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HOUSE BILL NO. 115

Offered January 10, 2024

Prefiled January 1, 2024

A BILL to amend and reenact §§ 64.2-2002, 64.2-2011, and 64.2-2020 of the Code of Virginia, relating to guardians and conservators; order of appointment and certificate of qualification; annual report.

Patron—Sullivan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2002, 64.2-2011, and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:

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

A. Any person, including a community services board and any other local or state governmental agency, 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;

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;

5a. The name, location, and post office address of the respondent's primary health care provider, if any;

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, contained in a separate confidential addendum, pursuant to § 64.2-2000.1;

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.

C. The petitioner shall complete and file with the petition for appointment of a guardian, conservator, or both, a cover sheet on a form prepared by the Office of the Executive Secretary of the Supreme Court of Virginia. Such cover sheet shall contain such information as the Executive Secretary deems necessary.

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

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59 certificate; reliance on certificate.

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

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

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

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

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

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

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

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

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

92 a. Engaging in the transaction with the guardian or conservator would be inconsistent with state or
93 federal law;

94 b. The person has actual knowledge of the termination of the authority of the guardian or conservator
95 or of the certificate of qualification before exercise of the power;

96 c. The person in good faith believes that the certificate of qualification is not valid or that the
97 guardian or conservator does not have the authority to perform the act requested; or

98 d. The person believes in good faith that the transaction may involve, facilitate, result in, or
99 contribute to financial exploitation.

100 **§ 64.2-2020. Annual reports by guardians.**

101 A. A guardian shall file an *initial* annual report ~~in compliance with the filing deadlines in~~
102 ~~§ 64.2-1305~~ *within four months of the date of qualification and shall file subsequent annual reports*
103 *annually thereafter on the same date* with the local department of social services for the jurisdiction
104 where the incapacitated person then resides. The annual report shall be on a form prepared by the Office
105 of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. To the
106 extent practicable, the annual report shall be formatted in a manner to encourage standardized and
107 detailed responses from guardians. The local department shall retain the fee in the jurisdiction where the
108 fee is collected for use in the provision of services to adults in need of protection. Within 60 days of
109 receipt of the annual report, the local department shall file a copy of the annual report with the clerk of
110 the circuit court that appointed the guardian, to be placed with the court papers pertaining to the
111 guardianship case. Twice each year the local department shall file with the clerk of the circuit court a
112 list of all guardians who are more than 90 days delinquent in filing an annual report as required by this
113 section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the
114 commissioner of accounts as provided in § 64.2-1305.

115 B. The annual report to the local department of social services shall include:

116 1. A description of the current mental, physical, and social condition of the incapacitated person,
117 including any change in diagnosis or assessment of any such condition of such incapacitated person by
118 any medical provider since the last report;

119 2. A description of the incapacitated person's living arrangements during the reported period,
120 including a specific assessment of the adequacy of such living arrangement;

121 3. The medical, educational, vocational, social, recreational, and any other professional services and
122 activities provided to the incapacitated person and the guardian's opinion as to the adequacy of the
123 incapacitated person's care. The information required by this subdivision shall include (i) the specific
124 names of the medical providers that have treated the incapacitated person and a description of the
125 frequency or number of times the incapacitated person was seen by such providers; (ii) the date and
126 location of and reason for any hospitalization of such incapacitated person; and (iii) a description of the
127 educational, vocational, social, and recreational activities in which such incapacitated person participated;

128 4. A statement of whether the guardian agrees with the current treatment or habilitation plan;

129 5. A statement of whether the incapacitated person has been an alleged victim in a report of abuse,
130 neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to
131 the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such
132 incapacitated person;

133 6. A recommendation as to the need for continued guardianship and any recommended changes in
134 the scope of the guardianship;

135 7. The name of any persons whose access to communicate, visit, or interact with the incapacitated
136 person has been restricted and the reasons for such restriction;

137 8. A self-assessment by the guardian as to whether he feels he is able to continue to carry out the
138 powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of
139 appointment pursuant to § 64.2-2009;

140 9. Unless the incapacitated person resides with the guardian, a statement of the frequency and nature
141 of any (i) in-person visits from the guardian with the incapacitated person over the course of the
142 previous year and (ii) visits over the course of the previous year from a designee who is directly
143 supervised or contracted by the guardian, including the name of the designee performing such visit. If
144 any visit described in this section is made virtually, the guardian shall include such information in the
145 annual report;

146 10. If no visit is made within a 120-day period, the guardian shall describe any challenges or
147 limitations in completing such visit;

148 11. A general description of the activities taken on by the guardian for the benefit of the
149 incapacitated person during the past year;

150 12. Any other information deemed necessary by the Office of the Executive Secretary of the
151 Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the
152 condition, treatment, and well-being of the incapacitated person;

153 13. Any other information useful in the opinion of the guardian; and

154 14. The compensation requested and the reasonable and necessary expenses incurred by the guardian.
155 The guardian shall certify by signing under oath that the information contained in the annual report
156 is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the
157 annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be
158 collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall
159 be deposited into the general fund.

160 C. If the local department of social services files notice that the annual report has not been timely
161 filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons
162 or rule to show cause why the guardian has failed to file such annual report.