CHAPTER 614

An Act to amend the Code of Virginia by adding in Chapter 45 of Title 2.2 a section numbered 2.2-4519 and by adding a title numbered 64.2, containing Subtitle I, consisting of a chapter numbered 1, containing sections numbered 64.2-100 through 64.2-108, containing Subtitle II, consisting of chapters numbered 2 through 6, containing sections numbered 64.2-200 through 64.2-620, containing Subtitle III, consisting of chapters numbered 7 through 11, containing sections numbered 64.2-700 through 64.2-1108, containing Subtitle IV, consisting of chapters numbered 12 through 21, containing sections numbered 64.2-1200 through 64.2-2120, and containing Subtitle V, consisting of chapters numbered 22 through 27, containing sections numbered 64.2-2200 through 64.2-2704, and to repeal Titles 26 (§§ 26-1 through 26-116) and 31 (§§ 31-1 through 31-59), Chapters 10 (§§ 37.2-1000 through 37.2-1030) and 10.1 (§§ 37.2-1031 through 37.2-1052) of Title 37.2, Chapter 2.1 (§§ 55-34.1 through 55-34.19), Article 1.2 (§§ 55-268.11 through 55-268.20) of Chapter 15, and Chapters 15.1 (§§ 55-277.1 through 55-277.33), 16 (§§ 55-278 through 55-286.2), 22 (§§ 55-401 through 55-415), and 31 (§§ 55-541.01 through 55-551.06) of Title 55, and Title 64.1 (§§ 64.1-01 through 64.1-206.8) of the Code of Virginia, relating to revising and recodifying the laws pertaining to wills, trusts, and fiduciaries.

[S 115]

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 45 of Title 2.2 a section numbered 2.2-4519 and by adding a title numbered 64.2, containing Subtitle I, consisting of a chapter numbered 1, containing sections numbered 64.2-100 through 64.2-108, containing Subtitle II, consisting of chapters numbered 2 through 6, containing sections numbered 64.2-200 through 64.2-620, containing Subtitle III, consisting of chapters numbered 7 through 11, containing sections numbered 64.2-700 through 64.2-1108, containing Subtitle IV, consisting of chapters numbered 12 through 21, containing sections numbered 64.2-1200 through 64.2-2120, and containing Subtitle V, consisting of chapters numbered 22 through 27, containing sections numbered 64.2-2200 through 64.2-2704, as follows:

§ 2.2-4519. Investment of funds by the Virginia Housing Development Authority and the Virginia Resources Authority.

A. For purposes of §§ 36-55.44 and 62.1-221 only, the following investments shall be considered lawful investments and shall be conclusively presumed to have been prudent:

1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Obligations of the United States. Stocks, bonds, treasury notes, and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; bonds of the District of Columbia; bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks; bonds, debentures, or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress; and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this subdivision may be held directly, in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Obligations of other states. Stocks, bonds, notes, and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Obligations of Virginia counties, cities, or other public bodies. Stocks, bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority, or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest is payable

from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in the Uniform Prudent Investor Act (§ 64.2-780 et seq.), without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

5. Obligations of cities, counties, towns, or districts of other states. Legally authorized stocks, bonds, notes, and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days; provided, that (i) within the 20 fiscal years next preceding the making of such investment, the city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note, or other evidence of indebtedness issued by it; (ii) the city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) the city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes, or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same; (v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of the city, county, town, or district, including the issue in which such investment is made, after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in the city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Obligations subject to repurchase. Investments set forth in subdivisions 1 through 5 may also be made subject to the obligation or right of the seller to repurchase these on a specific date.

7. Bonds secured on real estate. Bonds and negotiable notes directly secured by a first lien on improved real estate or farm property in the Commonwealth, or in any state contiguous to the Commonwealth within a 50-mile area from the borders of the Commonwealth, not to exceed 80 percent of the fair market value of such real estate, including any improvements thereon at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made.

8. Bonds secured on city property in Fifth Federal Reserve District. Bonds and negotiable notes directly secured by a first lien on improved real estate situated in any incorporated city in any of the states of the United States which lie wholly or in part within the Fifth Federal Reserve District of the United States as constituted on June 18, 1928, pursuant to the act of Congress of December 23, 1913, known as the Federal Reserve Act, as amended, not to exceed 60 percent of the fair market value of such real estate, with the improvements thereon, at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made, provided that such city has a population, as shown by the federal census next preceding the making of such investments, of not less than 5,000 inhabitants.

9. Bonds of Virginia educational institutions. Bonds of any of the educational institutions of the Commonwealth that have been or may be authorized to be issued by the General Assembly.

10. Securities of the Richmond, Fredericksburg and Potomac Railroad Company. Stocks, bonds, and other securities of the Richmond, Fredericksburg and Potomac Railroad Company, including bonds or other securities guaranteed by the Richmond, Fredericksburg and Potomac Railroad Company.

11. Obligations of railroads. Bonds, notes, and other evidences of indebtedness, including equipment trust obligations, which are direct legal obligations of or which have been unconditionally assumed or guaranteed as to the payment of principal and interest by, any railroad corporation operating within the United States that meets the following conditions and requirements:

a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have not been less than $10 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned an average of at least two times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment. The term "total fixed charges" as used in this subdivision and subdivision c shall be deemed to refer to the term used in the accounting reports of common carriers as prescribed by the regulations of the Interstate Commerce Commission; and

c. The aggregate of the average market prices of the total amounts of each of the individual

securities of such corporation junior to its bonded debt and outstanding at the time of the making of such investment shall be equal to at least two-thirds of the total fixed charges for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined by the average of the highest quotation and the lowest quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made, provided that if more than six months of the calendar year in which such investment is made shall have expired, then such period shall be only the then-expired portion of the calendar year in which such investment is made, and provided further that if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

12. Obligations of leased railroads. Stocks, bonds, notes, other evidences of indebtedness, and any other securities of any railroad corporation operating within the United States, the railroad lines of which have been leased by a railroad corporation, either alone or jointly with other railroad corporations, whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision 11, provided that the terms of such lease shall provide for the payment by such lessee railroad corporation individually, irrespective of the liability of other joint lessee railroad corporations, if any, in this respect, of an annual rental of an amount sufficient to defray the total operating expenses and maintenance charges of the lessor railroad corporation plus its total fixed charges, plus, in the event of the purchase of such a stock, a fixed dividend upon any issue of such stock in which such investment is made, and provided that if such investment so purchased shall consist of an obligation of definite maturity, such lease shall be one which shall, according to its terms, provide for the payment of the obligation at maturity or extend for a period of not less than 20 years beyond the maturity of such obligations so purchased, or if such investment so purchased shall be a stock or other form of investment having no definite date of maturity, such lease shall be one which shall, according to its terms, extend for a period of at least 50 years beyond the date of the making of such investment.

13. Equipment trust obligations. Equipment trust obligations issued under the "Philadelphia Plan" in connection with the purchase for use on railroads of new standard gauge rolling stock, provided that the owner, purchaser, or lessee of such equipment, or one or more of such owners, purchasers, or lessees, shall be a railroad corporation whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision A 11, and provided that all of such owners, purchasers, or lessees shall be both jointly and severally liable under the terms of such contract of purchase or lease, or both, for the fulfillment thereof.

14. Preferred stock of railroads. Any preference stock of any railroad corporation operating within the United States, provided such stock and such railroad corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

c. The total fixed charges, as defined in subdivision 11 b, of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned an average of at least two and one-half times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment; and

d. The aggregate of the average market prices of the total amount of each of the individual securities of such corporation, junior to such preference stock and outstanding at the time of the making of such investment, shall be at least equal to the par value of the total issue of the preference stock in question plus the total par value of all other issues of its preference stock having either the same rank as, or a senior rank to, the issue of such preference stock plus total fixed charges, as defined in subdivision 11 b, for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined in the same manner as prescribed in subdivision 11 c.

15. Obligations of public utilities. Bonds, notes, and other evidences of indebtedness of any public utility operating company operating within the United States, provided such company meets the following conditions and requirements:

a. The gross operating revenue of such public utility operating company for the fiscal year preceding

the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation and taxes, other than income taxes, an average of at least one and three-quarters times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment;

c. In the fiscal year next preceding the making of such investment, the ratio of the total par value of the bonded debt of such public utility operating company, including the total bonded indebtedness of all its subsidiary companies, whether assumed by the public utility operating company in question or not, to its gross operating revenue shall not be greater than four to one; and

d. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

The term "public utility operating company" as used in this subdivision and subdivision 16 means a public utility or public service corporation (i) of whose total income available for fixed charges for the fiscal year next preceding the making of such investment at least 55 percent thereof shall have been derived from direct payments by customers for service rendered them; (ii) of whose total operating revenue for the fiscal year next preceding the making of such investment at least 60 percent thereof shall have been derived from the sale of electric power, gas, water, or telephone service and not more than 10 percent thereof shall have been derived from traction operations; and (iii) whose gas properties are all within the limits of one state, if more than 20 percent of its total operating revenues are derived from gas.

16. Preferred stock of public utilities. Any preference stock of any public utility operating company operating within the United States, provided such stock and such company meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

c. The total fixed charges of such public utility operating company, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least two times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment;

d. In the fiscal year next preceding the making of such investment, the ratio of the sum of the total par value of the bonded debt of such public utility operating company, the total par value of the issue of such preference stock, and the total par value of all other issues of its preference stock having the same or senior rank to its gross operating revenue shall not be greater than four to one; and

e. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

17. Obligations of the following telephone companies. Bonds, notes, and other evidences of indebtedness of American Telephone and Telegraph, Bell Atlantic, Bell South, Southwestern Bell, Pacific Telesis, Nynex, American Information Technologies, or U.S. West, and bonds, notes, and other evidences of indebtedness unconditionally assumed or guaranteed as to the payment of principal and interest by any such company, provided that the total fixed charges, as reported for the fiscal year next preceding the making of the investment, of such company and all of its subsidiary corporations on a consolidated basis shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least one and three-fourths times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment.

18. Obligations of municipally owned utilities. The stocks, bonds, notes, and other evidences of indebtedness of any electric, gas, or water department of any state, county, city, town, or district whose obligations would qualify as legal for purchase under subdivision 3, 4, or 5, the interest and principal of which are payable solely out of the revenues from the operations of the facility for which the obligations were issued, provided that the department issuing such obligations meets the requirements applying to public utility operating companies as set out in subdivisions 15 a through c.

19. Obligations of industrial corporations. Bonds, notes, and other evidences of indebtedness of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided

such corporation meets the following conditions and requirements:

a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least three times annually during the seven fiscal years preceding the making of the investment and at least two and one-half times during the fiscal year immediately preceding the making of the investment;

c. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt as shown by such statement; and

d. The aggregate of the average market prices of the total amounts of each of the individual securities of such industrial corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to the total par value of the bonded debt of such industrial corporation at the time of the making of such investment, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

20. Preferred stock of industrial corporations. Any preference stock of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such industrial corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

c. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least four times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

d. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or, in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt plus the total par value of the issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank; and

e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such industrial corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least two and one-half times the par value of the total issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank plus the par value of the total bonded debt of such industrial corporation. Such lowest market price of any one of such individual securities shall be determined by the lowest single quotation of the individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made, and if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

21. Obligations of finance corporations. Bonds, notes, and other evidences of indebtedness of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such corporation meets the following conditions and requirements:

a. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the

making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least two and one-half times annually during the seven fiscal years preceding the making of the investment and at least two times during the fiscal year immediately preceding the making of the investment;

c. The aggregate indebtedness of such finance corporation as shown by its last fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate net worth, as represented by preferred and common stocks and surplus of such corporation; and

d. The aggregate of the average market prices of the total amounts of each of the individual securities of such finance corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to one-third of the sum of the par value of the bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

22. Preferred stock of finance corporations. Any preference stock of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

c. The total fixed charges of such finance corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least three and one-half times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

d. The aggregate indebtedness and par value of the purchased stock, both the issue in question and any issues equal or senior thereto, of such finance corporation as shown by its last published fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate par value of the junior securities and surplus of such corporation; and

e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such finance corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least equal to one-third of the sum of the par value of such preference stock plus the total par value of all other issues of preference stock having the same or senior rank plus the par value of the total bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such lowest market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 20 e.

23. Federal housing loans. First mortgage real estate loans insured by the Federal Housing Administrator under Title II of the National Housing Act.

24. Certificates of deposit and savings accounts. Certificates of deposit of, and savings accounts in, any bank, banking institution, or trust company, whose deposits are insured by the Federal Deposit Insurance Corporation at the prevailing rate of interest on such certificates or savings accounts; however, no such fiduciary shall invest in such certificates of, or deposits in, any one bank, banking institution, or trust company an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as a deposit in such bank, banking institution, or trust company by the Federal Deposit Insurance Corporation. A corporate fiduciary shall not, however, be prohibited by the terms of this subdivision from depositing in its own banking department, in the form of demand deposits, savings accounts, time deposits, or certificates of deposit, funds in any amount awaiting investments or distribution, provided that it shall have complied with the provisions of §§ 6.2-1005 and 6.2-1007, with reference to the securing of such deposits.

25. Obligations of International Bank, Asian Development Bank, and African Development Bank. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank.

26. Deposits in savings institutions. Certificates of deposit of, and savings accounts in, any state or federal savings institution or savings bank lawfully authorized to do business in the Commonwealth whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; however, no such fiduciary shall invest in such shares of any one such association an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured

as an account in such association by the Federal Deposit Insurance Corporation or other federal insurance agency.

27. Certificates evidencing ownership of undivided interests in pools of mortgages. Certificates evidencing ownership of undivided interests in pools of bonds or negotiable notes directly secured by first lien deeds of trust or mortgages on real property located in the Commonwealth improved by single-family residential housing units or multi-family dwelling units, provided that (i) such certificates are rated AA or better by a nationally recognized independent rating agency; (ii) the loans evidenced by such bonds or negotiable notes do not exceed 80 percent of the fair market value, as determined by an independent appraisal thereof, of the real property and the improvements thereon securing such loans; and (iii) such bonds or negotiable notes are assigned to a corporate trustee for the benefit of the holders of such certificates.

28. Shares in credit unions. Shares and share certificates in any credit union lawfully authorized to do business in the Commonwealth whose accounts are insured by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation, provided no such fiduciary shall invest in such shares an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such credit union by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation.

B. Whenever under the terms of this section the par value of a preference stock is required to be used in a computation, there shall be used instead of such par value the liquidating value of such preference stock in the case of involuntary liquidation, as prescribed by the terms of its issue, in the event that such liquidating value shall be greater than the par value of such preference stock; or in the event that the preference stock in question has no par value, then such liquidating value shall be used instead; or when such preference stock shall be one of no par value and one for which no such liquidating value shall have been so prescribed, then for the purposes of such computation the preference stock in question shall be deemed to have a value of $100 per share.

C. When any security provided for in this section is purchased by a fiduciary and at the time of such purchase the statement for the preceding fiscal year of the corporation issuing the security so being purchased has not been published and is therefore not available, the statement of such corporation for the fiscal year immediately prior to such preceding fiscal year shall be considered the statement for such preceding fiscal year and shall have the same force and effect as the statement for the fiscal year preceding such purchase, provided the date of such purchase is not more than four months after the end of the last fiscal year of the corporation.

D. In testing a new issue of securities under the provisions of this section, it shall be permissible, in determining the number of times that fixed charges or preferred dividend requirements have been earned, to use pro forma fixed charges or dividend requirements, provided the corporation or its corporate predecessor has been in existence for a period of not less than seven years.

E. Investments made under the provisions of this section, if in conformity with the requirements of this section at the time such investments were made, may be retained even though they cease to be eligible for purchase under the provisions of this section, but shall be subject to the provisions of the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

TITLE 64.2.
WILLS, TRUSTS, AND FIDUCIARIES.
SUBTITLE I.
GENERAL PROVISIONS.
CHAPTER 1.
DEFINITIONS AND GENERAL PROVISIONS.
Article 1.
Definitions.

§ 64.2-100. Definitions.

As used in this title, unless the context otherwise requires:

"Bona fide purchaser" means a purchaser of property for value who has acted in the transaction in good faith. Notice of a seller's marital status, or notice of the existence of a premarital or marital agreement, does not affect the status of a bona fide purchaser. A "purchaser" is one who acquires property by sale, lease, discount, negotiation, mortgage, pledge, or lien or who otherwise deals with property in a voluntary transaction, other than a gift. A purchaser gives "value" for property acquired in return for a binding commitment to extend credit to the transferor or another as security for or in total or partial satisfaction of a pre-existing claim, or in return for any other consideration sufficient to support a simple contract.

"Fiduciary" includes a guardian, committee, trustee, executor, conservator, or personal representative.

"Personal representative" includes the executor under a will or the administrator of the estate of a decedent, the administrator of such estate with the will annexed, the administrator of such estate unadministered by a former representative, whether there is a will or not, any person who is under the order of a circuit court to take into his possession the estate of a decedent for administration, and every

other curator of a decedent's estate, for or against whom suits may be brought for causes of action that accrued to or against the decedent.

"Trustee" means a trustee under a probated will or an inter vivos trust instrument.

"Will" includes any testament, codicil, exercise of a power of appointment by will or by a writing in the nature of a will, or any other testamentary disposition.

§ 64.2-101. Construction of generic terms.

In the interpretation of wills and trusts, adopted persons and persons born out of wedlock are included in class gift terminology or terms of relationship in accordance with rules for determining relationships for purposes of intestate succession unless a contrary intent appears on the face of the will or trust. In determining the intent of a testator or settlor, adopted persons are presumptively included in such terms as "children," "issue," "kindred," "heirs," "relatives," "descendents" or similar words of classification and are presumptively excluded by such terms as "natural children," "issue of the body," "blood kindred," "heirs of the body," "blood relatives," "descendents of the body" or similar words of classification. In the event that a fiduciary makes payment to members of a class to the exclusion of persons born out of wedlock of whose claim of paternity or maternity the fiduciary has no knowledge, the fiduciary shall not be held liable to such persons for payments made prior to knowledge of such claim. This section shall apply to all inter vivos trusts executed after July 1, 1978, and to all wills of decedents dying after July 1, 1978, regardless of when executed.

Article 2.

General Provisions.

§ 64.2-102. Meaning of child and related terms.

If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust or other instrument, a relationship of parent and child must be established to determine succession or a taking by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the biological parents, except that adoption of a child by the spouse of a biological parent has no effect on the relationship between the child and either biological parent.

2. The parentage of a child resulting from assisted conception is determined as provided in Chapter 9 (§ 20-156 et seq.) of Title 20.

3. Except as otherwise provided by subdivision 1 or 2, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void, or dissolved by a court; or

b. Paternity is established by clear and convincing evidence, including scientifically reliable genetic testing, as set forth in § 64.2-103; however, paternity established pursuant to this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.

4. No claim of succession based upon the relationship between a child born out of wedlock and a deceased parent of such child shall be recognized unless, within one year of the date of the death of such parent (i) an affidavit by such child or by someone acting for such child alleging such parenthood has been filed in the clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and (ii) an action seeking adjudication of parenthood is filed in an appropriate circuit court. The one-year limitation period runs notwithstanding the minority of such child, however it does not apply in those cases where the relationship between the child born out of wedlock and the parent in question is established by (a) a birth record prepared upon information given by or at the request of such parent; (b) admission by such parent of parenthood before any court or in writing under oath; or (c) a previously entered judgment establishing such parent's paternity by a court having jurisdiction to determine his paternity.

5. Unless otherwise specifically provided therein, an order terminating residual parental rights under § 16.1-283 terminates the rights of the parent to take from or through the child in question but the order does not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through the parent or the rights of the parent's kindred to take from or through the child.

§ 64.2-103. Evidence of paternity.

A. For the purposes of this title, paternity of a child born out of wedlock shall be established by clear and convincing evidence, and such evidence may include the following:

1. That he cohabited openly with the mother during all of the 10 months immediately prior to the time the child was born;

2. That he gave consent to a physician or other person, not including the mother, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the father of the child upon the birth record of the child;

3. That he allowed by a general course of conduct the common use of his surname by the child;

4. That he claimed the child as his child on any statement, tax return, or other document filed and signed by him with any local, state, or federal government or any agency thereof;

5. That he admitted before any court having jurisdiction to determine his paternity that he is the father of the child;

6. That he voluntarily admitted paternity in writing under oath;

7. The results of scientifically reliable genetic tests, including DNA tests, weighted with all the evidence; or

8. Other medical, scientific, or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts.

B. A judgment establishing a father's paternity made by a court having jurisdiction to determine his paternity is sufficient evidence of paternity for the purposes of this section.

§ 64.2-104. Incorporation by reference into a will, power of attorney, or trust instrument.

A. The following original documents may be incorporated by reference into a will, power of attorney, or trust instrument:

1. A letter or memorandum to the fiduciary or agent as to the interpretation of discretionary powers of distribution where the will, power of attorney, or trust instrument grants the fiduciary or agent the power to make distributions to beneficiaries in the discretion of the fiduciary or agent; and

2. A letter or memorandum stating the views or directions of the maker of the will, power of attorney, or trust instrument as to the exercise of discretion by the fiduciary or agent in making health care decisions for the maker.

B. No provision in the original document sought to be incorporated by reference under this section is enforceable if it contradicts or is inconsistent with a provision of the incorporating will, power of attorney, or trust instrument, including if it alters the possession or enjoyment of trust property or the income therefrom as directed in the trust instrument.

C. This section shall not prevent the incorporation by reference of any writing into any other writing that would otherwise be effective under § 64.2-400 or under any other law of incorporation by reference.

D. The maker shall sign and have notarized the documents referenced in subsection A and may prepare the documents before or after the execution of the will, power of attorney, or trust instrument.

§ 64.2-105. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.

A. For purposes of this section:

"Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health.

"Estate" includes all interests in the real or personal property of a decedent passing by will or by intestate succession.

"Fiduciary" includes one or more individuals or corporations having trust powers, and includes the fiduciary of the estate of a decedent and the trustee of an inter vivos or testamentary trust. Any substitute, added, or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument.

"Hazardous substances" means any substances defined as hazardous or toxic or otherwise regulated by any environmental law.

B. The following powers, in addition to all other powers granted by law, may be incorporated in whole or in part in any will or trust instrument by reference to this section:

1. To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary, if the fiduciary is a corporation, in the same form as they are at the time the investments and property come into the custody of the fiduciary, regardless of the character of the investments and property, whether they are such as then would be authorized by law for investment by fiduciaries, or whether a disproportionately large part of the trust or estate remains invested in one or more types of property, for such time as the fiduciary deems best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary deems advisable.

2. At the discretion of the fiduciary, to receive additions to the estate from any source, in cash or in kind, and to hold, administer, and distribute such additions as a part of and under the same terms and conditions as the estate then currently held.

3. To sell, assign, exchange, transfer and convey, or otherwise dispose of, any or all of the investments and property, real, personal or mixed, that are included in, or may at any time become part of the trust or estate upon such terms and conditions as the fiduciary, in his absolute discretion, deems advisable, at either public or private sale, either for cash or deferred payments or other consideration, as the fiduciary determines. For the purpose of selling, assigning, exchanging, transferring, or conveying such investments and property, the fiduciary has the power to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, or assignments in such form and with warranties and covenants as the fiduciary deems expedient and proper; and in the event of any sale, conveyance, exchange, or other disposition of any of the trust or estate, the purchaser shall not be obligated in any way to see to the application of the purchase money or other consideration passing in connection therewith.

4. To grant, sell, transfer, exchange, purchase, or acquire options of any kind on property held by such trust or estate or acquired or to be acquired by such trust or estate or held or owned by any other

person.

5. To lease any or all of the real estate that is included in or may at any time become a part of the trust or estate upon such terms and conditions as the fiduciary in his sole judgment and discretion deems advisable. Any lease made by the fiduciary may extend beyond the term of the trust or administration of the estate and, for the purpose of leasing such real estate, the fiduciary has the power to make, execute, acknowledge, and deliver any and all instruments, in such form and with such covenants and warranties as the fiduciary deems expedient and proper.

6. To vote any stocks, bonds, or other securities held by the fiduciary at any meeting of stockholders, bondholders, or other security holders, and to delegate the power to so vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted.

7. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as to the fiduciary seems advisable, including the power to borrow from the fiduciary, if the fiduciary is a bank, for the purpose of paying (i) debts, taxes, or other charges against the trust or estate or any part thereof and (ii) with prior approval of the court for any proper purpose of the trust or estate. The fiduciary has the power to mortgage or pledge such portion of the trust or estate as may be required to secure such loans and, as maker or endorser, to renew existing loans.

8. To make loans or advancements to the executor or other representative of the grantor's estate in case such executor or other representative is in need of cash with which to pay taxes, claims, or other indebtedness of the grantor's estate; but no assets acquired from a qualified retirement benefit plan under § 2039(c) of the Internal Revenue Code shall be used to make such loans or advancements, and such assets shall be segregated and held separately until all claims against the estate for debts of the decedent or claims of administration have been satisfied. Such loans or advancements may be secured or unsecured, and the trustee is not liable in any way for any loss resulting to the trust or estate by reason of the exercise of this authority.

9. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the trust or estate as the fiduciary deems best, and his decision is conclusive.

10. To make distributions in cash or in kind or partly in each at valuations to be determined by the fiduciary, whose decision as to values shall be conclusive.

11. To repair, alter, improve, renovate, reconstruct, or demolish any of the buildings on the real estate held by the fiduciary and to construct such buildings and improvements thereon as the fiduciary in his discretion deems advisable.

12. To employ and compensate, out of the principal or income, or both as to the fiduciary seems proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, licensed real estate brokers, licensed salesmen, and other assistants and advisors deemed by the fiduciary to be needful for the proper administration of the trust or estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

13. To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by the fiduciary to be genuine and upon any other evidence believed by the fiduciary to be sufficient, and to be protected and held harmless for all payments or distributions required to be made hereunder if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

14. To retain any interest held by the fiduciary in any business, whether as a stockholder or security holder of a corporation, a partner, a sole proprietor, or otherwise, for any length of time, without limitations, solely at the risk of the trust or estate and without liability on the part of the fiduciary for any losses resulting therefrom; including the power to (i) participate in the conduct of such business and take or delegate to others discretionary power to take any action with respect to its management and affairs that an individual could take as the owner of such business, including the voting of stock and the determination of any or all questions of policy; (ii) participate in any incorporation, reorganization, merger, consolidation, recapitalization, or liquidation of the business; (iii) invest additional capital in, subscribe to additional stock or securities of, and loan money or credit with or without security to, such business out of the trust or estate property; (iv) elect or employ as directors, officers, employees, or agents of such business, and compensate, any persons, including the fiduciary or a director, officer, or agent of the fiduciary; (v) accept as correct financial or other statements rendered by the business from time to time as to its conditions and operations except when having actual notice to the contrary; (vi) regard the business as an entity separate from the trust or estate with no duty to account to any court as to its operations; (vii) deal with and act for the business in any capacity, including any banking or trust capacity and the loaning of money out of the fiduciary's own funds, and to be compensated therefor; and (viii) sell or liquidate such interest or any part thereof at any time. If any business shall be unincorporated, contractual and tort liabilities arising out of such business shall be satisfied, first, out of the business, and second, out of the trust or estate; but in no event shall there be a liability of the fiduciary, and if the fiduciary is held liable, the fiduciary is entitled to

indemnification from, first, the business, and second, the trust or estate. The fiduciary is entitled to such additional compensation as is commensurate with the time, effort, and responsibility involved in his performance of services with respect to such business. Such compensation for services rendered to the business may be paid by the fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, determines to be advisable; however, the amount of such additional compensation is subject to the final approval of the court.

15. To do all other acts and things not inconsistent with the provisions of the will or trust in which these powers are incorporated that the fiduciary deems necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual could do with respect to his own property.

16. To hold property in the fiduciary's name or in the name of nominees.

17. During the minority, incapacity, or the disability of any beneficiary, and in the sole discretion of the fiduciary, to distribute income and principal to the beneficiary in any of the following ways: (i) directly to the beneficiary; (ii) to a relative, friend, guardian, conservator, or committee, to be expended by such person for the education, maintenance, support, or benefit of the beneficiary; (iii) by the fiduciary expending the same for the education, maintenance, support, or benefit of the beneficiary; (iv) to an adult person or bank authorized to exercise trust powers as custodian for a minor beneficiary under the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.) to be held by such custodian under the terms of such act; or (v) to an adult person or bank authorized to exercise trust powers as custodial trustee for a beneficiary who is incapacitated as defined in § 64.2-900, under the Uniform Custodial Trust Act (§ 64.2-900 et seq.) to be held as custodial trustee under the terms of such act.

18. To continue and carry on any farming operation transferred to the fiduciary and to operate such farms and any other farm which may be acquired, including the power to (i) operate the farm with hired labor, tenants, or sharecroppers; (ii) hire a farm manager or a professional farm management service to supervise the farming operations; (iii) lease or rent the farm for cash or for a share of the crops; (iv) purchase or otherwise acquire farm machinery, equipment, and livestock; (v) construct, repair, and improve farm buildings of all sorts necessary, in the fiduciary's judgment, for the operation of the farm; (vi) make loans or advances or to obtain loans or advances from any source, including the fiduciary at the prevailing rate of interest for farm purposes including for production, harvesting, or marketing, for the construction, repair, or improvement of farm buildings, or for the purchase of farm machinery, equipment, or livestock; (vii) employ approved soil conservation practices in order to conserve, improve, and maintain the fertility and productivity of the soil; (viii) protect, manage, and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate or trust; (ix) ditch and drain damp or wet fields and areas of the farm when needed; (x) engage in livestock production, if it is deemed advisable, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on a livestock program; (xi) execute contracts, notes, and chattel mortgages relating to agriculture with the Commodity Credit Corporation, the United States Secretary of Agriculture, or any other officer or agency of the federal or state governments, to enter into acreage reduction agreements, to make soil conservation commitments, and to do all acts necessary to cooperate with any governmental agricultural program; and (xii) in general, employ the methods of carrying on the farming operation that are in common use by the community in which the farm is located. As the duties that the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase the fiduciary's usual responsibility and work as fiduciary, the fiduciary is entitled to such additional reasonable compensation as is commensurate with the time, effort, and responsibility involved in his performance of such services.

19. To purchase and hold life insurance policies on the life of any beneficiary, or any person in whom the beneficiary has an insurable interest, and pay the premiums thereon out of income or principal as the fiduciary deems appropriate; provided, however, that the decision of the beneficiary of any trust otherwise meeting the requirements of § 2056(b)(5) of the Internal Revenue Code of 1954, as amended, shall control in respect to the purchase or holding of a life insurance policy by the trustee of such trust.

20. To make any election, including any election permitted by statutes enacted after the date of execution of the will or trust instrument, authorized under any law requiring, or relating to the requirement for, payment of any taxes or assessments on assets or income of the estate or in connection with any fiduciary capacity, regardless of whether any property or income is received by or is under the control of the fiduciary, including, elections concerning the timing of payment of any such tax or assessment, the valuation of any property subject to any such tax or assessment, and the alternative use of items of deduction in computing any tax or assessment.

21. To comply with environmental law:

a. To inspect property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting such property and to respond to a change in, or any actual or threatened violation of, any environmental law affecting property held by the fiduciary;

b. To take, on behalf of the estate or trust, any action necessary to respond to a change in, or

prevent, abate, or otherwise remedy any actual or threatened violation of, any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

c. To refuse to accept property in trust if the fiduciary determines that any property to be transferred to the trust either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance which could result in liability to the trust or otherwise impair the value of the assets held therein;

d. To disclaim any power granted by any document, statute, or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; and

e. To charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized herein against the income or principal of the trust or estate.

22. To resign as fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between him in his fiduciary capacity and in his individual capacity because of potential claims or liabilities which may be asserted against him on behalf of the trust or estate because of the type or condition of assets held therein.

C. For the purposes of this section, unless the will or trust instrument expresses a contrary intention, the incorporation by reference of powers enumerated by this statute shall refer to those powers existing at the time of death and reference to powers under the Uniform Gifts to Minors Act in an instrument executed prior to July 1, 1989, shall be construed to refer to the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.).

D. This section shall not be construed to affect the application of the standard of judgment and care as set forth in the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

E. In the event that the will or trust instrument contains a provision in favor of a surviving spouse of the testator or grantor, the powers enumerated in this section shall not be construed or interpreted to cause the bequest to fail to qualify for the marital deduction permitted under the federal estate tax law, unless the will or trust instrument shall specifically provide to the contrary. A fiduciary acting under a construction or interpretation of a power, where such action is otherwise reasonable under the circumstances, shall incur no responsibility for acts taken in good faith that are otherwise thereafter contended to cause disqualification for the marital deduction. This subsection applies without regard to when the will or trust was executed or probated or when the testator died in relation to the effective date of this section or amendments thereto.

§ 64.2-106. Grant of certain powers to personal representative or trustee by circuit court.

A. Upon the motion of a personal representative or trustee, a circuit court may grant to the personal representative or trustee all or a part of the powers that may be incorporated by reference pursuant to § 64.2-105. If there is more than one personal representative or trustee, the court may specify as to whether the consent of all personal representatives or trustees or a majority thereof shall be required to act, and in absence of such specification, the consent of all such personal representatives or trustees to act shall be required.

B. Such motion shall be filed in the circuit court in which the personal representative or trustee qualified, or if there was no qualification, the circuit court for the jurisdiction in which the grantor resides or resided at the time of his death, a trustee resides, or a corporate trustee has an office. Such motion may be ex parte; however, the court, in its discretion, may require such notice to and the convening of interested parties as it may deem proper in each case. Notwithstanding the granting of or the failure to grant such powers, the court shall have continuing jurisdiction to confer powers in addition to those previously granted or to revoke any or all such powers previously granted by the court. Such additional grant or revocation may also be ex parte.

C. The court may, in granting or withholding such powers, consider (i) whether the personal representative or trustee was nominated by the decedent, the grantor, or the beneficiaries; (ii) the number and capacity of the beneficiaries and their ability or inability to consent to the acts of the personal representative or trustee which are otherwise within the scope of § 64.2-105; (iii) the relationship of the personal representative or trustee to the beneficiaries; (iv) the character of the estate to be administered, including any real estate which would be within the scope of the powers granted by the provisions of § 64.2-106; and (v) the capacity of the personal representative or trustee to perform under the powers conferred and to answer for any acts for which he might be held accountable under his bond.

The court, in its discretion, may attach further conditions to such grant of power in any manner which it shall deem necessary and proper.

D. In no case shall a court grant any powers, if the grant of such powers would be contrary to the intention of the testator or grantor as implied from or as expressed in the will or trust instrument, or would otherwise be inconsistent with the disposition made in the will or trust instrument.

§ 64.2-107. Power granted to personal representatives to make election regarding marital deduction as to certain qualifying terminable interest property; binding effect of election.

A. For purposes of this section, "personal representative" includes the trustee of a qualified

terminable interest property trust if there has been no qualification of a personal representative for the estate of the decedent who created the trust.

B. Personal representatives, whether heretofore or hereafter qualified, are hereby granted the power to make the election on the return of their decedents as required pursuant to § 2056(b)(7) of the Internal Revenue Code of 1954, as amended, to obtain the marital deduction for bequests or devises of qualifying terminable interest property in favor of the surviving spouse created under a will or inter vivos trust of the decedent.

C. If the personal representative determines in good faith to make or not to make such an election and does not act imprudently in making such decision, the decision shall be final and binding upon all of the beneficiaries of the estate.

§ 64.2-108. Power granted to personal representatives and trustees to donate conservation or open-space easements.

Personal representatives and trustees, whether heretofore or hereafter qualified or appointed, are hereby granted the power to donate a conservation easement as provided in the Virginia Conservation Easement Act (§ 10.1-1009 et seq.) or an open-space easement as provided in the Open-Space Land Act (§ 10.1-1700 et seq.) on any real property of their decedents and settlors, in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the Internal Revenue Code of 1986, as amended, provided they have the written consent of all of the heirs, beneficiaries, and devisees whose interests are affected thereby. Upon petition of the personal representative or trustee, the circuit court may give consent on behalf of any unborn, unascertained, or incapacitated heirs, beneficiaries, or devisees whose interests are affected thereby after determining that (i) the donation of the conservation easement will not adversely affect such heirs, beneficiaries, or devisees or (ii) it is more likely than not that such heirs, beneficiaries, or devisees would consent if they were before the court and capable of giving consent. A guardian ad litem shall be appointed to represent the interests of any unborn, unascertained, or incapacitated persons.

SUBTITLE II.
WILLS AND DECEDENTS' ESTATES.
CHAPTER 2.
DESCENT AND DISTRIBUTION.

§ 64.2-200. Course of descents generally; right of Commonwealth if no other heir.

A. The real estate of any decedent not effectively disposed of by will descends and passes by intestate succession in the following course:

1. To the surviving spouse of the decedent, unless the decedent is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in which case, two-thirds of the estate descends and passes to the decedent's children and their descendants, and one-third of the estate descends and passes to the surviving spouse.

2. If there is no surviving spouse, then the estate descends and passes to the decedent's children and their descendants.

3. If there is none of the foregoing, then to the decedent's parents, or to the surviving parent.

4. If there is none of the foregoing, then to the decedent's brothers and sisters, and their descendants.

5. If there is none of the foregoing, then one-half of the estate descends and passes to the paternal kindred and one-half descends and passes to the maternal kindred of the decedent in the following course:

a. To the decedent's grandparents, or to the surviving grandparent.

b. If there is none of the foregoing, then to the decedent's uncles and aunts, and their descendants.

c. If there is none of the foregoing, then to the decedent's great-grandparents.

d. If there is none of the foregoing, then to the brothers and sisters of the decedent's grandparents, and their descendants.

e. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

B. If there are either no surviving paternal kindred or no surviving maternal kindred, the whole estate descends and passes to the paternal or maternal kindred who survive the decedent. If there are neither maternal nor paternal kindred, the whole estate descends and passes to the kindred of the decedent's most recent spouse, if any, provided that the decedent and the spouse were married at the time of the spouse's death, as if such spouse had died intestate and entitled to the estate.

