

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 532

*An Act to amend and reenact §§ 64.2-305, 64.2-309, 64.2-310, 64.2-311, 64.2-416, 64.2-424, 64.2-528, 64.2-537, 64.2-602, 64.2-609, 64.2-904, 64.2-1302, 64.2-1311, 64.2-1313, 64.2-1411, 64.2-1802, 64.2-1905, 64.2-1906, 64.2-2017, 64.2-2023, and 64.2-2026 of the Code of Virginia, relating to increasing various allowances and other amounts related to wills, trusts, and fiduciaries.*

[S 346]

Approved April 3, 2014

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 64.2-305, 64.2-309, 64.2-310, 64.2-311, 64.2-416, 64.2-424, 64.2-528, 64.2-537, 64.2-602, 64.2-609, 64.2-904, 64.2-1302, 64.2-1311, 64.2-1313, 64.2-1411, 64.2-1802, 64.2-1905, 64.2-1906, 64.2-2017, 64.2-2023, and 64.2-2026 of the Code of Virginia are amended and reenacted as follows:**

#### **§ 64.2-305. Augmented estate; exclusions; valuation.**

A. The augmented estate means the decedent's entire estate passing by will or intestate succession, real and personal, after payment of allowances and exemptions under Article 2 (§ 64.2-309 et seq.) of this chapter, funeral expenses, charges of administration that shall not include federal or state transfer taxes, and debts, and to which is added the following amounts:

1. The value of property, other than tangible personal property received by gift and the proceeds thereof, owned or acquired by the surviving spouse at the decedent's death, to the extent the property is derived from the decedent by any means other than by will or intestate succession without full consideration in money or money's worth;

2. The value of property, other than tangible personal property received by gift and the proceeds thereof, derived by the surviving spouse from the decedent without full consideration in money or money's worth by any means other than by will or intestate succession, and transferred by the surviving spouse at any time during the marriage to a person other than the decedent, which would have been includable in the surviving spouse's augmented estate if the surviving spouse had predeceased the decedent; and

3. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive full consideration in money or money's worth for the transfer, if the transfer was any of the following types:

a. Any transfer under which the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the possession or enjoyment of, or the right to income from, the property;

b. Any transfer to the extent that the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

c. Any transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship; or

d. Any transfer made to or for the benefit of a donee within the calendar year of the decedent's death or any of the five preceding calendar years to the extent that the aggregate value of the transfers to the donee exceeds \$10,000 in the amount specified in § 2503(b) of the Internal Revenue Code of 1986, as amended, for that calendar year, without regard to whether the federal gift tax exclusion applies to the transfer.

B. Notwithstanding the provisions of this section, the augmented estate shall not include (i) the value of any property transferred by the decedent during marriage with the written consent or joinder of the surviving spouse; (ii) the value of any property, its income, or proceeds received by the decedent, before or during the marriage to the surviving spouse, by gift, will, intestate succession, or any other method or form of transfer to the extent it was (a) received without full consideration in money or money's worth from a person other than the surviving spouse, and (b) maintained by the decedent as separate property; (iii) any transfer made to anyone other than the surviving spouse prior to January 1, 1991, to the extent that such transfer was irrevocable on that date; or (iv) the value of any property excluded from the augmented estate pursuant to § 64.2-317.

C. Property is valued as of the decedent's death, except that property irrevocably transferred during the lifetime of the decedent is valued as of the date the transferee came into possession or enjoyment of the property if such date precedes the date of the decedent's death.

1. Life estates and remainder interests are valued in the manner prescribed in Article 2 (§ 55-269.1 et seq.) of Chapter 15 of Title 55, and deferred payments and estates for years are discounted to present

value using the interest rate specified in § 55-269.1.

2. The value of an insurance policy that is irrevocably transferred during the lifetime of a decedent is the cost of a comparable policy on the date of the transfer or, if such a policy is not readily available, the policy's interpolated terminal reserve. The value of any premiums paid on an insurance policy owned by another person is only the amount of the premiums paid and not the insurance purchased or maintained with such premiums.

