

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 37.2-1000 and 64.1-118 of the Code of Virginia, relating to*
 3 *conservators, guardians, and the appointment of administrators.*

[S 217]

Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 37.2-1000 and 64.1-118 of the Code of Virginia are amended and reenacted as follows:**

8 § 37.2-1000. Definitions.

9 As used in this chapter, unless the context requires a different meaning:

10 "Advance directive" shall have the same meaning as provided in the Health Care Decisions Act
 11 (§ 54.1-2981 et seq.).

12 "Conservator" means a person appointed by the court who is responsible for managing the estate and
 13 financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited
 14 conservator" or a "temporary conservator." The term includes (i) a local or regional program designated
 15 by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of
 16 Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established
 17 pursuant to § 501(c) (3) of the Internal Revenue Code to provide conservatorial services to incapacitated
 18 persons. Such tax-exempt charitable organization shall not be a provider of direct services to the
 19 incapacitated person. *If a tax-exempt charitable organization has been designated by the Virginia*
 20 *Department for the Aging as a public conservator, it may also serve as a conservator for other*
 21 *individuals.*

22 "Estate" includes both real and personal property.

23 "Guardian" means a person appointed by the court who is responsible for the personal affairs of an
 24 incapacitated person, including responsibility for making decisions regarding the person's support, care,
 25 health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of
 26 involuntary admission, residence. Where the context plainly indicates, the term includes a "limited
 27 guardian" or a "temporary guardian." The term includes a (i) local or regional program designated by the
 28 Department for the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of
 29 Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)
 30 (3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt
 31 charitable organization shall not be a provider of direct services to the incapacitated person. *If a*
 32 *tax-exempt charitable organization has been designated by the Virginia Department for the Aging as a*
 33 *public guardian, it may also serve as a guardian for other individuals.*

34 "Incapacitated person" means an adult who has been found by a court to be incapable of receiving
 35 and evaluating information effectively or responding to people, events, or environments to such an
 36 extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care,
 37 safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or
 38 financial affairs or provide for his support or for the support of his legal dependents without the
 39 assistance or protection of a conservator. A finding that the individual displays poor judgment alone
 40 shall not be considered sufficient evidence that the individual is an incapacitated person within the
 41 meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that
 42 the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of
 43 Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides
 44 otherwise.

45 "Limited conservator" means a person appointed by the court who has only those responsibilities for
 46 managing the estate and financial affairs of an incapacitated person as specified in the order of
 47 appointment.

48 "Limited guardian" means a person appointed by the court who has only those responsibilities for the
 49 personal affairs of an incapacitated person as specified in the order of appointment.

50 "Property" includes both real and personal property.

51 "Respondent" means an allegedly incapacitated person for whom a petition for guardianship or
 52 conservatorship has been filed.

53 § 64.1-118. What clerk or court to appoint administrator of estate; who to be preferred.

54 A. The court or the clerk who would have jurisdiction as to the probate of a will, if there were a
 55 will, shall have the jurisdiction to hear and determine the right of administration of the estate in the case
 56 of a person dying intestate. Administration shall be granted as follows:

57 1. During the first thirty days following the intestate's death, the clerk may grant administration (i) to
58 a sole distributee or his designee or (ii) in the absence of a sole distributee, to any distributee or his
59 designee who presents written waivers of right to qualify from all other competent distributees.

60 2. After thirty days have passed since the intestate's death, the clerk may grant administration to the
61 first distributee, or his designee, who applies therefor, without either waiting for any further period of
62 time, or requiring the consent or waiver of any other distributee; provided, however, that if, during the
63 first thirty days following the intestate's death, more than one distributee notifies the clerk of an intent to
64 qualify after the thirty-day period has elapsed, the clerk shall not appoint any distributee, or his
65 designee, until the clerk has given all such distributees an opportunity to be heard.

66 3. *After 45 days have passed since the intestate's death, the clerk may grant administration to any*
67 *nonprofit charitable organization that operated as a conservator or guardian for the decedent at the*
68 *time of his death; however, (i) if, during the first 45 days following the intestate's death, any distributee*
69 *notifies the clerk of an intent to qualify after the 45-day period has elapsed, the clerk shall not appoint*
70 *any such organization administrator until the clerk has given all such distributees an opportunity to be*
71 *heard, and (ii) such organization certifies that it has made a diligent search to find an address for any*
72 *sole distributee and has given not less than 30 days notice by certified mail of its intention to apply for*
73 *administration to the last known address or addresses of the distributee discovered or, alternatively, that*
74 *it has not been able to find any such address. Qualification of such organization is not subject to*
75 *challenge on account of a failure to have made the certification herein required.*

76 4. After sixty days have passed since the intestate's death, the clerk may grant administration to one
77 or more of the creditors or to any other person, provided such creditor or other person certifies that he
78 has made diligent search to find an address for any sole distributee and has given not less than thirty
79 days notice by certified mail of his intention to apply for administration to the last known address or
80 addresses of the distributee discovered or alternatively, that he has not been able to find any such
81 address. Qualification of a creditor or person other than a distributee is not subject to challenge on
82 account of a failure to have made the certification herein required.

83 4 5. The court may appoint administrators under the same conditions as herein provided for the
84 clerk, and when the court determines that it is in the best interests of an intestate's estate, the court may
85 depart therefrom at any time and appoint such person as the court, in the exercise of its discretion,
86 deems most appropriate.

87 B. The court or clerk shall not grant administration to any person unless satisfied that he is suitable
88 and competent to perform the duties of his office. A person under a disability as defined in § 8.01-2 is
89 not eligible to qualify.

90 C. If any beneficiary of the estate objects, no husband, wife or parent who has been barred from all
91 interest in the estate because of desertion or abandonment as provided under § 64.1-16.3 is suitable to
92 serve as an administrator of the estate of the deceased spouse or child, as the case may be.