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## SENATE BILL NO. 321

Offered January 20, 1998

A BILL to amend and reenact §§ 26-48 and 26-51 of the Code of Virginia, relating to appointment of new trustee.

Patron—Quayle (By Request)

Referred to the Committee for Courts of Justice

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

**1. That §§ 26-48 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) dies, (2) becomes incapable of executing the trust on account of physical or mental disability or confinement in prison, (3) removes beyond the limits of the Commonwealth *or, in the case of a corporate trustee, removes the management function over an existing trust to a jurisdiction outside of the Commonwealth*, (4) declines to accept the trust, (5) having accepted, resigns the same, as he may be allowed to do, *or* (6) if such trustee ~~be~~ is a corporation, ~~be~~ is adjudicated a bankrupt, or for any reason ~~lose~~ loses its charter, or ~~(7) for any other 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 *the trustee is* a corporation, in which its principal office *in the Commonwealth* is located, or in which the trustee resides, or the judge thereof in vacation, may, *or whenever the management function is moved by a corporate trustee pursuant to clause (3), shall*, on motion of any party interested, and upon satisfactory evidence of such death, incapacity, confinement, removal, declination, resignation, bankruptcy, loss of charter, or of such other good cause, appoint a trustee or trustees in place of the trustee or trustees named in such instrument. *In the case of a corporate trustee who removes the management function over the trust, the court shall appoint a trustee who is a resident of the Commonwealth.*

~~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.~~

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

~~Until such appointment is made under § 26-48, If~~ 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~~ removal from the Commonwealth *of themselves*, 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, declination, or resignation aforesaid, or at the time such incapacity came into being (whether the trust subject ~~be~~ is real or personal property) *until an appointment is made pursuant to § 26-48* unless the instrument creating the trust directs otherwise, or some other trustee ~~be~~is appointed for the purpose by a circuit court of ~~chancery~~ having jurisdiction of the case. *In the case of removal of the trust management function by a corporate trustee, the corporate trustee shall continue to execute the trust until such time as an appointment is made pursuant to § 26-48.*

This section and §§ 26-48 through 26-50 shall not apply to any case provided for by § 55-29.

INTRODUCED

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