

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 410

An Act to amend and reenact §§ 26-48, 26-49 and 26-51 of the Code of Virginia, relating to appointment of trustees.

[H 487]

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-48, 26-49 and 26-51 of the Code of Virginia are amended and reenacted as follows:

§ 26-48. Court may appoint trustee in place of one dead, resigned, etc.

When a trustee in a will, deed or other writing ~~(1)~~ (i) dies, ~~(2)~~ (ii) becomes incapable of executing the trust on account of physical or mental disability or confinement in prison, ~~(3)~~ (iii) *when residency is statutorily required*, removes beyond the limits of the Commonwealth, ~~(4)~~ (iv) declines to accept the trust, ~~(5)~~ (v) having accepted, resigns the same, as he may be allowed to do, ~~(6)~~ (vi) if such trustee ~~be~~ is a corporation, ~~be~~ is adjudicated a bankrupt, or for any reason ~~lose~~ loses its charter, ~~(7)~~ (vii) *for any other reason ceases to be eligible to continue serving as trustee*, or ~~(7)~~ (viii) for any good cause shown, the circuit court of the county, or the circuit, corporation or other court of the city in which such will was admitted to probate, or such deed or other writing is or might have been recorded, or if a corporation, in which its principal office is located, or in which the trustee resides, or the judge thereof in vacation, may on motion of any party interested, and upon satisfactory evidence of such death, incapacity, confinement, removal, declination, resignation, bankruptcy, loss of charter, *or other loss of eligibility* or of such other good cause, appoint a trustee or trustees in place of the trustee or trustees named in such instrument.

Where the only courts of record in a city are a corporation court and a circuit court and both have the same clerk, then each of said courts shall have all the powers herein provided and any such decree or order of substitution heretofore made by such city, corporation, or city circuit court is hereby validated.

§ 26-49. Appointment by beneficiaries.

Except as provided in subdivision 9 of § 55-59, in any deed of trust, or trust agreement, the maker or makers or grantor or grantors may grant to the beneficiary or beneficiaries, or a majority in amount of the holders of the obligations secured thereunder, the right and power to appoint a substitute trustee or trustees, in event of the resignation, death, incapacity, disability, removal or absence from the Commonwealth *when residency is statutorily required*, of the trustee or trustees, *or if the trustee or trustees for any other reason cease to be eligible to continue serving*; ~~provided~~, however, ~~that~~ if the trust agreement so provides, substitution may be made at the discretion of the beneficiary or beneficiaries for any reason whatsoever.

When such power is so granted the beneficiary may designate and appoint a substitute trustee or trustees, in accordance with the deed of trust or other instrument creating or granting the power of appointment, by an instrument duly executed and acknowledged. When such instrument of appointment ~~shall have~~ has been executed, the substitute trustee or trustees named therein shall be vested with all the powers, rights, authority and duties vested in the trustee or trustees in the original deed of trust or trust agreement and, prior to or at the time of recordation of any instrument in which such power, right, authority or duty is exercised, shall record such instrument in the office of the clerk of the court wherein the original deed of trust or trust agreement is recorded.

All acts done prior to July 1, 1970, in conformity with the provisions of this section, are hereby validated.

§ 26-51. Who to execute the trust until new trustee appointed.

Until such appointment is made under § 26-48, the personal representative of a deceased sole trustee or of a deceased trustee who at the time of his death was the only trustee qualified to act, or if there ~~be~~ is more than one trustee, and one or more but less than all of them have died, resigned, or become incapable of executing the trust on account of physical or mental disability or confinement in prison or other institution, or removed from the Commonwealth *where residency is statutorily required*, or *otherwise become ineligible to continue serving as trustee*, or declined to accept the trust, the remaining trustee or trustees, shall execute the trust, or so much thereof as remained unexecuted at the death, removal, *ineligibility*, declination, or resignation aforesaid, or at the time such incapacity came into being (whether the trust subject ~~be~~ is real or personal property) unless the instrument creating the trust directs otherwise, or some other trustee ~~be~~ is appointed for the purpose by a court of chancery having jurisdiction of the case. This section and §§ 26-48 through 26-50 shall not apply to any case provided for by § 55-29.