3. An initial interest in property owned as a joint tenant with survivorship is valued at the time the interest is acquired, and a further interest received upon the death of a cotenant is valued at the time of the cotenant's death. Property owned jointly by persons married to each other is rebuttably presumed to have been acquired with contributions of equal value by each tenant. The mere creation of an indebtedness secured by jointly owned property is not a contribution to its acquisition, but any satisfaction of such an indebtedness is a contribution. An interest in a tenancy by the entireties is valued as if it were an interest in a joint tenancy with survivorship. Joint accounts in financial institutions are valued in accordance with the provisions of Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2.

**§ 64.2-309. Family allowance.**

A. In addition to any other right or allowance under this article, upon the death of a decedent who was domiciled in the Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum not to exceed ~~\$18,000~~ \$24,000, or in periodic installments not to exceed ~~\$1,500~~ \$2,000 per month for one year. It is payable to the surviving spouse for the use of the surviving spouse and minor children or, if there is no surviving spouse, to the person having the care and custody of the minor children. If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.

B. The family allowance has priority over all claims against the estate.

C. The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

D. The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid.

**§ 64.2-310. Exempt property.**

A. In addition to any other right or allowance under this article, the surviving spouse of a decedent who was domiciled in the Commonwealth is entitled from the estate to value not exceeding \$15,000 \$20,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If the value of the exempt property selected in excess of any security interests therein is less than ~~\$15,000~~ \$20,000, or if there is not ~~\$15,000~~ \$20,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~\$15,000~~ \$20,000 value.

B. The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property has priority over all claims against the estate, except the family allowance.

C. The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

**§ 64.2-311. Homestead allowance.**

A. In addition to any other right or allowance under this article, a surviving spouse of a decedent who was domiciled in the Commonwealth is entitled to a homestead allowance of ~~\$15,000~~ \$20,000. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to ~~\$15,000~~ \$20,000, divided by the number of minor children.

B. The homestead allowance has priority over all claims against the estate, except the family allowance and the right to exempt property.

C. The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will or by intestate succession is less than ~~\$15,000~~ \$20,000, then the surviving spouse or minor children are entitled to a homestead allowance in an amount that when added to the property passing to the surviving spouse and minor children by the decedent's will or by intestate succession, equals the sum of ~~\$15,000~~ \$20,000.

D. If the surviving spouse claims and receives an elective share of the decedent's estate under §§ 64.2-302 through 64.2-307, the surviving spouse shall not have the benefit of any homestead allowance.

**§ 64.2-416. Devises and bequests that fail; how to pass.**

A. Unless a contrary intention appears in the will, and except as provided in § 64.2-418:

1. If a devise or bequest other than a residuary devise or bequest fails for any reason, it shall become a part of the residue; and

2. If the residue is devised or bequeathed to two or more persons and the share of one fails for any reason, such share shall pass to the other residuary devisees or legatees in proportion to their interests in the residue.

B. Notwithstanding the provisions of §§ 64.2-2604 and 64.2-2605 and unless a contrary intention appears in the will, if a testator makes a bequest, not exceeding the value of ~~\$25~~ ~~\$100~~, to a legatee and such legatee refuses to take possession of such bequest, then the bequest shall fail and becomes a part of the residue of the testator's estate.

**§ 64.2-424. When direction to purchase annuity binding on legatee.**

If a testator directs in his will that an annuity sufficient to provide income of at least ~~\$10~~ ~~\$100~~ per month be purchased for a legatee, the legatee who is to receive the income from the annuity shall not have the right to instead take the sum directed to be used to purchase such annuity, except to the extent that the will expressly provides for such right or that an assignable annuity be purchased.

**§ 64.2-528. Order in which debts and demands of decedents to be paid.**

When the assets of the decedent in his personal representative's possession are not sufficient to satisfy all debts and demands against him, they shall be applied to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;
2. The allowances provided in Article 2 (§ 64.2-309 et seq.) of Chapter 3;
3. Funeral expenses not to exceed ~~\$3,500~~ ~~\$4,000~~;
4. Debts and taxes with preference under federal law;
5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed ~~\$400~~ ~~\$2,150~~ for each hospital and nursing home and ~~\$150~~ ~~\$425~~ for each person furnishing services or goods;
6. Debts and taxes due the Commonwealth;
7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of the Commonwealth; as personal representative, guardian, conservator, or committee when the qualification was in the Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;
8. Debts and taxes due localities and municipal corporations of the Commonwealth; and
9. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

**§ 64.2-537. Action to enforce claim of less than \$100; notice.**

No action may be brought pursuant to this article where the amount of the claim does not exceed ~~\$20~~ ~~\$100~~, unless, at least 30 days before the action was filed, the person or estate that is liable has been given notice that such action would be brought if the amount of the claim was not paid within such time.

