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HOUSE BILL NO. 1411

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 31, 2020)

(Patron Prior to Substitute—Delegate Leftwich)

A BILL to amend and reenact § 64.2-2011 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 5 of Title 64.2 a section numbered 64.2-520.2, relating to fiduciaries; good faith reliance on certificate of qualification.

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2011 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 5 of Title 64.2 a section numbered 64.2-520.2 as follows:

§ 64.2-520.2. *Reliance on certificate of qualification of a personal representative.*

A. Any individual or entity conducting business in good faith with a personal representative who presents a currently effective certificate of qualification may presume that the personal representative is properly authorized to act as to any matter or transaction. A person that refuses in violation of this section to accept a certificate of qualification is subject to (i) a court order mandating acceptance of the certificate of qualification and (ii) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the certificate of qualification or mandates acceptance of the certificate of qualification.

B. A person shall either accept or reject a certificate of qualification no later than seven business days after presentation of such certificate of qualification for acceptance. A person is not required to accept a certificate of qualification for a transaction if:

1. Engaging in the transaction with the personal representative would be inconsistent with state or federal law;

2. The person has actual knowledge of the termination of the personal representative's authority or of the certificate of qualification before exercise of the power; or

3. The person in good faith believes that the certificate of qualification is not valid or that the personal representative does not have the authority to perform the act requested.

§ 64.2-2011. **Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.**

A. A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and

3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

B. Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § 64.2-2014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order to the local department of social services in the jurisdiction where the respondent then resides and to the Department of Medical Assistance Services.

C. A conservator shall have all powers granted pursuant to § 64.2-2021 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to the limitations that are prescribed in the order. The powers granted to a guardian shall only be those powers enumerated in the court order.

D. Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification may presume that the guardian or conservator is properly authorized to act as to any matter or transaction, except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

1. A person that refuses in violation of this subsection to accept a certificate of qualification is subject to (i) a court order mandating acceptance of the certificate of qualification and (ii) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the certificate of qualification or mandates acceptance of the certificate of qualification.

60 2. A person shall either accept or reject a certificate of qualification no later than seven business
61 days after presentation of such certificate of qualification for acceptance. A person is not required to
62 accept a certificate of qualification for a transaction if:
63 a. Engaging in the transaction with the guardian or conservator would be inconsistent with state or
64 federal law;
65 b. The person has actual knowledge of the termination of the authority of the guardian or
66 conservator or of the certificate of qualification before exercise of the power; or
67 c. The person in good faith believes that the certificate of qualification is not valid or that the
68 guardian or conservator does not have the authority to perform the act requested.