C. If there is no other heir of a decedent's real estate, such real estate is subject to escheat to the Commonwealth in accordance with Chapter 10 (§ 55-168 et seq.) of Title 55.

§ 64.2-201. Distribution of personal estate; right of Commonwealth if no other distributee.

A. The surplus of the personal estate or any part thereof of any decedent, after payment of funeral expenses, charges of administration, and debts, and subject to the provisions of Article 2 (§ 64.2-309 et seq.) of Chapter 3, not effectively disposed of by will passes by intestate succession and is distributed to the same persons, and in the same proportions, as real estate descends pursuant to § 64.2-200.

B. If there is no other distributee of a decedent's personal estate, such personal estate shall accrue

to the Commonwealth.

§ 64.2-202. When persons take per capita and when per stirpes; collaterals of the half blood.

A. A decedent's estate, or each half portion of such estate when division is required by subdivision A 5 of § 64.2-200, shall, except when otherwise provided in subdivision A 1 of § 64.2-200, be divided into as many equal shares as there are (i) heirs and distributees who are in the closest degree of kinship to the decedent and (ii) deceased persons, if any, in the same degree of kinship to the decedent who, if living, would have been heirs and distributees and who left descendants surviving at the time of the decedent's death. One share of the estate or half portion thereof shall descend and pass to each such heir and distributee and one share shall descend and pass per stirpes to such descendants.

B. Notwithstanding the provisions of subsection A, collaterals of the half blood shall inherit only half as much as those of the whole blood.

§ 64.2-203. Inheritance rights of certain individuals.

A. Except as otherwise provided by law, no person is barred from inheriting because such person or a person through whom he claims his inheritance is or has been an alien.

B. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

§ 64.2-204. Afterborn heirs.

Relatives of the decedent conceived before his death but born thereafter, and children resulting from assisted conception born after the decedent's death who are determined to be relatives of the decedent as provided in Chapter 9 (§ 20-156 et seq.) of Title 20, shall inherit as if they had been born during the lifetime of the decedent.

§ 64.2-205. Right of entry or action for land not affected by descent cast.

The right to make entry on or bring an action to recover land is not tolled or defeated by descent cast.

§ 64.2-206. Advancements brought into hotchpot.

When the descendant of a decedent receives any property as an advancement from the decedent during the decedent's lifetime or under the decedent's will, and the descendant, or any descendant of his, is also to receive a distribution of any portion of the decedent's intestate estate, real or personal, the advancement shall be brought into hotchpot with the intestate estate and the descendant is entitled to his proper portion of the entire intestate estate, including such advancement.

CHAPTER 3.
RIGHTS OF MARRIED PERSONS.
Article 1.
Elective Share of Surviving Spouse.

§ 64.2-300. Definitions.

As used in this article, the terms "estate" and "property" shall include insurance policies, retirement benefits exclusive of federal social security benefits, annuities, pension plans, deferred compensation arrangements, and employee benefit plans to the extent owned by, vested in, or subject to the control of the decedent on the date of his death or the date of an irrevocable transfer by him during his lifetime. All such insurance policies and other benefits are included in the terms "estate" and "property" notwithstanding the presence of language contained in any statute otherwise providing that neither they nor their proceeds shall be liable to attachment, garnishment, levy, execution, or other legal process or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law or any other such similar language.

§ 64.2-301. Dower or curtesy abolished.

The interests of dower and curtesy are abolished. However, the abolition of dower and curtesy pursuant to this section shall not change or diminish the nature or right of (i) any dower or curtesy interest of a surviving spouse whose dower or curtesy vested prior to January 1, 1991, or (ii) a creditor or other interested third party in any real estate subject to a right of dower or curtesy.

The rights of all such parties, and the procedures for enforcing such rights, shall continue to be governed by the laws in force prior to January 1, 1991.

§ 64.2-302. When and how elective share may be claimed by surviving spouse.

A. A surviving spouse may claim an elective share regardless of whether (i) any provision for the surviving spouse is made in the decedent's will or (ii) the decedent dies intestate.

B. The surviving spouse of a decedent who dies domiciled in the Commonwealth may claim an elective share in the decedent's augmented estate within six months from the later of (i) the time of the admission of the decedent's will to probate or (ii) the qualification of an administrator on the decedent's intestate estate. The claim to an elective share shall be made either in person before the court having jurisdiction over administration of the decedent's estate, or by a writing recorded in the court or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under Chapter 6 (§ 55-106 et seq.) of Title 55.

C. The right, if any, of the surviving spouse of a decedent who dies domiciled outside of the Commonwealth to take an elective share based upon the value of property in the Commonwealth is governed by the law of the decedent's domicile at death.

§ 64.2-303. Extension of time until after determination of action for construction of will or extent of augmented estate.

If (i) a will is of doubtful import as to the amount or value of the property the surviving spouse of the decedent is to receive thereunder or (ii) the composition or value of the augmented estate is uncertain, and an action to resolve such issues is pending, the court in which the action is pending shall, upon the application of the surviving spouse made within the six-month period set forth in § 64.2-302, enter an order extending the time within which the surviving spouse may make a claim for an elective share. Such additional period within which to make a claim for an elective share shall not exceed 90 days after a final order has been entered in such suit, either by a trial court or any appellate court to which it is appealed.

§ 64.2-304. Rights upon claiming an elective share.

If a claim for an elective share is made, the surviving spouse is entitled to (i) one-third of the decedent's augmented estate if the decedent left surviving children or their descendants or (ii) one-half of the decedent's augmented estate if the decedent left no surviving children or their descendants. The surviving spouse is entitled to interest at the legal rate specified in § 6.2-301 from the date of the decedent's death to the date of satisfaction of the elective share.

§ 64.2-305. Augmented estate; exclusions; valuation.

A. The augmented estate means the decedent's entire estate passing by will or intestate succession, real and personal, after payment of allowances and exemptions under Article 2 (§ 64.2-309 et seq.) of this chapter, funeral expenses, charges of administration that shall not include federal or state transfer taxes, and debts, and to which is added the following amounts:

1. The value of property, other than tangible personal property received by gift and the proceeds thereof, owned or acquired by the surviving spouse at the decedent's death, to the extent the property is derived from the decedent by any means other than by will or intestate succession without full consideration in money or money's worth;

2. The value of property, other than tangible personal property received by gift and the proceeds thereof, derived by the surviving spouse from the decedent without full consideration in money or money's worth by any means other than by will or intestate succession, and transferred by the surviving spouse at any time during the marriage to a person other than the decedent, which would have been includable in the surviving spouse's augmented estate if the surviving spouse had predeceased the decedent; and

3. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage to the surviving spouse, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive full consideration in money or money's worth for the transfer, if the transfer was any of the following types:

a. Any transfer under which the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the possession or enjoyment of, or the right to income from, the property;

b. Any transfer to the extent that the decedent retained for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death, the power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

c. Any transfer whereby property is held at the time of the decedent's death by the decedent and another with right of survivorship; or

d. Any transfer made to or for the benefit of a donee within the calendar year of the decedent's death or any of the five preceding calendar years to the extent that the aggregate value of the transfers to the donee exceeds $10,000 in that calendar year.

B. Notwithstanding the provisions of this section, the augmented estate shall not include (i) the value of any property transferred by the decedent during marriage with the written consent or joinder of the surviving spouse; (ii) the value of any property, its income, or proceeds received by the decedent, before or during the marriage to the surviving spouse, by gift, will, intestate succession, or any other method or form of transfer to the extent it was (a) received without full consideration in money or money's worth from a person other than the surviving spouse, and (b) maintained by the decedent as separate property; (iii) any transfer made to anyone other than the surviving spouse prior to January 1, 1991, to the extent that such transfer was irrevocable on that date; or (iv) the value of any property excluded from the augmented estate pursuant to § 64.2-317.

C. Property is valued as of the decedent's death, except that property irrevocably transferred during the lifetime of the decedent is valued as of the date the transferee came into possession or enjoyment of the property if such date precedes the date of the decedent's death.

1. Life estates and remainder interests are valued in the manner prescribed in Article 2 (§ 55-269.1 et seq.) of Chapter 15 of Title 55, and deferred payments and estates for years are discounted to present value using the interest rate specified in § 55-269.1.

2. The value of an insurance policy that is irrevocably transferred during the lifetime of a decedent is the cost of a comparable policy on the date of the transfer or, if such a policy is not readily

available, the policy's interpolated terminal reserve. The value of any premiums paid on an insurance policy owned by another person is only the amount of the premiums paid and not the insurance purchased or maintained with such premiums.

3. An initial interest in property owned as a joint tenant with survivorship is valued at the time the interest is acquired, and a further interest received upon the death of a cotenant is valued at the time of the cotenant's death. Property owned jointly by persons married to each other is rebuttably presumed to have been acquired with contributions of equal value by each tenant. The mere creation of an indebtedness secured by jointly owned property is not a contribution to its acquisition, but any satisfaction of such an indebtedness is a contribution. An interest in a tenancy by the entireties is valued as if it were an interest in a joint tenancy with survivorship. Joint accounts in financial institutions are valued in accordance with the provisions of Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2.

§ 64.2-306. Charging spouse with the value of property received; liability of others for balance of elective share.

A. In determining the elective share, the value of property included in the augmented estate that passes or has passed to the surviving spouse, or that would have passed to the spouse but was disclaimed, is applied first to satisfy the elective share in order to reduce any contributions due from other recipients of transfers included in the augmented estate.

B. The recipients of the remaining property of the augmented estate are liable to contribute the balance of the elective share and any interest thereon in proportion to the value of their interests.

C. The only persons subject to contribution to make up the elective share are (i) an original transferee from or appointee of the decedent, and any subsequent gratuitous inter vivos donee or person claiming by will or intestate succession, to the extent such person has the property or its proceeds on or after the date of the decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share in the decedent's estate. A corporate fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no address is shown therein, at the office of its registered agent.

No other party is subject to contribution to make up the elective share even though the party makes a payment or transfers an item of property or other benefit to any person with actual knowledge that a surviving spouse has claimed an elective share in the decedent's estate.

D. Upon the petition of the surviving spouse, the decedent's personal representative, or any party in interest, the court having jurisdiction over the administration of the decedent's estate shall determine the amount of the elective share and the ratable portion of the elective share attributable to each person liable to contribution. Such petition may be brought against fewer than all persons from whom relief could be sought, but no person is subject to contribution in any amount greater than that which he would have been if relief had been secured against all persons subject to contribution.

E. Within 30 days after the court's determination of the contributions due under subsection D becomes final and not subject to further appeal, any person liable to the surviving spouse for contribution may file with the court a written statement specifying any of the following methods for satisfying his contribution and interest liability:

1. Conveyance to the surviving spouse of a portion of the property included in the augmented estate equal in value to his liability on the date the contribution statement is filed, or if, on the date of filing, the value of the property included in the augmented estate is less than his liability, conveyance to the surviving spouse of the entire property included in the augmented estate in full satisfaction;

2. Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

3. Partial conveyance and partial payment under subdivisions 1 and 2, provided that the value conveyed and paid is equal to his liability.

In the event a contribution statement is not filed within 30 days, the court shall enter an order specifying the method by which a person's liability to the surviving spouse shall be satisfied.

§ 64.2-307. Rights in family residence.

Until the surviving spouse's rights in the principal family residence have been determined and satisfied by an agreement between the parties or a final court decree, in cases (i) where the principal family residence passes under the provisions of § 64.2-200 and the decedent is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, or (ii) where the surviving spouse claims an elective share in the decedent's augmented estate under this article, the surviving spouse may hold, occupy, and enjoy the principal family residence and curtilage without charge for rent, repairs, taxes, or insurance. If the surviving spouse is deprived of possession of the principal family residence and curtilage, upon the filing of a complaint for unlawful entry or detainer, he is entitled to recover possession of such residence and damages sustained by him by reason of such deprivation during the time he was so deprived. Nothing in this section shall be construed to impair the lien or delay the enforcement of such lien of the Commonwealth or any locality for the taxes assessed upon the property.

§ 64.2-308. Statutory rights barred by desertion or abandonment.

A. If a spouse willfully deserts or abandons the other spouse and such desertion or abandonment continues until the death of the other spouse, the party who deserted the deceased spouse shall be barred of all interest in the decedent's estate by intestate succession, elective share, exempt property, family allowance, and homestead allowance.

B. If a parent willfully deserts or abandons his minor or incapacitated child and such desertion or abandonment continues until the death of the child, the parent shall be barred of all interest in the child's estate by intestate succession.

Article 2.

Exempt Property and Allowances.

§ 64.2-309. Family allowance.

A. In addition to any other right or allowance under this article, upon the death of a decedent who was domiciled in the Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum not to exceed $18,000, or in periodic installments not to exceed $1,500 per month for one year. It is payable to the surviving spouse for the use of the surviving spouse and minor children or, if there is no surviving spouse, to the person having the care and custody of the minor children. If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.

B. The family allowance has priority over all claims against the estate.

C. The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

D. The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid.

§ 64.2-310. Exempt property.

A. In addition to any other right or allowance under this article, the surviving spouse of a decedent who was domiciled in the Commonwealth is entitled from the estate to value not exceeding $15,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If the value of the exempt property selected in excess of any security interests therein is less than $15,000, or if there is not $15,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the $15,000 value.

B. The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property has priority over all claims against the estate, except the family allowance.

C. The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

§ 64.2-311. Homestead allowance.

A. In addition to any other right or allowance under this article, a surviving spouse of a decedent who was domiciled in the Commonwealth is entitled to a homestead allowance of $15,000. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to $15,000, divided by the number of minor children.

B. The homestead allowance has priority over all claims against the estate, except the family allowance and the right to exempt property.

C. The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will or by intestate succession is less than $15,000, then the surviving spouse or minor children are entitled to a homestead allowance in an amount that when added to the property passing to the surviving spouse and minor children by the decedent's will or by intestate succession, equals the sum of $15,000.

D. If the surviving spouse claims and receives an elective share of the decedent's estate under §§ 64.2-302 through 64.2-307, the surviving spouse shall not have the benefit of any homestead allowance.

§ 64.2-312. Source, determination, and documentation of family allowance, exempt property, and homestead allowance; petition for relief.

A. Property specifically bequeathed or devised shall not be used to satisfy the right to exempt property and the homestead allowance if there are sufficient assets in the estate otherwise to satisfy such rights. Subject to this restriction, the surviving spouse or the guardian of the minor children may select property of the estate as exempt property and the homestead allowance. The personal representative may make these selections if the surviving spouse or the guardian of the minor children is unable or fails to do so within a reasonable time, or if there is no guardian of the minor children. The personal representative may execute a deed of distribution to establish the ownership of property taken

as the homestead allowance or exempt property, which deed, if executed, shall (i) describe the property with reasonable certainty and (ii) state the value of each asset included therein. The personal representative may determine the family allowance in a lump sum or periodic installments in accordance with § 64.2-309. The personal representative may disburse funds of the estate in payment of the family allowance and in payment of any part of the exempt property or the homestead allowance that is payable in cash.

B. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the circuit court for appropriate relief, including the award of a family allowance that is larger or smaller than what the personal representative determined or could have determined. Such petition may be ex parte; provided, however, that the court in its discretion may require such notice to and the convening of interested parties as it may deem proper in each case.

§ 64.2-313. When and how exempt property and allowances may be claimed.

Any election to take a family allowance, exempt property, or a homestead allowance shall be made within one year from the decedent's death. The election shall be made either in person before the court having jurisdiction over probate or administration of the decedent's estate, or by a writing recorded in the court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under Chapter 6 (§ 55-106 et seq.) of Title 55.

§ 64.2-314. Waiver.

A. The right of a decedent's surviving spouse to a homestead allowance in the estate of a decedent as provided in § 64.2-311 may be waived during the decedent's lifetime only by execution of a marital or premarital agreement in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20 or by execution of a waiver provided (i) the waiver is in writing, (ii) the language of the waiver mentions homestead allowance in conspicuous language, and (iii) the waiver has been signed by the surviving spouse.

B. The right to the family allowance and exempt property, as provided in §§ 64.2-309 and 64.2-310, may be waived during the decedent's lifetime only by execution of a marital or premarital agreement made in accordance with Chapter 8 (§ 20-147 et seq.) of Title 20.

Article 3.

Uniform Disposition of Community Property Rights at Death Act.

§ 64.2-315. Application.

This article applies to the disposition at death of the following property acquired by a married person:

1. All personal property, wherever situated:

a. Which was acquired as or became, and remained, community property under the laws of another jurisdiction;

b. Which, all or the proportionate part of that property, was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, that community property; or

c. Which is traceable to that community property;

2. All or the proportionate part of any real property situated in the Commonwealth which was acquired with the rents, issues or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction, or property traceable to that community property.

§ 64.2-316. Presumptions.

In determining whether this article applies to specific property, the following rebuttable presumptions apply:

1. Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which this article applies; and

2. Real property situated in the Commonwealth and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which this article applies.

§ 64.2-317. Disposition upon death.

Upon death of a married person, one-half of the property to which this article applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of intestate succession of the Commonwealth. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of intestate succession of the Commonwealth. With respect to property to which this article applies, the decedent's one-half of the property is not subject to the surviving spouse's right to an elective share under § 64.2-302.

§ 64.2-318. Perfection of title of surviving spouse.

If the title to any property to which this article applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of

the commissioner of accounts. Neither the personal representative nor the court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which this article applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

§ 64.2-319. Perfection of title of personal representative, heir or devisee.

If the title to any property to which this article applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which this article applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

§ 64.2-320. Purchaser for value or lender.

A. If a surviving spouse has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

B. If a personal representative or an heir or devisee of the decedent has apparent title to property to which this article applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

C. A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

D. The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

§ 64.2-321. Creditor's rights.

This article does not affect rights of creditors with respect to property to which this article applies.

§ 64.2-322. Acts of married persons.

The provisions of this article do not prevent married persons from severing or altering their interests in property to which this article applies.

§ 64.2-323. Limitations on testamentary disposition.

This article does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

§ 64.2-324. Uniformity of application and construction.

This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

CHAPTER 4.
WILLS.
Article 1.
Requisites and Execution.

§ 64.2-400. Separate writing identifying recipients of tangible personal property; liability for distribution; action to recover property.

A. If a will refers to a written statement or list to dispose of items of tangible personal property not otherwise specifically bequeathed, the statement or list shall be given effect to the extent that it describes items of tangible personal property and their intended recipients with reasonable certainty and is signed by the testator although it does not satisfy the requirements for a will. Bequests of a general or residuary nature, whether referring only to personal property or to the entire estate, are not specific bequests for the purpose of this section.

B. The written statement or list may be (i) referred to as one that is in existence at the time of the testator's death, (ii) prepared before or after the execution of the will, (iii) altered by the testator at any time, and (iv) a writing that has no significance apart from its effect on the dispositions made by the will. When distribution is made pursuant to such a written statement or list, a copy thereof shall be furnished to the commissioner of accounts along with the legatee's receipt.

C. A personal representative shall not be liable for any distribution of tangible personal property to the apparent legatee under the testator's will made without actual knowledge of the existence of a written statement or list, nor shall he have any duty to recover property so distributed. However, a person named to receive certain tangible personal property in a written statement or list that is effective under this section may recover that property, or its value if the property cannot be recovered, from an apparent legatee to whom it has been distributed in an action brought for that purpose within one year after the probate of the testator's will.

D. This section shall not apply to a writing admitted to probate as a will and, except as provided herein, shall not otherwise affect the law of incorporation by reference.

§ 64.2-401. Who may make a will; what estate may be disposed of.

A. Except as provided in subsection B, any individual may make a will to dispose of all or part of his estate at his death that, if not disposed of, would otherwise pass by intestate succession, including any estate, right, or interest that the testator may subsequently become entitled to after the execution of the will.

B. An individual is not capable of making a will if he is (i) of unsound mind or (ii) an unemancipated minor.

§ 64.2-402. Advertisements to draw wills prohibited; penalty.

Any person that advertises any direct or indirect offer to draw any will or have any will drawn is guilty of a Class 3 misdemeanor, provided that the provisions of this section shall not apply to a duly licensed attorney-at-law, partnership composed of duly licensed attorneys-at-law, or a professional corporation or professional limited liability company incorporated or organized for the practice of law so long as such attorney, partnership, or professional corporation conducts such advertisement in accordance with the Rules of Court promulgated by the Supreme Court of Virginia.

§ 64.2-403. Execution of wills; requirements.

A. No will shall be valid unless it is in writing and signed by the testator, or by some other person in the testator's presence and by his direction, in such a manner as to make it manifest that the name is intended as a signature.

B. A will wholly in the testator's handwriting is valid without further requirements, provided that the fact that a will is wholly in the testator's handwriting and signed by the testator is proved by at least two disinterested witnesses.

C. A will not wholly in the testator's handwriting is not valid unless the signature of the testator is made, or the will is acknowledged by the testator, in the presence of at least two competent witnesses who are present at the same time and who subscribe the will in the presence of the testator. No form of attestation of the witnesses shall be necessary.

§ 64.2-404. Writings intended as wills.

A. Although a document, or a writing added upon a document, was not executed in compliance with § 64.2-403, the document or writing shall be treated as if it had been executed in compliance with § 64.2-403 if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (i) the decedent's will, (ii) a partial or complete revocation of the will, (iii) an addition to or an alteration of the will, or (iv) a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will.

B. The remedy granted by this section (i) may not be used to excuse compliance with any requirement for a testator's signature, except in circumstances where two persons mistakenly sign each other's will, or a person signs the self-proving certificate to a will instead of signing the will itself and (ii) is available only in proceedings brought in a circuit court under the appropriate provisions of this title, filed within one year from the decedent's date of death and in which all interested persons are made parties.

§ 64.2-405. Interested persons as competent witnesses.

No person is incompetent to testify for or against a will solely by reason of any interest he possesses in the will or the estate of the testator.

§ 64.2-406. When exercise of power of appointment by will valid.

An exercise of a power of appointment made by will is valid if the will made in execution of the power complies with the requirements of § 64.2-403, notwithstanding that the instrument creating the power expressly requires that a will made in execution of such power be executed with some additional or other form of execution or solemnity.

§ 64.2-407. Will of personal estate of nonresidents.

Notwithstanding the provisions of §§ 64.2-403 and 64.2-406, the will of a person domiciled out of the Commonwealth at the time of his death shall be valid as to personal property in the Commonwealth if the will is executed according to the law of the state or country in which the person was so domiciled.

§ 64.2-408. Presumption of formal execution of wills made by persons in military service; will of personal estate of persons in military service and seamen.

A. A will executed by a person while in the military service of the United States, as that term is defined in the Servicemembers Civil Relief Act (50 U.S.C. app. § 501 et seq.), that purports on its face to be witnessed as required by § 64.2-403, upon proof of the signature of the testator by any two disinterested witnesses, shall be presumed, in the absence of evidence to the contrary, to have been executed in accordance with the requirements of that section and shall be admitted to probate as if the formalities of execution were proved.

B. Notwithstanding the provisions of §§ 64.2-403 and 64.2-406, a person while in the military service of the United States, or a seaman or mariner while at sea, may dispose of his personal estate in the same manner as he might heretofore have done.

§ 64.2-409. Wills of living persons lodged for safekeeping with clerks of certain courts.

A. A person or his attorney may, during the person's lifetime, lodge for safekeeping with the clerk of the circuit court serving the jurisdiction where the person resides any will executed by such person. The clerk shall receive such will and give the person lodging it a receipt. The clerk shall (i) place the will in an envelope and seal it securely, (ii) number the envelope and endorse upon it the name of the testator and the date on which it was lodged, and (iii) index the same alphabetically in a permanent index that shows the number and date such will was deposited.

B. An attorney-at-law, bank, or trust company that has held a will for safekeeping for a client for at least seven years and that has no knowledge of whether the client is alive or dead after such time may

lodge such will with the clerk as provided in subsection A.

C. The clerk shall carefully preserve the envelope containing the will unopened until it is returned to the testator or his nominee in the testator's lifetime upon request of the testator or his nominee in writing or until the death of the testator. If such will is returned during the testator's lifetime and is later returned to the clerk, it shall be considered to be a separate lodging under the provisions of this section.

D. Upon notice of the testator's death, the clerk shall open the will and deliver the same to any person entitled to offer it for probate.

E. The clerk shall charge a fee of $2 for lodging, indexing, and preserving a will pursuant to this section.

F. The provisions of this section are applicable only to the clerk's office of a court where the judge or judges of such court have entered an order authorizing the use of the clerk's office for such purpose.

Article 2.

Revocation and Effect.

§ 64.2-410. Revocation of wills generally.

A. If a testator with the intent to revoke a will or codicil, or some person at his direction and in his presence, cuts, tears, burns, obliterates, cancels, or destroys a will or codicil, or the signature thereto, or some provision thereof, such will, codicil, or provision thereof is void and of no effect.

B. If a testator executes a will in the manner required by law or other writing in the manner in which a will is required to be executed that expressly revokes a former will, such former will, including any codicil thereto, is void and of no effect.

C. If a testator executes a will or codicil in the manner required by law that (i) expressly revokes a part, but not all, of a former will or codicil or (ii) contains provisions inconsistent with a former will or codicil, such former will or codicil is revoked and superseded to the extent of such express revocation or inconsistency if the later will or codicil is effective upon the death of the testator.

§ 64.2-411. Revival of wills after revocation.

Any will or codicil, or any part thereof that has been revoked pursuant to § 64.2-410 shall not be revived unless such will or codicil is reexecuted in the manner required by law. Such revival operates only to the extent that the testator's intent to revive the will or codicil is shown.

§ 64.2-412. Revocation by divorce or annulment; revival upon remarriage; no revocation by other change.

A. If, after making a will, the testator is divorced from the bond of matrimony or his marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse. Unless the will expressly provides otherwise, any provision conferring a general or special power of appointment on the former spouse or nominating the former spouse as executor, trustee, conservator, or guardian is also revoked.

B. Property prevented from passing to a former spouse because of revocation pursuant to this section shall pass as if the former spouse failed to survive the testator. Provisions of a will conferring a power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

C. If the provisions of the will are revoked solely pursuant to this section, and there is no subsequent will or inconsistent codicil, the provisions shall be revived upon the testator's remarriage to the former spouse.

D. Except as provided in this section, no change of circumstances shall be deemed to revoke a will.

§ 64.2-413. Effect of subsequent conveyance on will.

Except for an act that results in the revocation of a will pursuant to this article, any conveyance or other act done subsequent to the execution of a will shall not prevent the operation of the will with respect to such interest in the estate as the testator may have power to dispose of by will at the time of his death.

Article 3.

Construction and Effect.

§ 64.2-414. When wills deemed to speak.

A. A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

B. Every will reexecuted or republished, or revived by any codicil, shall be deemed to have been made at the time it was reexecuted, republished, or revived.

§ 64.2-415. How certain bequests and devises to be construed; nonademption in certain cases.

A. As used in this section:

"Incapacitated" means impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. Unless a contrary intention appears in the will:

1. A bequest of specific securities, whether or not expressed in number of shares, shall include as

much of the bequeathed securities as is part of the estate at the time of the testator's death, any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by the exercise of purchase options, and any securities of another entity acquired with respect to the specific securities mentioned in the bequest as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity;

2. A bequest or devise of specific property shall include the amount of any condemnation award for the taking of the property which remains unpaid at death and any proceeds unpaid at death on fire and casualty insurance on the property; and

3. A bequest or devise of specific property shall, in addition to such property that remains part of the estate of the testator, be deemed to be a bequest of a pecuniary amount if such specific property, during the life of the testator and while he is under a disability, was sold by a conservator, guardian, or committee for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the conservator, guardian, or committee for the testator. For purposes of this subdivision, the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision 2. This subdivision shall not apply if, after the sale or casualty, it is adjudicated that the disability of the testator had ceased and the testator survived the adjudication by one year.

C. Unless a contrary intention appears in a testator's will or durable power of attorney, a bequest or devise of specific property shall, in addition to such property that remains part of the estate of the testator, be deemed to be a bequest of a pecuniary amount if such specific property, during the life of the testator and while he is incapacitated, was sold by an agent acting within the authority of a durable power of attorney for the testator, or if proceeds of fire or casualty insurance as to such property are paid to the agent. For purposes of this subsection, (i) the pecuniary amount shall be the net sale price or insurance proceeds, reduced by the sums received under subdivision B 2, (ii) no adjudication of the testator's incapacity before death is necessary, and (iii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator. This subsection shall not apply (a) if the agent's sale of the specific property or receipt of the insurance proceeds is thereafter ratified by the testator or (b) to a power of attorney limited to one or more specific purposes.

D. Unless a contrary intention appears in the will, a devise that would describe a leasehold estate, if the testator had no freehold estate that could be described by the devise, shall be construed to include such a leasehold estate.

§ 64.2-416. Devises and bequests that fail; how to pass.

A. Unless a contrary intention appears in the will, and except as provided in § 64.2-418:

1. If a devise or bequest other than a residuary devise or bequest fails for any reason, it shall become a part of the residue; and

2. If the residue is devised or bequeathed to two or more persons and the share of one fails for any reason, such share shall pass to the other residuary devisees or legatees in proportion to their interests in the residue.

B. Notwithstanding the provisions of §§ 64.2-2604 and 64.2-2605 and unless a contrary intention appears in the will, if a testator makes a bequest, not exceeding the value of $25, to a legatee and such legatee refuses to take possession of such bequest, then the bequest shall fail and becomes a part of the residue of the testator's estate.

§ 64.2-417. When advancement deemed satisfaction of devise or bequest.

Property that a testator gave during his lifetime to a person shall not be treated as a satisfaction of a devise or bequest to that person, in whole or in part, unless (i) the will provides for deduction of the lifetime gift, (ii) the testator declares in a writing made contemporaneously with the gift that the gift is to be deducted from the devise or bequest or is in satisfaction thereof, or (iii) the devisee or legatee acknowledges in writing that the gift is in satisfaction of the devise or bequest.

§ 64.2-418. When children or descendants of devisee or legatee to take estate.

Unless a contrary intention appears in the will, if a devisee or legatee, including a devisee or legatee under a class gift, is (i) a grandparent or a descendant of a grandparent of the testator and (ii) dead at the time of execution of the will or dead at the time of testator's death, the children and the descendants of deceased children of the deceased devisee or legatee who survive the testator take in the place of the deceased devisee or legatee. The portion of the testator's estate that the deceased devisee or legatee was to take shall be divided into as many equal shares as there are (a) surviving descendants in the closest degree of kinship to the deceased devisee or legatee and (b) deceased descendants, if any, in the same degree of kinship to the deceased devisee or legatee who left descendants surviving at the time of the testator's death. One share shall pass to each such surviving descendant and one share shall pass per stirpes to such descendants of deceased descendants.

§ 64.2-419. Provision for omitted children when no child living when will made.

A. If a testator executes a will when the testator has no children, a child born or adopted after the execution of the testator's will, or any descendant of his, who is neither provided for nor mentioned in the will is entitled to such portion of the testator's estate as he would have been entitled to if the testator had died intestate.

B. The devisees and legatees shall contribute ratably to the portion of the testator's estate to which

the afterborn or after-adopted child is entitled, either in kind or in money, out of what is devised and bequeathed to them, as the court deems proper. However, if such afterborn or after-adopted child, or any descendant of his, dies unmarried, without issue, and before reaching 18 years of age, his portion of the estate, or so much of his portion as may remain unexpended, shall revert to the person to whom it was given by the will.

§ 64.2-420. Provision for omitted children when child living when will made.

A. If a testator executes a will that makes provision for a living child of the testator, a child born or adopted after execution of a testator's will who is neither provided for nor expressly excluded by the will is entitled to the lesser of (i) such portion of the testator's estate as the afterborn or after-adopted child would have been entitled to if the testator had died intestate or (ii) the equivalent in amount to any bequests and devises to any child named in the will, and if there are bequests or devises to more than one child, then to the largest aggregate bequest or devise to any child.

B. The devisees and legatees of the testator's will shall contribute ratably to the portion of the testator's estate to which the afterborn or after-adopted child is entitled, either in kind or in money, out of what is devised and bequeathed to them, as the court deems proper. However, if such afterborn or after-adopted child dies unmarried, without issue, and before reaching 18 years of age, his portion of the estate, or so much of his portion as may remain unexpended, shall revert to the person to whom it was given by the will.

§ 64.2-421. Construction of certain conditions of spouse's survivorship.

A. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death under a will or trust that provides that the spouse of the decedent shall survive until the distribution of the gift, the will or trust shall be construed as requiring that the spouse survive until the earlier of the date on which the distribution occurs or the date six months after the date of the death of the testator or decedent, unless the court shall find that the decedent intended a contrary result.

B. The proceeding to determine whether the decedent intended that the spouse actually survive until the distribution of the gift shall be filed within 12 months following the death of the decedent. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

§ 64.2-422. When omitted spouse to take intestate portion.

If a testator fails to provide by will for a surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate such spouse would have received if the decedent left no will, unless it appears from the will or from the provisions of a valid premarital or marital agreement that the omission was intentional.

§ 64.2-423. Exercise of power of appointment.

Unless a contrary intention appears in the will, a residuary clause in a will or a will making general disposition of all the testator's property shall not exercise a power of appointment held by the testator.

§ 64.2-424. When direction to purchase annuity binding on legatee.

If a testator directs in his will that an annuity sufficient to provide income of at least $10 per month be purchased for a legatee, the legatee who is to receive the income from the annuity shall not have the right to instead take the sum directed to be used to purchase such annuity, except to the extent that the will expressly provides for such right or that an assignable annuity be purchased.

§ 64.2-425. Interest on pecuniary legacies.

A. Unless a contrary intent is expressed in or to be implied from a will or trust: (i) interest on a pecuniary legacy begins to run at the expiration of one year after the date of the death of the testator and (ii) interest on a pecuniary amount from a trust begins to run at the expiration of one year after the date on which the beneficiary is entitled to receive the pecuniary amount.

B. For the purposes of this section, a marital formula pecuniary bequest either outright to the testator's spouse or in trust for the benefit of such spouse, designed in either case to qualify for the benefit of the marital deduction allowed by the Internal Revenue Code, shall not be considered a pecuniary legacy entitled to interest at the expiration of one year after the death of the testator but, instead, shall share ratably with the residue of the estate in the income earned by the estate during the period of administration, unless a contrary intent is expressed in the will.

§ 64.2-426. Testamentary additions to trusts by testator dying on or after July 1, 1994, and before July 1, 1999.

A. A devise or bequest, including the exercise of a power of appointment, may be made by a will to the trustees of an inter vivos trust or testamentary trust, whether the trust was established by the testator, by the testator and another, or by some other person if:

1. In the case of an inter vivos trust, the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before or concurrently with the execution of the testator's will; or

2. In the case of a testamentary trust, the trust is identified in the testator's will and its terms are set forth in the valid last will of a person who has predeceased the testator and whose will was executed before or concurrently with the execution of the testator's will.

In either event, at the time the devise or bequest is to be distributed to the trustees at least one trustee of the trust shall be (i) an individual or (ii) an entity authorized to do a trust business in the

Commonwealth. However, prior to distribution of the devise or bequest to the trustees, each nonresident individual or entity shall file with the clerk of the circuit court of the jurisdiction wherein the testator's will was admitted to probate, a consent in writing that service of process in any action against him as trustee or any other notice with respect to administration of the trust in his charge, may be by service upon the clerk of the court in which he is qualified or upon a resident of the Commonwealth at such address as he may appoint in the written instrument filed with the clerk. Where any nonresident qualifies pursuant to this subsection, bond with surety shall be required in every case unless at least one other trustee is a resident or the court in which the nonresident qualifies waives surety under the provisions of § 64.2-1411.

An entity not authorized to do a trust business in the Commonwealth at the time the devise or bequest is to be distributed shall not, in any case, be a trustee of such trust.

B. The inter vivos trust may be an unfunded trust, and for the purposes of this section:

1. An inter vivos trust shall be deemed established upon execution of the instrument creating such trust; and

2. An inter vivos trust may contain provisions whereby the amount of corpus to be allocated to any particular portion of the trust will be determined, measured, or affected by the adjusted gross estate of the settlor or testator for federal estate tax purposes, by the amount of the marital deduction allowable to the settlor's or testator's estate, by the amount of deductions or credits available to the estate of the settlor or testator for federal estate tax purposes, by the value of such estate for federal estate tax purposes, or by any other method, and that an unfunded trust shall not be deemed to be testamentary for that reason.

C. The devise or bequest shall not be invalid because (i) the trust is amendable or revocable or both by the settlor or any other person, either prior or subsequent to the testator's death, (ii) the trust instrument or any amendment thereto was not executed in the manner required for wills, or (iii) the trust was amended after the execution of the will or after the death of the testator.

D. Unless the testator's will provides otherwise, the property so devised or bequeathed:

1. Shall not be deemed held under a testamentary trust of the testator, but shall become a part of the corpus of the trust to which it is given or, if the will so specifies, the property shall become a part of any one or more particular portions of the corpus; and

2. Shall be administered and disposed of (i) in accordance with the terms of the trust as they appear in writing at the testator's death, including any amendments thereto made before the death of the testator, regardless of whether made before or after the execution of the testator's will, or (ii) if the testator expressly specifies in his will, as such terms are amended after the death of the testator.

E. In the event that the settlor or other person having the right to do so revokes or otherwise terminates the trust pursuant to a power to do so reserved in the trust instrument, and such revocation or termination is effected at a date subsequent to the death of a testator who has devised or bequeathed property to such trust, the revocation or termination shall be ineffective as to property devised or bequeathed to such trust by a testator other than the settlor, unless the testator's will expressly provides to the contrary.

F. The devise or bequest shall not be valid should the entire trust not be operative for any reason at the testator's death. If the devise or bequest is to augment only one or more portions of the trust, the devise or bequest shall not be valid should the trust not be operative for any reason as to such portion at the testator's death.