**§ 64.2-602. Payment or delivery of small asset valued at \$25,000 or less without affidavit.**

A. Notwithstanding the provisions of § 64.2-601, any person having possession of a small asset valued at ~~\$15,000~~ ~~\$25,000~~ or less may pay or deliver the small asset to any successor provided that:

1. At least 60 days have elapsed since the decedent's death; and
2. No application for the appointment of a personal representative is pending or has been granted in any jurisdiction.

B. The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth to the other successors, if any.

**§ 64.2-609. Money and personal property belonging to nonresident decedents.**

A. When any person, at the time of his death domiciled outside of the Commonwealth, owned stocks, bonds, securities, money, or tangible personal property located in the Commonwealth or was entitled to any debts, choses in action, or tangible personal property in the Commonwealth, the person, firm, or corporation holding such stocks, bonds, securities, money, debts, tangible personal property, and choses in action shall retain such assets for 90 days from the death of such decedent. After the 90-day period, the person, firm, or corporation shall pay over or deliver on demand such portion of the assets for which the person, firm, or corporation has received no legal notice of any lien or encumbrance to an executor, administrator, or other personal representative, qualified according to the laws of the decedent's domicile if the value of such assets in the Commonwealth is, to the knowledge of the person holding or owing such assets, less than ~~\$15,000~~ ~~\$25,000~~. When the value of such stocks, bonds, securities, money, debts, tangible personal property, and choses in action is ~~\$15,000~~ ~~\$25,000~~ or more, the holder may pay or deliver such assets to an executor, administrator, or other personal representative, qualified in accordance with the law of the decedent's domicile, 30 days after the holder gives public notice of his intention to make such a transfer by publication thereof once a week for four successive weeks in a newspaper of general circulation in the city, town, or county wherein the holder resides or has his principal place of business, provided that at the time of such payment or delivery, the holder has no actual notice of the appointment of a personal representative for such decedent in the Commonwealth.

and has received no legal notice of any lien or encumbrance upon such assets.

B. This section shall be construed as providing, as to the payment of money and the delivery of personal property belonging to nonresident decedents or their estates, optional methods of procedure in addition to those otherwise permitted or provided by law, including a comparable law of the state in which the nonresident decedents were domiciled, and shall not as to such matters add any limitations or restrictions to existing law.

**§ 64.2-904. Transfer to custodial trustee by fiduciary or obligor; facility of payment.**

A. Unless otherwise directed by an instrument designating a custodial trustee pursuant to § 64.2-902, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds ~~\$10,000~~ \$25,000, the transfer is not effective unless authorized by the court.

B. With court approval, any person, including a conservator, guardian, or other fiduciary who holds property of or owes a debt to an incapacitated individual, may make a transfer to any person as a custodial trustee for the use and benefit of the incapacitated individual. The court, in the exercise of its discretion, may require the custodial trustee to furnish a bond with surety for the faithful performance of his fiduciary duties.

C. A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

**§ 64.2-1302. Waiver of inventory and settlement for certain estates.**

When a decedent's personal estate passing by testate or intestate succession does not exceed \$15,000 \$25,000 in value and an heir, beneficiary, or creditor whose claim exceeds the value of the estate seeks qualification, the clerk of the circuit court shall waive the inventory under § 64.2-1300 and the settlement under § 64.2-1206. This section shall not apply if the decedent died owning any real estate over which the person seeking qualification would have the power of sale.

**§ 64.2-1311. Vouchers and statement of assets on hand; direct payments to account; vouchers for IRS payments.**

A. Vouchers for disbursements and a statement of cash on hand or in a bank and all investments held at the terminal date of the account shall also be exhibited with each account. A voucher shall not be required when a disbursement, not exceeding the value of ~~\$25~~ \$50, is made to a legatee under the authority of a will and such legatee refuses to take the possession or fails to present the disbursement check to a bank for payment. In such case the fiduciary shall file an affidavit stating that he has made a good faith effort to comply with the terms of the will and the provisions of this section.

