limitations same persons and under the same circumstances and terms as specified above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box.~~

C. ~~The company or bank may require proof of death or incapacity in the form of a letter from a licensed physician, as it deems necessary, and shall not be liable except for acting in bad faith or the permitting of the removal of other items from the safe-deposit box. Upon receiving a letter from a licensed physician that in his professional opinion an individual, who is the sole lessee of a safe-deposit box, is incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of another, the company or bank may permit access to such box for the limited purpose of looking for an advance medical directive executed by the lessee. Such access shall be limited to the lessee's guardian, spouse, next of kin, and persons asserting a knowledge or belief that they are named as an agent in an advance medical directive believed to be in the box. Access shall be under the supervision of a designated officer or employee, and nothing shall be removed from the box except the advance medical directive for transmission to a person named as agent therein or, in the absence of such a person, to the lessee's attending physician to be made a part of the lessee's medical records. If the box is co-leased, the company or bank may permit entry into the box by the same persons and under the same circumstances and terms as specified above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box.~~

D. *The company or bank shall make a photocopy of any document removed from a lessee's box pursuant to this section and place such copy in the box prior to delivering the original to any person, and it shall not be liable except for acting in bad faith or the permitting of the removal of other items from the safe-deposit box.*

§ 11-9.7. Failure to deliver power of attorney.

An attorney-in-fact or other agent in possession of a general, special or limited power of attorney or other writing vesting any power or authority in him shall, where the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure of the principal to deliver the instrument to him, and persons dealing with such attorney-in-fact or agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in any proceeding brought to terminate, suspend or limit the authority of the attorney-in-fact or other agent.

§ 54.1-2989.1. Failure to deliver advance directive.

An agent in possession of an advance medical directive vesting any power or authority in him shall, when the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure by the declarant to deliver the instrument to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in a proceeding brought to remove the agent or revoke the directive.