G. In any case in which the devise or bequest to the trustee of a trust fails to take effect by reason of the fact that there is no qualified trustee acting at the time the devise or bequest is to be distributed, or that one or more of the trustees then acting is an entity not authorized to do a trust business in the Commonwealth, the court having jurisdiction with respect to the probate of the will or the administration of the testator's estate, upon sufficient evidence of the existence of a trust estate for administration, independent of the testator's estate, and of the validity of the trust established by virtue of such separate written instrument, may determine that the trusts declared by such separate written instrument are the trusts upon which the devise or bequest is made to the same extent and with like effect as if such trust provisions had been extensively incorporated in the testamentary documents, and that such trusts do not fail for want of a qualified trustee to administer the trust estate so devised or bequeathed. The court may then grant such further and ancillary relief as the nature of the case may require, including the appointment of a qualified trustee to perform the trusts with respect to the estate so devised or bequeathed, and granting instruction and guidance to the trustee so appointed in the performance of his duties. Nothing herein shall be deemed to authorize any such trustee to be excused from any obligations of accounting or performance as are required by law of fiduciaries, nor to prevent the transfer of the trust estate to a trustee appointed by or qualified in a court of record in a foreign state in accordance with the provisions of § 64.2-706.

H. This section shall apply to any devise or bequest under the will of a decedent dying on or after July 1, 1994, and before July 1, 1999.

§ 64.2-427. Testamentary additions to trusts by testator dying after June 30, 1999.

A. A will may validly devise or bequeath property, including by the exercise of a power of

appointment, to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts or (ii) at the testator's death by the testator's devise or bequest to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

B. Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection A is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

C. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

D. Unless at least one trustee of the trust is an individual resident of the Commonwealth or an entity authorized to do a trust business in the Commonwealth, at the time the devise or bequest is to be distributed to the trust, the testator's personal representative shall not make any distribution to the trust until each nonresident individual or entity files with the clerk of the circuit court of the jurisdiction wherein the testator's will was admitted to probate, a consent in writing that service of process in any action against the trustee or any other notice with respect to administration of the trust in the trustee's charge may be by service upon a resident of the Commonwealth at such address as the trustee may appoint in the written instrument filed with the clerk. No further requirement shall be imposed upon any nonresident individual or entity as a condition to receiving the devise or bequest.

E. This section applies to a will of a testator who dies after June 30, 1999, and it shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

§ 64.2-428. Distribution of assets by fiduciaries in satisfaction of pecuniary bequests or transfers in trust of pecuniary amount.

A. Where a will or trust agreement authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount, unless the instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date of their distribution.

B. Whenever a fiduciary under the provisions of a will or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse and is authorized to satisfy such bequest or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will or other governing instrument otherwise specifically directs, shall distribute assets, including cash, in a manner that is fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of such pecuniary bequest or transfer. This subsection shall not prevent a fiduciary from carrying out the provisions of the will or other governing instrument that require the fiduciary, in order to implement such a bequest or transfer, to distribute assets, including cash, having an aggregate fair market value at the date of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

C. Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse shall be authorized to enter into agreements with the Commissioner of Internal Revenue of the U.S. Department of the Treasury and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust, and any such agreement heretofore entered into after April 1, 1964, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the Internal Revenue Code, and to do and perform all acts incident to securing such deduction.

D. Where a will or trust agreement directs the fiduciary to satisfy a pecuniary or fractional bequest or transfer in trust of a pecuniary amount or fractional share in favor of the testator's or donor's spouse with amounts or assets having a value equal to the maximum marital deduction available under the Internal Revenue Code, the interest of such spouse shall vest immediately upon the testator's death in the case of a will, and upon the execution of the trust agreement in the case of a trust, regardless of

when the exact amount of the bequest or transfer is finally determined.

§ 64.2-429. Construction of trust provisions otherwise eligible for the election permitted under § 2056(b)(7) of the Internal Revenue Code.

If any trust created under a will or trust agreement made by a decedent dying after December 31, 1981, would qualify for the election specified in § 2056(b)(7) of the Internal Revenue Code but for (i) a direction that accrued income remaining in the hands of a trustee at the death of the surviving spouse of the decedent not be paid to the estate of the surviving spouse or (ii) an authorization to retain unproductive property as an asset of the trust, then, unless the decedent shall have specifically otherwise provided in the will or trust agreement by reference to this section, (a) all accrued and undistributed income of the trust at the death of the surviving spouse shall be paid to the personal representative of the surviving spouse as contemplated by the Uniform Principal and Income Act (§ 64.2-1000 et seq.) and (b) the surviving spouse shall have the right to require the trustee of the trust to make the trust assets productive of income, so as to render the trust eligible for the election provided in § 2056(b)(7) of the Internal Revenue Code.

This section shall apply to all wills and revocable trusts made by decedents dying after December 31, 1981, regardless of when the will or trust was made.

§ 64.2-430. Certain marital deduction formula clauses to be construed to refer to federal marital deduction allowable if decedent had died on December 31, 1981.

A. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death under a will executed before September 12, 1981, or a trust created before September 12, 1981, and such will or trust contains a formula providing that the spouse of the decedent is to receive the maximum amount of property qualifying for the marital deduction allowable under federal law, then such formula provision shall be construed as referring to the maximum amount of property eligible for the marital deduction as was allowable under the Internal Revenue Code as if the decedent had died on December 31, 1981, unless the court shall find that the decedent intended to refer to the maximum marital deduction of the Internal Revenue Code in effect at the time of his death, provided that such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer specifically to an unlimited marital deduction or an amount qualifying for such deduction, or to otherwise manifest an intent to have the estate qualify for the unlimited marital deduction.

B. If property passes from the decedent or is acquired from the decedent by reason of the decedent's death under a will executed before September 12, 1981, or a trust created before September 12, 1981, and such will or trust contains a formula providing that the spouse of the decedent is to receive the maximum amount of property qualifying for the marital deduction allowable under federal law, but no more than will reduce such federal estate tax to zero or any other pecuniary or fractional share of property determined with reference to the marital deduction, then such provision reducing such bequest to such amount necessary to reduce the federal tax to zero or any other pecuniary or fractional share of property determined with reference to the marital deduction, shall be construed as referring to a computation done as of December 31, 1981, that would have reduced the federal estate tax to zero if the decedent had died on December 31, 1981, unless the court shall find that the decedent intended the computation to be made as of date of death, provided that such will or trust is not amended on or after September 12, 1981, and before the death of the decedent to refer to the federal estate tax on a date later than September 12, 1981.

C. The proceeding to determine whether the decedent intended that the computation under subsection A or B be made as of the date of death, rather than the earlier 1981 date, shall be filed within 12 months following the death of the testator or grantor. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

§ 64.2-431. Certain powers of appointment construed to refer to federal gift tax exclusion in effect on date of execution.

If an instrument executed before September 12, 1981, provides for a power of appointment that may be exercised during any period after December 31, 1981, and such power of appointment is defined in terms of, or by reference to, the maximum amount of property qualifying for the gift tax exclusion under federal law, then such instrument shall be construed as referring to the maximum amount of property eligible for the annual gift tax exclusion as was allowable under the Internal Revenue Code in effect on the date of execution of such instrument provided that the instrument described has not been amended after September 12, 1981, to refer specifically to the federal gift tax exclusion available after December 31, 1981, or the amount qualifying for such exclusion.

§ 64.2-432. Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax laws applicable to estates of decedents dying after December 31, 2009, and before January 1, 2011.

A. A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction," "unlimited marital deduction," "inclusion ratio," "applicable fraction," or any section of the Internal Revenue Code relating

to the federal estate tax or generation-skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009. This provision shall not apply with respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective before that date, the reference to January 1, 2011, in this subsection shall refer instead to the first date on which such tax becomes legally effective.

B. The personal representative or any affected beneficiary under the will or other instrument may bring a proceeding to determine whether the decedent intended that the formulae under subsection A be construed with respect to the law as it existed after December 31, 2009. Such a proceeding shall be commenced within 12 months following the death of the testator or grantor.

Article 4.

Uniform International Wills Act.

§ 64.2-433. Definitions.

As used in this article:

"Authorized person" and "person authorized to act in connection with international wills" means a person who by § 64.2-441 or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

"International will" means a will executed in conformity with §§ 64.2-434 through 64.2-437.

§ 64.2-434. Validity.

A. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this article.

B. The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

C. This article shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

§ 64.2-435. Requirements.

A. The will shall be made in writing. It need not be written by the testator himself. It may be written in any language, by hand or by any other means.

B. The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his will and that he knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

C. In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he has previously signed it, shall acknowledge his signature.

D. When the testator is unable to sign, the absence of his signature does not affect the validity of the international will if the testator indicates the reason for his inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator to sign the testator's name for him, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him.

E. The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

§ 64.2-436. Other points of form.

A. The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be signed by the testator or, if he is unable to sign, by the person signing on his behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

B. The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

C. The authorized person shall ask the testator whether he wishes to make a declaration concerning the safekeeping of his will. If so, and at the express request of the testator, the place where he intends to have his will kept shall be mentioned in the certificate provided for in § 64.2-437.

D. A will executed in compliance with § 64.2-435 shall not be invalid merely because it does not comply with this section.

§ 64.2-437. Certificate.

The authorized person shall attach to the will a certificate to be signed by him establishing that the requirements of this article for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

I, ... (name, address and capacity), a person authorized to act in connection with international wills

Certify that on ..... (date) ..... (place)

(testator) ..... (name, address, date and place of birth) in my presence and that of the witnesses

(a) ..... (name, address, date and place of birth)

(b) ..... (name, address, date and place of birth)

has declared that the attached document is his will and that he knows the contents thereof.

I furthermore certify that:

(a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged his signature previously affixed.

**(2) following a declaration of the testator stating that he was unable to sign his will for the following reason ..... I have mentioned this declaration on the will*

**and the signature has been affixed by (name and address)*

(b) the witnesses and I have signed the will;

**(c) each page of the will has been signed by .... and numbered;*

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

(f) the testator has requested me to include the following statement concerning the safekeeping of his will:

PLACE OF EXECUTION

DATE

SIGNATURE and, if necessary, SEAL.

** to be completed if appropriate*

§ 64.2-438. Effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this article. The absence or irregularity of a certificate shall not affect the formal validity of a will under this article.

§ 64.2-439. Revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

§ 64.2-440. Source and construction.

Sections 64.2-433 through 64.2-439 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this article, regard shall be had to its international origin and to the need for uniformity in its interpretation.

§ 64.2-441. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of the Commonwealth and who are members in good standing of the Virginia State Bar are hereby declared to be authorized persons in relation to international wills.

§ 64.2-442. International will information registration.

The Secretary of the Commonwealth shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the testator and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual-identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the testator. The Secretary of the Commonwealth, at the request of the authorized person, may cause the information he receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in the Commonwealth.

Article 5.

Probate.

§ 64.2-443. Jurisdiction of probate of wills.

A. The circuit courts shall have jurisdiction of the probate of wills. A will shall be offered for probate in the circuit court in the county or city wherein the decedent has a known place of residence; if he has no such known place of residence, then in a county or city wherein any real estate lies that is devised or owned by the decedent; and if there is no such real estate, then in the county or city wherein he dies or a county or city wherein he has estate.

B. Where any person has become, either voluntarily or involuntarily, a patient in a nursing home, convalescent home, or similar institution due to advanced age or impaired health, the place of legal residence of the person shall be rebuttably presumed to be the same as it was before he became a patient.

§ 64.2-444. Clerks may probate wills.

A. The clerk of any circuit court, or any duly qualified deputy of such clerk, may admit wills to probate, appoint and qualify executors, administrators, and curators of decedents, and require and take from them the necessary bonds, in the same manner and with like effect as the circuit court.

B. The clerk shall keep an order book, in which shall be entered all orders made by him, or his deputy, in performance of his duties pursuant to subsection A, except probate orders that are recorded in the will book need not be entered in the order book.

C. All wills heretofore admitted to probate by any duly qualified deputy clerk of any circuit court are deemed to have been properly admitted to probate to the same extent as if the clerk had acted in the proceeding.

§ 64.2-445. Appeal from order of clerk.

Any person interested in the probate of the will may appeal any order entered pursuant to § 64.2-444 within six months after the entering of such an order, without giving any bond, to the circuit court whose clerk, or deputy, has made the order. Upon application for such appeal, the clerk or deputy shall enter forthwith in his order or will book an order allowing such appeal. The appeal shall be given precedence on the court's docket. The matter shall be heard de novo by the court and a copy of its final order shall be entered into the clerk's order or will book. At any time after such appeal is allowed, the court may enter an order for the protection of the persons interested in the probate of the will or for the protection or preservation of any property involved as it finds necessary.

§ 64.2-446. Motion for probate; process against persons interested in probate.

A. A person offering, or intending to offer, to a circuit court or to the clerk of the circuit court a will for probate, may request that the clerk of such court summon any person interested in the probate of the will to appear to show cause why the will should not be admitted to probate. Upon such request, the clerk shall, or in the absence of such request the court may, summon all persons interested in the probate of the will to appear to show cause why the will should not be admitted to probate.

B. The court shall hear the motion to admit the will to probate when all persons interested in the probate of the will have been summoned or otherwise appear as parties. Upon the request of any person interested in the probate of the will, the court shall order a trial by jury to ascertain whether any paper produced is the will of the decedent. The court shall enter a final order as to the probate.

C. In the absence of a request that the clerk summon any person interested in the probate of the will to appear to show cause why the will should not be admitted to probate, the court in which the will is offered for probate may proceed to admit or reject the will without summoning any party.

§ 64.2-447. Use of depositions.

A. The deposition of a witness who subscribed a will attesting that the will is the will of the testator, or in the case of a holographic will, a witness attesting that the will is wholly in the handwriting of the testator, may be admitted as evidence to prove the will if the witness (i) resides outside of the Commonwealth or (ii) resides in the Commonwealth but is unable to testify for any reason before the court or clerk where the will is offered. For the purpose of taking such depositions, the person offering the will for probate shall be permitted to withdraw the will temporarily, leaving an attested copy with the court or clerk, or the clerk may give such person a certified copy of the will.

B. The deposition of such witnesses shall be taken and certified in accordance with § 8.01-420.4 and the Rules of Supreme Court of Virginia, except that no notice of the time and place of taking the deposition need be given unless the probate is opposed by some person interested in the probate of the will. Such deposition may be taken prior to the time that the will is offered for probate and may be filed at the same time the will is offered for probate, provided, that if probate is opposed by some person interested in the probate of the will, such person shall have the right to examine such witness.

§ 64.2-448. Complaint to impeach or establish a will; limitation of action; venue.

A. A person interested in the probate of the will who has not otherwise been before the court or clerk in a proceeding to probate the will pursuant to § 64.2-444 or in an ex parte proceeding to probate the will pursuant to subsection B of § 64.2-446 may file a complaint to impeach or establish the will within one year from the date of the order entered by the court in exercise of its original jurisdiction or after an appeal of an order entered by the clerk, or, if no appeal from an order entered by the clerk is taken, from the date of the order entered by the clerk.

B. A person interested in the probate of the will who had been proceeded against by an order of publication pursuant to subsection B of § 64.2-449 may file a complaint to impeach or establish the will within two years from the date of the order entered by the court in the exercise of its original jurisdiction, unless he actually appeared as a party or had been personally served with a summons to appear.

C. A person interested in the probate of the will who has not otherwise been before the court and who was a minor at the time of the order pursuant to § 64.2-444 or 64.2-446 may file a complaint to impeach or establish the will within one year after such person reaches the age of maturity or is judicially declared emancipated.

D. A person interested in the probate of the will who has not otherwise been before the court and who was incapacitated at the time of the order pursuant to § 64.2-444 or 64.2-446 may file a complaint to impeach or establish the will within one year after such person is restored to capacity.

E. Upon the filing of a complaint to impeach or establish the will pursuant to this section, the court shall order a trial by jury to ascertain whether what was offered for probate is the will of the testator. The court may require all testamentary papers of the testator be produced and direct the jury to ascertain whether any paper produced is the will of the testator. The court shall decide whether to admit the will to probate.

F. The venue for filing a complaint to impeach or establish the will shall be as specified in subdivision 7 of § 8.01-261.

G. Subject to the provisions of § 8.01-428, a final order determining whether to admit a will to probate bars any subsequent complaint to impeach or establish a will.

§ 64.2-449. Procedure in probate proceedings.

A. In every probate proceeding, the court may require all testamentary papers of the testator be produced and may compel the production of the will of a testator that is in the custody of any person.

B. A summons may be served by an order of publication on any person interested in the probate of the will in accordance with § 8.01-316.

C. The court may appoint a guardian ad litem for any person interested in the probate of the will in accordance with § 8.01-9.

D. The record of the testimony given by witnesses in court on the motion to admit a will to probate and any out of court depositions of witnesses who cannot be produced at a jury trial may be admitted as evidence and given such weight as the jury deems proper.

§ 64.2-450. Probate of copy of will proved outside the Commonwealth; authenticated copy.

When a will relative to an estate within the Commonwealth has been proved in another jurisdiction, an authenticated copy of the will and the certificate of probate of the will may be offered for probate in the Commonwealth, and there shall be a rebuttable presumption that the will was duly executed and admitted to probate as a will of personal estate in the jurisdiction of the testator's domicile and the circuit court, or the clerk of such court, where it is offered shall admit such copy to probate as a will of personal estate in the Commonwealth. If such copy indicates that the will was admitted to probate in a court of another jurisdiction and was so executed as to be a valid will of real estate in the Commonwealth by the law of the Commonwealth, such copy may be admitted to probate as a will of real estate. An authenticated copy of any will which has been self-proved under the laws of another state shall, when offered with its authenticated certificate of probate, be admitted to probate as a will of personal estate and real estate.

§ 64.2-451. Appointment of curator; when made; his duties.

The court or the clerk of such court, or his duly qualified deputy, may appoint a curator of the estate of a decedent during a contest about the decedent's will, during the infancy or in the absence of an executor, or until administration of the estate be granted and may require the curator to give a bond in a reasonable penalty. The curator shall ensure that the estate is not wasted before the qualification of an executor or administrator, or before such estate lawfully comes into possession of such executor or administrator. The curator may demand, sue for, recover, and receive the decedent's personal estate and all debts due to the testator. The curator may lease or receive the rents and profits of any real estate that the decedent possessed when he died. The curator shall pay debts, to the extent that there are sufficient assets to do so in the order of payment prescribed by law, and may be sued in the same manner as an executor or administrator. Upon the qualification of an executor or administrator, the curator shall account for and pay and deliver to him such estate as he controls or may be liable for.

§ 64.2-452. How will may be made self-proved; affidavits of witnesses.

A will, at the time of its execution or at any subsequent date, may be made self-proved by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses, each made before an officer authorized to administer oaths under the laws of the Commonwealth or the laws of the state where acknowledgment occurred, or before an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed, and evidenced by the officer's certificate, attached or annexed to the will. The officer's certificate shall be substantially as follows in form and content:

STATE OF VIRGINIA

COUNTY/CITY OF .....

Before me, the undersigned authority, on this day personally appeared ....., ..., and ....., known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ..., the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.

.....

Testator

.....

Witness

.....

Witness

Subscribed, sworn and acknowledged before me by ....., the testator, and subscribed and sworn before me by ..... and ....., witnesses, this .... day of ....., A.D., ...

SIGNED .....

.....

(OFFICIAL CAPACITY OF OFFICER)

The affidavits of any such witnesses taken as provided by this section, whenever made, shall be accepted by the court as if it had been taken ore tenus before such court, notwithstanding that the officer did not attach or affix his official seal thereto. Any codicil that is self-proved under the provisions of this section that, by its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have the effect of self-proving the will whether or not the will was so executed originally.

§ 64.2-453. How will may be made self-proved; acknowledgment of witnesses.

A will, at the time of its execution or at any subsequent date, may be made self-proved by the acknowledgment thereof by the testator and the attesting witnesses, each made before an officer authorized to administer oaths under the laws of the Commonwealth or the laws of the state where the acknowledgment occurred, or before an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed, and evidenced by the officer's certificate, attached or annexed to the will. The officer's certificate shall be substantially as follows in form and content:

STATE OF VIRGINIA

CITY/COUNTY OF .....

Before me, the undersigned authority, on this day personally appeared ....., ..., and ....., known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, ..., the testator, declared to me and to the witnesses in my presence that said instrument is his last will and testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his last will and testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of eighteen years and of sound and disposing mind and memory.

Sworn and acknowledged before me by ....., the testator, and ..... and ....., witnesses, this .... day of ....., A.D., ...

SIGNED .....

.....

(OFFICIAL CAPACITY OF OFFICER)

Any codicil that is self-proved under the provisions of this section that, by its terms, expressly confirms, ratifies, and republishes a will except as altered by the codicil shall have the effect of self-proving the will whether or not the will was so executed originally.

§ 64.2-454. Appointment of administrator for prosecution of action for personal injury or wrongful death against or on behalf of estate of deceased resident or nonresident.

An administrator may be appointed in any case in which it is represented that a civil action for personal injury or death by wrongful act arising within the Commonwealth is contemplated against or

on behalf of the estate or the beneficiaries of the estate of a resident or nonresident of the Commonwealth who has died within or outside the Commonwealth if an executor of the estate has not been appointed, solely for the purpose of prosecution of such action, by the clerk of the circuit court in the county or city in which jurisdiction and venue would have been properly laid for such action if the person for whom the appointment is sought had survived.

Article 6.

Recordation and Effect.

§ 64.2-455. Wills to be recorded; recording copies; effect; transfer to The Library of Virginia.

A. Every will or authenticated copy admitted to probate by any circuit court or clerk of any circuit court shall be recorded by the clerk and remain in the clerk's office, except during such time as the same may be carried to another court under a subpoena duces tecum or as otherwise provided in § 17.1-213. A certified copy of such will or of any authenticated copy may be recorded in any county or city wherein there is any estate, real or personal, devised or bequeathed by such will.

B. The personal representative of the testator shall cause a certified copy of any will or of any authenticated copy so admitted to record to be recorded in any county or city wherein there is any real estate of which the testator possessed at the time of his death or that is devised by his will.

C. Every will or certified copy when recorded shall have the effect of notice to all persons of any devise or disposal by the will of real estate situated in a county or city in which such will or copy is so recorded.

D. With the approval of the judges of a circuit court of any county or city, the clerk of such court may transfer such original wills from his office to the Archives Division of The Library of Virginia. A copy of any will that has been microfilmed or stored in an electronic medium, prepared from such microfilmed or electronic record and certified as authentic by the clerk or his designee, shall constitute a certified copy of the will for any purpose arising under this title for which a certified copy of the will is required.

§ 64.2-456. Bona fide purchaser of real estate without notice of devise protected.

The title of a bona fide purchaser without notice from the heir at law of a person who has died heretofore, or who may die hereafter, having title to any real estate of inheritance in the Commonwealth, shall not be affected by a devise of such real estate made by the decedent, unless within one year after the testator's death the will devising the same or, if such will has been probated outside of the Commonwealth, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

§ 64.2-457. Bona fide purchaser of real estate without notice of devise protected; later will.

The title of a bona fide purchaser without notice from the devisee, or from the personal representative with power to sell, encumber, lease, or exchange, under the will of a person who has died heretofore, or may die hereafter, having title to any real estate of inheritance in the Commonwealth, shall not be affected by any other devise of such real estate made by the testator in another will, unless within one year after the testator's death such other will or, if such other will has been probated outside of the Commonwealth, an authenticated copy thereof and the certificate of probate shall be filed for probate before the court or clerk having jurisdiction for that purpose and shall afterwards be admitted to probate and recorded in the proper court or clerk's office as a will of real estate.

§ 64.2-458. Bona fide purchaser of real estate without notice of devise protected; intestacy.

The title of a bona fide purchaser without notice from the devisee, or from the personal representative with power to sell, encumber, lease, or exchange, under the will of a person who has died heretofore, or may die hereafter, having title to any real estate of inheritance in the Commonwealth, shall not be affected by the later impeachment of the testator's will that results in intestacy, unless within one year after the testator's death a complaint is filed before the court having jurisdiction for that purpose.

CHAPTER 5.

PERSONAL REPRESENTATIVES AND ADMINISTRATION OF ESTATES.

Article 1.

Appointment and Qualification.

§ 64.2-500. Grant of administration with the will annexed.

A. If the will does not name an executor, or the executor named refuses to accept, fails to give bond, or dies, resigns, or is removed from office, the court or clerk may grant administration with the will annexed to a person who is a residual or substantial legatee under the will, or his designee, or if such person fails to apply for administration within 30 days, to a person who would have been entitled to administration if there had been no will.

B. Administration shall not be granted to any person unless he takes the required oath and gives bond, and the court or clerk is satisfied that he is suitable and competent to perform the duties of his office. Administration shall not be granted to any person under a disability as defined in § 8.01-2.

C. If any beneficiary of the estate objects, a spouse or parent who has been barred from all interest

in the estate because of desertion or abandonment as provided under § 64.2-308 may not serve as an administrator of the estate.

§ 64.2-501. Oath of executor or administrator with the will annexed.

An executor or administrator with the will annexed shall take an oath that the writing admitted to record contains the true last will of the decedent, so far as he knows, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, vice-president, secretary, treasurer, or trust officer.

§ 64.2-502. Grant of administration of intestate estate.

A. The court or the clerk who would have jurisdiction as to the probate of a will, if there were a will, has jurisdiction to hear and determine the right of administration of the estate in the case of a person dying intestate. Administration shall be granted as follows:

1. During the first 30 days following the decedent's death, the court or the clerk may grant administration to a sole distributee, or his designee, or in the absence of a sole distributee, to any distributee, or his designee, who presents written waivers of the right to qualify from all other competent distributees.

2. After 30 days have passed since the decedent's death, the court or the clerk may grant administration to the first distributee, or his designee, who applies, provided, that if, during the first 30 days following the decedent's death, more than one distributee notifies the court or the clerk of an intent to qualify after the 30-day period has elapsed, the court or the clerk shall not grant administration to any distributee, or his designee, until the court or the clerk has given all such distributees an opportunity to be heard.

3. After 45 days have passed since the decedent's death, the court or the clerk may grant administration to any nonprofit charitable organization that operated as a conservator or guardian for the decedent at the time of his death if such organization certifies that it has made a diligent search to find an address for any sole distributee and has sent notice by certified mail to the last known address of any such distributee of its intention to apply for administration at least 30 days before such application, or, that it has not been able to find any address for such distributee. However, if, during the first 45 days following the decedent's death, any distributee notifies the court or the clerk of an intent to qualify after the 45-day period has elapsed, the court or the clerk shall not grant administration to any such organization until the court or the clerk has given all such distributees an opportunity to be heard. Qualification of such nonprofit charitable organization is not subject to challenge on account of the failure to make the certification required by this subdivision.

4. After 60 days have passed since the decedent's death, the court or the clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or person other than a distributee certifies that he has made a diligent search to find an address for any sole distributee and has sent notice by certified mail to the last known address of any such distributee of his intention to apply for administration at least 30 days before such application, or that he has not been able to find any address for such distributee. Qualification of a creditor or person other than a distributee is not subject to challenge on account of the failure to make the certification required by this subdivision.

B. When granting administration, if the court determines that it is in the best interests of a decedent's estate, the court may depart from the provisions of this section at any time and grant administration to such person as the court deems appropriate.

C. The court or clerk may admit to probate a will of the decedent after a grant of administration. If administration has been granted to a creditor or person other than a distributee, the court or clerk may grant administration to a distributee who applies for administration and who has not previously been refused administration after reasonable notice has been given to such creditor or other person previously granted administration. Admission of a will to probate or the grant of administration pursuant to this subsection terminates any previous grant of administration.

D. The court or clerk shall not grant administration to any person unless satisfied that he is suitable and competent to perform the duties of his office. Administration shall not be granted to any person under a disability as defined in § 8.01-2.

E. If any beneficiary of the estate objects, a spouse or parent who has been barred from all interest in the estate because of desertion or abandonment as provided under § 64.2-308 may not serve as an administrator of the estate of the deceased spouse or child.

§ 64.2-503. Oath and bond of administrator of intestate estate.

An administrator of an intestate estate shall give bond and take an oath that the decedent has left no will, so far as he knows, and that he will faithfully perform the duties of his office to the best of his judgment. Such oath may be taken on behalf of a corporation by its president, a vice-president, secretary, treasurer, or trust officer.

§ 64.2-504. Bond of executor or administrator.

A. Except as provided in subsection B, every bond of an executor or administrator shall be, at least, in an amount equal to (i) the full value of the personal estate of the decedent to be administered, or (ii) if the will authorizes the executor or administrator to sell real estate, or receive the rents and profits

thereof, the full value of the personal estate and such real estate, or the rents and profits thereof, as the case may be.

B. Upon the request of an executor or administrator, the clerk shall redetermine the amount of the bond in light of any reduction in the current market value of the estate in the executor's or administrator's possession or subject to his power, whether such reduction is due to disbursements, distributions, or valuation of assets, if such reduction is reflected in an accounting that has been confirmed by the court or an inventory that has been approved by the commissioner of accounts and recorded in the clerk's office. This provision shall not apply to any bond set by the court.

§ 64.2-505. When security not required.

A. The court or clerk shall require a personal representative to furnish security. However, the court or clerk shall not require a personal representative to furnish security if:

1. All distributees of a decedent's estate or all beneficiaries under the decedent's will are personal representatives of that decedent's estate, whether serving alone or with others who are not distributees or beneficiaries; however, if all personal representatives of a testate decedent are entitled to file a statement in lieu of an accounting under § 64.2-1314, the security shall be required only upon the portion of their bond given in connection with the property passing to beneficiaries who are not personal representatives; or

2. The will waives security of an executor nominated therein.

B. Notwithstanding subsection A, upon the motion of a legatee, devisee, or distributee of an estate, or any person who has a pecuniary interest in an estate, the court may require that the personal representative furnish security. A copy of such motion shall be served upon the personal representative. The court shall conduct a hearing on the motion and may require the personal representative to furnish security in an amount it deems sufficient and may award the movant reasonable attorney fees and costs which shall be paid out of the estate.

C. This section shall be deemed to permit qualification without security where the personal representative is the only distributee or only beneficiary by virtue of one or more instruments of disclaimer filed prior to, or at the time of, such personal representative's qualification.

§ 64.2-506. When letters of administration and order for obtaining probate in due form are required.

The court or clerk may issue a certificate of qualification to any personal representative for obtaining probate or letters of administration, which shall be given the same effect as the probate or letters made out in due form. The clerk when required by any personal representative, shall make out such probate or letters in due form that shall be signed by the clerk, sealed with the seal of the court, and certified by the judge to be attested in due form.

§ 64.2-507. Clerks to deliver statement of responsibilities.

The clerk of any court in which any person qualifies as executor or administrator of an estate shall deliver to such person, at the time of qualification, a statement in at least the following form: "As an executor or administrator of an estate, you are charged with the responsibility of filing any income, inheritance or estate tax returns required by state or federal law and an accounting of your handling of the estate."

§ 64.2-508. Written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties.

A. Except as otherwise provided in this section, a personal representative of a decedent's estate or a proponent of a decedent's will when there is no qualification shall provide written notice of qualification or probate, and notice of entitlement to copies of wills, inventories, accounts, and reports, to the following persons:

1. The surviving spouse of the decedent, if any;

2. All heirs at law of the decedent, whether or not there is a will;

3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under § 64.2-418, and beneficiaries of any trust created by the will; and

4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided (i) when the known assets passing under the will or by intestacy do not exceed $5,000 or (ii) to the following persons:

1. A personal representative or proponent of the will;

2. Any person who has signed a waiver of right to receive notice;

3. Any person to whom a summons has been issued pursuant to § 64.2-446;

4. Any person who is the subject of a conservatorship, guardianship, or committeeship, if notice is provided to his conservator, guardian, or committee;

5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;

6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;

7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or

person in loco parentis;

8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in either case the beneficiary is not an heir at law and the value of the bequest is not in excess of $5,000; and

9. Any unborn or unascertained persons.

C. The notice shall include the following information:

1. The name and date of death of the decedent;

2. The name, address, and telephone number of a personal representative or a proponent of a will;

3. The mailing address of the clerk of the court in which the personal representative qualified or the will was probated;

4. A statement as follows: "This notice does not mean that you will receive any money or property";

5. A statement as follows: "If personal representatives qualified on this estate, they are required by law to file an inventory with the commissioner of accounts within four months after they qualify in the clerk's office, to file an account within 16 months of their qualification, and to file additional accounts within 16 months from the date of their last account period until the estate is settled. If you make written request therefor to the personal representatives, they must mail copies of these documents (not including any supporting vouchers, but including a copy of the decedent's will) to you at the same time the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an heir at law in a case where all of the decedent's probate estate is disposed of by will or (ii) your gift has been satisfied in full before the time of such filing. Your written request may be made at any time; it may relate to one specific filing or to all filings to be made by the personal representative, but it will not be effective for filings made prior to its receipt by a personal representative. A copy of your request may be sent to the commissioner of accounts with whom the filings will be made. After the commissioner of accounts has completed work on an account filed by a personal representative, the commissioner files it and a report thereon in the clerk's office of the court wherein the personal representative qualified. If you make written request therefor to the commissioner before this filing, the commissioner must mail a copy of this report and any attachments (excluding the account) to you on or before the date that they are filed in the clerk's office"; and

6. The mailing address of the commissioner of accounts with whom the inventory and accounts must be filed by the personal representatives, if they are required.

D. Within 30 days after the date of qualification or admission of the will to probate, a personal representative or proponent of the will shall forward notice by delivery or by first-class mail, postage prepaid, to the persons entitled to notice at their last known address. If the personal representative or proponent does not determine that the assets of the decedent passing under the will or by intestacy exceed $5,000 until after the date of the qualification or admission of the will to probate, notice shall be forwarded to the persons entitled thereto within 30 days after such determination.

E. Failure to give the notice required by this section shall not (i) affect the validity of the probate of a decedent's will or (ii) render any person required to give notice, who has acted in good faith, liable to any person entitled to receive notice. In determining the limitation period for any rights that may commence upon or accrue by reason of such probate or qualification in favor of any entitled person, the time that elapses from the date that notice should have been given to the date that notice is given shall not be counted, unless the person required to give notice could not determine the name and address of the entitled person after the exercise of reasonable diligence.

F. The personal representative or proponent of the will shall record within four months in the clerk's office where the will is recorded an affidavit stating (i) the names and addresses of the persons to whom he has mailed or delivered notice and when the notice was mailed or delivered to each or (ii) that no notice was required to be given to any person. The commissioner of accounts shall not approve any settlement filed by a personal representative until the affidavit described in this subsection has been recorded. If the personal representative of an estate or the proponent of a will is unable to determine the name and address of any person to whom notice is required after the exercise of reasonable diligence, a statement to that effect in the required affidavit shall be sufficient for purposes of this subsection. Notwithstanding the foregoing provisions, any person having an interest in an estate may give the notice required by this section and record the affidavit described in this subsection. If this subsection has not been complied with within four months after qualification, the commissioner of accounts shall issue, through the sheriff or other proper officer, a summons to such fiduciary requiring him to comply, and if the fiduciary does not comply, the commissioner shall enforce the filing of the affidavit in the manner set forth in § 64.2-1215.

G. The form of the notice to be given pursuant to this section, which shall contain appropriate instructions regarding its use, shall be provided to each clerk of the circuit court by the Office of the Executive Secretary of the Supreme Court and each clerk shall provide copies of such form to the proponents of a will or those qualifying on an estate.

Article 2.

List of Heirs and Affidavit of Real Estate.

§ 64.2-509. List of heirs.

A. Every personal representative of a decedent, whether the decedent died testate or intestate, shall, at the time of his qualification, and every proponent of a will where there is no qualification of a personal representative, shall, at the time the will is presented for probate, furnish a list of heirs under oath in accordance with a form provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof to the court or clerk where the personal representative qualifies and to the clerk of the circuit court for the jurisdiction where any real estate that is part of the decedent's estate is located.

B. If there has been no qualification of a personal representative within 30 days following the decedent's death, a list of heirs, made under oath in accordance with the form provided to each clerk or a computer-generated facsimile thereof, may be filed by any heir at law of a decedent who died intestate.

C. The clerk shall record the list of heirs in the will book and index the list in the name of the decedent and the heirs. A list of heirs made under oath and recorded pursuant to this section shall be prima facie evidence of the facts contained in the list. The cost of recording the list shall be deemed a part of the cost of administration and be paid out of the estate of the decedent.

D. The personal representative shall not receive any compensation for his services until the list of heirs is filed unless he files an affidavit before the commissioner of accounts that the heirs are unknown to him and that after diligent inquiry he has been unable to ascertain their names, ages, or addresses, as the case may be.

E. The list of heirs filed pursuant to this section shall reflect the heirs in existence on the date of the decedent's death. If there are any changes as to who should be included on the list of heirs, an additional list of heirs shall be filed that includes such changes.

§ 64.2-510. Affidavit relating to real estate of intestate decedent.

A. Any person having an interest in real estate that is part of an intestate decedent's estate, including a personal representative who has qualified, may execute an affidavit, on a form provided to each clerk of the court by the Office of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof, setting forth briefly (i) a description of the real estate owned by the decedent at the time of his death situated within the jurisdiction where the affidavit is to be recorded; (ii) that the decedent died intestate; and (iii) the names and last known addresses of the decedent's heirs at law. The clerk of the circuit court of the jurisdiction where such real estate or any part thereof is located shall record and index the affidavit as wills are recorded and indexed in the name of the decedent and the heirs.

B. The clerk of the circuit court of the jurisdiction where the affidavit is recorded shall transmit an abstract of the affidavit to the commissioner of the revenue of such jurisdiction. Upon receipt of the affidavit, the commissioner may transfer the real estate upon the land books and assess the real estate in accordance therewith.

Article 3.

Authority and General Duties.

§ 64.2-511. Powers of executor before qualification.

A person named in a will as executor shall not exercise the powers of executor until he qualifies as such by taking an oath and giving bond in the court or before the clerk where the will or an authenticated copy thereof is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses, and preserve the estate from waste.

§ 64.2-512. Funeral expenses.