B. A fiduciary may make payment to a beneficiary by transfer to the beneficiary's bank account with the fiduciary or by payment to an account with another bank through an automated clearinghouse, wire transfer, or similar mechanism, if the beneficiary has consented in writing to such method of payment. In either case, a record or statement of the bank making such payment shall be a sufficient voucher for the purpose of subsection A.

C. In the case of payments to the Internal Revenue Service for income tax estimates or any other payments required or permitted to be made by wire transfer or similar mechanism, a record or statement of the bank making such payment shall be a sufficient voucher for the purpose of subsection A.

D. In the case of payments of debts, taxes, and expenses, a corporate fiduciary's affidavit signed by an officer familiar with the facts that describes each payment by date, payee, purpose, and amount shall be a sufficient voucher for the purpose of subsection A. However, the commissioner of accounts may require that the corporate fiduciary exhibit a voucher for a specific payment.

E. In the event a fiduciary seeks to use a check as a voucher or receipt under this section, (i) a copy of both sides of the check shall be sufficient or (ii) a copy of the front side of the check and the periodic statement from the financial institution showing the check number and amount that coincides with the copy shall be sufficient, provided that (a) the copy was made in the regular course of business in accordance with the admissibility requirements of § 8.01-391 and (b) the commissioner of accounts may require a fiduciary to exhibit a proper voucher for a specific payment or for distributions to beneficiaries or distributees. However, the commissioner of accounts shall not require a fiduciary to exhibit an original check as a voucher under this subsection.

**§ 64.2-1313. Exhibition of accounts when sum does not exceed certain amount.**

If the principal sum held by any fiduciary mentioned in § 64.2-1206 does not exceed ~~\$15,000~~ \$25,000, the fiduciary shall exhibit his accounts before the commissioner of accounts within the appropriate time period provided in §§ 64.2-1305, 64.2-1306, and 64.2-1307. Thereafter, the commissioner of accounts may permit the fiduciary to exhibit his accounts every three years, which permission may be revoked by the commissioner of accounts on his own motion or upon request of any interested person. The provisions of this section shall apply to any case in which the corpus of the estate in the hands of the fiduciary has been reduced to ~~\$15,000~~ \$25,000 or less although it formerly exceeded that amount. Any fiduciary exhibiting his accounts in accordance with the provisions of this section shall be entitled to compensation for his services.

**§ 64.2-1411. When fiduciary may qualify without security.**

Any circuit court or circuit court clerk, having jurisdiction to appoint personal representatives, guardians, conservators, and committees, may, in his discretion, when the amount coming into the possession of the personal representative, guardian of a minor, conservator, or committee does not exceed ~~\$15,000~~ \$25,000, allow the personal representative, guardian, conservator, or committee to qualify by giving bond without surety. Any personal representative or trustee serving jointly with a bank or trust company that is exempted from giving surety on its bond under § 6.2-1003 shall, unless the court directs otherwise, also be exempt from giving surety.

**§ 64.2-1802. Parental duty of support; limited authority of commissioner of accounts.**

A commissioner of accounts for the jurisdiction where a guardian qualifies may authorize the same distributions under the same circumstances as the circuit court may authorize under subsection A of § 64.2-1801, except that (i) the total distributions authorized in any one year shall not exceed \$3,000 \$5,000 and (ii) the commissioner of accounts shall, in his report to the court on the guardian's next accounting, explain the necessity for the distributions so authorized. The provisions of subsection B of § 64.2-1801 shall not apply to proceedings under this section, but the commissioner shall give five days' written notice of the scheduled hearing date to any minor who is 14 years of age or older. The commissioner of accounts shall not charge a fee in excess of \$100 for such hearing.

**§ 64.2-1905. Other transfer by fiduciary.**

A. Subject to subsection C, a personal representative or trustee may make an irrevocable transfer to an adult or trust company as custodian for the benefit of a minor pursuant to § 64.2-1908 in the absence of a will or under a will or trust that does not contain an authorization to do so.

B. Subject to subsection C, a conservator may make an irrevocable transfer to an adult or trust company as custodian for the benefit of the minor pursuant to § 64.2-1908.

C. A transfer under either subsection A or B may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds ~~\$10,000~~ \$25,000 in value or is made by a conservator.

**§ 64.2-1906. Transfer by obligor.**

A. Subject to subsections B and C, a person not subject to § 64.2-1904 or who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 64.2-1908.

