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SENATE BILL NO. 217

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 1, 2006)

(Patron Prior to Substitute—Senator Quayle)

A BILL to amend and reenact §§ 37.2-1000, 37.2-1010, and 64.1-118 of the Code of Virginia, relating to conservators, guardians, and the appointment of administrators.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-1000, 37.2-1010, and 64.1-118 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-1000. Definitions.

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

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

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

"Estate" includes both real and personal property.

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

"Incapacitated person" means an adult who has been found by a court to be 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 (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

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

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

"Property" includes both real and personal property.

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

§ 37.2-1010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the

incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 37.2-1015. The guidelines for determining indigency set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

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

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

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

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

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

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

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

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

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