Subject to the provisions of § 64.2-528, reasonable funeral and burial expenses of a decedent shall be considered an obligation of the decedent's estate, which shall be liable for such expenses to (i) the funeral establishment, (ii) the cemetery, (iii) any third-party creditor who finances the payment of such expenses, or (iv) any person authorized to make arrangements for the funeral of the decedent who has paid such expenses. A person who is authorized to make arrangements for the funeral of the decedent shall have the authority to bind the decedent's estate for such expenses and may execute, on behalf of the estate, any necessary instruments.

§ 64.2-513. Effect of death, resignation, or removal of sole executor.

Upon the death, resignation, or removal of the sole surviving executor under any last will, administration of the estate of the testator not already administered may be granted, with the will annexed, to any person the court deems appropriate.

§ 64.2-514. Duty of every personal representative.

Every personal representative shall administer, well and truly, the whole personal estate of his decedent.

§ 64.2-515. Duty of fiduciaries as to joint accounts.

A. Except as provided in subsection B, a fiduciary charged with the administration of the estate of a decedent is not required to assert a claim on behalf of the decedent's estate to any funds on deposit in any financial institution in a joint account held, at the time of the decedent's death, in the name of the decedent and one or more other persons when the terms of the contract of deposit, or the laws of the state in which such funds are deposited, permit such financial institution to pay the funds to (i) any of

such persons in whose name the account is held, whether the other, or others, are living or not, or (ii) a named survivor or survivors.

B. The fiduciary shall assert a claim to such funds if he receives a request in writing from any person interested in the estate within six months from the date of the initial qualification of the estate. The fiduciary, or his attorney, shall acknowledge in writing receipt of such request within 10 days, and if the fiduciary is the surviving cotenant of such funds, the fiduciary shall segregate such funds and place such funds in an interest-bearing account, awaiting an appropriate court order concerning the ultimate disposition of such funds. The fiduciary shall not use such funds for his own personal account. However, if the fiduciary accedes to the request that such funds be treated as estate funds, the fiduciary may distribute the funds according to law without any court order.

§ 64.2-516. Duties of fiduciaries as to certain obligations of the United States.

A. Except as provided in subsection B, a fiduciary charged with the administration of the estate of a decedent is not required to assert a claim to or seek to recover the whole or any part of funds arising from the redemption or payment of bonds of the United States that are paid or payable to others under the applicable laws of the United States or rules and regulations of the U.S. Department of the Treasury.

B. The fiduciary shall assert a claim to such funds if he receives a request in writing from any person interested in the estate within six months from the date of the initial qualification of the estate. The fiduciary, or his attorney, shall acknowledge in writing receipt of such request within 10 days, and if the fiduciary is the co-owner of such funds, the fiduciary shall segregate such funds and place such funds in an interest-bearing account, awaiting an appropriate court order concerning the ultimate disposition of such funds. The fiduciary shall not use such funds for his own personal account. However, if the fiduciary accedes to the request that such funds be treated as estate funds, the fiduciary may distribute the funds according to law without any court order.

§ 64.2-517. Exercise of discretionary powers by surviving executors or administrators with the will annexed.

A. When discretionary powers are conferred upon the executors under any will and some, but not all, of the executors die, resign, or become incapable of acting, the executors or executor remaining shall continue to exercise the discretionary powers conferred by the will, unless the will expressly provides that the discretionary powers cannot be exercised by fewer than all of the original executors named in the will.

B. When discretionary powers are conferred upon the executors under any will and all of the executors or the sole executor if only one is named in the will dies, resigns, or becomes incapable of acting, the administrator with the will annexed appointed by the court shall exercise the discretionary powers conferred by the will upon the original executors or executor, unless the will expressly provides that the discretionary powers can only be exercised by the executors or executor named in the will.

§ 64.2-518. When personal representative may renew obligation of decedent.

A. When a decedent is obligated on any note, bond, or other obligation for the payment of money that is due at the time of the decedent's death, or becomes due prior to the settlement of the decedent's estate, the decedent's personal representative may execute, in the same capacity as the decedent was obligated, a new note, bond, or other obligation for the payment of money for no more than the same amount as the sum due on the original obligation, including both principal and interest, which shall be in lieu of the obligation of the decedent, whether made payable to the original holder or another. Any note, bond, or other obligation executed by the personal representative shall be binding upon the estate of the decedent to the same extent and in the same manner as the original note, bond, or other obligation executed by the decedent.

B. The personal representative may renew such note, bond, or other obligation for the payment of money from time to time, provided, that the time for final payment of the note, bond, or other obligation, or any renewal thereof, shall not exceed two years from the qualification of the original personal representative, unless otherwise ordered by a court of competent jurisdiction.

C. The personal representative is not personally liable for any note, bond, or other obligation for the payment of money executed pursuant to this section.

§ 64.2-519. Suits upon judgment and contracts of decedent and actions for personal injury or wrongful death.

A personal representative may sue or be sued (i) upon any judgment for or against the decedent, (ii) upon any contract of or with the decedent, or (iii) in any action for personal injury or wrongful death against or on behalf of the estate.

§ 64.2-520. Action for goods carried away, or for waste, destruction of, or damage to estate of decedent.

A. Any action for damages for the taking or carrying away of any goods, or for the waste, destruction of, or damage to any estate of or by the decedent, whether such damage be direct or indirect, may be maintained by or against the decedent's personal representative.

B. An action for damages, including future tax liability, to the grantor, his estate or his trust, resulting from legal malpractice concerning an irrevocable trust shall accrue upon completion of the

representation in which the malpractice occurred. The action may be maintained pursuant to § 8.01-281 by the grantor or by the grantor's personal representative or the trustee if such damages are incurred after the grantor's death. An action for damages pursuant to this section in which a written contract for legal services existed between the grantor and the defendant shall be brought within five years after the cause of action accrues. An action for damages pursuant to this section in which an unwritten contract for legal services existed between the grantor and the defendant shall be brought within three years after the cause of action accrues. Notwithstanding this section, no such action shall be based upon damages that may reasonably be avoided or that result from a change of law subsequent to the representation upon which the action is based.

C. Any action pursuant to this section shall survive pursuant to § 8.01-25.

Article 4.

Power with Respect to Real Estate.

§ 64.2-521. Personal representatives to sell real estate devised to be sold, and to receive certain rents.

A. If the will devises real estate to be sold and no person other than the executor is appointed to sell such real estate, the executor has the power to sell and convey such real estate and to receive the proceeds of sale or the rents and profits of any real estate that the executors are authorized by the will to receive.

B. Unless a contrary intent is clearly set out in the will, if no executor qualifies, or those qualifying die, resign, or are removed, an administrator with the will annexed has the power to sell or convey the real estate devised by the will to be sold and to receive the proceeds of sale or the rents and profits of any real estate.

§ 64.2-522. Personal representatives to pay over sale proceeds and rents to persons entitled.

An executor or administrator shall faithfully pay the rents and profits or proceeds of sale of real estate that lawfully come into his possession, or into the possession of any person for him, to such persons entitled thereto.

§ 64.2-523. Personal representative may execute deed pursuant to written contract of decedent.

When any decedent has executed and delivered a bona fide written contract of sale, purchase option, or other agreement binding such deceased person, his heirs, personal representatives, or assigns, to convey any real property or any interest therein, his personal representatives may execute a deed and do all things necessary to effect the transfer of title to such real property or any interest therein to the purchaser upon the purchaser's full compliance with the terms and conditions of such contract, option, or agreement. Such transfer shall be as effective as if it had been made by the decedent. The contract, option, or agreement shall be attached to any deed executed by a personal representative pursuant to this section and the clerk shall record such contract, option, or agreement in the deed book. Any personal representative duly qualified in any other state, upon taking an oath that the decedent owed no debts in the Commonwealth and posting bond upon such terms and in such amount as may be fixed by the clerk, but not less than the value of the decedent's interest to be conveyed, may convey real property or any interest therein under the provisions of this section without qualifying in the Commonwealth.

§ 64.2-524. Validation of certain conveyances by foreign executor.

A. Every conveyance of real estate within the Commonwealth made prior to June 30, 1986, by the executor under a will that, prior to such sale, has been probated according to the laws of another state without the qualification of the executor in the Commonwealth, shall be as valid and effective to pass the title of such real estate as if the executor had qualified in the Commonwealth, provided that (i) the will under which the executor acted was duly executed according to the laws of the Commonwealth, (ii) the will confers upon the executor the power to convey the real estate, and (iii) an authenticated copy of such will has been admitted to probate in the Commonwealth in the county or city in which the real estate or any part thereof is located.

B. Every conveyance of real estate within the Commonwealth made on or after June 30, 1986, by an executor described in subsection A shall be valid and effective to pass the title of such real estate if (i) the executor complies with the conditions set forth in subsection A and (ii) an ancillary administrator upon the estate of the decedent who shall sign and acknowledge the deed by which such real estate is conveyed has been appointed and qualified in the Commonwealth.

Article 5.

Liability of Personal Estate to Debts.

§ 64.2-525. Debtor's appointment as executor.

The appointment of a debtor of the estate as executor shall not extinguish his debt to the estate.

§ 64.2-526. What personal estate to be sold; use of proceeds.

A. Subject to the provisions of Article 2 (§ 64.2-309 et seq.) of Chapter 3 and excluding personal estate that the will directs not to be sold, the personal representative shall sell such assets of the personal estate where the retention of such assets is likely to result in an impairment of value. In conducting such a sale, the personal representative may give reasonable credit and take bond with good security.

B. If, after the sale pursuant to subsection A, the personal estate is not sufficient to pay the funeral

expenses, charges of administration, debts, and legacies, the personal representative shall sell so much of the remaining personal estate as is necessary to pay such obligations. In conducting such a sale, the personal representative shall give as much consideration as practicable to preserving specific bequests in the will and to the provisions of Article 2 (§ 64.2-309 et seq.) of Chapter 3.

C. Unless necessary for the payment of funeral expenses, charges of administration, or debts, the personal representative shall not sell personal estate that the will directs not to be sold.

§ 64.2-527. Estate held for another's life; inclusion in personal estate.

Any estate for the life of another shall go to the personal representative of the party entitled to the estate and shall be applied and distributed as the personal estate of such party.

§ 64.2-528. Order in which debts and demands of decedents to be paid.

When the assets of the decedent in his personal representative's possession are not sufficient to satisfy all debts and demands against him, they shall be applied to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;

2. The allowances provided in Article 2 (§ 64.2-309 et seq.) of Chapter 3;

3. Funeral expenses not to exceed $3,500;

4. Debts and taxes with preference under federal law;

5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed $400 for each hospital and nursing home and $150 for each person furnishing services or goods;

6. Debts and taxes due the Commonwealth;

7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of the Commonwealth; as personal representative, guardian, conservator, or committee when the qualification was in the Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;

8. Debts and taxes due localities and municipal corporations of the Commonwealth; and

9. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

§ 64.2-529. Creditors to be paid in order of their classification; class paid ratably; when representative not liable for paying debt.

No payment shall be made to creditors of any one class until all those of the preceding class have been fully paid, and if the assets are not sufficient to pay all the creditors of any one class, the creditors of such class shall be paid ratably; but a personal representative who, after 12 months from his qualification, pays a debt or demand of his decedent is not personally liable for any debt or demand against the decedent of an equal or superior class, whether it is of record or not, unless he had notice of such debt or demand before making such payment.

§ 64.2-530. Lien acquired during lifetime of decedent not affected.

The provisions of §§ 64.2-528 and 64.2-529 shall not affect any lien acquired during the lifetime of the decedent.

§ 64.2-531. Nonexoneration; payment of lien if granted by agent.

A. Unless a contrary intent is clearly set out in the will, a specific devise or bequest of real or personal property passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator, without the right of exoneration. A general directive in the will to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated prior to passing to the legatee.

B. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator against any specifically devised or bequeathed real or personal property that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated. For the purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator, and (iii) an incapacitated testator is one who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest, or other lien granted by the agent on the specific property is thereafter ratified by the testator while he is not incapacitated, or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

C. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of the death of the testator against any specific devise or bequest of any real or personal property that was granted by a conservator, guardian, or committee of the testator. This subsection shall not apply if, after the mortgage, pledge, security interest, or other lien granted by the conservator, guardian or committee, there is an adjudication that the testator's disability has ceased and the testator

survives that adjudication by at least one year.

Article 6.

Liability of Real Estate to Debts.

§ 64.2-532. Real estate of decedent as assets for payment of debts.

If a decedent's personal estate is insufficient to satisfy the decedent's debts and lawful demands against his estate, all real estate of the decedent, including such real estate that remains after satisfying the debts with which the real estate was charged or was subject to under the decedent's will, are assets for the payment of the decedent's debts and all lawful demands against his estate. A decedent's real estate shall be applied to his debts and lawful demands against his estate in the same order that the personal estate of a decedent is applied pursuant to § 64.2-528.

§ 64.2-533. Administration of assets for payment of debts.

The circuit court in which a report of the accounts of a decedent's personal representative and of the debts and demands against the decedent's estate is or may be filed may administer the real estate of the decedent in the possession of the decedent's personal representative that is an asset for the payment of the decedent's debts and demands against the decedent's estate, or any circuit court may administer such real estate.

§ 64.2-534. Liability of heir or devisee for value of real estate sold and conveyed; validity of premature conveyances.

A. Any heir or devisee who sells and conveys any real estate that is an asset for the payment of a decedent's debts or lawful demands against his estate pursuant to § 64.2-532 is liable for the value of such real estate, with interest, to those persons entitled to be paid out of the real estate. However, the heir or devisee is not liable to such persons provided that (i) the conveyance was bona fide and (ii) at the time of such conveyance, no action has been commenced for the administration of the real estate and no reports have been filed of the debts and demands of such creditors.

B. Notwithstanding the provisions of subsection A, no sale and conveyance of such real estate made by an heir or devisee within one year after the death of the decedent is valid against creditors of such decedent, except as otherwise provided in § 64.2-535.

C. Any sale and conveyance made within one year after the death of a decedent is valid against creditors as if it were made more than one year after the death of the decedent, if no action has been commenced for the administration of the real estate and no report of the debts and demands has been filed within one year after the death of the decedent.

§ 64.2-535. When sale and conveyance within one year valid against creditors; proceeds paid to special commissioner; bond to obtain proceeds.

A. For purposes of this section:

"Net proceeds" means the purchase price for the real estate, including money, deferred purchase money obligations, and other securities, remaining after the payment of the expenses of sale ordinarily paid by the seller in sales of such real estate and the discharge of indebtedness and encumbrances that the real estate is primarily liable for by law.

B. Any sale and conveyance of real estate that is an asset for the payment of a decedent's debts or lawful demands against his estate pursuant to § 64.2-532 made within one year after the death of the decedent is valid against creditors of such decedent, if such real estate is sold and conveyed pursuant to a decree of a court of competent jurisdiction in an action for partition, sale of lands of persons under a disability, or other judicial sale, and the net proceeds of sale are paid to a special commissioner appointed by the court.

C. The special commissioner shall hold the net proceeds paid to him in lieu of the real estate subject to the claims of the decedent's creditors in the same manner and to the same extent as such real estate would have been if not sold until at least one year after the death of the decedent. If no claim has been asserted against the net proceeds, the special commissioner shall distribute the net proceeds to those creditors entitled thereto in proportion to their interest in the real estate upon (i) the expiration of the one-year period or (ii) at any time within the one-year period upon posting bond with such surety as may be prescribed by the court to secure any claims against the real estate or net proceeds.

D. A purchaser of any real estate sold and conveyed in accordance with this section is not required to see to the application of the purchase money.

E. The special commissioner who receives and holds such net proceeds or refunding bond shall give such bond as required by the court appointing him.

§ 64.2-536. Liability of heir or devisee; action by personal representative or creditor; recording notice of lis pendens; evidence.

An heir or devisee may be sued by the personal representative or any creditor to whom a claim is due for which the estate descended or devised is liable, or for which the heir or devisee is liable with regard to such estate. Any judgment for such a claim entered against the personal representative of the decedent is prima facie evidence of the claim against the heir or devisee in a suit against the heir or devisee by the personal representative or any creditor. In any suit by the personal representative or any creditor pursuant to this article, he shall record a notice of lis pendens as required by § 8.01-268 at the time of filing such suit. The personal representative or creditor has the burden to show to the

satisfaction of the court that there are not sufficient personal assets in the estate to satisfy all claims against the estate.

§ 64.2-537. Action to enforce claim of less than $20; notice.

No action may be brought pursuant to this article where the amount of the claim does not exceed $20, unless, at least 30 days before the action was filed, the person or estate that is liable has been given notice that such action would be brought if the amount of the claim was not paid within such time.

§ 64.2-538. Lien acquired during lifetime of decedent not affected.

This article shall not affect any lien acquired during the lifetime of the decedent.

Article 7.

Apportionment of Estate Taxes.

§ 64.2-539. Definitions.

For the purposes of this article:

"Gross estate" includes any property or interest that is required to be included in the gross estate of the decedent under the estate tax law of the United States, increased by any "adjusted taxable gifts" as defined in § 2001(b) of the Internal Revenue Code.

"Persons interested in the estate" includes all persons, firms, and corporations who may be entitled to receive or who have received any property or interest that is required to be included in the gross estate of the decedent or any benefit whatsoever with respect to any such property or interest, whether under a will, by intestacy, or by reason of any transfer, trust, estate, interest, right, power, or relinquishment of power taxable under any estate tax law of the Commonwealth, any other state, or the United States heretofore or hereafter enacted.

§ 64.2-540. Apportionment required.

A. Except as provided in subsection B, whenever it appears upon any settlement of accounts or in any other appropriate action or proceeding that an executor, administrator, curator, trustee, or other person acting in a fiduciary capacity has paid an estate tax levied or assessed under the provisions of any estate tax law of the Commonwealth, any other state, or the United States, upon or with respect to any property required to be included in the gross estate of a decedent under the provisions of any such law, the amount of the tax so paid, together with any interest and penalty required by the taxing authority to be paid, shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues. Such apportionment shall be made in the proportion that the value of the property, interest, or benefit of each such person bears to the total value of the property, interests, and benefits received by all such persons interested in the estate. However, in making such proration each person shall have the benefit of any exemptions, deductions, and exclusions allowed by law in respect of the person or the property passing to him, and where a trust is created or other provision is made giving a person an interest in income, an estate for years, an estate for life, or any other temporary interest or estate in any property or fund, the tax on such temporary interest or estate shall be charged against and paid out of the corpus of such property or fund without apportionment between the temporary interests or estates and any remainder interests, and any interest and penalty required by the taxing authority to be paid may be charged against either the temporary interest, estate, or corpus, or partially against the temporary interest, estate, or corpus, as determined by the fiduciary paying the tax, provided that the determination is made so as to fairly balance all interests in the property or fund.

B. The amount of tax paid upon or with respect to property included in the decedent's gross estate under § 2044 of the Internal Revenue Code, as amended, or any successor provision relating to certain property for which the marital deduction was previously allowed, shall be the excess of (i) the total estate tax levied or assessed under the provisions of the estate tax laws of the Commonwealth, any other state, and the United States over (ii) the estate tax that would have been levied or assessed under those provisions if the § 2044 property had not been included in the gross estate. The tax paid upon or with respect to the § 2044 property shall be prorated according to subsection A as if no other estate tax were payable under the laws of the Commonwealth, any other state, and the United States, and as if the § 2044 property constituted the entire gross estate; but it shall be prorated only among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit of such property accrues. The tax determined under clause (ii) shall be prorated according to subsection A as if no other estate tax were payable under the laws of the Commonwealth, any other state, and the United States, and as if the § 2044 property were not included in the gross estate. This subsection shall apply only to estates of persons dying on or after July 1, 1986.

C. The personal representative of an estate which for tax purposes includes § 2044 property owes a duty of good faith and fair dealing to all persons interested in the estate to whom or for whom the § 2044 property may be transferred or held. The duty of good faith includes a duty to keep such persons or their designated representative reasonably informed as to the contents of the returns to be filed and as to all administrative and judicial proceedings that concern the taxes to be paid with respect to the § 2044 property, and to provide copies of the relevant portions of all returns to be filed with respect to such taxes. The designated representative of such persons shall be invited to attend any administrative

conference or proceeding where valuation issues may be discussed which would have a bearing on the taxes to be paid with respect to the § 2044 property. This subsection shall apply only to estates of persons for which a federal estate tax return is required to be filed on or after July 1, 1994.

§ 64.2-541. Recovery by executor when part of estate not in his possession.

If any property required to be included in the gross estate is not in the possession of the executor, administrator, or other fiduciary, he shall recover from the person who is in possession of such property, or from the persons interested in the estate, the amount of tax payable by the persons interested in the estate that is chargeable to such persons under the provisions of this article.

§ 64.2-542. Transfers not required until tax ascertained or security given.

An executor, administrator, or other fiduciary is not required to transfer, pay over, or distribute any fund or property subject to an estate tax imposed by the Commonwealth, any other state, or the United States until the devisee, legatee, distributee, or other person to whom such property is transferred pays such fiduciary the amount of such tax due, or, if the apportionment of tax has not been determined, furnishes adequate security for such payment.

§ 64.2-543. Contrary provisions of will or other instrument to govern.

A. For purposes of this section:

"Includable beneficial interest" means any property, interest, or benefit included in a person's estate for estate tax purposes which passes pursuant to an instrument other than such person's will.

B. The provisions of this article shall not impair the right or power of any person by will or by written instrument executed inter vivos to make direction for the payment of estate taxes and to designate the fund or property out of which such payment shall be made. Such designated funds or property may, in addition to any property passing by testate or intestate succession, include any includable beneficial interest. Unless a larger amount is charged to a specific includable beneficial interest by the instrument creating the interest, the maximum amount of tax that each such includable beneficial interest may be charged shall be limited to its share, as determined pursuant to § 64.2-540 for the apportionment of taxes.

§ 64.2-544. Construction of direction to pay all taxes imposed on account of testator's death.

A. A general direction in a will, trust instrument, or other document to pay all taxes imposed on account of a testator's or settlor's death or similar language shall not be construed to include the following taxes unless the testator or settlor expressly manifests an intention that such taxes be paid out of his estate, trust, or other property by reference to the particular chapter, title, or section of the Internal Revenue Code providing for such taxes:

1. Additional tax imposed upon disposition or cessation of qualified use by the qualified heir with respect to qualified use property under § 2032A;

2. Taxes on general power of appointment property includable in the estate of the testator or settlor under § 2041;

3. Taxes on qualified terminable interest property includable in the estate of the testator or settlor under § 2044;

4. Taxes payable under § 2056A, upon a taxable event with respect to a qualified domestic trust as defined in that section;

5. Any generation skipping transfer tax under Chapter 13 except direct skips occurring at death for estates of decedents dying on or after July 1, 1994; and

6. Taxes payable under § 4980A, on excess retirement accumulation.

B. Unless a contrary intention is manifest, such taxes shall be apportioned and charged to each item of funds or property generating them in the manner provided in this article.

C. The reference in subsection A to any section or chapter is to the Internal Revenue Code of 1986, as amended, and shall be deemed to refer to any corresponding successor sections, chapters, or Code.

Article 8.

Liability of Representatives; Administrators de Bonis Non.

§ 64.2-545. Transfer of assets to administrator de bonis non; administration of assets.

A. If the powers of a personal representative have ceased and there is an administrator de bonis non of the decedent's estate, the personal representative may pay and deliver to such administrator de bonis non, with the consent of the court or clerk before which the administrator de bonis non qualified, the assets of the decedent, whether converted or not, for which such former personal representative is responsible. The court or clerk shall not consent to the payment and delivery of such assets to the administrator de bonis non unless the administrator de bonis non gives a bond sufficient to cover the additional assets to be paid or delivered to him. The administrator de bonis non shall administer such assets paid or delivered to him as assets received in due course of administration. The administrator de bonis non shall provide a receipt for such assets in the form of a voucher in the settlement of the accounts of the former personal representative. The former personal representative shall not be liable for the assets lawfully paid or delivered to the administrator de bonis non.

B. The administrator de bonis non may bring an action against the former personal representative or his estate for mismanagement or to compel the payment and delivery to the administrator de bonis non of the assets of the decedent that were wrongfully converted by the former personal representative.

C. Nothing contained in this section shall (i) limit the liability of the former personal representative and his sureties for any breach of duty committed by him with respect to the assets of the decedent's estate before they were paid over and delivered to the administrator de bonis non by him or (ii) bar the beneficiaries, creditors, or any other parties in interest from bringing any action against the former personal representative for his acts or omissions while serving as the personal representative.

§ 64.2-546. Action against representative of executor for waste.

An action may be maintained for waste of a decedent's estate against (i) the personal representative of a person who, without any lawful authority, assumes to act as an executor or (ii) the personal representative of a rightful executor or administrator.

§ 64.2-547. Revival of judgment by administrator de bonis non.

If an action is pending or a judgment has been rendered in the Commonwealth in favor of a personal representative upon a contract made during or for a cause of action that accrued in the lifetime of the decedent, the administrator de bonis non of the decedent may petition for execution upon such judgment, or to revive the pending action if the personal representative who brought the action could have maintained the same.

§ 64.2-548. Action against surety of personal representative; procedure.

A. An action may be brought against the surety of the personal representative for failure of the personal representative to discharge his duties faithfully if an execution on a judgment against a personal representative is returned unsatisfied.

B. The surety may plead any pleas and offer any evidence that the personal representative could have made or offered in an action against the surety of the personal representative for a devastavit.

§ 64.2-549. Liability of personal representative or his surety.

The liability of a personal representative or his surety shall not exceed the assets of the decedent by reason of any omission or mistake in pleading or false pleading by such representative.

Article 9.

Settlement of Accounts and Distribution.

§ 64.2-550. Proceedings for receiving proof of debts by commissioners of accounts.

A. A commissioner of accounts who has for settlement the accounts of a personal representative of a decedent shall, when requested to so do by a personal representative or any creditor, legatee, or distributee of a decedent, or may at any other time determined by the commissioner of accounts, even though no accounting is pending, conduct a hearing for receiving proof of debts and demands against the decedent or the decedent's estate. The commissioner of accounts shall publish notice of the hearing at least 10 days before the date set for the hearing in a newspaper published or having general circulation in the jurisdiction where the personal representative qualified. and shall also post a notice of the time and place of the hearing at the front door of the courthouse of the court of the jurisdiction where the personal representative qualified. The commissioner of accounts may adjourn the hearing from time to time as necessary.

B. The personal representative shall give written notice by personal service or by regular, certified, or registered mail at least 10 days before the date set for the hearing to any claimant of a disputed claim that is known to the personal representative at the last address of the claimant known to the personal representative. The notice shall inform the claimant of his right to attend the hearing and present his case, his right to obtain another hearing date if the commissioner of accounts finds the initial date inappropriate, and the fact that the claimant will be bound by any adverse ruling. The personal representative shall also inform the claimant of his right to file exceptions with the circuit court in the event of an adverse ruling. The personal representative shall file proof of any mailing or service of notice with the commissioner of accounts.

C. The commissioner of accounts may direct the personal representative, the claimant, or both of them to institute a proceeding in the circuit court to establish the validity or invalidity of any claim or demand that the commissioner of accounts deems not otherwise sufficiently proved.

§ 64.2-551. Account of debts by commissioners of accounts.

The commissioner of accounts, within 60 days from the date of the hearing for receiving proof of debts and demands against the decedent or the decedent's estate or the date of the last adjournment of any such hearing, shall make out an account of all such debts or demands as have been sufficiently proved, stating separately the debts and demands of each class.

§ 64.2-552. How claims filed before commissioners of accounts; tolling of limitations period.

A. Any person who seeks to prove that he has a debt or demand against the decedent or the decedent's estate shall file his claim in writing with the commissioner of accounts, who shall endorse upon it the date of the filing and sign the endorsement in his official character.

B. If the commissioner of accounts recommends in writing the recovery or enforcement of a claim for a debt or demand against the decedent or the decedent's estate, the filing of such claim with the commissioner of accounts pursuant to subsection A shall toll any limitations period that would otherwise bar an action for the recovery or enforcement of the claim or bar the filing of such claim until the termination of the proceedings commenced under § 64.2-550.

§ 64.2-553. When court to order payment of debts.

A. Upon confirmation of a report of the accounts of any personal representative and of the debts and demands against the decedent's estate pursuant to Chapter 12 (§ 64.2-1200 et seq.), the court shall order that so much of the estate in the possession of the personal representative as is proper be applied to the payment of such debts and demands. The court, in its discretion, may order that a portion of the estate be reserved to pay all or a proportion of a claim of a surety for the decedent or any other contingent claim against the estate, or to pay all or a proportion of any other claim not finally passed upon, provided that creditors of the same class shall be paid in the same proportion.

B. For any claim allowed subsequent to any dividend where the court ordered that a portion of the estate be reserved to pay such a claim, the court shall order that the claim be paid from the estate in the possession of the personal representative, regardless of the existence of any debt or demand of superior dignity for which no reservation has been ordered. The claim shall be paid in the same proportion as creditors of the same class, provided, however, that whether there be enough reserved to pay the claim pursuant to this subsection shall not affect any dividend already paid.

C. If there are assets remaining in the possession of the personal representative after claims are paid pursuant to subsections A and B, or if further assets come into the possession of the personal representative, such surplus shall be divided among all the decedent's creditors who have proved debts and demands against the decedent's estate in the order and proportion in which they may be entitled.

§ 64.2-554. When distribution may be required; refunding bond.

A personal representative shall not be compelled to pay any legacy made in the will or to distribute the estate of the decedent for six months from the date of the order conferring authority on the first executor or administrator of such decedent and, except when it is otherwise specifically provided for in the will, the personal representative shall not be compelled to make such payment or distribution until the legatee or distributee gives a bond, executed by himself or some other person, with sufficient surety, to refund a due proportion of any debts or demands subsequently proved against the decedent or the decedent's estate and of the costs of the recovery of such debts or demands. Such bond shall be filed and recorded in the clerk's office of the court which may have decreed such payment or distribution or in which the accounts of such representative may be recorded.

§ 64.2-555. When fiduciaries are protected by refunding bonds.

If any personal representative pays any legacy made in the will or distributes any of the estate of the decedent and a proper refunding bond for what is so paid or distributed, with sufficient surety at the time it was made, is filed and recorded pursuant to § 64.2-554, such personal representative shall not be personally liable for any debt or demand against the decedent, whether it be of record or not, unless, within six months from his qualification or before such payment or distribution, he had notice of such debt or demand. However, if any creditor of the decedent establishes a debt or demand against the decedent's estate by judgment therefor or by confirmation of a report of the commissioner of accounts that allows the debt or demand, a suit may be maintained on such refunding bond, in the name of the obligee or his personal representative, for the benefit of such creditor, and a recovery shall be had thereon to the same extent that would have been had if such obligee or his personal representative had satisfied such debt or demand.

§ 64.2-556. Order to creditors to show cause against distribution of estate to legatees or distributees; liability of legatees or distributees to refund.

A. When a report of the accounts of any personal representative and of the debts and demands against the decedent's estate has been filed in the office of a clerk of a court, whether under §§ 64.2-550 and 64.2-551 or in a civil action, the court, after six months from the qualification of the personal representative, may, on motion of the personal representative, or a successor or substitute personal representative, or on motion of a legatee or distributee of the decedent, enter an order for the creditors and all other persons interested in the estate of the decedent to show cause on the day named in the order against the payment and delivery of the estate of the decedent to his legatees or distributees. A copy of the order shall be published once a week for two successive weeks, in one or more newspapers, as the court directs; the costs of such publication shall be paid by the petitioner or applicant. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as it prescribes. However, every legatee or distributee to whom any such payment or delivery is made, and his representatives, may, in a suit brought against him within five years after such payment or delivery is made, be adjudged to refund a due proportion of any claims enforceable against the decedent or his estate that have been finally allowed by the commissioner of accounts or the court, or that were not presented to the commissioner of accounts, and the costs of the recovery of such claim. In the event any claim becomes known to the fiduciary after the notice for debts and demands but prior to the entry of an order of distribution, the claimant, if the claim is disputed, shall be given notice in the form provided in § 64.2-550 and the order of distribution shall not be entered until after expiration of 10 days from the giving of such notice. If the claimant, within such 10-day period, indicates his desire to pursue the claim, the commissioner of accounts shall schedule a date for hearing the claim and for reporting thereon if action thereon is contemplated under § 64.2-550.

B. Any personal representative who has in good faith complied with the provisions of this section

and has, in compliance with or, as subsequently approved by, the order of the court, paid and delivered the money or other estate in his possession to any party that the court has adjudged entitled thereto shall not be liable for any demands of creditors and all other persons.

C. Any personal representative who has in good faith complied with the provisions of this section and has, in compliance with, or as subsequently approved by, the order of the court, paid and delivered the money or other estate in his possession to any party that the court has adjudged entitled thereto, even if such distribution shall be prior to the expiration of the period of one year provided in § 64.2-302, 64.2-313, 64.2-448, or 64.2-457, shall not be liable for any demands of spouses, persons seeking to impeach the will or establish another will, or purchasers of real estate from the personal representative, provided that the personal representative has contacted any surviving spouse known to it having rights of renunciation and ascertained that the surviving spouse had no plan to renounce the will, such intent to be stated in writing in the case of renunciation under § 64.2-302, and that the personal representative has not been notified in writing of any person's intent to impeach the will or establish a later will in the case of persons claiming under § 64.2-448 or 64.2-457 or under a later will.

D. In the case of such distribution prior to the expiration of such one-year period, the personal representative shall take refunding bonds, without surety, to the next of kin or legatees to whom distribution is made, to protect against the contingencies specified in this section.

§ 64.2-557. Form for notice to show cause under § 64.2-556.