B. If a person having the right to do so under § 64.2-1902 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

C. If no custodian has been nominated under § 64.2-1902, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ~~\$10,000~~ \$25,000 in value, in which event the transfer may be made if authorized by the court.

**§ 64.2-2017. Payments from U.S. Department of Veterans Affairs.**

Monthly payments of pension, compensation, insurance, or other benefits from the U.S. Department of Veterans Affairs made to a trustee or other fiduciary shall be considered as income and not principal, but the accumulation of such monthly payments received by a trustee or other fiduciary and in his possession at the end of the accounting year may be carried over as principal and converted into the corpus of the estate when the accumulation amounts to ~~\$200~~ \$2,000 or more.

**§ 64.2-2023. Estate planning.**

A. In the order appointing a conservator entered pursuant to § 64.2-2009 or in a separate proceeding brought on petition, the court may for good cause shown authorize a conservator to (i) make gifts from income and principal of the incapacitated person's estate 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, (ii) disclaim property as provided in Chapter 26 (§ 64.2-2600 et seq.), or (iii) create a revocable or irrevocable trust on behalf of an incapacitated person with terms approved by the court or transfer assets of an incapacitated person or an incapacitated person's estate to a trust.

B. In a proceeding under this section, a guardian ad litem shall be appointed to represent the interest of the incapacitated person. Notice of a proceeding under this section shall be given pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia to: (i) the incapacitated person and the incapacitated person's spouse and children, (ii) all beneficiaries named in any known will of the incapacitated person, (iii) the incapacitated person's intestate heirs determined as if the incapacitated person had died intestate on the date of the filing of the petition, and (iv) all other interested persons. The court may authorize the hearing to proceed without notice to any person who would not be substantially affected by the proceedings. For the purposes of this section, the beneficiaries and intestate heirs shall be deemed possessed of inchoate property rights. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may with the approval of the court be represented and bound by another

having a substantially identical interest with respect to the will proceeding under this section, but only to the extent that there is no conflict of interest between the representative and the person represented.

C. The court shall determine the amounts, recipients, and proportions of any gifts of the estate, the advisability of any disclaimer, whether good cause exists to create a trust or transfer assets, and whether to approve the trust terms after considering (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of the gifts, disclaimers, trusts, or transfers 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 and the effect of the gifts, disclaimers, trusts, or transfers on the estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts, disclaimers, trusts, or transfers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; (viii) whether to require, during the lifetime of the incapacitated person, that the trustee of any trust created or funded pursuant to this section post bond, with or without surety, or provide an accounting as set forth in § 64.2-1305; and (ix) other factors that the court may deem relevant.

D. *A commissioner of accounts for the jurisdiction where a conservator qualifies may authorize the same gifts under the same circumstances as the circuit court may authorize under subsection C, except that (i) the total gifts authorized in a calendar year shall not exceed \$25,000 and (ii) the commissioner shall report to the court his determination based upon consideration of clauses (i) through (ix) set forth in subsection C. The provisions of subsection B shall not apply to proceedings before the commissioner, but the commissioner shall give reasonable written notice of the scheduled hearing date to any person who would be substantially affected by the proceedings. The commissioner may provide notice to a minor by mail to the duly qualified guardian of the minor or, if none exists, a custodial parent of the minor who is also not the conservator.*

E. If the gifts by the conservator under clause (i) of subsection A do not exceed ~~\$100~~ \$150 to each donee in a calendar year and do not exceed a total of ~~\$500~~ \$750 in a calendar year, the conservator may make such gifts without a hearing under this section, the appointment of a guardian ad litem, or giving notice to any person. Prior to the making of such a gift, the conservator shall consider clauses (i) through (ix) set forth in subsection C and shall 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.

~~E.~~ F. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where the 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. The conservator also may 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.

~~F.~~ G. 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.

#### **§ 64.2-2026. Surrender of incapacitated person's estate.**

A. If the incapacitated person is restored to capacity, the fiduciary shall surrender the incapacitated person's estate or that portion for which he is accountable to the incapacitated person.

B. If the incapacitated person dies prior to being restored to capacity, the fiduciary shall surrender the real estate to the incapacitated person's heirs or devisees and the personal estate to his executors or administrators. If, at the time of the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is ~~\$15,000~~ \$25,000 or less, (ii) a personal representative has not qualified within 60 days of the incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse or, if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the fiduciary's final accounting submitted to the commissioner of accounts.