

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 528

An Act to amend and reenact § 37.1-137.5 of the Code of Virginia, relating to estate planning; revocation or amendment of trust by conservator.

[H 2809]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 37.1-137.5 of the Code of Virginia is amended and reenacted as follows:

§ 37.1-137.5. Estate planning.

A. In the order appointing a conservator entered pursuant to § 37.1-134.14 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind; or (ii) disclaim property as provided in Chapter 8 (§ 64.1-188 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person, the court in its discretion may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of such gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) such other factors as the court may deem relevant.

B. The conservator may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the requirement of a court-appointed guardian ad litem, without the requirement of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person if he or she were dead or a beneficiary under any known will of the incapacitated person and without requiring a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where such transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325 and may also contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

D. *A conservator may exercise the incapacitated person's power to revoke or amend a trust or to withdraw or demand distribution of trust assets only with the approval of the court for good cause shown, unless the trust instrument expressly provides otherwise.*