Any notice to show cause published or posted in pursuance of the requirements of § 64.2-556 may be substantially in the form following:

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Virginia: In the ..................... Court of ............
          the ...... day of ......
          Re: ..........., deceased.
                              SHOW CAUSE ORDER
It appearing that a report of the accounts of ..........., Personal
Representative of the estate of ..........., deceased, and of the debts
and demands against (his) (her) estate has been filed in the Clerk's
Office, and that six months have elapsed since the qualification,
on motion of ..........., (a distributee;) (a legatee;) (the personal
representative;) IT IS ORDERED that the creditors of, and all others
interested in, the estate do show cause, if any they can, on the
........ day of .......... (before this Court at its courtroom)
at ............ against the payment and delivery of the Estate
of ..........., deceased, to (the distributees) (the legatees)
(without requiring refunding bonds) (with or without refunding bonds
as the Court prescribes).
   A Copy - Teste:
   ...................
          Clerk
   ............., p.q.
```

§ 64.2-558. Distribution to persons standing in loco parentis to certain beneficiaries.

Notwithstanding any provision of law to the contrary, a distribution to a person standing in loco parentis to an incapacitated person or an infant pursuant to authorization under subdivision B 17 of § 64.2-105 or a comparable provision in a will or trust instrument may be approved by the commissioner of accounts without regard to the amount or value of the fund or property.

CHAPTER 6.
TRANSFERS WITHOUT QUALIFICATION.
Article 1.
Virginia Small Estate Act.

§ 64.2-600. Definitions.

For the purposes of this article, the following definitions apply:

"Designated successor" means one or more successors who are designated pursuant to subdivision A 7 of § 64.2-601.

"Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Small asset" means any indebtedness owed to or any asset belonging or presently distributable to the decedent, other than real property, having a value, on the date of the decedent's death, of no more than $50,000. A small asset includes any bank account, savings institution account, credit union account, brokerage account, security, deposit, tax refund, overpayment, item of tangible personal property, or an instrument evidencing a debt, obligation, stock, or chose in action.

"Successor" means any person, other than a creditor, who is entitled under the decedent's will or the

laws of intestacy to part or all of a small asset.

§ 64.2-601. Payment or delivery of small asset by affidavit.

A. Any person having possession of a small asset shall pay or deliver the small asset to the designated successor of the decedent upon being presented an affidavit made by all of the known successors stating:

1. That the value of the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, does not exceed $50,000;

2. That at least 60 days have elapsed since the decedent's death;

3. That no application for the appointment of a personal representative is pending or has been granted in any jurisdiction;

4. That the decedent's will, if any, was duly probated;

5. That the claiming successor is entitled to payment or delivery of the small asset, and the basis upon which such entitlement is claimed;

6. The names and addresses of all successors, to the extent known;

7. The name of each successor designated to receive payment or delivery of the small asset on behalf of all successors; and

8. That the designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth.

B. The designated successor may discharge his fiduciary duty to promptly pay or deliver the small asset to a successor who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the asset directly to the incapacitated or disabled successor or applying it for such successor's benefit, or by:

1. Paying it to such successor's conservator or, if no conservator exists, guardian;

2. Paying it to such successor's custodian under the Virginia Uniform Transfers to Minors Act (§ 64.2-1900 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), and, for that purpose, creating a custodianship or custodial trust;

3. If the designated successor does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of such successor to be expended on such successor's behalf; or

4. Managing it as a separate fund on such successor's behalf, subject to such successor's continuing right to withdraw the asset.

C. Any successor may be represented and bound under virtual representation provisions of §§ 64.2-714, 64.2-716, and 64.2-717 with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.

D. A transfer agent of any security, upon the surrender of the certificates, if any, evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the designated successor upon the presentation of an affidavit as provided in subsection A.

§ 64.2-602. Payment or delivery of small asset valued at $15,000 or less without affidavit.

A. Notwithstanding the provisions of § 64.2-601, any person having possession of a small asset valued at $15,000 or less may pay or deliver the small asset to any successor provided that:

1. At least 60 days have elapsed since the decedent's death; and

2. No application for the appointment of a personal representative is pending or has been granted in any jurisdiction.

B. The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth to the other successors, if any.

§ 64.2-603. Discharge and release of payor.

Any person paying or delivering a small asset pursuant to § 64.2-601 or 64.2-602 is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. Such person is not required to see the application of the small asset or to inquire into the truth of any statement in any affidavit presented pursuant to subsection A of § 64.2-601. If any person to whom such an affidavit is presented refuses to pay or deliver any small asset, it may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled thereto. Any person to whom payment or delivery of a small asset has been made is answerable and accountable therefor to any personal representative of the decedent's estate or to any other successor having an equal or superior right.

§ 64.2-604. Payment or delivery of small asset; funeral expenses.

Thirty days after the death of a decedent upon whose estate there shall have been no application for the appointment of a personal representative pending or granted in any jurisdiction, any person holding a small asset belonging to the decedent may, at the request of a successor, pay or deliver so much of the small asset as does not exceed the amount given priority by § 64.2-528 to the undertaker or mortuary handling the funeral of the decedent, and a receipt of the payee shall be a full and final release of the payor as to such sum.

§ 64.2-605. Construction of article.

The remedies provided by this article shall be in addition to, and not in exclusion of, any other

remedies provided by law.

Article 2.

Payments, Settlements, or Administration Without Appointment of Representative.

§ 64.2-606. Transfer of certain vessels registered with U.S. Coast Guard and transfer of motor vehicles.

A. When a resident of the Commonwealth owning a vessel registered with the U.S. Coast Guard dies and there has been no qualification on the decedent's estate, a transfer of ownership may be made by a legatee or distributee if he presents a statement made by him to the U.S. Coast Guard stating that (i) there has not been and there is not expected to be a qualification on the estate and (ii) the decedent's debts have been paid in full or that the proceeds from the sale of such vessel will be used to apply against the decedent's debts. The statement shall state the decedent's name, residence at the time of death, and date of death, and the names of all other persons, if any, having an interest in the vessel who, if they have reached the age of majority, shall signify in writing their consent to such transfer of title.

B. A transfer of ownership of a motor vehicle may be made by a legatee or distributee pursuant to § 46.2-634.

§ 64.2-607. Transfer of evidences of indebtedness, securities, and stock held in decedents' estates.

When any executor or administrator duly appointed and qualified under this title has completed the distribution of the estate with the exception of transferring any evidences of indebtedness, securities, or stock in any corporation constituting a portion of such estate, such executor or administrator may file with the clerk of the court in which such executors or administrators qualified, a petition describing any such evidences of indebtedness, securities, and stock, stating that all debts of the decedent have been paid, and stating that a final accounting has been filed and approved. Upon receipt of the petition, the clerk shall issue a certificate certifying that the powers of such executor or administrator continue in full force and effect.

§ 64.2-608. Transfer of securities of nonresident decedents.

The stocks, bonds, or evidences of indebtedness issued by (i) the Commonwealth or any corporation created by the Commonwealth or (ii) any national bank or any other corporation created pursuant to federal law that has its principal office in the Commonwealth that are held in the name of a decedent domiciled outside of the Commonwealth at the time of his death and who is not known by the officer or agent charged with the duty of transferring such stocks, bonds, or evidences of indebtedness to have a personal representative qualified as such within the Commonwealth, may be transferred by the executor or administrator of the decedent qualified according to the laws of the decedent's domicile.

§ 64.2-609. Money and personal property belonging to nonresident decedents.

A. When any person, at the time of his death domiciled outside of the Commonwealth, owned stocks, bonds, securities, money, or tangible personal property located in the Commonwealth or was entitled to any debts, choses in action, or tangible personal property in the Commonwealth, the person, firm, or corporation holding such stocks, bonds, securities, money, debts, tangible personal property, and choses in action shall retain such assets for 90 days from the death of such decedent. After the 90-day period, the person, firm, or corporation shall pay over or deliver on demand such portion of the assets for which the person, firm, or corporation has received no legal notice of any lien or encumbrance to an executor, administrator, or other personal representative, qualified according to the laws of the decedent's domicile if the value of such assets in the Commonwealth is, to the knowledge of the person holding or owing such assets, less than $15,000. When the value of such stocks, bonds, securities, money, debts, tangible personal property, and choses in action is $15,000 or more, the holder may pay or deliver such assets to an executor, administrator, or other personal representative, qualified in accordance with the law of the decedent's domicile, 30 days after the holder gives public notice of his intention to make such a transfer by publication thereof once a week for four successive weeks in a newspaper of general circulation in the city, town, or county wherein the holder resides or has his principal place of business; provided that at the time of such payment or delivery, the holder has no actual notice of the appointment of a personal representative for such decedent in the Commonwealth and has received no legal notice of any lien or encumbrance upon such assets.

B. This section shall be construed as providing, as to the payment of money and the delivery of personal property belonging to nonresident decedents or their estates, optional methods of procedure in addition to those otherwise permitted or provided by law, including a comparable law of the state in which the nonresident decedents were domiciled, and shall not as to such matters add any limitations or restrictions to existing law.

§ 64.2-610. When court may allow another to qualify on estate.

A. Except during the pendency of a suit to contest the decedent's will or during the infancy or absence of the executor, the court where the will was admitted to probate or that has jurisdiction to grant administration on the decedent's estate, or the clerk of such court, shall, if there has been no executor or administrator on the decedent's estate for more than two months and on the motion of any person, order any person of the county or city to take into his possession the estate of such decedent and administer the same after requiring such person post a proper bond. However, any sheriff so

ordered may decline the appointment if the appointment interferes with his current duties or obligations. The person ordered to take possession of the decedent's estate shall be the administrator, or administrator de bonis non, of the decedent, with his will annexed, if there be a will, and shall be entitled to all the rights and bound to perform all the duties of such administrator.

B. The court may, on reasonable notice to the person appointed, revoke the order made by it or its clerk and the court may, after reasonable notice to the parties in interest, permit the person to resign and allow any other person to qualify as executor or administrator.

C. When an estate is committed to a person pursuant to subsection A on the motion of a creditor or other person, the state tax due for such administration shall be paid by the party who made the motion and such tax shall be repaid to him by the administrator so appointed out of the first funds received by him for such estate.

§ 64.2-611. Disposition by sheriff of property when no person entitled thereto.

If any sheriff has in his possession any money or personal property of a decedent and, after reasonable diligence, is unable to ascertain the identity of any person entitled to such property, the sheriff shall sell such property at public auction within two years of coming into possession of such property. The sheriff shall post notices of the date, time, and place of the sale at least 10 days before the sale in three or more public places in his jurisdiction, or shall advertise the date, time, and place of the sale at least 10 days before the sale in a newspaper published or having general circulation in his jurisdiction. The proceeds of the sale of personal property, together with any such money of the decedent in the sheriff's possession, after the payment of all necessary expenses, shall be paid into the state treasury to the credit of the Literary Fund.

Article 3.

Uniform Transfers on Death (TOD) Security Registration Act.

§ 64.2-612. Definitions.

In this article, unless the context otherwise requires:

"Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

"Devisee" means any person designated in a will to receive a disposition of real or personal property.

"Heirs" means those persons, including the surviving spouse, who are entitled under the laws of intestate succession to the property of a decedent.

"Personal representative" includes an executor, administrator, successor, personal representative, special administrator, and a person who performs substantially the same function under the law governing his status.

"Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

"Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

"Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

"Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

"Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

§ 64.2-613. Registration in beneficiary form; sole or joint tenancy ownership; applicable law.

A. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

B. A security may be registered in beneficiary form if the form is authorized by this article or a similar law of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent, or its office making the registration, or by a similar law of the state listed as the owner's address at the time of registration.

A registration governed by the law of a jurisdiction in which this article or a similar law is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to

be valid and authorized as a matter of contract law.

§ 64.2-614. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 64.2-615. Form of registration in beneficiary form; effect.

A. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of the beneficiary.

B. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

§ 64.2-616. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to any beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the names of any beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

§ 64.2-617. Protection of registering entity.

A. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protection given to the registering entity by this article.

B. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this article.

C. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with § 64.2-616 and does so in good faith reliance (i) on the registration, (ii) on this article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representative, or on other information available to the registering entity. The protections of this article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this article.

D. The protection provided by this article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 64.2-618. Nontestamentary transfer on death.

A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this article, and is not testamentary.

This article does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of the Commonwealth.

§ 64.2-619. Terms, conditions, and forms for registration; examples.

A. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death.

Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate

implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

B. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

1. Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr.

2. Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr.

3. Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr. LDPS.

Article 4.

Nonprobate Transfers on Death.

§ 64.2-620. Nonprobate transfers on death.

A. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary.

Nontestamentary transfers also include writings stating that (i) money or other benefits due to, controlled by, or owned by a decedent before death shall be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later; (ii) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or (iii) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

B. This section does not limit rights of creditors under other laws of the Commonwealth.

SUBTITLE III.

TRUSTS.

CHAPTER 7.

UNIFORM TRUST CODE.

Article 1.

General Provisions and Definition.

§ 64.2-700. Scope.

A. This chapter applies to express inter vivos trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This chapter also applies to testamentary trusts, except to the extent that specific provision is made for them in Part A (§ 64.2-1200 et seq.) of Subtitle IV or elsewhere in the Code of Virginia, or to the extent it is clearly inapplicable to them. Section 64.2-675, which provides the duties of a trustee to inform and report to the trust's beneficiaries, shall apply to testamentary trusts. For purposes of this subsection, the word "trust" and the words "trustee" or "fiduciary," as used in Part A (§ 64.2-1200 et seq.) of Subtitle IV, shall be deemed to refer to testamentary trusts and testamentary trustees, except to the extent that the use of such words is clearly inapplicable to testamentary trusts and testamentary trustees. This chapter shall not apply to:

1. A trust that is primarily used for business, investment, or commercial transactions, including business trusts, land trusts (§ 55-17.1), deeds of trusts (Article 2 (§ 55-58 et seq.) of Chapter 4 of Title 55), voting trusts, common trust funds, security arrangements, liquidation trusts, trusts created by deposit arrangement in a financial institution, and trusts created for paying debts, dividends, interest, or profits.

2. A trust that is used primarily for employment including trusts created for paying salaries, wages, pensions, or employee benefits of any kind.

3. A trust under which a person is a nominee or escrowee for another.

4. Other special purpose trusts governed by particular statutes, including trusts under Title 57.

B. Notwithstanding subsection A, a court, in exercising jurisdiction over the supervision or administration of trusts, may determine that application of the policies, procedures, or rules of the Code is appropriate to resolution of particular issues.

§ 64.2-701. Definitions.

In this chapter:

"Action," with respect to an act of a trustee, includes a failure to act.

"Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

"Beneficiary" means a person that (i) has a present or future beneficial interest in a trust, vested or contingent; or (ii) in a capacity other than that of trustee, holds a power of appointment over trust property.

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in

§ 64.2-723.

"Conservator" means a person appointed by the court to administer the estate of an adult individual.

"Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

"Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

"Guardian of the estate" means a person appointed by the court to administer the estate of a minor.

"Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

"Jurisdiction," with respect to a geographic area, includes a state or country.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard, or that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

"Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

"Qualified beneficiary" means a living or then existing beneficiary who, on the date the beneficiary's qualification is determined, (i) is a distributee or permissible distributee of trust income or principal; (ii) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in clause (i) terminated on that date, but the termination of those interests would not cause the trust to terminate; or (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

"Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

"Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

"Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

"Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

"Trustee" includes an original, additional, and successor trustee, and a cotrustee.

§ 64.2-702. Knowledge.

A. Subject to subsection B, a person has knowledge of a fact if the person:

1. Has actual knowledge of it;

2. Has received a notice or notification of it; or

3. From all the facts and circumstances known to the person at the time in question, has reason to know it.

B. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 64.2-703. Default and mandatory rules.

A. Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust;

2. The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust

have a purpose that is lawful, not contrary to public policy, and possible to achieve;

4. The power of the court to modify or terminate a trust under §§ 64.2-728 through 64.2-734;

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 (§ 64.2-742 et seq.) of this chapter;

6. The power of the court under § 64.2-755 to require, dispense with, or modify or terminate a bond;

7. The power of the court under subsection B of § 64.2-761 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;

8. The effect of an exculpatory term under § 64.2-799;

9. The rights under §§ 64.2-801 through 64.2-804 of a person other than a trustee or beneficiary;

10. Periods of limitation for commencing a judicial proceeding; and

11. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

§ 64.2-704. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of the Commonwealth.

§ 64.2-705. Governing law.

The meaning and effect of the terms of a trust are determined by:

1. The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

2. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

§ 64.2-706. Principal place of administration.

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of an inter vivos trust designating the principal place of administration are valid and controlling if:

1. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

2. All or part of the administration occurs in the designated jurisdiction.

B. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee of an inter vivos trust may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

C. When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the qualified beneficiaries of the proposed transfer not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in the Commonwealth where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries shall not be deemed to have transferred its principal place of administration if all or significant portions of the administration of the trust are performed outside the Commonwealth. The notice of proposed transfer shall include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;

2. The address and telephone number at the new location at which the trustee can be contacted;

3. An explanation of the reasons for the proposed transfer;

4. The date on which the proposed transfer is anticipated to occur; and

5. The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

D. The authority of a trustee under this section to transfer a trust's principal place of administration to another state or to a jurisdiction outside of the United States terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

E. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to § 64.2-757.

F. The court, for good cause shown, may transfer the principal place of administration of a testamentary trust to another state or to a jurisdiction outside of the United States upon such conditions, if any, as it may deem appropriate.

§ 64.2-707. Methods and waiver of notice.

A. Notice to a person under this chapter or the sending of a document to a person under this chapter shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

B. Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding shall be given as provided in § 64.2-713.

§ 64.2-708. Others treated as qualified beneficiaries.

A. Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

B. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date of the charitable organization's qualification is being determined:

1. Is a distributee or permissible distributee of trust income or principal;

2. Would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

3. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

C. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in § 64.2-726 or 64.2-727 has the rights of a qualified beneficiary under this chapter.

D. The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the Commonwealth but need not be given notices or information required under §§ 64.2-758 and 64.2-775 unless otherwise requested.

§ 64.2-709. Nonjudicial settlement agreements.

A. For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

B. Except as otherwise provided in subsection C, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

C. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

D. Matters that may be resolved by a nonjudicial settlement agreement include:

1. The interpretation or construction of the terms of the trust;

2. The approval of a trustee's report or accounting;

3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

4. The resignation or appointment of a trustee and the determination of a trustee's compensation;

5. Transfer of a trust's principal place of administration; and

6. Liability of a trustee for an action relating to the trust.

E. Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 (§ 64.2-714 et seq.) of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Article 2.
Judicial Proceedings.

§ 64.2-710. Role of court in administration of trust.

A. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

B. Except as provided in Part A (§ 64.2-1200 et seq.) of Subtitle IV, a trust is not subject to continuing judicial supervision unless ordered by the court.

C. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

§ 64.2-711. Jurisdiction over trustee and beneficiary.

A. By accepting the trusteeship of a trust having its principal place of administration in the Commonwealth or by moving the principal place of administration to the Commonwealth, the trustee submits personally to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust.

B. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in the Commonwealth are subject to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the Commonwealth regarding any matter involving the trust.

C. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 64.2-712. Proceedings to appoint or remove trustees.

A. Proceedings to appoint or remove trustees may be brought by motion pursuant to §§ 64.2-1405

and 64.2-1406.

B. Proceedings to appoint or remove trustees also may be brought by petition or complaint. In such a proceeding, beneficiaries who are not qualified beneficiaries shall not be necessary parties, nor shall it be necessary to join (i) a trustee who has declined to accept the trust, resigned or been adjudicated an incapacitated person or (ii) the personal representative of a trustee.

§ 64.2-713. 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 that 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:

(1) An order binding a conservator or a guardian of an estate binds the person whose estate he controls;

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

(3) 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;

(4) 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

(5) 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 court shall not conduct any hearing or trial until it has made a finding that the required notice to the public has been given as specified herein.

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 course of a judicial proceeding as follows:

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

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

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

Article 3.

Representation.

§ 64.2-714. Representation; basic effect.

A. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

B. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

C. Except as otherwise provided in §§ 64.2-729 and 64.2-751, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

D. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under § 64.2-729.

§ 64.2-715. Representation by holder of general testamentary power of appointment.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§ 64.2-716. Representation by fiduciaries and parents or other ancestors.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

1. A conservator or guardian of the estate may represent and bind the estate that such fiduciary controls;

2. A guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

3. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

4. A trustee may represent and bind the beneficiaries of the trust;

5. A personal representative of a decedent's estate may represent and bind persons interested in the estate;

6. A parent may represent and bind the parent's minor or unborn child if a guardian of the estate or guardian for the child has not been appointed; and

7. If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

§ 64.2-717. Representation by person having substantially identical interest.

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented.

§ 64.2-718. Appointment of representative.

A. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

B. A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

C. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Article 4.

Creation, Validity, Modification, and Termination of Trust.

§ 64.2-719. Methods of creating trust.

A trust may be created by:

1. Transfer of property to another person as trustee during the settlor's lifetime by the settlor or by the settlor's agent, acting in accordance with § 64.2-1612, under a power of attorney that expressly authorizes the agent to create a trust on settlor's behalf; or by will or other disposition taking effect upon the settlor's death;

2. Declaration by the owner of property that the owner holds identifiable property as trustee; or

3. Exercise of a power of appointment in favor of a trustee.

§ 64.2-720. Requirements for creation.

A. A trust is created only if:

1. The settlor has capacity to create a trust; or when the trust is created by the settlor's agent under a power of attorney, which expressly authorizes the agent to create a trust on the settlor's behalf;

2. The settlor or his agent indicates an intention to create the trust;

3. The trust has a definite beneficiary or is:

a. A charitable trust;

b. A trust for the care of an animal, as provided in § 64.2-726; or

c. A trust for a noncharitable purpose, as provided in § 64.2-727;

4. The trustee has duties to perform; and

5. The same person is not the sole trustee and sole beneficiary.

B. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

C. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 64.2-721. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

1. The settlor was domiciled, had a place of abode, or was a national;

2. A trustee was domiciled or had a place of business; or

3. Any trust property was located.

§ 64.2-722. Trust purposes.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms shall be for the benefit of its beneficiaries.

§ 64.2-723. Charitable purposes; enforcement.

A. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

B. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

C. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

§ 64.2-724. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

§ 64.2-725. Evidence of oral trust.

Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

§ 64.2-726. Trust for care of animal.

A. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal. Funds from the trust may be applied to any outstanding expenses of the trust and for burial or other postdeath expenditures for animal beneficiaries as provided for in the instrument creating the trust.

B. The instrument creating the trust shall be liberally construed to bring the transfer within the scope of trusts governed by this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

D. Except as ordered by a court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or surety bond shall be required by reason of the existence of the fiduciary relationship of the trustee.

E. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living. If the settlor is deceased, such property shall be distributed pursuant to the residuary clause of the settlor's will if the trust for the animal was created in a preresiduary clause in the will or pursuant to the residuary provisions of the inter vivos trust if the trust for the animal was created in a preresiduary clause in the trust instrument; otherwise, such property shall be distributed to the settlor's successors in interest.

§ 64.2-727. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in § 64.2-726 or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable

beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

§ 64.2-728. Modification or termination of trust; proceedings for approval or disapproval.

A. In addition to the methods of termination prescribed by §§ 64.2-729 through 64.2-732, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under §§ 64.2-729 through 64.2-734, or trust combination or division under § 64.2-735, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under § 64.2-731.

§ 64.2-729. Modification or termination of noncharitable irrevocable trust by consent.

A. If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. Upon termination of a trust under subsection A or B, the trustee shall distribute the trust property as agreed by the beneficiaries.

D. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B, the modification or termination may be approved by the court if the court is satisfied that:

1. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2. The interests of a beneficiary who does not consent will be adequately protected.

§ 64.2-730. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

A. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor's probable intention.

B. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

§ 64.2-731. Cy pres.

A. Except as otherwise provided in subsection B, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

1. The trust does not fail, in whole or in part;

2. The trust property does not revert to the settlor or the settlor's successors in interest; and

3. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

B. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection A to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

1. The trust property is to revert to the settlor and the settlor is still living; or

2. Fewer than 21 years have elapsed since the date of the trust's creation.

§ 64.2-732. Modification or termination of uneconomic trust.

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

B. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

D. This section does not apply to an easement for conservation or preservation.

§ 64.2-733. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 64.2-734. Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

§ 64.2-735. Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

§ 64.2-736. Amendment of trust where gift, grant, or will establishes private foundation or constitutes a charitable trust or a split-interest trust.

When any such gift, grant, devise, or bequest establishes a private foundation, as defined in § 509 of the Internal Revenue Code, or constitutes a charitable trust, as described in § 4947(a)(1) of the Internal Revenue Code, or a split-interest trust, as described in § 4947(a)(2) of the Internal Revenue Code, the trustee or trustees of such trust, with the concurrence of the creator of the trust, if then living and able to give such consent, and the Attorney General, may, without resort to any court, unless such amendment is inconsistent with an express provision of such trust's governing instrument, amend the terms of such trust to bring such trust into or continue such trust in conformity with requirements for exemption of such trust, or any interest therein, from federal taxes. When such gift, grant, or will is recorded, a copy of such amendment shall be similarly recorded.

§ 64.2-737. Distribution of income of trust that is a private foundation or a charitable trust; prohibitions as to such private foundation.

Every trust that is a private foundation, as defined in § 509 of the Internal Revenue Code, or a charitable trust, as described in § 4947(a)(1) of the Internal Revenue Code, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income, and if necessary principal, for each taxable year at such time and in such manner as not to subject such trust to tax under § 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code.

§ 64.2-738. Prohibitions as to trust that is deemed a split-interest trust.

Every trust that is a split-interest trust, as described in § 4947(a)(2) of the Internal Revenue Code, unless its governing instrument expressly includes specific provisions to the contrary, shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, that would give rise to liability for the tax imposed by § 4943(a) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code. This section shall not apply with respect to:

1. Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under § 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

2. Any amounts in trust other than amounts for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if such other amounts are segregated from amounts for which no deduction was allowable; or

3. Any amounts transferred in trust before May 27, 1969.

§ 64.2-739. Application of §§ 64.2-737 and 64.2-738.

Sections 64.2-737 and 64.2-738 shall apply to any private foundation, charitable trust, or split-interest trust defined or described therein and established after December 31, 1969; and to any such private foundation, charitable trust, or split-interest trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue Code shall apply or unless the trustee or trustees shall elect that this section shall not apply by filing written notice of such election with the Attorney General,

and with the clerk of the court in which its governing instrument may be recorded, on or before December 31, 1971.

§ 64.2-740. Interpretation of references to Internal Revenue Code in §§ 64.2-736 through 64.2-739.

Each reference to a section of the Internal Revenue Code made in §§ 64.2-736 through 64.2-739 shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

§ 64.2-741. Powers of courts not impaired by §§ 64.2-736 through 64.2-740; severability.

Nothing in §§ 64.2-736 through 64.2-740 shall impair the power of a court of competent jurisdiction with respect to any such foundation or trust, and the invalidity of any one or more of such sections shall not be deemed to affect the validity of the other sections.

Article 5.

Creditor's Claims; Spendthrift and Discretionary Trusts.

§ 64.2-742. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

§ 64.2-743. Spendthrift provision.

A. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

B. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

C. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§ 64.2-744. Exceptions to spendthrift provision.

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

C. Subject to the limitations of § 64.2-745, no spendthrift provision shall operate to the prejudice of the United States, the Commonwealth, or any county, city, or town.

D. A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of a beneficiary. The court may limit the award of such relief as is appropriate under the circumstances.

§ 64.2-745. Certain claims for reimbursement for public assistance.

A. Notwithstanding any contrary provision in the trust instrument, if a statute or regulation of the United States or Commonwealth requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or an attorney acting on behalf of the state agency responsible for the program may file a petition in the circuit court having jurisdiction over the trustee requesting reimbursement. The petition may be filed prior to obtaining a judgment. The beneficiary, the guardian of his estate, his conservator, or his committee shall be made a party.

B. Following its review of the circumstances of the case, the court may:

1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary; or

2. Regardless of whether the beneficiary has the right to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of any future payments that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion under the trust.

C. A duty in the trustee under the instrument to make disbursements in a manner designed to avoid rendering the beneficiary ineligible for public assistance to which he might otherwise be entitled, however, shall not be construed as a right possessed by the beneficiary to compel such payments.

D. The court shall not issue an order pursuant to this section if the beneficiary is a person who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody, and constitutes a substantial handicap.

§ 64.2-746. Discretionary trusts; effect of standard.

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Except as otherwise provided in subsection C and § 64.2-745, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

1. The discretion is expressed in the form of a standard of distribution; or

2. The trustee has abused the discretion.

C. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

1. A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and

2. The court shall direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

D. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

E. A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

§ 64.2-747. Creditor's claim against settlor.

A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children including the family allowance, the right to exempt property, and the homestead allowance to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. This section shall not apply to life insurance proceeds under § 38.2-3122. No proceeding to subject a trustee, trust assets, or distributees of such assets to such claims, costs, and expenses shall be commenced unless the personal representative of the settlor has received a written demand by a surviving spouse, a creditor, or one acting for a minor or dependent child of the settlor and no proceeding shall be commenced later than two years following the death of the settlor. This section shall not affect the right of a trustee to make distributions required or permitted by the terms of the trust prior to being served with process in a proceeding brought by the personal representative.

B. For purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in § 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or § 2503(b) of the Internal Revenue Code of 1986.

§ 64.2-748. Overdue distribution.

A. In this section "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (i) the discretion is expressed in the form of a standard of distribution or (ii) the terms of the trust authorizing a distribution use language of discretion with language of direction.

B. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 64.2-749. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Article 6.

Revocable Trusts.

§ 64.2-750. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 64.2-751. Revocation or amendment of revocable trust.

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2006.

B. If a revocable trust is created or funded by more than one settlor:

1. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

2. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

3. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

C. The settlor may revoke or amend a revocable trust:

1. By substantial compliance with a method provided in the terms of the trust; or

2. If the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent, acting in accordance with § 64.2-1612, under a power of attorney that expressly authorizes such action except to the extent expressly prohibited by the terms of the trust.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only (i) to the extent expressly authorized by the terms of the trust or (ii) if authorized by the court supervising the conservatorship or guardianship for good cause shown.

G. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 64.2-752. Settlor's powers; powers of withdrawal.

A. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

B. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

§ 64.2-753. Limitation on action contesting validity of revocable trust; distribution of trust property.

A. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

1. Two years after the settlor's death; or

2. Six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

B. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

1. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

2. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

C. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

Article 7.
Office of Trustee.

§ 64.2-754. Accepting or declining trusteeship.

A. Except as otherwise provided in subsection C, a person designated as trustee accepts the trusteeship:

1. By substantially complying with a method of acceptance provided in the terms of the trust; or

2. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

B. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

C. A person designated as trustee, without accepting the trusteeship, may:

1. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified

beneficiary; and

2. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 64.2-755. Trustee's bond.

A. Except as otherwise provided in Part A (§ 64.2-1200 et seq.) of Subtitle IV, a trustee shall give bond, or bond with surety or other security, to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. A regulated financial service institution qualified to do trust business in the Commonwealth need not give bond, even if required by the terms of the trust.

§ 64.2-756. Cotrustees.

A. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

B. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

C. A cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

D. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

E. A trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

F. Except as otherwise provided in subsection G, a trustee who does not join in an action of another trustee is not liable for the action.

G. Each trustee shall exercise reasonable care to:

1. Prevent a cotrustee from committing a serious breach of trust; and

2. Compel a cotrustee to redress a serious breach of trust.

H. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§ 64.2-757. Vacancy in trusteeship; appointment of successor.

A. A vacancy in a trusteeship occurs if:

1. A person designated as trustee rejects the trusteeship;

2. A person designated as trustee cannot be identified or does not exist;

3. A trustee resigns;

4. A trustee is disqualified or removed;

5. A trustee dies; or

6. An individual serving as trustee is adjudicated an incapacitated person.

B. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

C. A vacancy in a trusteeship of a noncharitable trust that is required to be filled shall be filled in the following order of priority:

1. By a person designated pursuant to the terms of the trust to act as successor trustee;

2. By a person appointed by unanimous agreement of the qualified beneficiaries; or

3. By a person appointed by the court pursuant to §§ 64.2-1405 and 64.2-1406, or pursuant to § 64.2-712.

D. A vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

1. By a person designated pursuant to the terms of the trust to act as successor trustee;

2. By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust, subject, however, to the concurrence of the Attorney General in any case in which he has previously requested of an organization so designated that he be consulted regarding the selection of successor; or

3. By a person appointed by the court pursuant to §§ 64.2-1405 and 64.2-1406, or pursuant to § 64.2-712.

E. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

F. A successor or surviving trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee without

regard to the nature of discretionary powers conferred by the instrument, unless the trust instrument expressly provides to the contrary, or unless an order appointing the successor trustee provides otherwise.

§ 64.2-758. Resignation of trustee.

A. A trustee may resign:

1. Upon at least 30 days' notice to the settlor, if living, to all cotrustees, and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust that the settlor has the capacity to revoke; or

2. With the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 64.2-759. Removal of trustee.

A. The settlor, a cotrustee, or a beneficiary, or, in the case of a charitable trust, the Attorney General may petition the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

1. The trustee has committed a serious breach of trust;

2. Lack of cooperation among cotrustees substantially impairs the administration of the trust;

3. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

4. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection B of § 64.2-792 as may be necessary to protect the trust property or the interests of the beneficiaries.

§ 64.2-760. Delivery of property by former trustee.

A. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

B. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

C. Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer, or assignment by the prior trustee.

§ 64.2-761. Compensation of trustee.

A. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

B. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

1. The duties of the trustee are substantially different from those contemplated when the trust was created; or

2. The compensation specified by the terms of the trust would be unreasonably low or high.

§ 64.2-762. Reimbursement of expenses.

A. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

1. Expenses that were properly incurred in the administration of the trust; and

2. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

B. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Article 8.

Duties and Powers of Trustee.

§ 64.2-763. Duty to administer trust and invest.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest trust assets in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and the Uniform Principal and Income Act (§ 64.2-1000 et seq.).

§ 64.2-764. Duty of loyalty.

A. A trustee shall administer the trust solely in the interests of the beneficiaries.

B. Subject to the rights of persons dealing with or assisting the trustee as provided in § 64.2-803, a

sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

1. The transaction was authorized by the terms of the trust;

2. The transaction was approved by the court;

3. The beneficiary did not commence a judicial proceeding within the time allowed by § 64.2-796;

4. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with § 64.2-800; or

5. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

C. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

1. The trustee's spouse;

2. The trustee's descendants, siblings, parents, or their spouses;

3. An agent or attorney of the trustee; or

4. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

D. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

E. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

F. An investment by a trustee in securities of an investment company, investment trust, mutual fund, or other investment or financial product to which the trustee, or an affiliate of the trustee, sponsors, sells, or provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and § 64.2-1506. The trustee may be compensated by the investment company, investment trust, mutual fund, or other investment or financial product, or by the affiliated entity sponsoring, selling, or providing such service, and such compensation may be in addition to the compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee's annual report under § 64.2-775 of the rate and method by which that compensation was determined and of any subsequent changes to such rate or method of compensation.

G. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

H. This section does not preclude the following transactions, if fair to the beneficiaries:

1. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

2. Payment of reasonable compensation to the trustee;

3. A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

4. A deposit of trust money in a regulated financial service institution operated by the trustee; or

5. An advance by the trustee of money for the protection of the trust.

I. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 64.2-765. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

§ 64.2-766. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 64.2-767. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

§ 64.2-768. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's

representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 64.2-769. Delegation by trustee.

A. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;

2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with subsection A is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

§ 64.2-770. Powers to direct.

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

C. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

D. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

§ 64.2-771. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 64.2-772. Recordkeeping and identification of trust property.

A. A trustee shall keep adequate records of the administration of the trust.

B. A trustee shall keep trust property separate from the trustee's own property.

C. Except as otherwise provided in subsection D, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

E. A deed or other instrument purporting to convey or transfer real or personal property to a trust instead of to the trustee or trustees of the trust shall be deemed to convey or transfer such property to the trustee or trustees as fully as if made directly to the trustee or trustees.

§ 64.2-773. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 64.2-774. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust or duty known to the trustee to have been committed by a former trustee or other fiduciary.

§ 64.2-775. Duty to inform and report.

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. A trustee who fails to furnish information to a beneficiary or respond to a request for information regarding the administration of the trust in a good faith belief that to do so would be unreasonable under the circumstances or contrary to the purposes of the settlor shall not be subject to removal or other sanctions therefor.

B. A trustee:

1. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

2. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

3. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable

trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection C; and

4. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

E. Subdivisions B 2 and B 3 and subsection C apply only to an irrevocable trust created on or after the effective date of this chapter, and to a revocable trust that becomes irrevocable on or after the effective date of this chapter.

§ 64.2-776. Discretionary powers; tax savings.

A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

B. Subject to subsection D, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

1. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

2. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

C. A power whose exercise is limited or prohibited by subsection B may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

D. Subsection B does not apply to:

1. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in § 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended, was previously allowed;

2. Any trust during any period that the trust may be revoked or amended by its settlor; or

3. A trust if contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.

§ 64.2-777. General powers of trustee.

A. A trustee, without authorization by the court, may exercise:

1. Powers conferred by the terms of the trust; and

2. Except as limited by the terms of the trust:

a. All powers over the trust property that an unmarried competent owner has over individually owned property;

b. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

c. Any other powers conferred by this chapter.

