

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 64.2-2009 and 64.2-2012 of the Code of Virginia, relating to guardianship and conservatorship; restoration or modification or termination of order; informal written communication.

[H 786]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2009 and 64.2-2012 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, § 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 64.2-2007; (vi) set the bond of the guardian and the bond and surety, if any, of the conservator; and (vii) where a petition is brought prior to the incapacitated person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect immediately upon entry or on the incapacitated person's eighteenth birthday.

A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine. Any such determination to waive the hearing or use a schedule differing from that prescribed in this subsection shall be supported in the order and address the reason for such determination, including (i) the likelihood that the respondent's condition will improve or the respondent will regain capacity, (ii) whether concerns or questions were raised about the suitability of the person appointed as a guardian or conservator at the time of the initial appointment, and (iii) whether the appointment of a guardian or conservator or the appointment of the specifically appointed guardian or conservator was contested by the respondent or another party.

The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123; an assisted living facility, as defined in § 63.2-100, or any other similar institution; or a health care provider other than a family member. If the petitioner is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall require such petitioner to attend any periodic review hearing.

Any person may file a petition, which may be on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date set forth in the order of appointment. The court shall hold an earlier hearing upon good cause shown. At such a hearing, the court shall review the schedule set forth in the order of appointment and determine whether future periodic review hearings are necessary or may be waived.

A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file a report. The incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the incapacitated person and to all individuals entitled to notice as identified in the court order of appointment. Fees and costs shall be paid in accordance with the provisions of §§ 64.2-2003 and 64.2-2008. The court shall enter an order reflecting any findings made during the review hearing and any modification to the guardianship or conservatorship.

B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs. The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes that are specified in the order.

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C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition.

D. A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive. A guardian need not be appointed for a person where a health care decision is made pursuant to, and within the scope of, the Health Care Decisions Act (§ 54.1-2981 et seq.).

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

E. All orders appointing a guardian shall include the following statements in conspicuous bold print in at least 14-point type:

1. Pursuant to § 64.2-2009 of the Code of Virginia, (name of guardian), is hereby appointed as guardian of (name of respondent) with all duties and powers granted to a guardian pursuant to § 64.2-2019 of the Code of Virginia, including but not limited to: (enter a statement of the rights removed and retained, if any, at the time of appointment; whether the appointment of a guardian is a full guardianship, public guardianship pursuant to § 64.2-2010 of the Code of Virginia, limited guardianship pursuant to § 64.2-2009 of the Code of Virginia, or temporary guardianship; and the duration of the appointment).

2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known, and shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

3. Pursuant to § 64.2-2020 of the Code of Virginia, an annual report shall be filed by the guardian with the local department of social services for the jurisdiction where the incapacitated person resides.

4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for restoration of the incapacitated person to capacity; modification of the type of appointment or areas of protection, management, or assistance granted; or termination of the guardianship. *In lieu of such a petition, if the person subject to the guardianship is not represented by counsel, such person may initiate the process by sending informal written communications to the court. All orders appointing a guardian, conservator, or both shall include the current mailing address, email address, and physical address of the court issuing the order and to which such informal written communication shall be directed.*

§ 64.2-2012. Petition for restoration, modification, or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or upon motion of the court, the court may (i) declare the incapacitated person restored to capacity; (ii) modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; (iii) terminate the guardianship or conservatorship; (iv) order removal of the guardian or conservator as provided in § 64.2-1410; or (v) order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 42 of § 17.1-275.

A1. Instead of the filing of a petition or upon motion provided by subsection A, if the person subject to the guardianship or conservatorship is not represented by counsel, such person may initiate the process to be restored to capacity or have guardianship or conservatorship modified or terminated by informal written communication to the court.

Upon receipt of such informal written communication, the court shall review the communication to determine whether there is good cause to take action and may (i) set the matter for hearing pursuant to the provisions of this section or (ii) take no action if there is not good cause for such a hearing. The

118 court shall communicate its decision to the incapacitated person and any guardian, conservator, and
 119 guardian ad litem then serving. Any court response, whether to set the matter for hearing or take no
 120 action, shall be issued in the form of a court order.

121 *No filing fee shall be assessed for the receipt of such informal communication.*

122 B. In the case of a petition for modification to expand the scope of a guardianship or
 123 conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing
 124 and a copy of the petition shall be personally served on the incapacitated person and mailed to other
 125 persons entitled to notice pursuant to § 64.2-2004. The court shall appoint a guardian ad litem for the
 126 incapacitated person and may appoint one or more licensed physicians or psychologists or licensed
 127 professionals skilled in the assessment and treatment of the physical or mental conditions of the
 128 incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other
 129 such petition or upon the motion of the court, and after reasonable notice to the incapacitated person,
 130 any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an
 131 original petition as provided in § 64.2-2004, and any other person or entity as the court may require, the
 132 court shall hold a hearing. *Upon the filing of any petition or submission of informal written*
 133 *communications pursuant to subsection A1, the incapacitated person has a right to be represented by*
 134 *counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis.*

135 C. An order appointing a guardian or conservator may be revoked, modified, or terminated upon a
 136 finding that it is in the best interests of the incapacitated person and that:

137 1. The incapacitated person is no longer in need of the assistance or protection of a guardian or
 138 conservator;

139 2. The extent of protection, management, or assistance previously granted is either excessive or
 140 insufficient considering the current need of the incapacitated person;

141 3. The incapacitated person's understanding or capacity to manage his estate and financial affairs or
 142 to provide for his health, care, or safety has so changed as to warrant such action; or

143 4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is
 144 insufficient.

145 D. The court shall declare the person restored to capacity and discharge the guardian or conservator
 146 if, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence
 147 that the incapacitated person has substantially regained his ability to (i) care for his person in the case of
 148 a guardianship or (ii) manage and handle his estate in the case of a conservatorship.

149 In the case of a petition for modification of a guardianship or conservatorship, the court shall order
 150 (a) limiting or reducing the powers of the guardian or conservator if the court finds by a preponderance
 151 of the evidence that it is in the best interests of the incapacitated person to do so, or (b) increasing or
 152 expanding the powers of the guardian or conservator if the court finds by clear and convincing evidence
 153 that it is in the best interests of the incapacitated person to do so.

154 The court may order a new bond or other appropriate relief upon finding by a preponderance of the
 155 evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or
 156 of the estate.

157 E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of
 158 the guardian or conservator or upon the termination of the guardianship or conservatorship.

159 A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if
 160 ordered by the court, following a hearing on the petition of any interested person.

161 F. The court may allow reasonable compensation from the estate of the incapacitated person to any
 162 guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed
 163 shall be taxed as costs of the proceeding.