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**HOUSE BILL NO. 841**

Offered January 8, 2020

Prefiled January 7, 2020

*A BILL to amend and reenact §§ 64.2-2002, 64.2-2006, 64.2-2007, and 64.2-2008 of the Code of Virginia, relating to guardianship; appointment of counsel for respondent; presence of respondent at hearings and proceedings; proceedings initiated in bad faith.*

Patron—Murphy

Referred to Committee for Courts of Justice

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

**1. That §§ 64.2-2002, 64.2-2006, 64.2-2007, and 64.2-2008 of the Code of Virginia are amended and reenacted as follows:**

**§ 64.2-2002. Who may file petition; contents.**

A. Any person may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;

2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;

3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order. *The petitioner shall further certify that the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren, have (i) been notified of petitioner's intent to petition for the appointment as a guardian, a conservator, or both; (ii) affirmatively waived their right and desire to serve as such guardian, or conservator, or both; and (iii) designated and support petitioner to become such guardian, conservator, or both;*

4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, and any guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney, advance directive, or order appointing the guardian, committee, or conservator, if available;

6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;

8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;

9. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;

10. The native language of the respondent and any necessary alternative mode of communication;

11. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;

12. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and

13. A request for appointment of a guardian ad litem.

**§ 64.2-2006. Counsel for respondent.**

The respondent has the right to be represented by counsel of the respondent's choice. If the

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59 respondent is not represented by counsel, the court ~~may~~ *shall* appoint legal counsel upon the filing of  
60 the petition ~~or at any time prior to the entry of the order upon request of the respondent or the guardian~~  
61 ~~ad litem~~, if the court determines that counsel is needed to protect the respondent's interest. Counsel  
62 appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of  
63 the proceeding.

64 A health care provider shall disclose or make available to the attorney, upon request, any  
65 information, records, and reports concerning the respondent that the attorney determines necessary to  
66 perform his duties under this section, including a copy of the evaluation report required under §  
67 64.2-2005.

68 **§ 64.2-2007. Hearing on petition to appoint.**

69 A. The respondent is entitled to a jury trial upon request, and may compel the attendance of  
70 witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

71 B. The court or the jury, if a jury is requested, shall hear the petition for the appointment of a  
72 guardian or conservator. The hearing may be held at such convenient place as the court directs,  
73 including the place where the respondent is located. The hearing shall be conducted within 120 days  
74 from the filing of the petition unless the court postpones it for cause. The proposed guardian or  
75 conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide  
76 the court with a recommendation as to living arrangements and a treatment plan for the respondent. The  
77 respondent is entitled to be present at the hearing and all other stages of the proceedings. ~~The Except for~~  
78 ~~good cause shown, the respondent shall be present if he so requests or if his presence is requested by~~  
79 ~~the guardian ad litem and given an opportunity to be heard.~~ Whether or not present, the respondent  
80 shall be regarded as having denied the allegations in the petition.

81 C. In determining the need for a guardian or a conservator and the powers and duties of any  
82 guardian or conservator, if needed, consideration shall be given to the following factors: (i) the  
83 limitations of the respondent; (ii) the development of the respondent's maximum self-reliance and  
84 independence; (iii) the availability of less restrictive alternatives, including advance directives and  
85 durable powers of attorney; (iv) the extent to which it is necessary to protect the respondent from  
86 neglect, exploitation, or abuse; (v) the actions needed to be taken by the guardian or conservator; (vi)  
87 the suitability of the proposed guardian or conservator; and (vii) the best interests of the respondent.

88 D. If, after considering the evidence presented at the hearing, the court or jury determines on the  
89 basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or  
90 conservator, the court shall appoint a suitable person, who may be the spouse of the respondent, to be  
91 the guardian or the conservator or both, giving due deference to the wishes of the respondent.

92 The court in its order shall make specific findings of fact and conclusions of law in support of each  
93 provision of any orders entered.

94 **§ 64.2-2008. Fees and costs.**

95 A. The petitioner shall pay the filing fee set forth in subdivision A 43 of § 17.1-275 and costs.  
96 Service fees and court costs may be waived by the court if it is alleged under oath that the estate of the  
97 respondent is unavailable or insufficient. If a guardian or conservator is appointed and the court finds  
98 that the petition is brought in good faith and for the benefit of the respondent, the court shall order that  
99 the petitioner be reimbursed from the estate for all reasonable costs and fees if the estate of the  
100 incapacitated person is available and sufficient to reimburse the petitioner. If a guardian or conservator  
101 is not appointed and the court nonetheless finds that the petition is brought in good faith and for the  
102 benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to  
103 reimburse the petitioner for all reasonable costs and fees. The court ~~may~~ *shall* require the petitioner to  
104 pay or reimburse all ~~or some~~ of the respondent's reasonable costs and fees and any other costs incurred  
105 under this chapter if the court finds that the petitioner initiated a proceeding under this chapter that was  
106 in bad faith or not for the benefit of the respondent. *If a court finds that a petitioner initiated a*  
107 *proceeding under this chapter in bad faith or not for the benefit of the respondent, such petitioner shall*  
108 *further be fined and be prohibited from initiating any other such proceeding.*

109 B. In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to  
110 be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be  
111 borne by the Commonwealth.