B. The exercise of a power is subject to the fiduciary duties prescribed by this article.

C. Any reference in a trust instrument incorporating the powers authorized under § 64.2-105 shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

§ 64.2-778. Specific powers of trustee.

A. Without limiting the authority conferred by § 64.2-777, a trustee may:

1. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

2. Acquire or sell property, for cash or on credit, at public or private sale;

3. Exchange, partition, or otherwise change the character of trust property;

4. Deposit trust money in an account in a regulated financial service institution;

5. Borrow money, with or without security, and mortgage or pledge trust property for a period

within or extending beyond the duration of the trust;

6. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

a. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

d. Deposit the securities with a depository or other regulated financial service institution;

8. With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

9. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

10. Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

11. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

12. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

13. With respect to possible liability for violation of environmental law:

a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

16. Exercise elections with respect to federal, state, and local taxes;

17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

19. Pledge trust property to guarantee loans made by others to the beneficiary;

20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

a. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

b. Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), and, for that purpose, creating a custodianship or custodial trust;

c. If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

d. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

22. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

23. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

26. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

B. Any reference in a trust instrument incorporating the powers authorized under § 64.2-105 shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

§ 64.2-779. Distribution upon termination.

A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

B. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

1. It was induced by improper conduct of the trustee; or

2. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Article 9.
Uniform Prudent Investor Act.

§ 64.2-780. Definition of terms.

As used in this article:

"Controlling document" means the will, agreement, power of attorney, court order, or other instrument creating the fiduciary powers.

"Trust" includes the assets under the control or management of the trustee.

"Trustee" includes any fiduciary as defined in § 8.01-2, an attorney-in-fact or agent acting for a principal under a written power of attorney, a custodian under § 64.2-1911, and a custodial trustee under § 64.2-906.

§ 64.2-781. Prudent investor rule.

A. Except as otherwise provided in subsection B or § 2.2-4519 or 64.2-1502, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A general authorization in a controlling document authorizing a trustee to invest in such assets as the trustee, in his sole discretion, may deem best, or other language purporting to expand the trustee's investment powers, shall not be construed to waive the rule of subsection A unless the controlling document expressly manifests an intention that it be waived (i) by reference to the "prudent man" or "prudent investor" rule, (ii) by reference to power of the trustee to make "speculative" investments, (iii) by an express authorization to acquire or retain a specific asset or type of asset such as a closely held business, or (iv) by other language synonymous with clause (i), (ii) or (iii). A trustee shall not be liable to a beneficiary for the trustee's good faith reliance on a waiver of the rule of subsection A.

§ 64.2-782. Standard of care; portfolio strategy; risk and return objectives.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

B. A trustee's investment and management decisions respecting individual assets shall be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

1. General economic conditions;

2. The possible effect of inflation or deflation;

3. The expected tax consequences of investment decisions or strategies;

4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

5. The expected total return from income and the appreciation of capital;

6. Other resources of the beneficiaries;

7. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

G. A trustee may hold any policies of life insurance acquired by gift or pursuant to an express permission or direction in the governing instrument including an authority granted by subdivision B 19 of § 64.2-105 with no duty or need to (i) determine whether any such policy is or remains a proper investment, (ii) dispose of such policy in order to diversify the investments of the trust, or (iii) exercise policy options under any such contract not essential to the continuation of the life insurance provided by such contract. However, apart from these specific authorities, this subsection is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in this section. This subsection shall apply to all trusts, regardless of when established.

§ 64.2-783. Diversification by trustee.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 64.2-784. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this article.

§ 64.2-785. Loyalty and impartiality.

A. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

B. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

§ 64.2-786. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

§ 64.2-787. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 64.2-788. Delegation of investment and management functions.

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;

2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of subsection A is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

§ 64.2-789. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified by language articulating the investment standard to which the trustee is to be held, authorizes any investment or strategy permitted under this article: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the

circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

§ 64.2-790. Application to existing trusts.

This article applies to trusts existing on and created after January 1, 2000. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

§ 64.2-791. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

Article 10.

Liability of Trustees and Rights of Persons Dealing with Trustee.

§ 64.2-792. Remedies for breach of trust.

A. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

B. To remedy a breach of trust that has occurred or may occur, the court may:

1. Compel the trustee to perform the trustee's duties;

2. Enjoin the trustee from committing a breach of trust;

3. Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

4. Order a trustee to account;

5. Appoint a special fiduciary to take possession of the trust property and administer the trust;

6. Suspend the trustee;

7. Remove the trustee as provided in § 64.2-759;

8. Reduce or deny compensation to the trustee;

9. Subject to § 64.2-803, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

10. Order any other appropriate relief.

§ 64.2-793. Damages for breach of trust.

A. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

1. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

2. The profit the trustee made by reason of the breach.

B. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 64.2-794. Damages in absence of breach.

A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

B. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§ 64.2-795. Attorney fees and costs.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§ 64.2-796. Limitation of action against trustee.

A. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

B. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

C. If subsection A does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust shall be commenced within five years after the first to occur of:

1. The removal, resignation, or death of the trustee;

2. The termination of the beneficiary's interest in the trust; or

3. The termination of the trust.

D. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person benefiting from the fraud, whether innocent or not, except for a bona fide

purchaser. Any proceeding shall be commenced within two years after the fraud is discovered, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time the fraud is committed. This section does not apply to remedies for fraud practiced on a decedent during his lifetime which affects the succession of his estate.

E. The provisions of this section shall not operate to reduce the period of limitations applicable to actions and suits governed by § 8.01-245.

§ 64.2-797. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 64.2-798. Event affecting administration or distribution.

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

§ 64.2-799. Exculpation of trustee.

A. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

1. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

2. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

B. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the existence and contents of the exculpatory term were adequately communicated to the settlor.

§ 64.2-800. Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 64.2-801. Limitation on personal liability of trustee.

A. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

B. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

C. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

§ 64.2-802. Interest as general partner.

A. Except as otherwise provided in subsection C or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act (§ 50-73.79 et seq.).

B. Except as otherwise provided in subsection C, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

C. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

D. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

§ 64.2-803. Protection of person dealing with trustee.

A. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

B. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

C. A person who in good faith delivers assets to a trustee need not ensure their proper application.

D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

E. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§ 64.2-804. Certification of trust.

A. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

1. That the trust exists and the date the trust instrument was executed;

2. The identity of the settlor;

3. The identity and address of the currently acting trustee;

4. The powers of the trustee;

5. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

6. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

7. The trust's taxpayer identification number; and

8. The manner of taking title to trust property.

B. A certification of trust may be signed or otherwise authenticated by any trustee.

C. A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

D. A certification of trust need not contain the dispositive terms of a trust.

E. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

F. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

G. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

H. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

I. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

Article 11.

Miscellaneous Provisions.

§ 64.2-805. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 64.2-806. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of § 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 64.2-807. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 64.2-808. Application to existing relationships.

A. Except as otherwise provided in this chapter:

1. This chapter applies to all trusts created before, on, or after July 1, 2006;

2. This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2006;

3. This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2006, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

4. Any rule of construction or presumption provided in this chapter applies to trust instruments

executed before July 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust; and

5. An act done before July 1, 2006, is not affected by this chapter.

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded.

CHAPTER 8.
[RESERVED]
CHAPTER 9.
UNIFORM CUSTODIAL TRUST ACT.

§ 64.2-900. Definitions.

As used in this chapter:

"Adult" means an individual who is at least 18 years of age.

"Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter.

"Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

"Court" means a circuit court of the Commonwealth.

"Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

"Custodial trustee" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

"Guardian" means a person appointed or qualified by a court as a guardian of a person, including a limited guardian, but not a person who is only a guardian ad litem.

"Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

"Legal representative" means a personal representative or conservator.

"Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

"Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

"Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Transferor" means a person who creates a custodial trust by transfer or declaration.

"Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

§ 64.2-901. Custodial trust; creation and termination; general provisions.

A. A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration if the property is of a type subject to registration, or by other instrument of transfer, executed in any lawful manner, naming as beneficiary an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under this chapter.

B. In addition, a person may create a custodial trust of property by a written declaration, evidenced by registration of the property if the property is of a type subject to registration, or by other instrument of declaration, executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under this chapter. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

C. Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

D. The beneficiary, if not incapacitated, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. The conservator of an incapacitated beneficiary may similarly terminate the custodial trust in this manner but only if granted the power by the circuit court that appointed him in a proceeding in which the custodial trustee is made a party. If not previously terminated, the custodial trust terminates on the death of the beneficiary. A transferor may not terminate a custodial trust except as provided in this subsection.

E. Any person may augment existing custodial trust property by the addition of other property pursuant to this chapter.

F. The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

G. This chapter does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this chapter may be enforceable according to its terms under other law.

§ 64.2-902. Custodial trustee for future payment or transfer.

A. A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for . . . . . (name of beneficiary) under the Virginia Uniform Custodial Trust Act."

B. Persons may be designated as substitute or successor custodial trustees to whom the property shall be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

C. A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation shall be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

§ 64.2-903. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

A. Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

B. The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, ... (name of custodial trustee), acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for . . . . . (name of beneficiary) under the Virginia Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Virginia Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of . . . . . .

Dated: . . . . . .

. . . . . .

(signature of custodial trustee)

C. Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

§ 64.2-904. Transfer to custodial trustee by fiduciary or obligor; facility of payment.

A. Unless otherwise directed by an instrument designating a custodial trustee pursuant to § 64.2-902, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $10,000, the transfer is not effective unless authorized by the court.

B. With court approval, any person, including a conservator, guardian, or other fiduciary who holds property of or owes a debt to an incapacitated individual, may make a transfer to any person as a custodial trustee for the use and benefit of the incapacitated individual. The court, in the exercise of its discretion, may require the custodial trustee to furnish a bond with surety for the faithful performance of his fiduciary duties.

C. A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

§ 64.2-905. Multiple beneficiaries; separate custodial trusts; survivorship.

A. Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship or survivorship is required as to marital property.

B. Custodial trust property held under this chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

C. A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to §§ 64.2-906 and 64.2-914 for the administration of the custodial trust.

§ 64.2-906. General duties of custodial trustee.

A. If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property. If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In

the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care set forth in the Uniform Prudent Investor Act (§ 64.2-780 et seq.), except to the extent provided by § 64.2-1502. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. Subject to this subsection, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

B. A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act."

C. A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

D. An agent under a power of attorney for an incapacitated beneficiary may not terminate or direct the administration of a custodial trust.

§ 64.2-907. General powers of custodial trustee.

A. A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property that an unmarried adult owner has over individually owned property, which shall include but not be limited to those powers set forth in § 64.2-105 as of the date the custodian acts, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

B. This section does not relieve a custodial trustee from liability for a violation of § 64.2-906.

§ 64.2-908. Use of custodial trust property.

A. A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time. If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

B. A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

§ 64.2-909. Determination of incapacity; effect.

A. The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if (i) the custodial trust was created under § 64.2-904, (ii) the transferor has so directed in the instrument creating the custodial trust, or (iii) the custodial trustee has determined that the beneficiary is incapacitated. A custodial trustee may determine that the beneficiary is incapacitated in reliance upon (a) previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney, (b) the certificate of the beneficiary's physician, or (c) other persuasive evidence. On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated. Absent determination of incapacity of the beneficiary, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

B. If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

C. Incapacity of a beneficiary does not terminate (i) the custodial trust, (ii) any designation of a successor custodial trustee, (iii) rights or powers of the custodial trustee, or (iv) any immunities of third persons acting on instructions of the custodial trustee.

§ 64.2-910. Exemption of third person from liability.

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining (i) the validity of the purported custodial trustee's designation, (ii) the propriety of, or the authority under this chapter for, any action of the purported custodial trustee, (iii) the validity or propriety of an

instrument executed or instruction given pursuant to this chapter either by the person purporting to make a transfer or declaration or by the purported custodial trustee, or (iv) the propriety of the application of property vested in the purported custodial trustee.

§ 64.2-911. Liability to third person; exceptions.

A. A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

B. A custodial trustee is not personally liable to a third person (i) on a contract properly entered into in a fiduciary capacity, unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract, or (ii) for an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault. A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

C. This section does not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

§ 64.2-912. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor.

A. Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under § 64.2-902 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to § 64.2-902. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

B. A custodial trustee who has accepted the custodial trust property may resign by (i) delivering written notice to a successor custodial trustee, if any, the beneficiary, and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any, and (ii) transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee.

C. If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated in accordance with the trust instrument or in accordance with § 64.2-902 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

D. If a successor custodial trustee is not designated as provided in this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian or conservator of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

E. A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

F. A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

§ 64.2-913. Expenses, compensation, and bond of custodial trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

1. Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

2. Has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

3. Need not furnish a bond or other security for the faithful performance of fiduciary duties.

§ 64.2-914. Reporting and accounting by custodial trustee; determination of liability.

A. Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property (i) once each year, (ii) upon request at reasonable times by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) upon termination of the custodial trust. The statements shall be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

B. A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

C. A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

D. If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

E. In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

F. On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

§ 64.2-915. Limitations of action against custodial trustee.

A. Except as otherwise provided in subsection C, unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee who (i) has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement or (ii) has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

B. Except as otherwise provided in subsection C, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

C. A claim for relief is not barred by this section if the claimant:

1. Is a minor, until the earlier of two years after the claimant becomes an adult or dies;

2. Is an incapacitated adult, until the earliest of two years after (i) the appointment of a conservator, (ii) the removal of the incapacity, or (iii) the death of the claimant; or

3. Was an adult, now deceased, who was not incapacitated, until two years after the claimant's death.

§ 64.2-916. Distribution on termination.

A. Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property as follows:

1. To the beneficiary, if not incapacitated or deceased;

2. To the conservator or such other recipient as is designated by the court for an incapacitated beneficiary; or

3. Upon the beneficiary's death, in the following order:

a. As last directed in writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

b. To the survivor of multiple beneficiaries if survivorship is provided for pursuant to § 64.2-905;

c. As designated in the instrument creating the custodial trust; or

d. To the estate of the deceased beneficiary.

B. If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

C. Death of the beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

§ 64.2-917. Methods and forms for creating custodial trusts.

A. If a transaction, including a declaration with respect to or a transfer of specific property,

otherwise satisfies applicable law, the criteria of § 64.2-901 are satisfied by either:

1. The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE VIRGINIA UNIFORM CUSTODIAL TRUST ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), transfer to ..... (name of trustee other than transferor), as custodial trustee for ..... (name of beneficiary) as beneficiary and ..... (name of distributee) as distributee on termination of the trust in absence of direction by the beneficiary under the Virginia Uniform Custodial Trust Act, the following: ..... (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: . . . . . .

. . . . . .

(signature of transferor or fiduciary)

2. The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE VIRGINIA UNIFORM CUSTODIAL TRUST ACT

I, ... (name of owner of property), declare that henceforth I hold as custodial trustee for ..... (name of beneficiary other than transferor) as beneficiary and ..... (name of distributee) as distributee on termination of the trust in absence of direction by the beneficiary under the Virginia Uniform Custodial Trust Act, the following: ..... (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: . . . . . .

. . . . . .

(signature of owner)

3. Either form may be modified by the owner to include, for example, a designation of an alternate or successor trustee or the recipient of the custodial property upon termination of the trust.

B. Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

1. Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

2. Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subdivision A 1;

3. Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

4. Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

5. Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

6. Irrevocable exercise of power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

7. Delivery of a written notification or assignment of a right to future payment under a contract to an obligor that transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

8. Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act";

9. Issuance of a certificate of title by an agency of a state or of the United States that evidences title to tangible personal property (i) issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act,"

or (ii) delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act"; or

10. Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance "as custodial trustee for ..... (name of beneficiary) under the Virginia Uniform Custodial Trust Act."

§ 64.2-918. Applicable law.

A. This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in the Commonwealth or custodial trust property is located in the Commonwealth. The custodial trust remains subject to this chapter despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from the Commonwealth.

B. A transfer made pursuant to an act of another state substantially similar to this chapter is governed by the law of that state and may be enforced in the Commonwealth.

CHAPTER 10.
UNIFORM PRINCIPAL AND INCOME ACT.
Article 1.
Definitions and Fiduciary Duties.

§ 64.2-1000. Definitions.

In this chapter:

"Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

"Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 (§ 64.2-1009 et seq.) of this chapter.

"Income beneficiary" means a person to whom net income of a trust is or may be payable.

"Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

"Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, or joint venture; government or governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

"Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

§ 64.2-1001. Fiduciary duties; general principles.

A. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 (§ 64.2-1004 et seq.) and 3 (§ 64.2-1006 et seq.) of this chapter, a fiduciary:

1. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

2. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

3. Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

4. Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

B. In exercising the power to adjust under subsection A of § 64.2-1002 or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

C. The power of a fiduciary to allocate receipts and expenses between income and principal, whether incorporated by reference, expressly conferred by the terms of a will or trust, or granted by a court pursuant to § 64.2-106, does not alone constitute a discretionary power of administration for purposes of this section.

§ 64.2-1002. Fiduciary's power to adjust.

A. A fiduciary may adjust between principal and income to the extent the fiduciary considers necessary if the fiduciary invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the fiduciary determines, after applying the rules in subsection A of § 64.2-1001, that the fiduciary is unable to comply with subsection B of § 64.2-1001.

B. In deciding whether and to what extent to exercise the power conferred by subsection A, a fiduciary shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose, and expected duration of the trust;

2. The intent of the settlor;

3. The identity and circumstances of the beneficiaries;

4. The needs for liquidity, regularity of income, and preservation and appreciation of capital;

5. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the fiduciary or received from the settlor;

6. The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;

7. Whether and to what extent the terms of the trust give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary has exercised a power from time to time to invade principal or accumulate income;

8. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

9. The anticipated tax consequences of an adjustment.

C. A fiduciary may not make an adjustment:

1. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment;

2. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

3. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

4. From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

5. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the fiduciary did not possess the power to make an adjustment;

6. If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary or appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;

7. If the fiduciary is a beneficiary of the trust; or

8. If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly.

D. If subdivision C 5, 6, 7, or 8 applies to a fiduciary and there is more than one fiduciary, a cofiduciary to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust. Any

beneficiary or fiduciary may petition the circuit court for appointment of a cofiduciary who would be permitted to make an adjustment not permitted by the other fiduciary or fiduciaries.

E. A fiduciary may release the entire power conferred by subsection A or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in subdivisions C 1 through 6 or subdivision C 8 or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection C. The release may be permanent or for a specified period, including a period measured by the life of an individual.

F. Terms of a trust that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection A.

G. As used in this section and the application of this section elsewhere in this chapter, the term "trust" includes the assets under the control or management of a personal representative.

§ 64.2-1003. Total return unitrust.

A. As used in this section:

"Disinterested person" means a person who is not a "related or subordinate party," as that term is defined in § 672(c) of the Internal Revenue Code (hereinafter referred to in this section as the "I.R.C.," and all such references shall include the specific section referred to and any successor provisions thereof) with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

"Grantor" means an individual who created an inter vivos or a testamentary trust.

"Grantor-created unitrust" means a trust, created either by an inter vivos or a testamentary instrument, that provides that the trust shall be administered in the manner of a total return unitrust as provided in this section.

"Income trust" means a trust, created by either an inter vivos or a testamentary instrument, that directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

"Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" as defined in I.R.C. § 672(c), with respect to such distributee.

"Interested trustee" means (i) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

"Total return unitrust" means (i) an income trust that has been converted under and meets the provisions of this section; or (ii) a grantor-created unitrust.

"Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

"Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

B. A trustee, other than an interested trustee, or where two persons are acting as trustees the trustee that is not an interested trustee, or where more than two persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

2. The trustee sends notice in a manner authorized under § 64.2-707 of his intention to take such action, along with copies of such written policy and this section, to (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ 64.2-714, 64.2-716, 64.2-717, and 64.2-718 shall apply to notice under this subdivision;

3. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 2 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 2; and

4. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

C. If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in his sole discretion and without judicial approval, (i) convert an income trust to a total return unitrust; (ii) convert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

1. The trustee adopts a written policy for the trust providing: (i) in the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

2. The trustee appoints a disinterested person who, in his sole discretion but acting in a fiduciary capacity: (i) in the case of conversion to a total return unitrust, determines for the trustee (a) the percentage to be used to calculate the unitrust amount, (b) the method to be used in determining the fair market value of the trust, and (c) which assets, if any, are to be excluded in determining the unitrust amount; and (ii) determines for the trustee that conversion is in the best interests of the trust;

3. The trustee sends notice in a manner authorized under § 64.2-707 of his intention to take such action, along with copies of such written policy and this section, to (i) the grantor of the trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General; and (iii) all persons acting as advisor or protector of the trust. The representation provisions of §§ 64.2-714, 64.2-716, 64.2-717, and 64.2-718 shall apply to notice under this subdivision;

4. At least one member of each class of qualified beneficiaries receiving notice under clause (ii) of subdivision 3 is (i) legally competent, (ii) in the case of a charitable organization, then existing, or (iii) represented in the manner set forth in subdivision 3; and

5. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee or the determinations of the disinterested person within 30 days of receipt of such notice.

D. If any trustee desires to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsections B or C above, the trustee may petition the circuit court in which the trustee qualified, or if there is no such qualification, the circuit court for the jurisdiction in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder. Any qualified beneficiary of the trust then determined under §§ 64.2-701 and 64.2-708, other than the Attorney General, may also petition such circuit court to convert an income trust to a total return unitrust, convert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust assets.

E. The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Any asset for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Any such asset may be excluded from valuation, provided all income received with respect to such asset is distributed to the extent distributable in accordance with the terms of the governing instrument.

F. The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, either as provided by the grantor in the governing instrument in the case of a grantor-created unitrust, or otherwise taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

G. Following the conversion of an income trust to a total return unitrust, or upon the creation of a grantor-created unitrust, the trustee:

1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust, and the distribution of the

unitrust amount shall be considered in full satisfaction of the distribution of all of the net income of the trust;

2. May allocate to trust income for each taxable year of the trust, or portion thereof:

a. Net short-term capital gain described in I.R.C. § 1222(5), for such year or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for such year or portion thereof does not exceed the unitrust amount for such year or portion thereof; and

b. Net long-term capital gain described in I.R.C. § 1222(7), for such year or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subdivision 2 a, allocated to trust income for such year, or portion thereof, does not exceed the unitrust amount for such year, or portion thereof; and

3. Shall treat the unitrust amount as if it were income of the trust for purposes of determining the amount of trustee compensation where the governing instrument directs that such compensation be based wholly or partially on income.

H. In administering a total return unitrust, the trustee may, in his sole discretion but subject to the provisions of the governing instrument, determine (i) if the trust is converted to a total return unitrust, the effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is converted to an income trust, the effective date of such conversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

I. Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

J. Subject to the provisions of the governing instrument, this section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under Virginia law, regardless of the date the trust was created, unless:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

2. The trust is a pooled income fund described in I.R.C. § 642(c)(5), or a charitable-remainder trust described in I.R.C. § 664(d); or

3. The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of § 64.2-1003, Code of Virginia, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust," or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount", or similar words reflecting such intent shall be sufficient to preclude the use of this section.

K. Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to convert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

Article 2.

Decedent's Estate or Terminating Income Interest.

§ 64.2-1004. Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3 (§ 64.2-1006 et seq.) through 5 (§ 64.2-1024 et seq.) of this chapter that apply to trustees and the rules in subdivision 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 that apply to trustees and by:

a. Including in net income all income from property used to discharge liabilities;

b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are

apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subdivision 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

4. A fiduciary shall distribute the net income remaining after distributions required by subdivision 3 in the manner described in § 64.2-1005 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary may not reduce principal or income receipts from property described in subdivision 1 because of a payment described in § 64.2-1024 or 64.2-1025 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§ 64.2-1005. Distribution to residuary and remainder beneficiaries.

A. Each beneficiary described in subdivision 4 of § 64.2-1004 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

B. In determining a beneficiary's share of net income, the following rules apply:

1. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

2. The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

3. The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

4. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

C. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

D. A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Article 3.

Apportionment at Beginning and End of Income Interest.

§ 64.2-1006. When right to income begins and ends.

A. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

B. An asset becomes subject to a trust:

1. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

2. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

3. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

C. An asset becomes subject to a successive income interest on the day after the preceding income

interest ends, as determined under subsection D, even if there is an intervening period of administration to wind up the preceding income interest.

D. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ 64.2-1007. Apportionment of receipts and disbursements when decedent dies or income interest begins.

A. A trustee shall allocate an income receipt or disbursement other than one to which subdivision 1 of § 64.2-1004 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

B. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

C. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which § 64.2-1009 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ 64.2-1008. Apportionment when income interest ends.

A. In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

B. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

C. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Article 4.

Allocation of Receipts During Administration of Trust.

Part 1.

Receipts from Entities.

§ 64.2-1009. Character of receipts.

A. In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which § 64.2-1010 applies, a business or activity to which § 64.2-1011 applies, or an asset-backed security to which § 64.2-1023 applies.

B. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

C. A trustee shall allocate the following receipts from an entity to principal:

1. Property other than money;

2. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

3. Money received in total or partial liquidation of the entity; and

4. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

D. Money is received in partial liquidation:

1. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

2. If the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

E. Money is not received in partial liquidation, nor may it be taken into account under subdivision D 2, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.

F. A trustee may rely upon a statement made by an entity about the source or character of a

distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§ 64.2-1010. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, § 64.2-1009 or 64.2-1023 applies to a receipt from the trust.

§ 64.2-1011. Business and other activities conducted by trustee.

A. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

B. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

C. Activities for which a trustee may maintain separate accounting records include:

1. Retail, manufacturing, service, and other traditional business activities;

2. Farming;

3. Raising and selling livestock and other animals;

4. Management of rental properties;

5. Extraction of minerals and other natural resources;

6. Timber operations; and

7. Activities to which § 64.2-1022 applies.

Part 2.

Receipts Not Normally Apportioned.

§ 64.2-1012. Principal receipts.

A trustee shall allocate to principal:

1. To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

2. Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

3. Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision A 7 of § 64.2-1025 or for other reasons to the extent not based on the loss of income;

4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

5. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and

6. Other receipts as provided in §§ 64.2-1016 through 64.2-1023.

§ 64.2-1013. Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ 64.2-1014. Obligation to pay money.

A. An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

B. A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

C. This section does not apply to an obligation to which § 64.2-1017, 64.2-1018, 64.2-1019, 64.2-1020, 64.2-1022, or 64.2-1023 applies.

§ 64.2-1015. Insurance policies and similar.

A. Except as otherwise provided in subsection B, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

B. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 64.2-1011, loss of profits from a business.

C. This section does not apply to a contract to which § 64.2-1017 applies.

Part 3.

Receipts Normally Apportioned.

§ 64.2-1016. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by § 64.2-1017, 64.2-1018, 64.2-1019, 64.2-1020, or 64.2-1023 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection C of § 64.2-1002 applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection D of § 64.2-1002 and may be released for the reasons and in the manner described in subsection E of § 64.2-1002. An allocation is presumed to be insubstantial if:

1. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

2. The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

§ 64.2-1017. Deferred compensation, annuities, and similar payments.

A. In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan. For purposes of subsections D, E, F, and G, the term also includes any payment from a separate fund, regardless of the reason for the payment.

B. To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

C. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

D. Except as otherwise provided in subsection E, subsections F and G apply, and subsections B and C do not apply, in determining the allocation of a payment made from a separate fund to:

1. A trust to which an election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

2. A trust that qualifies for the marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

E. Subsections D, F, and G do not apply if and to the extent that the series of payments would, without the application of subsection D, qualify for the marital deduction under § 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

F. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

G. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least four percent of the fund's value, according to the most recent statement of value preceding the beginning of the

accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

H. Subsections D, E, F, and G apply to a trust described in subsection D on and after the following dates: (i) if the trust is not funded as of July 1, 2009, the date of the decedent's death, (ii) if the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death, or (iii) if the trust is not described in (i) or (ii), January 1, 2009.

I. This section does not apply to a payment to which § 64.2-1018 applies.

§ 64.2-1018. Liquidating asset.

A. In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, or royalty right, and a right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to § 64.2-1017, resources subject to § 64.2-1019, timber subject to § 64.2-1020, an activity subject to § 64.2-1022, an asset subject to § 64.2-1023, or any asset for which the trustee establishes a reserve for depreciation under § 64.2-1026.

B. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

§ 64.2-1019. Minerals, water, and other natural resources.

A. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

1. If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

2. If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

3. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent shall be allocated to principal and the balance to income.

4. If an amount is received from a working interest or any other interest not provided for in subdivision 1, 2, or 3, 90 percent of the net amount received shall be allocated to principal and the balance to income.

B. An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90 percent of the amount shall be allocated to principal and the balance to income.

C. This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

D. If a trust owns an interest in minerals, water, or other natural resources on January 1, 2000, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2000, the trustee shall allocate receipts from the interest as provided in this chapter.

§ 64.2-1020. Timber.

A. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

1. To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

2. To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

3. To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivision 1 or 2; or

4. To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision 1, 2, or 3.

B. In determining net receipts to be allocated pursuant to subsection A, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

C. This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

D. If a trust owns an interest in timberland on January 1, 2000, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2000. If the trust acquires an interest in timberland after January 1, 2000, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

§ 64.2-1021. Property not productive of income.

A. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under § 64.2-1002 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection A of § 64.2-1002. The trustee may decide which action or combination of actions to take.

B. In cases not governed by subsection A, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§ 64.2-1022. Derivatives and options.

A. In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

B. To the extent that a trustee does not account under § 64.2-1011 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

C. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

§ 64.2-1023. Asset-backed securities.

A. In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 64.2-1009 or 64.2-1017 applies.

B. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

C. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

Article 5.

Allocation of Disbursements During Administration of Trust.

§ 64.2-1024. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision 2 b or 2 c of § 64.2-1004 applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§ 64.2-1025. Disbursements from principal.

A. A trustee shall make the following disbursements from principal:

1. The remaining one-half of the disbursements described in subdivisions 1 and 2 of § 64.2-1024;

2. All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

3. Payments on the principal of a trust debt;

4. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe

the trust or to protect the trust or its property;

5. Premiums paid on a policy of insurance not described in subdivision 4 of § 64.2-1024 of which the trust is the owner and beneficiary;

6. Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

7. Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

B. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

§ 64.2-1026. Transfers from income to principal for depreciation.

A. In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

B. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

1. Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

2. During the administration of a decedent's estate; or

3. Under this section if the trustee is accounting under § 64.2-1011 for the business or activity in which the asset is used.

C. An amount transferred to principal need not be held as a separate fund.

§ 64.2-1027. Transfers from income to reimburse principal.

A. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

B. Principal disbursements to which subsection A applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

1. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

2. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

3. Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

4. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

5. Disbursements described in subdivision A 7 of § 64.2-1025.

C. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection A.

§ 64.2-1028. Income taxes.

A. A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

B. A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

C. A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid:

1. From income to the extent that receipts from the entity are allocated only to income;

2. From principal to the extent that receipts from the entity are allocated only to principal;

3. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

4. From principal to the extent that the tax exceeds the total receipts from the entity.

D. After applying subsections A through C, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

§ 64.2-1029. Adjustments between principal and income because of taxes.

A. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

1. Elections and decisions, other than those described in subsection B, that the fiduciary makes from time to time regarding tax matters;

2. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

3. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

B. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Article 6.

Miscellaneous Provisions.

§ 64.2-1030. Expenses and receipts; nontrust estates.

A. The provisions of this chapter concerning the allocation and apportionment of receipts and expenses to principal and income shall govern the allocation and apportionment of receipts and expenses between a tenant and a remainderman where no trust has been created, except as otherwise provided in subsection B or C, and except for any provision that requires the exercise of a discretionary power by a trustee.

B. The cost of, or special taxes or assessments for, an improvement representing an addition of value to property forming part of the principal shall be paid by the tenant, when such improvement cannot reasonably be expected to outlast the estate of the tenant. In all other cases a portion thereof only shall be paid by the tenant, while the remainder shall be paid by the remainderman. Such portion shall be ascertained by taking that percentage of the total that is found by dividing the present value of the tenant's estate by the present value of an estate corresponding to the reasonably expected duration of the improvement. The computation of present values of the estate shall be made on the expectancy basis set forth in § 55-269.1 and no other evidence of duration or expectancy shall be considered. When either tenant or remainderman has incurred an expense for the benefit of his own estate and without the consent or agreement of the other, he shall pay such expense in full.

C. The rules of this section are subject to any agreement of the parties.

§ 64.2-1031. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

§ 64.2-1032. Application of chapter to existing trusts, decedent's estates, and nontrust estates.

This chapter applies to every trust, decedent's estate, or nontrust estate existing on January 1, 2000, except as otherwise expressly provided in the will or the terms of the trust, any other governing document, or in this chapter.

CHAPTER 11.

UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§ 64.2-1100. Definitions.

In this chapter:

"Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental or municipal purpose, or any other purpose the achievement of which is beneficial to the community.

"Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

"Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

"Institution" means:

1. A person, other than an individual, organized and operated exclusively for charitable purposes;

2. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

3. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

"Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

1. Program-related assets;

2. A fund held for an institution by a trustee that is not an institution, unless the fund is held by the trustee as a component trust of a community trust or foundation; or

3. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability

company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 64.2-1101. Standard of conduct in managing and investing institutional fund.

A. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

B. In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

C. In managing and investing an institutional fund, an institution:

1. May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

2. Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

D. An institution may pool two or more institutional funds for purposes of management and investment.

E. Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

a. General economic conditions;

b. The possible effect of inflation or deflation;

c. The expected tax consequences, if any, of investment decisions or strategies;

d. The role that each investment or course of action plays within the overall investment portfolio of the fund;

e. The expected total return from income and the appreciation of investments;

f. Other resources of the institution;

g. The needs of the institution and the fund to make distributions and to preserve capital; and

h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

3. Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

§ 64.2-1102. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

A. Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

1. The duration and preservation of the endowment fund;

2. The purposes of the institution and the endowment fund;

3. General economic conditions;

4. The possible effect of inflation or deflation;

5. The expected total return from income and the appreciation of investments;

6. Other resources of the institution; and

7. The investment policy of the institution.

