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HOUSE BILL NO. 2251

Offered January 10, 2007

Prefiled January 9, 2007

A *BILL to amend and reenact § 55-542.06 of the Code of Virginia, relating to Uniform Trust Code; certain notice requirements.*

Patrons—Waddell, Hall, Kilgore, McClellan and O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 55-542.06 of the Code of Virginia is amended and reenacted as follows:**

§ 55-542.06. Pleadings; parties; orders; notice.

A. In judicial proceedings involving trusts governed under this chapter, including proceedings to modify or terminate a trust:

1. Interests to be affected by the proceeding shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in any other appropriate manner.

2. Orders shall bind persons as follows:

a. An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default or otherwise are subject to such power.

b. To the extent there is no conflict of interest between or among them:

i. An order binding a conservator or a guardian of an estate binds the person whose estate he controls;

ii. An order binding a guardian of the person binds the ward if no conservator or guardian of his estate has been appointed;

iii. An order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

iv. An order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

v. An order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

c. Unless otherwise represented, a minor, an incapacitated, unborn, or unascertained person is bound by an order if his interest is adequately represented by another party having a substantially identical interest in the proceedings.

3. Notice shall be given:

a. Pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia; (i) to every interested party or to a person who can bind an interested party pursuant to subdivision 2 a or 2 b; and (ii) *if the proceeding seeks the modification or termination of a charitable trust or the sale of any of its real estate, to the public at large by order of publication published once a week for three consecutive weeks prior to any hearing or trial in a paper of general circulation in the county or city (a) of the trust's principal place of administration and (b) where any affected real estate of the trust is located. This notice provision does not change the common law rule that members of the public at large are not entitled to be parties to such judicial proceedings or to have any right to appear therein. The purpose of the notice, which shall be stated therein, is solely to make the public aware of the nature of such proceedings, the remedy being sought therein, and the opportunity to share their views in regard thereto with the Attorney General. The failure to give such notice shall not be considered jurisdictional, but it shall give the Attorney General the right to reopen the proceeding for a period of one year following the entry of final judgment by filing an answer, or amended answer, which shall not require leave of court. Upon such reopening, the court may make such findings and enter such orders, judgments, or decrees as it deems proper.*

b. To unborn or unascertained persons who are not represented pursuant to subdivision 2 a or 2 b by giving notice to all known persons whose interests in the proceeding are substantially identical to those of the unborn or unascertained persons.

4. Persons under a disability, or unborn or incapacitated persons may be represented during the

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59 course of a judicial proceeding as follows:

60 a. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the
61 interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or
62 address is unknown, if the court determines that representation of the interest otherwise would be
63 inadequate. The guardian ad litem may be appointed to represent several persons or interests to the
64 extent there is no conflict of interest among those persons or interests. The reasons for appointing a
65 guardian ad litem shall be stated in the record of the proceedings.

66 b. A minor or other person under a disability may be represented by an attorney-at-law duly licensed
67 to practice in this Commonwealth who has entered of record an appearance on his behalf to the extent
68 permitted by § 8.01-9.

69 B. The provisions of this section shall apply notwithstanding the Rules of Supreme Court of Virginia
70 or any applicable provisions in Title 8.01.