

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 678

An Act to amend and reenact § 26-59 of the Code of Virginia, relating to nonresident fiduciaries.

[H 2127]

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 26-59 of the Code of Virginia is amended and reenacted as follows:

§ 26-59. Nonresident fiduciaries must have resident cofiduciaries; exceptions.

A. Except as provided in subsection B, a natural person, not a resident of this Commonwealth shall not be appointed or allowed to qualify or act as personal representative, or trustee under a will, of any decedent, or appointed as guardian of an infant's estate, or guardian of the person or property of an incapacitated person under § 37.1-132 or committee of any person non compos mentis, unless there is also appointed to serve with the nonresident personal representative, trustee, guardian or committee, a person resident in this Commonwealth or corporation authorized to do business in this Commonwealth. In the event such resident personal representative, trustee, or guardian ceases, for any reason to act, then a new resident personal representative, trustee, or guardian shall be appointed in the same manner as provided in § 26-48. However, when the nonresident guardian or committee is the parent of the infant or person non compos mentis, the resident guardian appointed under this section shall have no control over the person of the ward.

B1. Notwithstanding the provisions of subsection A, a parent, brother, or sister of a decedent, a child or other descendant of a decedent, the spouse of a child of a decedent, the surviving spouse of a decedent, or a person or all such persons otherwise eligible to file a statement in lieu of an accounting pursuant to § 26-20.1, or any combination of them, may be appointed and allowed to qualify as personal representative, or trustee under a will, of the decedent, provided, in each instance, (i) such qualification shall be subject to the provisions of Article 1 (§ 64.1-116 et seq.) of Chapter 6 of Title 64.1, and (ii) at the time of qualification each such person files with the clerk of the circuit court of the jurisdiction wherein such qualification is had, his consent in writing that service of process in any action or proceeding against him as personal representative, or trustee under a will, or any other notice with respect to the administration of the probate estate or the trust in his charge in this Commonwealth may be by service upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. In the event of the death, removal, resignation or absence from this Commonwealth of such resident agent or any successor named by a similar instrument filed with the clerk, or in the event that such resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of such circuit court. Notwithstanding § 64.1-121, where any nonresident qualifies pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative or trustee qualifies at the same time.

B2. *Notwithstanding the provisions of subsection A, an adult parent, brother, sister, spouse, child, or other adult descendant of a person adjudged incompetent or incapacitated pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1 of the Code, or any combination of them, may be appointed and allowed to qualify as guardian, committee or trustee of such incompetent or incapacitated person, provided, in each instance, at the time of qualification each such person files with the clerk of the circuit court of the jurisdiction wherein such qualification is had, his consent in writing that service of process in any action or proceeding against him as such fiduciary, or any other notice with respect to the administration of the estate, trust or person in his charge in this Commonwealth, may be by service upon the clerk of the court in which he is qualified pursuant to Chapter 1 (§ 26-7.1 et seq.) of Title 26, or upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. Notwithstanding § 37.1-135, when any nonresident qualifies pursuant to this subsection, bond with surety shall be required in every case, unless a resident fiduciary qualifies at the same time or the court making the appointment waives surety under the provisions of § 26-7.1.*

C. No corporation shall be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under § 37.1-132, or as one of the guardians of the person or property of an incapacitated person under § 37.1-132, or as committee of any person non compos mentis, or as one of the committees of a person non compos mentis, unless such corporation be authorized to do business in this Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, 1962, nor to affect in any way the other provisions of this chapter or of § 64.1-130. The provisions of this section

shall not authorize or allow any appointment or qualifications prohibited by § 6.1-5.

D. The fact that an individual nominated or appointed as the guardian of the person of an infant is not a resident of this Commonwealth shall not prevent the qualification of the individual to serve as the sole guardian of the person of the infant.