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HOUSE BILL NO. 984

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 19, 2004)

(Patron Prior to Substitute—Delegate Reese)

A *BILL to amend and reenact § 37.1-134.6 of the Code of Virginia, relating to guardians and conservators.*

Be it enacted by the General Assembly of Virginia:

1. That § 37.1-134.6 of the Code of Virginia is amended and reenacted as follows:

§ 37.1-134.6. Definitions.

As used in this chapter, unless a different meaning is clearly required by the context:

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the (i) Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization pursuant to § 501 (c) (3) of the Internal Revenue Code established to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.

"Estate" includes both real and personal property.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and, if not inconsistent with an order of commitment, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes a local or regional program designated by the (i) Department for the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization pursuant to § 501 (c) (3) of the Internal Revenue Code established to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his or her support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.