

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 64.2-2019 of the Code of Virginia, relating to guardianship;*  
3 *communication between incapacitated person and others.*

4 [S 466]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 64.2-2019 of the Code of Virginia is amended and reenacted as follows:**8 **§ 64.2-2019. Duties and powers of guardian.**

9 A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was  
10 appointed guardian and may be held personally liable for a breach of any fiduciary duty to the  
11 incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the  
12 guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of  
13 the incapacitated person.

14 B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance  
15 directive or durable power of attorney previously executed by the incapacitated person. A guardian may  
16 seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as  
17 provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of  
18 the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of  
19 § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an  
20 advance directive, but the modification shall not in any way affect the incapacitated person's directives  
21 concerning the provision or refusal of specific medical treatments or procedures.

22 C. A guardian shall maintain sufficient contact with the incapacitated person to know of his  
23 capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as  
24 often as necessary.

25 D. A guardian shall be required to seek prior court authorization to change the incapacitated person's  
26 residence to another state, to terminate or consent to a termination of the person's parental rights, or to  
27 initiate a change in the person's marital status.

28 E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in  
29 decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A  
30 guardian, in making decisions, shall consider the expressed desires and personal values of the  
31 incapacitated person to the extent known and shall otherwise act in the incapacitated person's best  
32 interest and exercise reasonable care, diligence, and prudence. *A guardian shall not unreasonably restrict*  
33 *an incapacitated person's ability to communicate with, visit, or interact with other persons with whom*  
34 *the incapacitated person has an established relationship.*

35 F. A guardian shall have authority to make arrangements for the funeral and disposition of remains,  
36 including cremation, interment, entombment, memorialization, inurnment, or scattering of the remains,  
37 or some combination thereof, if the guardian is not aware of any person that has been otherwise  
38 designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to  
39 make arrangements for the funeral and disposition of remains after the death of an incapacitated person  
40 if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to  
41 determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make  
42 the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next  
43 of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral  
44 service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune  
45 from civil liability for any act, decision, or omission resulting from acceptance of any dead body for  
46 burial, cremation, or other disposition when the provisions of this section are met, unless such acts,  
47 decisions, or omissions resulted from bad faith or malicious intent.

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