B. To limit the authority to appropriate for expenditure or accumulate under subsection A, a gift instrument shall specifically state the limitation.

C. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

1. Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purposes of the fund; and

2. Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection A.

§ 64.2-1103. Delegation of management and investment functions.

A. Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

1. Selecting an agent;

2. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

B. In performing a designated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

C. An institution that complies with subsection A is not liable for the decisions or actions of an agent to which the function was delegated.

D. By accepting delegation of a management or investment function from an institution that is subject to the laws of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth in all proceedings arising from or related to the delegation or the performance of the delegated function.

E. An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the Commonwealth other than this chapter.

§ 64.2-1104. Release or modification of restrictions on management, investment, or purpose.

A. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

B. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

C. If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.

D. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, without application to the court but with the consent of the Attorney General, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument if the fund subject to the restriction has a total value of less than $250,000.

E. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of less than $50,000;

2. More than 20 years have elapsed since the fund was established; and

3. The institution uses the property in a manner consistent with the charitable purposes expressed in

the gift instrument.

§ 64.2-1105. Reviewing compliance.

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

§ 64.2-1106. Application to existing institutional funds.

This chapter applies to institutional funds existing on or established after July 1, 2008. As it applies to institutional funds existing on July 1, 2008, this article governs only decisions made or actions taken on or after that date.

§ 64.2-1107. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101 of that act, 15 U.S.C. § 7001(a), or authorize electronic delivery of any of the notices described in § 103 of that act, 15 U.S.C. § 7001(b).

§ 64.2-1108. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SUBTITLE IV.
FIDUCIARIES AND GUARDIANS.
PART A.
FIDUCIARIES.
CHAPTER 12.
COMMISSIONERS OF ACCOUNTS.

§ 64.2-1200. Commissioners of accounts.

A. The judges of each circuit court shall appoint as many commissioners of accounts as may be necessary to carry out the duties of that office. The commissioner of accounts shall have general supervision of all fiduciaries admitted to qualify in the court or before the clerk of the circuit court and shall make all ex parte settlements of the fiduciaries' accounts. The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

B. In the event more than one commissioner of accounts is appointed, each commissioner of accounts shall maintain his own office and keep his own books, records, and accounts. Each commissioner of accounts shall retain the power of supervision over every account, matter, or thing referred to him until a final account is approved for such account, matter, or thing, unless he resigns, retires, or is removed from office, in which case his successor shall continue such duties.

C. For any given service performed, each commissioner of accounts shall have the authority to establish a lesser fee than that prescribed by the court or to waive one or more fees.

§ 64.2-1201. Appointment of assistant commissioners of accounts; duties and powers.

The judges of each circuit court may appoint, in addition to commissioners of accounts, assistant commissioners of accounts who shall perform all the duties and exercise all of the powers required of the commissioner of accounts in all cases in which the commissioner of accounts is so situated that he cannot perform the duties of his office or in which the commissioner of accounts is of the opinion that it is improper for him to act. Assistant commissioners of accounts may perform such duties and exercise such powers in any case except cases in which he is so situated that he cannot act or in which he is of the opinion it is improper for him to act. Assistant commissioners of accounts shall act only in such cases that the commissioner of accounts delegates to him. An assistant commissioner of accounts making a settlement of a fiduciary account under the provisions of this section shall, within 30 days, report the fact and date of the settlement to the commissioner of accounts, who shall make an entry of the settlement in his record books. The person appointed as an assistant commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

§ 64.2-1202. Appointment of deputy commissioners of accounts in certain cities and counties; duties and powers.

In any city or county having a population in excess of 200,000, the commissioner of accounts, with the approval of the judges of the circuit court, may appoint a deputy commissioner of accounts who may discharge any of the official duties of the commissioner of accounts for such jurisdiction for so long as the commissioner of accounts continues to serve. The person appointed as a deputy commissioner of accounts shall be a discreet and competent attorney-at-law and shall be removable at the pleasure of the court.

Before entering upon the duties of his office, any deputy commissioner of accounts shall take and subscribe an oath similar to that provided for the commissioner of accounts. The oath shall be filed with the clerk of court and a record of the appointment and oath shall be entered in the order book of such court.

§ 64.2-1203. Subpoena powers of commissioners of accounts, assistants, and deputies; penalty.

Commissioners of accounts, assistant commissioners of accounts, and deputy commissioners of accounts shall have the power to issue subpoenas to require any person to appear before them and to

issue subpoenas duces tecum to require the production of any documents or papers before them. Commissioners of accounts, assistants, and deputies shall not have the power to punish any person for contempt for failure to appear or to produce documents or papers, but may certify the fact of such nonappearance or failure to produce to the circuit court, which may impose penalties for civil contempt as if the court had issued the subpoena. Commissioners of accounts, assistants, and deputies may certify to the circuit court the fact of a fiduciary's failure to inform the clerk or commissioners of his nonresident status and new address pursuant to § 64.2-1409. The court, upon a finding of a violation of § 64.2-1409, may impose a $50 civil penalty. Such penalties shall be paid to the state treasurer for deposit into the general fund.

§ 64.2-1204. Commissioners of accounts to examine and report on bonds and whether fiduciaries should be removed.

A. When any fiduciary, other than a sheriff or other officer, who is required to file an inventory or an account with the commissioner of accounts has made such a filing, the commissioner of accounts shall examine whether the fiduciary has given bond as the law requires and whether the penalty and surety stated in the bond are sufficient. At any time before a required filing is made by a fiduciary with the commissioner of accounts, upon the application of any interested person or the next friend of an interested infant, and after reasonable notice to the fiduciary, the commissioner of accounts for the circuit court wherein the fiduciary qualified shall investigate (i) the bond given and inquire whether security ought to be required of a fiduciary who may have been allowed to qualify without giving it and (ii) whether it is improper to permit the estate of the decedent, ward, or other person to remain under the fiduciary's control due to the incapacity or misconduct of the fiduciary, the removal of the fiduciary from the Commonwealth, or for any other cause. The commissioner of accounts shall report the result of every examination and inquiry to the court and to the clerk of court.

B. When any fiduciary of an estate has given a bond to the court and then absconds with or improperly disburses any or all of the assets of the estate, the commissioner of accounts may petition the court in which the order was made conferring his authority on the fiduciary and ask the court to order that such bond be forfeited.

§ 64.2-1205. Commissioners of accounts to inspect and file inventories with clerks.

The commissioner shall inspect all inventories returned to him by fiduciaries and see that they are in proper form. Within 10 days after any inventory is received and approved by the commissioner of accounts, he shall deliver the inventory to the clerk of the circuit court to be recorded as required by law.

§ 64.2-1206. Settlement of fiduciaries' accounts.

Every fiduciary referred to in this part shall account before the commissioner of accounts of the jurisdiction wherein he qualified as provided in this part. Every account shall be signed by all fiduciaries. A statement in a separate document, signed by the fiduciary and attached to an account, that a fiduciary has received, read, and agrees with the account shall be treated as a signature to the account.

§ 64.2-1207. Settlement for year to include unsettled portion of preceding year.

When a commissioner of accounts has the account of a fiduciary for any year before him for settlement, the settlement shall also include any time prior to such year for which the fiduciary has not settled.

§ 64.2-1208. Expenses and commissions allowed fiduciaries.

A. In stating and settling the account, the commissioner of accounts shall allow the fiduciary any reasonable expenses incurred by him and, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.) shall also be allowed reasonable compensation for his services. If a committee or other fiduciary renders services with regard to real estate owned by the ward or beneficiary, compensation may also be allowed for the services rendered with regard to the real estate and the income from or the value of such real estate.

B. Notwithstanding subsection A or any provision under Chapter 7 (§ 64.2-700 et seq.), where the compensation of an institutional fiduciary is specified under the terms of the trust or will by reference to a standard published fee schedule, the commissioner of accounts shall not reduce the compensation below the amount specified unless there is sufficient proof that (i) the settlor or testator was not competent when the trust instrument or will was executed or (ii) such compensation is excessive in light of the compensation institutional fiduciaries generally receive in similar situations.

§ 64.2-1209. Who may insist or object before commissioner of accounts.

Any interested person, or the next friend of an interested person, may, before the commissioner of accounts, insist upon or object to anything which could be insisted upon or objected to by such interested person if the commissioner of accounts were acting under an order of a circuit court for the settlement of a fiduciary's accounts made in a suit to which such interested person was a party.

§ 64.2-1210. Accounts and debts and demands to be reported.

The commissioner of accounts shall report every account stated under this part, including a

statement of the cash on hand and in bank accounts and the investments held by the fiduciary at the terminal date of the account, and, where applicable, reports of debts and demands under § 64.2-551, along with any matters specially stated deemed pertinent by the commissioner of accounts or that an interested person may require.

§ 64.2-1211. Where filed; notice to certain parties.

The commissioner of accounts shall file the report in the office of the circuit court by which he is appointed as soon as practicable after its completion. On or before the date of filing a report on a personal representative's account, the commissioner of accounts shall send a copy of the report and any attachments, excluding the account, by first-class mail to every person who (i) was entitled to request a copy of the account pursuant to § 64.2-1303 and (ii) submits a written request therefor to the commissioner of accounts. The copy of the report of the commissioner of accounts shall be accompanied by a statement advising the recipient that the report will stand confirmed by law 15 days after the report is filed with the court in the absence of any objections being filed thereto.

§ 64.2-1212. Exceptions to report; examination, correction, and confirmation.

A. If no exceptions have been filed, the report shall stand confirmed on the day next following the expiration of the period of 15 days after the day on which the report was filed in the clerk's office.

B. If objections have been filed, the circuit court, after 15 days from the time the report has been filed in its office, shall examine such exceptions that have been timely filed. The court shall correct any errors that appear on the exceptions and to this end may (i) commit the report to the same or another commissioner of accounts, as often as it sees cause, (ii) cause a jury to be empaneled to inquire into any matter that in its opinion should be ascertained in that way, or (iii) confirm the report in whole or in a qualified manner. The court shall certify in the order that it has made a personal examination of the exceptions.

§ 64.2-1213. Effect of confirmation of report.

The report, to the extent to which it is confirmed by an order of the circuit court upon exceptions filed pursuant to subsection B of § 64.2-1212 or in whole when confirmed by lapse of time without exceptions pursuant to subsection A of § 64.2-1212, shall be taken to be correct, except so far as it may, in a suit, in proper time, be surcharged or falsified. However, no person who was a party to exceptions filed to the report shall bring a suit to surcharge or falsify the report, and in such case the action of the court on the report shall be final as to such party, except that it may be appealed from as in other suits.

§ 64.2-1214. Recordation of report.

The clerk shall record every report so confirmed, whether by order of the circuit court upon exceptions filed or by the lapse of the time without exceptions filed, and note at the foot of it the order of confirmation or the clerk's certificate that no exceptions were filed, as the case may be, in the will book or the book in which the fiduciary accounts in the clerk's office are recorded and index it according to the provisions of § 17.1-249.

§ 64.2-1215. Power of commissioner of accounts to enforce the filing of inventories.

A. If any fiduciary fails to make the return required by § 64.2-1300, the commissioner of accounts shall issue, through the sheriff or other proper officer, a summons to the fiduciary requiring him to make such return. If the fiduciary fails to make the required return within 30 days after the date of service of the summons, the commissioner of accounts shall report the fact to the circuit court. The court shall immediately issue a summons to the fiduciary requiring him to appear and shall, upon his appearance, assess a fine against the fiduciary in an amount not to exceed $500 unless excused for sufficient reason. If, after his appearance before the court, the fiduciary continues to fail to make the required return within such time as the court may prescribe, the fiduciary shall be punished for contempt of court.

B. Whenever the commissioner of accounts reports to the court that a fiduciary who is an attorney-at-law licensed to practice in the Commonwealth has failed to make the required return within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.

§ 64.2-1216. Failure to account; enforcement.

A. If any fiduciary required to account fails to make a complete and proper account within the time allowed, the commissioner of accounts shall either (i) proceed against the fiduciary in accordance with the procedures set forth in § 64.2-1215 or (ii) file with the circuit court and the clerk at such times as the court shall order, but not less than twice a year, a list of all fiduciaries who have failed to make a complete and proper account within the time allowed, excepting those fiduciaries to whom the commissioner of accounts has granted additional time. Upon the filing of this list, the clerk shall issue a summons against each fiduciary on the list, returnable to the first day of the next term of court, and the court shall take action against the fiduciary in accordance with the procedures set forth in § 64.2-1215.

B. Every commissioner of accounts shall file with the court and the clerk at such times as the court shall order, but not less than quarterly, a list of all fiduciaries whose accounts for any reason have been before the commissioner of accounts for more than five months. The commissioner of accounts shall note on the list the fiduciaries who are deemed delinquent.

C. Whenever the commissioner of accounts reports to the court that a fiduciary who is an attorney-at-law licensed to practice in the Commonwealth has failed to make the required settlement within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.

§ 64.2-1217. Forfeiture of fiduciary's commission.

If a fiduciary wholly fails to file an account before the commissioner of accounts containing a statement of all matters required in § 64.2-1206, together with all other statements and items therein required for any year, within four months after the year's expiration or, though the fiduciary files an account before the commissioner of accounts, if the commissioner of accounts finds the fiduciary is chargeable for that year with any money or other property not included in the statement, the fiduciary shall receive no compensation for his services during such year or any commission on such money or other property unless allowed by the commissioner of accounts for good cause shown. The circuit court shall review the commissioner of accounts' action in such case upon the filing of timely exceptions by any interested person. This section shall not apply to a fiduciary who has filed a statement of his accounts within such year before a commissioner in chancery who in a pending suit has been ordered to settle his account.

§ 64.2-1218. When fiduciaries personally liable for costs.

The costs of all proceedings against a fiduciary who fails without good cause to make the returns and exhibits required shall be paid by him personally, and he shall receive no allowance for the costs in the settlement of his accounts.

§ 64.2-1219. Fees of commissioners of accounts.

Except as otherwise provided, the circuit court appointing a commissioner of accounts shall prescribe the fees of such commissioner of accounts.

§ 64.2-1220. Receipt for vouchers filed in settlement; effect thereof.

Any commissioner of accounts having before him the accounts of a fiduciary for settlement shall, on request, execute and deliver to the fiduciary a receipt for all vouchers filed with the commissioner of accounts. The receipt, if such vouchers are subsequently lost or destroyed, shall be evidence of the delivery to the commissioner of accounts of the vouchers mentioned in the receipt in any suit or proceeding against the fiduciary.

§ 64.2-1221. Report on fiduciaries' bonds; "record of fiduciaries."

A. The clerk of each circuit court shall furnish to the commissioner of accounts at the end of each month a list of the fiduciaries authorized to act as such under orders entered during that month and shall examine whether each fiduciary has given such bond as the law requires. If it appears that the fiduciary has given no bond or that his bond is defective, the clerk shall immediately report this fact to the circuit court.

B. The commissioner of accounts shall keep a book or other proper record called the "record of fiduciaries," in which the following shall be entered in separate columns:

1. The name of every fiduciary;

2. The name of the decedent whose estate the fiduciary represents or the name of the living person for whom he is acting in fiduciary capacity;

3. The penalty of his bond;

4. The names of his sureties;

5. The date of the order conferring his authority;

6. The date of any order revoking his authority;

7. The date of the return of every inventory of the estate; and

8. The date of each settlement of the accounts of the fiduciary.

The commissioner of accounts shall index the record of fiduciaries in the name of the decedent or person represented by the fiduciary.

C. The clerk shall certify to the commissioner of accounts the revocation of the authority of any fiduciary within 10 days of the revocation.

D. Any commissioner failing to make entries pursuant to subsection B or any clerk failing to certify the revocation of a fiduciary's authority pursuant to subsection C shall forfeit $20 for every such failure.

§ 64.2-1222. Commissioners of accounts to post list of fiduciaries whose accounts are before them for settlement.

Every commissioner of accounts shall, on the first day of the term of the circuit court that appointed him, or during the first week of each month, post at the front door of the courthouse of the circuit court a list of the fiduciaries whose accounts are before him for settlement. The list shall contain (i) the names of the fiduciaries; (ii) the nature of their accounts, whether as a personal representative, guardian, conservator, curator, committee, or trustee; and (iii) the name of their decedents or of the persons for whom they are guardians, conservators, curators, or committees or under whose deed or other trust instrument they are acting. The commissioner of accounts shall not settle and approve the account of any fiduciary until 10 days after posting the list containing the name of the fiduciary as provided by this section.

CHAPTER 13.

INVENTORIES AND ACCOUNTS.

§ 64.2-1300. Inventories to be filed with commissioners of accounts.

A. Every personal representative or curator shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts an inventory of all the personal estate under his supervision and control, the decedent's interest in any multiple party account in any financial institution, all real estate over which he has the power of sale, and any other real estate that is an asset of the decedent's estate, whether or not situated in the Commonwealth. Every personal representative or curator shall also return to the commissioner of accounts an inventory of any such assets discovered thereafter as provided in subsection E.

B. Every guardian of an estate, conservator, or committee shall, within four months after the date of the order conferring his authority, return to the commissioner of accounts an inventory of the ward's personal estate under his supervision and control, the ward's real estate, the ward's legal or equitable ownership interest in any real or personal property that will pass to another at the ward's death by a means other than testate or intestate succession, and any periodic payments of money to which the ward is entitled. Every guardian of an estate, conservator, or committee shall also return to the commissioner of accounts an inventory of any such assets discovered thereafter as provided in subsection E.

C. Every trustee who qualifies in the circuit court clerk's office shall, within four months after the first date that any assets are received, return to the commissioner of accounts an inventory of the real and personal estate which is under the trustee's supervision and control. Every such trustee shall also return to the commissioner of accounts an inventory of any such assets received thereafter as provided in subsection E. However, any trustee who is not required to account under the provisions of § 64.2-1307 shall be exempted from the duty to file an inventory for as long as there remains no duty to file annual accounts with the commissioner of accounts.

D. In listing property pursuant to subsection A, B, or C, the fiduciary shall place the market value on each item. The market value shall be determined as of (i) the date of death if a decedent's estate; (ii) the date assets are received by the trustee if a trust; or (iii) the date of qualification in all other cases. Any reasonable expense incurred in determining such values shall be allowable as a cost of the administration of the estate.

E. In the case of assets discovered or received by a fiduciary after filing an inventory, the further inventory required by subsections A, B, and C may be made by filing an amended inventory showing all assets of the estate or trust, by filing an additional inventory showing only the after-discovered assets or, with the permission of the commissioner of accounts, by showing the after-discovered assets on the estate's or trust's next regular accounting. The filing shall be made or the permission granted within four months after the discovery or receipt of the assets.

§ 64.2-1301. When inventory and settlement not required.

An inventory under § 64.2-1300 or a settlement under § 64.2-1206 shall not be required of a personal representative who qualifies for the sole purpose of bringing an action under § 8.01-50. However, if there is no surviving relative designated as a beneficiary under § 8.01-53 and the circuit court directs that the funds recovered in such action be paid to the personal representative for distribution according to law, the personal representative shall file the inventory required in § 64.2-1300 and the statement required under § 64.2-1206.

§ 64.2-1302. Waiver of inventory and settlement for certain estates.

When a decedent's personal estate passing by testate or intestate succession does not exceed $15,000 in value and an heir, beneficiary, or creditor whose claim exceeds the value of the estate seeks qualification, the clerk of the circuit court shall waive the inventory under § 64.2-1300 and the settlement under § 64.2-1206. This section shall not apply if the decedent died owning any real estate over which the person seeking qualification would have the power of sale.

§ 64.2-1303. Copies of inventories and accounts to be provided by personal representatives.

A. Every personal representative filing with the commissioner of accounts an inventory or account, including an affidavit of intent to file a statement in lieu of an account pursuant to § 64.2-1314, or any document making changes to either, shall, on or before the date of such filing, send a copy thereof by first-class mail to those persons to whom notice was given pursuant to subsections A and B of § 64.2-508 and who requested the same from the personal representative in writing. Copies sent pursuant to this subsection need not include copies of any supporting vouchers and such copies need not be given to (i) persons who would take only as heirs at law in a case where all of the decedent's probate estate is disposed of by will or (ii) beneficiaries whose gifts have been satisfied in full prior to such filing. A request for copies may be made to a personal representative at any time. The request may relate to one specific filing or to all filings to be made by the personal representative but it is not effective for filings made prior to its receipt by a personal representative.

B. No commissioner of accounts shall approve any personal representative's inventory or account (i) until 21 days have elapsed from the receipt of such inventory or account and (ii) unless the inventory or account contains a statement that any copies requested pursuant to this section have been mailed, and shows the names and addresses of the persons to whom they were mailed and the date of such mailing.

§ 64.2-1304. Personal representatives.

A. Within 16 months from the date of the qualification, personal representatives shall exhibit before the commissioner of accounts a statement of all money and other property that the fiduciary has received, has become chargeable with, or has disbursed within 12 months from the date of qualification.

B. After the first account of the fiduciary has been filed and settled, the second and subsequent accounts for each succeeding 12-month period shall be due within four months from the last day of the 12-month period commencing on the terminal date of the preceding account unless the commissioner of accounts extends the period for filing upon reasonable cause.

C. Notwithstanding subsections A and B, a personal representative may file a first or subsequent account at an earlier date, and the commissioner of accounts or the circuit court may require the personal representative to file a first or subsequent account at an earlier date upon reasonable cause shown.

§ 64.2-1305. Conservators, guardians of minors' estates, committees, trustees under § 64.2-2016, and receivers.

A. Within six months from the date of the qualification, conservators, guardians of minors' estates, committees, and trustees under § 64.2-2016 shall exhibit before the commissioner of accounts a statement of all money and other property that the fiduciary has received, has become chargeable with, or has disbursed within four months from the date of qualification.

B. After the first account of the fiduciary has been filed and settled, the second and subsequent accounts for each succeeding 12-month period shall be due within four months from the last day of the 12-month period commencing on the terminal date of the preceding account unless the commissioner of accounts extends the period for filing upon reasonable cause.

C. For fiduciaries acting on behalf of Medicaid recipients, the fees charged by the commissioners of accounts under subsection A or B shall not exceed $25.

§ 64.2-1306. Testamentary trustees.

A. Except as provided in subsections B and C, testamentary trustees shall exhibit a statement of all money and other property that the fiduciary has received, has become chargeable with, or has disbursed for each calendar year before the commissioner of accounts of the circuit court where the order conferring his authority was entered on an annual basis commencing on or before May 1 of the calendar year following initial funding of the trust. Accounts for each calendar year thereafter shall be filed on or before May 1 of the following calendar year.

B. All testamentary trustees who qualify prior to July 1, 1993, and elect to file accounts on a fiscal year basis may continue to file such accounts on an annual basis within four months after the end of the fiscal year selected.

C. Accountings for trusts where one of the trustees is a corporation qualified under § 6.2-803, and by other testamentary trustees permitted by the Internal Revenue Code to file income tax returns on a fiscal year, may be filed on the basis of the trust fiscal year. The first account shall be filed within 16 months of the date on which the trust was initially funded.

§ 64.2-1307. Testamentary trustees under a will waiving accounts; waiver where beneficiary also trustee.

A. For purposes of this section, the term "sole beneficiary" means a person who is (i) the only income beneficiary who is entitled to the principal, or where the remaining principal goes to the trustee's estate or (ii) the only income beneficiary and has either a general power of appointment over the principal or has a special power of appointment that is not limited to a particular class of persons.

B. If (i) the will of a decedent probated on or after July 1, 1993, contains a waiver of the obligations of the testamentary trustee nominated therein to account or (ii) the sole beneficiary of the trust also is a trustee, the trustee will not be required to file accounts with the commissioner of accounts.

Where the waiver is contained in the decedent's will, the trustee shall within 90 days after qualification, notify in writing all beneficiaries of the trust, other than the trustee, who are adults, whose addresses are known to the trustee, and to whom income or principal of the trust could be currently distributed; provide each such beneficiary with a copy of the applicable provisions of the will; advise each such beneficiary of his right to require an annual accounting; and provide each such beneficiary with a copy of this section and annually thereafter, provide each such beneficiary an accounting upon request. The trustee shall send to the commissioner of accounts a copy of the notice given to each beneficiary or, in the alternative, file a writing with the commissioner of accounts stating that the requirements of this section have been met. For receiving and filing such notice or writing, the commissioner of accounts shall be allowed a fee not to exceed $25.

C. Language substantially in form and effect as follows shall be sufficient to constitute a waiver in the will of the decedent of the trustee's obligation to account: "I hereby direct that my trustee(s) shall not be required to file annual accounts with a court as otherwise required by Virginia law."

D. Notwithstanding a waiver in the will of the decedent or any prior consent of a beneficiary, any such adult beneficiary may, at any time during the administration of the trust, demand in a writing delivered to the trustee and to the commissioner of accounts that the trustee settle annually with the commissioner of accounts. Upon notice of such demand to the trustee and the commissioner of accounts,

such trustee shall file an account with the commissioner of accounts for a period acceptable to the commissioner of accounts as though there were no waiver by the testator. The beneficiary making such demand may later revoke his demand by a writing delivered to the trustee and the commissioner of accounts. The demand for settlement of the trustee's account before the commissioner of accounts may also be made by the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney-in-fact for a beneficiary, a guardian of an incapacitated beneficiary, a committee of a convict or insane beneficiary, the duly qualified guardian of a minor, or if none exists, a custodial parent of a minor or by any minor who has attained 14 years of age.

E. Notwithstanding the provisions of this section, any trustee under a will of a decedent containing the requisite waiver, whenever probated, shall be relieved of the duty to file an inventory or annual accounts with the commissioner of accounts if the trustee (i) obtains the written consent of all adult beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those beneficiaries with the documents and information specified in subsection B; and (ii) files those consents with the commissioner of accounts on or before the date on which the inventory or next required accounting would otherwise be due. For receiving and filing such written consent, the commissioner of accounts shall be allowed a fee not to exceed $25.

F. Notwithstanding the provisions of this section, any trustee under a will of a decedent probated on or after July 1, 2010, shall be relieved of the duty to file an inventory or annual accounts with the commissioner of accounts if the will of the decedent does not direct the filing of such inventory or accounts and the trustee (i) obtains the written consent of all adult beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those beneficiaries with the documents and information specified in subsection B; (ii) obtains the written consent of the representatives of all incapacitated beneficiaries, other than the trustee, to whom income or principal of the trust could be currently distributed, after providing those representatives with the documents and information specified in subsection B; and (iii) files those consents with the commissioner of accounts on or before the date on which the inventory or next required accounting would otherwise be due. For receiving and filing such written consent, the commissioner of accounts shall be allowed a fee not to exceed $25. The consent of an incapacitated beneficiary may be made by the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney-in-fact for a beneficiary, a guardian of an incapacitated beneficiary, a committee of a convict or insane beneficiary, the duly qualified guardian of a minor, or if none exists, a custodial parent of a minor who is not also the trustee. Language substantially in form and effect as follows shall be sufficient to constitute a direction in the will of the decedent of the trustee's obligation to account: "I hereby direct that my trustee(s) shall be required to file annual accounts with a court as otherwise required by Virginia law."

G. A circuit court having jurisdiction may order the filing of annual accounts if it deems such filings to be in the best interests of one or more beneficiaries of the trust.

§ 64.2-1308. Forms for inventories and accounts.

The Office of the Executive Secretary of the Supreme Court shall provide to each circuit court clerk forms and instructions for the inventories required by § 64.2-1300 and forms and instructions for accounts. The clerk shall provide the appropriate forms to every fiduciary who qualifies in the clerk's office. An inventory filed pursuant to § 64.2-1300 or an account filed pursuant to § 64.2-1206 may be made on the form provided to the fiduciary by the clerk of the court, on a computer-generated facsimile of the appropriate form, or in any other clear format.

§ 64.2-1309. Accounts of sales under deeds of trust.

A. Within six months after the date of a sale made under any recorded deed of trust, mortgage, or assignment for benefit of creditors, other than under a decree, the trustee shall return an account of the sale to the commissioner of accounts of the circuit court where the instrument was first recorded. After recording any trustee's deed, the trustee shall promptly deliver to the commissioner of accounts a copy of the deed. The date of sale is the date specified in the notice of sale, or any postponement thereof, as required by subsection A of § 55-59.1. The commissioner of accounts shall state, settle, and report to the court an account of the transactions of the trustee, which shall be recorded as other fiduciary reports. Any trustee failing to comply with this section shall forfeit his commissions on such sale, unless such commissions are allowed by the court.

B. If the commissioner of accounts of the court where an instrument was first recorded becomes aware that an account as required by this section has not been filed, the commissioner of accounts and the court shall proceed against the trustee and impose penalties in the same manner as set forth in § 64.2-1215, unless the trustee is excused for sufficient reason. If after a deed of trust is given on land located in a county, and before a sale under the deed of trust, the land is taken within the limits of the incorporated city, the returns of the trustee and settlement of his accounts shall be before the commissioner of accounts of such city.

C. Whenever the commissioner of accounts reports to the court that a fiduciary who is an attorney-at-law licensed to practice in the Commonwealth has failed to make the required return within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of

his report to the Virginia State Bar.

§ 64.2-1310. Recordation of inventories and accounts of sales.

Every inventory and account of sales returned under §§ 64.2-1300 and 64.2-1309 shall be recorded by the clerk in the will book and indexed as required by § 17.1-223.

§ 64.2-1311. Vouchers and statement of assets on hand; direct payments to account; vouchers for IRS payments.

A. Vouchers for disbursements and a statement of cash on hand or in a bank and all investments held at the terminal date of the account shall also be exhibited with each account. A voucher shall not be required when a disbursement, not exceeding the value of $25, is made to a legatee under the authority of a will and such legatee refuses to take the possession or fails to present the disbursement check to a bank for payment. In such case the fiduciary shall file an affidavit stating that he has made a good faith effort to comply with the terms of the will and the provisions of this section.

B. A fiduciary may make payment to a beneficiary by transfer to the beneficiary's bank account with the fiduciary or by payment to an account with another bank through an automated clearinghouse, wire transfer, or similar mechanism, if the beneficiary has consented in writing to such method of payment. In either case, a record or statement of the bank making such payment shall be a sufficient voucher for the purpose of subsection A.

C. In the case of payments to the Internal Revenue Service for income tax estimates or any other payments required or permitted to be made by wire transfer or similar mechanism, a record or statement of the bank making such payment shall be a sufficient voucher for the purpose of subsection A.

D. In the case of payments of debts, taxes, and expenses, a corporate fiduciary's affidavit signed by an officer familiar with the facts that describes each payment by date, payee, purpose, and amount shall be a sufficient voucher for the purpose of subsection A. However, the commissioner of accounts may require that the corporate fiduciary exhibit a voucher for a specific payment.

E. In the event a fiduciary seeks to use a check as a voucher or receipt under this section, (i) a copy of both sides of the check shall be sufficient or (ii) a copy of the front side of the check, and the periodic statement from the financial institution showing the check number and amount that coincides with the copy shall be sufficient, provided that (a) the copy was made in the regular course of business in accordance with the admissibility requirements of § 8.01-391, and (b) the commissioner of accounts may require a fiduciary to exhibit a proper voucher for a specific payment or for distributions to beneficiaries or distributees. However, the commissioner of accounts shall not require a fiduciary to exhibit an original check as a voucher under this subsection.

§ 64.2-1312. Report to circuit court; death of fiduciary; fiduciary for recipient of federal benefits.

A. The commissioner of accounts shall state, settle, and report to the circuit court an account of the transactions of a fiduciary, as provided by law. Every fiduciary shall also, at the request of the commissioner of accounts, exhibit (i) the securities held by the fiduciary together with a statement from every bank in which cash is held at the terminal date of the account and (ii) proof that all premiums due upon any required surety bond have been paid.

B. If a personal representative of a decedent's estate, a testamentary trustee, a guardian, a conservator, or a committee dies prior to the filing and settlement of the fiduciary's account, the personal representative of the fiduciary's estate shall have the obligation to make the requisite filing and settlement through the date of death unless any successor fiduciary makes the requisite filing.

C. For fiduciaries acting on behalf of a recipient of social security, supplemental security income, or veteran's or other federal benefits, no accounting to the commissioner of accounts shall be required of benefits paid to a designated representative on behalf of the recipient if the representative is otherwise required to account for such benefits. However, any fiduciary otherwise required to make an accounting to the commissioner of accounts shall disclose in the account the total amount of such benefits received during the accounting period for which no incremental fee for such benefits shall be charged by the commissioner of accounts.

§ 64.2-1313. Exhibition of accounts when sum does not exceed certain amount.

If the principal sum held by any fiduciary mentioned in § 64.2-1206 does not exceed $15,000, the fiduciary shall exhibit his accounts before the commissioner of accounts within the appropriate time period provided in §§ 64.2-1305, 64.2-1306, and 64.2-1307. Thereafter, the commissioner of accounts may permit the fiduciary to exhibit his accounts every three years, which permission may be revoked by the commissioner of accounts on his own motion or upon request of any interested person. The provisions of this section shall apply to any case in which the corpus of the estate in the hands of the fiduciary has been reduced to $15,000 or less although it formerly exceeded that amount. Any fiduciary exhibiting his accounts in accordance with the provisions of this section shall be entitled to compensation for his services.

§ 64.2-1314. Statement in lieu of settlement of accounts by personal representatives in certain circumstances.

A. For the purposes of this section, the term "residuary beneficiary" shall not include the trustee of a trust that receives a residuary gift under a decedent's will.

B. If all distributees of a decedent's estate or all residuary beneficiaries under a decedent's will are personal representatives of that decedent's estate, whether serving alone or with others who are not distributees or residuary beneficiaries, the personal representatives may, in lieu of the settlement of accounts required by § 64.2-1304, file with the commissioner of accounts a statement under oath that (i) all known charges against the estate have been paid, (ii) six months have elapsed since the personal representatives qualified in the clerk's office, and (iii) the residue of the estate has been delivered to the distributees or beneficiaries. In the case of a residuary beneficiary, the statement shall include an itemized listing, substantiated and accompanied by proper vouchers, showing satisfaction of all other bequests in the will. The statement shall be considered an account stated and subject to all the provisions of this chapter applicable to accounts stated.

C. If the statement authorized by this section cannot be filed with the commissioner of accounts within the time prescribed by § 64.2-1304, the personal representatives, within that time, shall file either (i) an interim account or (ii) a written notice under oath that the personal representatives intend to file a statement in lieu of the settlement of accounts when all requirements of this section have been met, which shall include an explanation of why such a statement cannot presently be filed. Second and subsequent interim accounts or notices of intent to file shall be filed annually until the statement in lieu of the settlement of accounts is filed. A commissioner of accounts who determines that the reasons offered for not presently filing a statement in lieu of settlement are not sufficient, whether in a first or subsequent written notice, may require the personal representatives to file an interim account in addition to the notice. The filing of an interim account shall not preclude the filing of a subsequent statement.

D. For examining and approving a statement and vouchers or a written notice under the provisions of this section, the commissioner of accounts shall be allowed a fee not to exceed $75.

§ 64.2-1315. Certification and recording of accounts settled in a judicial proceeding.

When the account of any fiduciary is settled in a judicial proceeding, it shall be the duty of the clerk of the circuit court in which the judicial proceeding was held, as soon as may be practicable after entry of a final order, to certify to the clerk of the circuit court in which the fiduciary qualified a copy of the account so far as the account has been confirmed, with a memorandum at the foot of the copy stating the style of the suit and the date of the final order. The account and memorandum so certified shall be recorded by the clerk to whom it is certified in the book in which accounts of fiduciaries are required to be recorded under § 64.2-1214. If in a proceeding subsequent to the entry of the final order, the account is reformed or altered, a copy of such reformed or altered account shall be certified and recorded, together with a memorandum stating the style of the suit and the date of the order or decree of confirmation, in the same manner as the final order. When the judicial proceeding is conducted in the same court in which the fiduciary qualified, the clerk of such court shall make the memoranda and recordations required by this section, and shall for such purpose use the original papers. For making any copy under this section, the clerk shall be entitled to the fees prescribed in like cases, and for recording such account of the fiduciary he shall be entitled to the fees allowed for recording accounts settled ex parte. The fees for copying and recording shall be paid as the court in which the judicial proceeding was held shall direct.

§ 64.2-1316. Settlement of fiduciary's accounts by commissioner in chancery; report to commissioner of accounts.

On the motion of any fiduciary having charge of an estate or any interested person, the circuit court may require a commissioner in chancery to settle the accounts of the fiduciary. In addition, a court may require a commissioner in chancery to settle the accounts of any of the fiduciaries mentioned in this chapter. A commissioner in chancery making a settlement under such order of a court shall report the fact and date of the settlement to the commissioner of accounts within 30 days, who shall make an entry of the same in his record book.

§ 64.2-1317. Disposition of papers relating to estates.

A. The circuit court or the clerk at the time of the confirmation of an account shall return all inventories and original accounts of sales filed with the clerk of the circuit court as required by §§ 64.2-1205 and 64.2-1310, all reports filed with the clerk under § 64.2-1214 when the reports have been actually recorded by the clerk, compared, indexed, and confirmed as required by law, and all vouchers or other evidence filed with the commissioner of accounts upon request made at the time of such filing, or in the discretion of the commissioner of accounts if no request is made, to the fiduciary or other person who filed such inventories, accounts, reports, vouchers, or other evidence; provided, however, that such inventories, accounts, reports, vouchers, or other evidence is not required as evidence of any further matter of inquiry pending before the court or the commissioner of accounts.

B. The clerk of court may destroy any papers mentioned in subsection A or any other papers relating to estates, when the matter concerned has been closed with a final settlement for more than three years and appropriate recordations have been made. However, nothing in this section shall apply to original documents recorded by binding. If recordation is done by facsimile or microfilm reproduction process, such papers may be destroyed if the return of such papers was not requested at the time of filing for recordation.

C. The commissioner of accounts may destroy any papers mentioned in subsection A or any other

papers relating to estates when the matter concerned has been closed with a confirmed final accounting for more than one year.

CHAPTER 14.
FIDUCIARIES GENERALLY.
Article 1.
Appointment, Qualification, Resignation, and Removal of Fiduciaries.

§ 64.2-1400. Authority to qualify trustee; necessity for security; notice of qualification; qualification by less than all of trustees named.

A. Subject to the provisions of § 64.2-1406, the clerk of any circuit court or any duly qualified deputy of such clerk may qualify any trustee named in a will, deed, or other writing, and require and take from them the necessary bonds in the same manner and with like effect as the court.

B. Pursuant to the provisions of § 64.2-1426, the clerk or deputy may appoint and qualify an individual or a corporation authorized under § 6.2-803 as trustee. Such appointment may be made in the same manner and subject to the provisions of § 64.2-500.

C. The clerk shall not require security from a trustee if the will, deed, or other writing directs that a trustee shall not give security, unless, based on the application of any interested person or on the clerk's own knowledge, the clerk determines that security ought to be required. This section shall not be construed to require security where security is not required pursuant to § 6.2-1003 or 64.2-1401, or to affect the jurisdiction of the court to qualify trustees and to require security or not, as the court sees fit.

D. Qualification of a trustee under this section may be ex parte, and no prior notice to the beneficiaries of the qualification shall be required. If less than all the trustees named in the deed, will, or other writing desire to qualify, then the trustee shall only be qualified after reasonable notice is given to any other named trustees.

E. If less than all the trustees named in the will, deed, or other writing qualify, then the trust powers conferred by the trust instrument shall be exercisable only by the trustees who have qualified under this section or in any other manner permitted by law.

§ 64.2-1401. Jurisdiction for qualification of testamentary trustee; qualification and bond; when surety not required.

A. In the case of a testamentary trust, the jurisdiction where the will has been admitted to probate in the Commonwealth shall be the exclusive jurisdiction for the qualification of the trustee under such will. In the case of a will of a nonresident that has not been admitted to probate in the Commonwealth, the trustee under such will shall be permitted to qualify in any jurisdiction in which such will could be probated or, if there is no such jurisdiction, then the trustee shall be permitted to qualify pursuant to § 64.2-1402.

B. Before proceeding to act as trustee, the trustee named in a will probated after July 1, 1968, shall qualify and give bond before the proper circuit court or clerk with surety as may be required by the court or clerk unless (i) the will waives surety on the bond, (ii) surety is not required under § 6.2-1003, or (iii) the will was executed prior to July 1, 1968, and the trustee offering to qualify as such was also named in the will as executor and qualifies as such, and the will waives surety upon the bond of such executor.

C. The provisions hereof shall not apply to a testamentary devise or bequest to a church or its trustees.

D. If real estate located in the Commonwealth constitutes any of the trust assets, the qualification of the trustee under this section shall not be in lieu of any other recordation required by law.

§ 64.2-1402. Jurisdiction for qualification of certain testamentary trustees and trustees generally.

A. In the case of a testamentary trust for which there is no jurisdiction for probate as provided in § 64.2-1401 and in the case of any trust under any deed or other writing, other than a will, the trustee may qualify in any jurisdiction where the trustee resides, or if one trustee is a corporate trustee, then in the jurisdiction where the corporate trustee has its registered office.

B. If real estate located in the Commonwealth constitutes any of the trust assets, the qualification of the trustee under this section shall not be in lieu of any other recordation required by law.

§ 64.2-1403. Qualification of trustees.

A. For the purposes of this section, the phrase "deed or other writing" does not include a will.

B. Any trustee appointed by a deed or other writing where the deed or other writing requires that the trustee qualify shall not act as trustee until he has qualified before the circuit court or clerk by giving bond and taking oath that he will perform the duties of his office. The oath may be taken on behalf of a corporate trustee by its president or other officer.

C. Any trustee appointed by a deed or other writing where the deed or other writing does not require that the trustee qualify may voluntarily qualify. However, regardless of whether the deed or other writing does not require qualification, upon the request of any interested party, the administration of the trust shall be in the same manner as if qualification had been required by the terms of the deed or other writing creating it.

§ 64.2-1404. New fiduciary appointed when authority of former revoked.

If an order revoking and annulling the powers of any fiduciary is entered, the circuit court in which

he qualified shall, at or after the date of the order, appoint an administrator de bonis non, a new guardian, or other fiduciary as if the fiduciary whose powers have been revoked and annulled had died at that date.

§ 64.2-1405. Court may appoint trustee in place of one named in will, deed, or other writing; management by corporate trustee outside of the Commonwealth.

A. If a trustee named in a will, deed, or other writing (i) dies, (ii) becomes incapable of executing the trust on account of physical or mental disability or confinement in prison, (iii) if residency is statutorily required, is no longer a resident of the Commonwealth, (iv) declines to accept the trust, (v) resigns the trust after having accepted the trust, (vi) in the case of a corporate trustee, is adjudicated bankrupt or for any reason loses its charter, (vii) for any other reason ceases to be eligible to continue serving as trustee, or (viii) for any other good cause shown, the circuit court 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, may on motion of any interested party, and upon satisfactory evidence of any of the conditions in clauses (i) through (viii), appoint a trustee in place of the trustee named in the instrument.

B. The circuit court may appoint a substitute corporate trustee whenever a corporate trustee removes the management function over an existing trust which was previously managed in the Commonwealth to a jurisdiction outside of the Commonwealth if the court finds that the management of the trust after such removal results in good cause for the substitution of the trustee. A corporate trustee that maintains a place of business in the Commonwealth where one or more trust officers are available on a regular basis for personal contact with trust customers or beneficiaries shall not be deemed to have removed such management function.

§ 64.2-1406. Notice required; certain substitutions validated.

A. Reasonable notice of a motion made pursuant to § 64.2-1405 for the appointment of a substitute trustee shall be provided to all persons interested in the execution of the trust other than the moving party. If any interested person is under 18 years of age, the circuit court or clerk shall appoint a discreet and competent attorney-at-law as guardian ad litem for such person on whom notice may be served. If any interested person is incapacitated or incarcerated, the notice shall be served on his committee, guardian, or conservator, if any, or if none exists, the court or clerk shall appoint a discreet and competent attorney-at-law as a guardian ad litem for such person on whom notice may be served. Notice does not need to be given to a trustee or, if one has previously been appointed, a substitute trustee who no longer resides the Commonwealth, declined to accept the trust, or resigned, or to the personal representative of a deceased trustee, or to a corporate trustee that has been adjudicated bankrupt or that has lost its charter.

