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HOUSE BILL NO. 1954

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 11, 2019)

(Patron Prior to Substitute—Delegate Campbell, J.L.)

*A BILL to amend and reenact § 64.2-1614 of the Code of Virginia, relating to Uniform Power of Attorney Act breach of fiduciary duty; recovery of attorney fees.***Be it enacted by the General Assembly of Virginia:****1. That § 64.2-1614 of the Code of Virginia is amended and reenacted as follows:****§ 64.2-1614. Judicial relief.**

A. In addition to the remedies referenced in § 64.2-1621, the following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

1. The principal or the agent;
2. A guardian, conservator, personal representative of the estate of a deceased principal, or other fiduciary acting for the principal;
3. A person authorized to make health care decisions for the principal;
4. The principal's spouse, parent, or descendant;
5. An adult who is a brother, sister, niece, or nephew of the principal;
6. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
7. The adult protective services unit of the local department of social services for the county or city where the principal resides or is located;
8. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
9. A person asked to accept the power of attorney.

B. 1. Whether or not supplemental relief is sought in the proceeding, where an agent has violated duties of disclosure imposed by § 64.2-1612, any person to whom such duties are owing may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under Chapter 20 (§ 64.2-2000 et seq.); (ii) terminating, suspending, or limiting the authority of the agent; or (iii) bringing a proceeding to hold the agent, or a transferee from such agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the agent of information and records pertaining to actions taken pursuant to a power of attorney.

2. The petition may be filed in the circuit court of the county or city in which the agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under Chapter 20 (§ 64.2-2000 et seq.), or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the agent and to the principal, if no guardian or conservator has been appointed, or to the conservator or guardian, if one has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of Supreme Court of Virginia. Upon the failure of the agent to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 64.2-1612, may, upon finding that the failure to comply with the request for information was unreasonable, order the agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.

3. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the agent.

C. The agent may, after reasonable notice to the principal, petition the circuit court for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney or other writing. The court shall determine the amounts, recipients, and proportions of any gifts of the principal's property after considering all relevant factors including, without limitation, those

60 contained in subsection C of § 64.2-1638.

61 D. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the
62 court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

63 *E. In a judicial proceeding under this chapter, if the court finds that the agent breached his fiduciary*
64 *duty in violation of the provisions of this chapter, the court, as justice and equity may require, may*
65 *award costs and expenses, including reasonable attorney fees, to any person who petitions the court for*
66 *relief under subdivisions A 1 through 8, to be paid by the agent found in violation. This provision*
67 *applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2019.*