B. In the case of the substitution of the trustee in a deed of trust securing the payment of indebtedness, notice of the motion made pursuant to § 64.2-1405 need only be given to the trustee or, if one has previously been appointed, to the substituted trustee unless notice to him is not required pursuant to subsection A; any beneficiaries appearing of record or known to the moving party; any debtors mentioned in the deed of trust; any persons who may be shown by the deed records to have assumed payment of the indebtedness in whole or in part; and the person in whom the equitable title to the property conveyed by the deed of trust is vested at the time of the motion as shown by the deed records. In such case when the written notice of motion has been filed in the clerk's office of the court having jurisdiction as defined in § 64.2-1405, service of the notice as to all parties mentioned in § 8.01-316 may be made in conformity with the provisions of §§ 8.01-316, 8.01-317, 8.01-318, 8.01-320, 8.01-322, and 8.01-323.

C. Any decree or order of substitution heretofore made by a court of competent jurisdiction is hereby validated.

D. Nothing in this section shall be construed as preventing a court from substituting a trustee in a suit instituted for that purpose.

§ 64.2-1407. Who to execute the trust until new trustee appointed.

A. The personal representative of a deceased trustee, or the remaining trustee or trustees if there were more than one trustee and one or more but less than all of them have died, resigned, become incapable of executing the trust on account of physical or mental disability or confinement in prison, become ineligible to continue to serve as trustee because of no longer being a resident of the Commonwealth where residency is statutorily required, or otherwise become ineligible to continue serving as trustee, shall execute the trust, or so much of the trust as remained unexecuted at the time such lack of capacity to execute the trust or such ineligibility came into being until an appointment is made pursuant to this part, unless the instrument creating the trust directs otherwise or some other trustee is appointed for the purpose by a circuit court 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 this part.

B. The provisions of this section shall not apply to any trust governed by the Uniform Trust Code (§ 64.2-700 et seq.).

§ 64.2-1408. Circuit court may exercise same powers in suit to enforce or administer trust.

A circuit court may exercise all the powers conferred by §§ 64.2-1405, 64.2-1406, 64.2-1407, and 64.2-1412 in a suit pending to enforce or administer the trust.

§ 64.2-1409. Information to be provided to clerk by fiduciary.

A. On and after July 1, 1998, every person seeking to qualify in any fiduciary capacity before the circuit court or clerk shall provide to the court or clerk the information required to make the qualification on forms provided to the proposed fiduciary by the clerk. The forms, with appropriate instructions concerning their use, shall be provided to each clerk by the Office of the Executive Secretary of the Supreme Court. In lieu of any form, a computer-generated facsimile of the form may be used by any person seeking to qualify.

B. Every qualified fiduciary who moves from the Commonwealth and becomes resident in another state shall inform the clerk and the commissioner of accounts of the court in which he was qualified of his new address within 30 days of the date of the change in residency. Any fiduciary who fails to so inform the clerk and commissioner of accounts shall be subject to a civil penalty of $50. For purposes of this section, a person becomes resident in another state when he can no longer satisfy the residency requirements specified in § 38.2-1800.1. This section shall not apply to any fiduciary whose cofiduciary is a resident of the Commonwealth.

§ 64.2-1410. When court may require new bond or revoke authority; giving new bond upon motion of fiduciary, surety, or other party in interest.

A. Regardless of whether a fiduciary has given bond with or without sureties, at any time the circuit court under whose order or under the order of whose clerk any such fiduciary derives his authority shall, on the application of any surety or his personal representative, or may, (i) upon motion of the fiduciary or (ii) when it appears proper on report of the clerk or a commissioner of accounts or on evidence adduced before it by any interested party, order the fiduciary to give before the court or clerk a new bond or additional bond in a reasonable time as prescribed by the court and in such penalty and with or without sureties as the court deems proper. The new bond or additional bond shall have the effect provided by § 49-14. In all cases where the fiduciary qualified pursuant to an order issued by a clerk, the clerk shall have the same power as the court regarding bond and surety under this section. If the order of the court or clerk is not complied with, or whenever from any cause it appears proper, the court may revoke and annul the powers of any such fiduciary. However, no such order shall be made unless reasonable notice appears to have been given to the fiduciary by (a) the commissioner of accounts who made the report, (b) the surety or his representative making the application, or (c) the service of a rule or otherwise. No order or revocation shall invalidate any previous act of such fiduciary.

B. When the court or clerk orders a new bond, additional bond, or a reduction in bond, the court or clerk shall, in lieu of requiring a personal appearance by the fiduciary for the execution thereof, allow the fiduciary's execution to be made by the fiduciary's agent under a power of attorney expressly authorizing the same.

§ 64.2-1411. When fiduciary may qualify without security.

Any circuit court or circuit court clerk, having jurisdiction to appoint personal representatives, guardians, conservators, and committees, may, in his discretion, when the amount coming into the possession of the personal representative, guardian of a minor, conservator, or committee does not exceed $15,000, allow the personal representative, guardian, conservator, or committee to qualify by giving bond without surety. Any personal representative or trustee serving jointly with a bank or trust company that is exempted from giving surety on its bond under § 6.2-1003 shall, unless the court directs otherwise, also be exempt from giving surety.

§ 64.2-1412. How trustee required to give bond; when to be removed and another appointed.

After reasonable notice to a trustee, whether appointed by will, deed, or other writing, the circuit court that has jurisdiction to administer the trust may, on motion of any interested person, order the trustee to give bond with surety before the court, or before the clerk of the court, within a reasonable time and in a penalty to be prescribed by the court, for the faithful execution of the trust if the court deems the bond is proper for the security of the trust estate. If the order is not complied with, or whenever for any cause it appears proper, the court may remove the trustee and appoint another in his place.

§ 64.2-1413. Placing certain trust assets in designated financial institutions; waiver or reduction of bond of fiduciary.

A. If the circuit court having jurisdiction of any estate in the process of administration by any guardian, conservator, curator, executor, administrator, trustee, receiver, or other fiduciary, determines that the size of the bond required of the fiduciary would be burdensome or for other cause, the court may order a portion or all of the personal assets of the estate, as the court deems proper, to be placed with a designated bank, trust company, or savings institution, insured by the Federal Deposit Insurance Corporation or other federal insurance agency and doing business in the Commonwealth, with consideration being given to any bank, trust company, or savings institution proposed by the fiduciary. When the original assets are placed with a designated financial institution, the financial institution shall issue in the name of the estate and file with the court a receipt for such assets and shall give the

fiduciary a copy of the receipt. The receipt shall acknowledge that:

1. The original assets received by the financial institution, or the duly collected proceeds from such assets, and all interest, dividends, principal, and other indebtedness subsequently collected by the financial institution on account thereof, are to be held by the financial institution in safekeeping, subject to such instructions of the fiduciary to the financial institution that have been authorized by orders of the court; and

2. Accountings therefor shall be made to the fiduciary at reasonably frequent intervals agreeable to the fiduciary. After the receipt of the financial institution for the original assets placed with the financial institution has been filed with the court, the court shall enter an order waiving the bond to be given or previously given by the fiduciary or reduce it so that the bond applies only to the estate remaining in the possession of the fiduciary, whichever the court deems best for the estate.

B. Whenever the court has ordered any assets of an estate be placed with a financial institution pursuant to subsection A, any person or corporation having possession or control of any of the assets, or owing interest, dividends, principal, or other indebtedness on account thereof, shall, on the due dates thereof, upon the demand of the financial institution whether the fiduciary has duly qualified or not, pay and deliver the assets, interest, dividends, principal, and other indebtedness to the financial institution. The receipt and acceptance thereof by the financial institution shall relieve the person or corporation from all further responsibility.

C. Any bank, trust company, or savings institution designated by the court pursuant to subsection A may accept or reject the designation in any particular instance. The financial institution shall evidence its acceptance or rejection by filing the same with the court or the clerk of the court making the designation within 15 days after actual knowledge of the designation shall have come to the attention of the financial institution. In the event of acceptance, the financial institution shall be allowed as a proper charge against the assets placed with it such reasonable amount for its services and expenses as the court making the designation may order.

§ 64.2-1414. Effect of orders of qualification of bank as committee or guardian.

If a bank qualifies as committee or guardian and the order of qualification fails to specify that the bank is to be guardian or committee of the person, it shall be deemed a qualification solely as committee, conservator, or guardian of the estate.

§ 64.2-1415. Liability for losses by negligence or failure to make defense.

A. If any personal representative, guardian, conservator, curator, or committee, or any agent or attorney-at-law, by his negligence or improper conduct, loses any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal.

B. If any personal representative, guardian, conservator, curator, or committee pays any debt the recovery of which could be prevented by reason of illegality of consideration, lapse of time, or otherwise, knowing the facts by which the recovery could have been prevented, no credit shall be allowed to him for such payment.

§ 64.2-1416. Liability of fiduciary for actions of cofiduciary.

A. As used in this section, "fiduciary" has the same meaning as provided in § 8.01-2, except that it shall not include trustees subject to the requirements and provisions of the Uniform Trust Code (§ 64.2-700 et seq.).

B. Any power vested in three or more fiduciaries may be exercised by a majority of the fiduciaries, but a fiduciary who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise. A dissenting fiduciary is not liable for the consequences of an act in which he joins at the direction of the majority of the fiduciaries if he expressed his dissent in writing to any of his cofiduciaries, if the act is not of itself a patent breach of trust.

C. A fiduciary shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any cofiduciary, or for those of any banker, broker, or other person with whom the trust money or securities may be lawfully deposited, or for any loss that does not result from his own default or negligence.

D. Whenever the instrument under which a fiduciary or fiduciaries are acting reserves the authority to direct the making or retention of any investment for the settlor, testator, or creator or vests such authority in an advisory or investment committee or any other person, including a cofiduciary, to the exclusion of the fiduciary or the exclusion of one or more of several fiduciaries,, the excluded fiduciary or cofiduciary shall be liable, if at all, only as a ministerial agent and shall not be liable as fiduciary or cofiduciary for any loss resulting from the making or retention of any investment pursuant to such authorized direction.

E. This section does not excuse a cofiduciary from liability for failing to (i) participate in the administration of trust, (ii) attempt to prevent a breach of trust, or (iii) seek advice and guidance from the circuit court in an apparently recurring situation unless otherwise expressly provided by the instrument under which the cofiduciary is acting.

§ 64.2-1417. How judgment may be entered against personal representative, conservator, or committee.

A judgment or decree against the personal representative of a decedent, committee of a convict, or conservator of an incapacitated person as defined in § 64.2-2000, for a debt due from the decedent, convict, or incapacitated person may, without taking an account of the transactions of the representative, conservator, or committee, be entered to be paid out of the estate of the decedent, convict, or incapacitated person in, or that shall come into, the possession of the representative, conservator, or committee to be administered. If the circuit court holds that the proceeding for the debt would not have been brought if the fiduciary had prudently discharged his duty, the amount of the judgment or decree for costs shall be paid out of the estate of the representative, conservator, or committee.

§ 64.2-1418. Court order for payments due from fiduciaries; effect.

When a report of the accounts of any guardian, curator, conservator, committee, or trustee is confirmed, either in whole or in a qualified manner, the circuit court for the clerk's office where the report is filed may order payment of what appears due on such accounts to such persons as would be entitled to recover the same by suit. Any guardian, curator, conservator, committee, or trustee who has, in good faith and in compliance with the order of such court, paid and delivered the money and other estate in his possession to whomsoever the court has adjudged is entitled thereto, shall be fully protected against the demands of creditors and all other persons.

§ 64.2-1419. Execution of fiduciary bond or appointment of agent designates clerk as attorney for service of process.

A. Every person who qualifies in a circuit court or clerk's office as a personal representative of a decedent, guardian, conservator, committee, trustee, or receiver, and the surety upon any such fiduciary's bond, shall, by executing the bond required of the fiduciary, be deemed to have designated the clerk of the court in which the qualification is had, and his successor in office, as the true and lawful attorney of the fiduciary upon whom service of any notice, process, or rule issuing from a court of the Commonwealth or a commissioner of such court may be executed, whenever the fiduciary cannot be found and served within the Commonwealth after the exercise of due diligence. This section only applies if the proceeding relates to the proper administration or distribution of the fiduciary estate, including a proceeding to assert a claim against the estate or to remove the fiduciary or to obtain a personal judgment against him and his surety, either or both, for nonfeasance, misfeasance, or malfeasance in the performance of the fiduciary's duties. The designation shall terminate and no longer be in effect when the fiduciary's final account shall stand confirmed as provided in § 64.2-1212 or by order of court.

B. Every nonresident trustee who, pursuant to § 64.2-427 or 64.2-428, files a consent in writing with a clerk of a circuit court that any service of process or notice may be by service upon a resident of the Commonwealth at such address as the trustee may appoint in the written instrument filed with the clerk shall, by filing such consent, be deemed to have designated the clerk of the court in which the consent is filed, and his successor in office, as the true and lawful attorney of the nonresident trustee upon whom service of any notice, process, or rule issuing from a court of the Commonwealth may be executed, whenever the resident appointed to receive service cannot be found and served within the Commonwealth after the exercise of due diligence.

§ 64.2-1420. Clerk to mail notice, process, or rule to person served.

Whenever any notice, process, or rule is served on the clerk of a circuit court pursuant to § 64.2-1419, the clerk shall mail the notice, process, or rule forthwith by certified or registered mail, postage prepaid, to the person thus served, to his last known address as shown by the court papers, the cost thereof to be paid in advance by the person desiring the service. In lieu of using certified or registered mail, the clerk of court may also use overnight delivery, with the cost thereof to be paid in advance by the person desiring service.

§ 64.2-1421. What judgment or decree based upon service upon clerk shall specifically adjudicate.

Any judgment or decree based upon service of notice, process, or rule upon the clerk of the circuit court shall specifically adjudicate that due diligence has been used and that the person thus served cannot be found and served within the Commonwealth, that the requirements of § 64.2-1420 have been complied with, and that the fiduciary's final account does not stand confirmed as provided in § 64.2-1212 or by order of court.

§ 64.2-1422. Environmental liability of fiduciaries.

A. As used in this section:

"Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health.

"Fiduciary" includes guardians, committees, conservators, trustees, executors, administrators and administrators with the will annexed, curators of decedents' wills, and attorneys-in-fact or agents acting for principals under written powers of attorney, and any combination of individuals, corporations, and other entities serving in those capacities.

"Individual capacity" means the nonfiduciary capacity of any individual, corporation, or other entity serving as a fiduciary.

B. As to any property held in trust or in an estate, a fiduciary shall not be considered in its

individual capacity to be (i) the owner or operator of that property as defined under any applicable environmental law or (ii) a party otherwise liable under any environmental law unless the fiduciary's acts or omissions outside the scope of its fiduciary duties constitute conduct that independently would give rise to individual liability.

C. A fiduciary shall not be liable in its individual capacity to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's investigation or evaluation of potential contamination of property held in the trust or estate or the fiduciary's compliance with any environmental law, specifically including any reporting or disclosure requirement under such law.

D. Neither a fiduciary's acceptance of property nor its failure to inspect property shall be deemed to create any implication as to whether or not there is or may be any liability under any environmental law with respect to such property.

E. Nothing in this section shall affect or modify any defense to individual liability under any environmental law available to any fiduciary under any other provision of state or federal law, including the common law.

§ 64.2-1423. Trustee not disqualified due to status as stockholder, employee, or officer of corporate noteholder; sale of property by trustee not voidable.

A. The fact that a trustee in a deed of trust to secure a debt due to a corporation is a stockholder, member, employee, officer or director of, or counsel to, the corporation, does not disqualify the trustee from exercising the powers conferred by the deed of trust nor does it render voidable a sale by the trustee in the exercise of the powers conferred on him by the deed of trust so long as the trustee did not participate in the corporation's decision as to the amount to be bid at the sale of the trust property.

B. In addition to the provisions of subsection A, if the lender secured by the deed of trust bids the amount secured, including interest through the date of sale and costs of foreclosure, the trustee's participation in fixing the bid price by the lender shall not be deemed improper and the sale shall not be rendered voidable solely by reason of the trustee's participation.

C. All sales made before July 1, 1990, by any trustee by virtue of a deed of trust and any deed made by the trustee in pursuance of such sales are hereby declared to be valid and effective in all respects, if otherwise valid according to laws then in force, the same as if the trustee had not been a stockholder, member, employee, officer or director of, or counsel to, the corporation thereby secured.

§ 64.2-1424. Resignation by fiduciary of his trust.

The circuit court in which or before the clerk of which a fiduciary qualified may allow any personal representative, guardian, conservator, or committee to resign his trust conditioned upon his accounts as the fiduciary being stated and settled in the mode prescribed by law. Such resignation shall not invalidate any act done or affect any liability incurred by him while holding such trust.

§ 64.2-1425. How securities transferred to successor.

When any securities for money loaned or invested shall be standing in the name of any fiduciary who has died, resigned, or whose power has been revoked, and the fiduciary or his personal representative has not transferred the securities to his successor, the circuit court in which the fiduciary qualified, upon the petition of the successor or of any other interested person, may direct that the securities be transferred to the successor, a receiver of the court, or otherwise, and may direct that the dividends, interest, or proceeds of the securities be received or paid in such manner as the court deems proper.

Article 2.
Nonresident Trustees.

§ 64.2-1426. Nonresident fiduciaries.

A. A natural person who is not a resident of the Commonwealth may be appointed or allowed to qualify or act as the personal representative, or trustee under a will, of any decedent, or appointed as the guardian of an infant's estate, or the guardian or conservator of the property of an incapacitated person under Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.).

Qualification of such person as a personal representative, or trustee under a will, of any decedent shall be subject to the provisions of Article 1 (§ 64.2-500 et seq.) of Chapter 5.

At the time of qualification or appointment, each such nonresident shall file with the clerk of the circuit court of the jurisdiction wherein the qualification is had or appointment is made his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, conservator, or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in the Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of the Commonwealth and at such address as the nonresident may appoint in the written instrument. In the event of the death, removal, resignation, or absence from the Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a 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 the circuit court. Notwithstanding §§ 64.2-505 and 64.2-2011, where any nonresident qualifies, other than as a guardian of an incapacitated person, pursuant to this subsection,

bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same time or the court or clerk making the appointment waives surety under the provisions of § 64.2-1411.

B. A corporation shall not 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 Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.), or as one of the guardians or conservators, unless the corporation is authorized to do business in the 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 § 64.2-609. The provisions of this section shall not authorize or allow any appointment or qualification prohibited by § 6.2-803.

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

§ 64.2-1427. How property of nonresident infant or incapacitated person transferred to foreign guardian, conservator, or committee.

When any nonresident infant or incapacitated person is entitled to property or money in the Commonwealth, a petition to remove the property or money to the domicile of the infant or incapacitated person may be filed by his guardian, conservator, committee, or other fiduciary lawfully appointed and qualified in the state or country of his residence, in the circuit court of the county or city in which the property or money, or some part thereof, is located. If entitlement to the property or money was acquired other than by a will or was acquired by a will that restricts the transfer out of the Commonwealth, the infant or incapacitated person, and the guardian of the infant or the conservator or other fiduciary of the incapacitated person appointed in the Commonwealth, if there is one, shall be made a party defendant to this petition. The court shall appoint a guardian ad litem for the infant or incapacitated person who, as well as the conservator or other fiduciary, if there is one, shall answer the petition on oath. Upon a hearing of the case on its merits, or upon the petition without hearing if entitlement to the property or money was acquired by a will that does not restrict the transfer out of the Commonwealth, the court may order the fiduciary to pay and deliver to the foreign guardian, conservator, committee, or fiduciary, or his agent or attorney, all personal property and money in his possession belonging to the infant or incapacitated person, and authorize the foreign guardian, conservator, committee, or fiduciary to sue for, recover, and receive all money and personal property, including the accruing rents of his real estate, that belongs to the infant or incapacitated person in the same manner as if he were appointed a guardian, conservator, committee, or fiduciary of the infant or incapacitated person in the Commonwealth, and to remove the money and personal property to the state or country in which the foreign fiduciary was appointed and qualified.

§ 64.2-1428. Transfer of proceeds of sale of real estate of nonresident beneficiary to foreign fiduciary.

When the proceeds of sale of the real estate of an infant, incapacitated person, or cestui que trust are invested, or required to be invested under the direction of the circuit court, and the infant, incapacitated person, or cestui que trust does not reside in the Commonwealth, on the petition of a guardian, committee, conservator, or trustee lawfully appointed or qualified in the state or country of residence of the infant, incapacitated person, or cestui que trust, the court under whose direction such proceeds are so invested, or required to be invested, may, with the consent of the persons residing in the Commonwealth who would be the heirs of the infant, incapacitated person, or cestui que trust, if he were dead, order such proceeds to be paid and delivered to the foreign guardian, committee, conservator, or trustee, or his agent or attorney, and removed by him to the state or country in which he was appointed and qualified. The court may refuse to permit the payment and delivery if the court determines that the removal of the trust subject will defeat or conflict with the provisions of the deed, will, or other instrument creating the trust.

§ 64.2-1429. Notice and bond required prior to transfer.

No order shall be made pursuant to §§ 64.2-1427 and 64.2-1428 until (i) notice of the petition has been published once a week for four successive weeks in a newspaper published in the county or city in which the petition is filed, or if there is none, then in a newspaper published in an adjoining county, (ii) it is shown by authentic documentary evidence that the foreign guardian, conservator, or committee has, in the state or country where he qualified, given bond with surety sufficient to insure his accountability for the whole amount of the estate in his possession or that may be received by him, and (iii) the circuit court determines that the removal of such money or property from the Commonwealth will not impair the rights or be prejudicial to the interests either of the infant or incapacitated person or of any other person.

§ 64.2-1430. When bond may be dispensed with.

In any case in which the circuit court finds that the laws of the state or country in which the infant or incapacitated person resides and the foreign guardian, conservator, or committee was appointed and

qualified do not provide for the giving of a bond by the guardian, conservator, or committee, the court, in its discretion, may permit the money and other estate of the infant or incapacitated person to be paid and delivered to the foreign fiduciary although he has not given the bond required by § 64.2-1429.

§ 64.2-1431. Sale of property and payment of proceeds to nonresident trustee.

If, in any proceeding under § 64.2-1427 or in case of an interest in property acquired by a will that does not restrict the transfer of property out of the Commonwealth upon petition under § 64.2-1427, the circuit court may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian, conservator, committee, or nonresident trustee.

§ 64.2-1432. Discharge from liability of resident guardian, committee, conservator, or trustee.

When any guardian, committee, conservator, trustee, or other person in the Commonwealth shall pay over, transfer, or deliver any estate in his possession or vested in him, under any order or decree made in pursuance of this chapter, he shall be discharged from all responsibility therefor.

CHAPTER 15.
INVESTMENTS.

§ 64.2-1500. Court orders regarding money in possession of fiduciary.

If a report made pursuant to § 64.2-1210 or a special report of the commissioner of accounts shows that money is in the possession of a fiduciary, the circuit court in which the report is filed may order that the money be invested or loaned out, or make such other order respecting the money as the court deems proper.

§ 64.2-1501. Time within which guardian of an estate, conservator, or other fiduciary to invest funds; reasonable diligence required.

A. Whenever a guardian of an estate, conservator, or other fiduciary charged with the investment of funds collects any principal, he shall have a reasonable time, not to exceed four months, to invest or loan the funds, and shall not be charged with interest thereon until the expiration of such time. A guardian of an estate, conservator, or any other fiduciary shall only be required to invest in accordance with the provisions of §§ 64.2-1502 through 64.2-1506 and the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and, if he invests in accordance with these provisions, he shall be accountable only for such interest and profits as are earned. If any funds are otherwise invested without the previous consent of the court having jurisdiction of such trust funds, the burden shall be on the guardian of an estate, conservator, or other fiduciary before his settlement is approved by the commissioner of accounts to show to the satisfaction of the commissioner of accounts that, after exercising reasonable diligence, he was unable to invest the funds in accordance with these provisions and that the investment made was reasonable and proper under all of the circumstances and fair to the beneficiary of the funds.

B. This section shall not be construed as altering the provisions of any will, deed, or other instrument that give the fiduciary discretion as to the rate of interest, character of security, nature or investment under the trust, or time within which the trust funds are to be loaned or invested.

§ 64.2-1502. In what securities fiduciaries may invest; definitions.

A. As used in this section:

"Fiduciary" has the same meaning as provided in § 8.01-2 and also includes an attorney-in-fact or agent acting for a principal under a written power of attorney, a custodian under § 64.2-1911, and a custodial trustee under § 64.2-906.

"National rating service" means Standard & Poor's Corporation, Moody's Investors Service, Inc., Duff and Phelps, Inc., Fitch Investors Corporation, and any successor to the rating business of any of them.

B. Notwithstanding any other provision of law designating as legal investments for fiduciaries the bonds, notes, obligations, or other evidences of indebtedness issued by a governmental entity or political subdivision of the Commonwealth, including but not limited to agencies, authorities, commissions, districts, boards, or local governments, and except as specifically provided in § 2.2-4519, fiduciaries, whether individual or corporate, shall, except as limited in subsection E, be conclusively presumed to have been prudent in investing the funds held by them in a fiduciary capacity in only the following securities:

1. Obligations of the Commonwealth, its agencies and political subdivisions. The following obligations:

a. Bonds, notes, and other evidences of indebtedness of the Commonwealth and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth;

b. Revenue bonds, revenue notes, or other evidences of revenue indebtedness issued by agencies or authorities of the Commonwealth upon which there is no default; and

c. Bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority, or other public body in the Commonwealth upon which there is no default provided that such bonds, notes, and other evidences of indebtedness are (i) direct legal obligations of the public body, for the payment of which the public body has pledged its full faith and credit and unlimited taxing power, or (ii) unconditionally guaranteed as to the payment of principal and interest by the public body.

In every case referred to in this subdivision, such bonds, notes, or other evidences of indebtedness shall be rated in one of the two highest rating categories of at least one national rating service and not

rated in a category lower than the two highest rating categories of any national rating service. Determination of an obligation's rating in one of the two highest rating categories shall be made without regard to any refinement or gradation of such rating category by numerical or other modifier. In addition, the remaining maturity of such bonds, notes, or other evidences of indebtedness shall not be greater than five years.

2. Obligations of the United States. Bonds, notes, and other obligations of the United States and securities unconditionally guaranteed as to the payment of principal and interest by the United States with a remaining maturity not greater than five years, except in the case of savings bonds, which may have a longer maturity. The obligations enumerated in this subdivision may be held directly or in the form of repurchase agreements collateralized by such obligations or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such obligations or repurchase agreements collateralized by such obligations, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Savings accounts, time deposits, or certificates of deposit. Savings accounts, time deposits, or certificates of deposit in any bank, savings bank, trust company, savings and loan association, or credit union authorized to do business in the Commonwealth, but only to the extent that such accounts, deposits, or certificates are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or by the National Credit Union Share Insurance Fund or any successor to it.

C. Notwithstanding the provisions of this section, investments listed in § 2.2-4519 as in effect prior to July 1, 1992, which continue to be held on July 1, 1992, shall be subject to § 64.2-781, and any reference to the Virginia "legal list" or to § 2.2-4519 or any predecessor statute contained in a will, trust, or other instrument that was irrevocable on June 30, 1992, shall be construed to refer to such section as in effect on June 30, 1992, or at such earlier time as may be specified in the controlling document, absent an expression of intent to the contrary contained in such document.

D. The permissible investments specified in subsection B are not exclusive and shall not be construed to limit a fiduciary's investments as permitted pursuant to the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

E. The presumption under subsection B shall apply to (i) a fiduciary only for a calendar year in which the value of the intangible personal property under the fiduciary's control or management does not exceed $100,000 at the beginning of such year or (ii) a fiduciary who, on motion for good cause shown, has obtained express authorization from the court having jurisdiction over the fiduciary for the presumption under subsection B to apply.

§ 64.2-1503. Investment in bonds or other obligations issued, guaranteed, or assured by Inter-American Development Bank.

Executors, administrators, trustees, and other fiduciaries, both individual and corporate, may invest the funds held by them in a fiduciary capacity in bonds and other obligations issued, guaranteed, or assured by the Inter-American Development Bank, which are and shall be considered lawful investments.

§ 64.2-1504. Investments in municipal bonds by banks or trust companies.

Subject to the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and the common law duties of a fiduciary, unless the governing instrument or a court order specifically directs otherwise, a bank or trust company serving as personal representative, trustee, guardian, agent, or in any other fiduciary capacity, may purchase during the existence of any underwriting or selling syndicate any state or municipal security otherwise authorized by this title in spite of the fact that the fiduciary, or an affiliate thereof under common ownership, participates or has participated as a member of a syndicate underwriting such security if the fiduciary purchases the security from another syndicate member or from an affiliate thereof and not from itself or any of its affiliates.

§ 64.2-1505. Investments that cease to be eligible may be retained.

Investments made under the provisions of § 64.2-1502, if in conformity with the requirements of that section at the time the investments were made, may be retained even though they cease to be eligible for purchase under the provisions of that section, but shall be subject to the provisions of the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

§ 64.2-1506. Investment in mutual fund affiliated with fiduciary.

Unless prohibited or otherwise limited by the instrument under which a fiduciary is acting, including a fiduciary of an agency account, the fiduciary may invest in a mutual company, investment trust, or investment company sponsored, advised, or sold by the fiduciary or an affiliate if the investment is otherwise appropriate as an investment. In such case, the fiduciary shall not take a commission as fiduciary to the extent that the fiduciary, or its affiliate or division, receive compensation for services relating to advice or services to such mutual fund, investment trust, or investment company, unless (i) otherwise expressly agreed in writing by the creator of the trust or affected beneficiary or (ii) the fiduciary discloses by statement, prospectus, or otherwise to all current income beneficiaries of an account the rate, formula, or other method by which the compensation received or to be received by the fiduciary or affiliate or division of the fiduciary for such advice and services is determined. In such

case, the compensation for such advice and services shall not exceed the customary or prevailing amount that is charged by a fiduciary, or its affiliate or division, for providing comparable advice and services for the benefit of nonfiduciary accounts.

PART B.

POWERS OF ATTORNEY.

CHAPTER 16.

UNIFORM POWER OF ATTORNEY ACT.

Article 1.

General Provisions.

§ 64.2-1600. Definitions.

For the purposes of this chapter, unless the context requires otherwise:

"Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.

"Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Good faith" means honesty in fact.

"Incapacity" means inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

2. Is missing or outside the United States and unable to return.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

"Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

"Principal" means an individual who grants authority to an agent in a power of attorney.

"Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Sign" means, with present intent to authenticate or adopt a record: (i) to execute or adopt a tangible symbol; or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

§ 64.2-1601. Applicability.

This chapter applies to all powers of attorney except:

1. A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

2. A power to make health care decisions;

3. A proxy or other delegation to exercise voting rights or management rights with respect to an entity;

4. A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; and

5. A power to make arrangements for burial or disposition of remains pursuant to § 54.1-2825.

§ 64.2-1602. Power of attorney is durable.

A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

§ 64.2-1603. Execution of power of attorney.

A power of attorney shall be signed by the principal or in the principal's conscious presence by

another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney in order to be recordable shall satisfy the requirements of § 55-106.

§ 64.2-1604. Validity of power of attorney.

A. A power of attorney executed in the Commonwealth on or after July 1, 2010, is valid if its execution complies with § 64.2-1603.

B. A power of attorney executed in the Commonwealth before July 1, 2010, is valid if its execution complied with the law of the Commonwealth as it existed at the time of execution.

C. A power of attorney executed other than in the Commonwealth is valid in the Commonwealth if, when the power of attorney was executed, the execution complied with (i) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to § 64.2-1605; (ii) the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended; or (iii) the laws of the Commonwealth.

D. Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

E. An agent in possession of a general, special, or limited power of attorney or other writing vesting any power or authority in him shall, where the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure of the principal to deliver the instrument to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in any proceeding brought to terminate, suspend, or limit the authority of the agent.

§ 64.2-1605. Meaning and effect of power of attorney.

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

§ 64.2-1606. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

A. In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

B. If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

§ 64.2-1607. When power of attorney effective.

A. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

B. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

C. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by (i) the principal's attending physician and a second physician or licensed clinical psychologist after personal examination of the principal that the principal is incapacitated within the meaning of subdivision 1 of the definition of incapacity in § 64.2-1600 or (ii) an attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of subdivision 1 of the definition of incapacity in § 64.2-1600.

D. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

§ 64.2-1608. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

1. The principal dies;

2. The principal becomes incapacitated, if the power of attorney is not durable;

3. The principal revokes the power of attorney;

4. The power of attorney provides that it terminates;

5. The purpose of the power of attorney is accomplished; or

6. The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

B. An agent's authority terminates when:

1. The principal revokes the authority;

2. The agent dies, becomes incapacitated, or resigns;

3. An action is filed for the divorce or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

4. The power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection B, notwithstanding a lapse of time since the execution of the power of attorney.

D. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

E. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

F. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

§ 64.2-1609. Coagents and successor agents.

A. A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

B. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent (i) has the same authority as that granted to the original agent; and (ii) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

C. Except as otherwise provided in the power of attorney and subsection D, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

D. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§ 64.2-1610. Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

§ 64.2-1611. Agent's acceptance.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§ 64.2-1612. Agent's duties.

A. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

1. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

2. Act in good faith; and

3. Act only within the scope of authority granted in the power of attorney.

B. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

1. Act loyally for the principal's benefit;

2. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

3. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

4. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

5. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and otherwise act in the principal's best interest; and

6. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if

preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

a. The value and nature of the principal's property;

b. The principal's foreseeable obligations and need for maintenance;

c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

d. Eligibility for a benefit, a program, or assistance under a statute or regulation.

C. An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

D. An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

E. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

F. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

G. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person; however, nothing herein is intended to abrogate any duty of the agent under the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

H. Except as otherwise provided in the power of attorney, an agent shall disclose receipts, disbursements, or transactions conducted on behalf of the principal if requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

I. Except as otherwise provided in the power of attorney, an agent shall, on reasonable request made by a person listed in subdivisions A 3 through A 9 of § 64.2-1614 who has a good faith belief that the principal suffers an incapacity or, if deceased, suffered incapacity at the time the agent acted, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal within the five years prior to either (i) the date of the request or (ii) the date of the death of the principal, if the principal is deceased at the time such request is made, and shall permit reasonable inspection of records pertaining to such actions by such person. In all cases where the principal is deceased at the time such request is made, such request shall be made within one year after the date of the death of the principal. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

§ 64.2-1613. Exoneration of agent.

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

1. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

2. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

§ 64.2-1614. Judicial relief.

A. In addition to the remedies referenced in § 64.2-1621, the following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

1. The principal or the agent;

2. A guardian, conservator, personal representative of the estate of a deceased principal, or other fiduciary acting for the principal;

3. A person authorized to make health care decisions for the principal;

4. The principal's spouse, parent, or descendant;

5. An adult who is a brother, sister, niece, or nephew of the principal;

6. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

7. The adult protective services unit of the local department of social services for the county or city where the principal resides or is located;

8. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

9. A person asked to accept the power of attorney.

B. 1. Whether or not supplemental relief is sought in the proceeding, where an agent has violated duties of disclosure imposed by § 64.2-1612, any person to whom such duties are owing may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under Chapter 20 (§ 64.2-2000 et seq.); (ii) terminating, suspending, or limiting the authority of the agent; or (iii) bringing a proceeding to hold the agent, or a transferee from such agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the agent of information and records pertaining to actions taken pursuant to a power of attorney.

2. The petition may be filed in the circuit court of the county or city in which the agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under Chapter 20 (§ 64.2-2000 et seq.), or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the agent and to the principal, if no guardian or conservator has been appointed, or to the conservator or guardian, if one has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of Supreme Court of Virginia. Upon the failure of the agent to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 64.2-1612, may, upon finding that the failure to comply with the request for information was unreasonable, order the agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.

3. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the agent.

C. The agent may, after reasonable notice to the principal, petition the circuit court for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney or other writing. The court shall determine the amounts, recipients, and proportions of any gifts of the principal's property after considering all relevant factors including, without limitation, those contained in subsection C of § 64.2-1638.

D. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

§ 64.2-1615. Agent's liability.

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

1. Restore the value of the principal's property to what it would have been had the violation not occurred; and

2. Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

§ 64.2-1616. Agent's resignation; notice.

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

1. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent;

2. If there is no person described in subdivision 1, to an adult who is a spouse, child or other descendant, parent, brother, or sister of the principal;

3. If none of the foregoing persons is reasonably available, another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

4. If none of the foregoing persons is reasonably available, the adult protective services unit of the local department of social services for the county or city where the principal resides or is located.

§ 64.2-1617. Acceptance of and reliance upon acknowledged power of attorney.

A. For purposes of this section and § 64.2-1618, "acknowledged" means verified before a notary public or other individual authorized to take acknowledgments.

B. A person that in good faith accepts an acknowledged power of attorney that has been signed in accordance with § 64.2-1603 without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. The preceding sentence shall not apply to an acknowledged power of attorney that contains a forged signature of the

principal.

C. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation, any or all of the following:

1. An agent's certification under oath of any factual matter concerning the principal, agent, or power of attorney;

2. An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

3. An opinion of the counsel for the principal or the agent, or the opinion of counsel for the person, as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

D. An English translation or an opinion of counsel for the principal or the agent requested under this section shall be provided at the principal's expense.

E. An agent's certification, an English translation, or an opinion of counsel shall be in recordable form if the exercise of the power requires recordation of any instrument under the laws of the Commonwealth.

F. For purposes of this section and § 64.2-1618, a person that conducts activities through employees and exercises commercially reasonable procedures to communicate information concerning powers of attorney among its employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney has followed such procedures and is nonetheless without actual knowledge of the fact.

§ 64.2-1618. Liability for refusal to accept acknowledged power of attorney.

A. Except as otherwise provided in subsection B:

1. A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617 no later than seven business days after presentation of the power of attorney for acceptance;

2. If a person requests a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

3. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

B. A person is not required to accept an acknowledged power of attorney for a transaction if:

1. The person is not otherwise required to engage in the transaction with the principal in the same circumstances, or the principal has otherwise relieved the person from an obligation to engage in the transaction with an agent representing the principal under a power of attorney;

2. Engaging in the transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

3. The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

4. A request for a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617 is refused;

5. The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617 has been requested or provided; or

6. The person makes, or has actual knowledge that another person has made, a report to the local adult protective services department or adult protective services hotline stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

C. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

1. A court order mandating acceptance of the power of attorney; and

2. Liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

D. For purposes of this section, "business day" shall refer to any day other than Saturday, Sunday, or any day designated as a holiday by the Commonwealth or the federal government.

§ 64.2-1619. Principles of law and equity.

Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

§ 64.2-1620. Laws applicable to financial institutions and entities.

This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter.

§ 64.2-1621. Remedies under other law.

The remedies under this chapter are not exclusive and do not abrogate any right or remedy, including a court-supervised accounting, under the laws of the Commonwealth other than this chapter.

Article 2.

Authority.

§ 64.2-1622. Authority that requires specific grant; grant of general authority.

A. Subject to the provisions of subsection H, an agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited or limited by another statute, agreement, or instrument to which the authority or property is subject:

1. Create, amend, revoke, or terminate an inter vivos trust;

2. Make a gift;

3. Create or change rights of survivorship;

4. Create or change a beneficiary designation;

5. Delegate authority granted under the power of attorney;

6. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or

7. Exercise fiduciary powers that the principal has authority to delegate.

B. Notwithstanding a grant of authority to do an act described in subsection A or H, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

C. Subject to subsections A, B, D, and E, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §§ 64.2-1625 through 64.2-1637.

D. Unless the power of attorney otherwise provides and subject to subsection H, a grant of authority to make a gift is subject to § 64.2-1638.

E. Subject to subsections A, B, and D, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

F. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in the Commonwealth and whether or not the authority is exercised or the power of attorney is executed in the Commonwealth.

G. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

H. Notwithstanding the provisions of subsection A, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent shall have the authority to make gifts in any amount of any of the principal's property to any individuals or to organizations described in §§ 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This subsection shall not in any way impair the right or power of any principal, by express words in the power of attorney, to authorize, or limit the authority of, an agent to make gifts of the principal's property.

§ 64.2-1623. Incorporation of authority.

A. An agent has authority described in this article if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in §§ 64.2-1625 through 64.2-1638, or cites the section in which the authority is described.

B. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in §§ 64.2-1625 through 64.2-1638 or a citation to a section of §§ 64.2-1625 through 64.2-1638 incorporates the entire section as if it were set out in full in the power of attorney.

C. A principal may modify authority incorporated by reference.

§ 64.2-1624. Construction of authority generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in §§ 64.2-1625 through 64.2-1638 or that grants to an agent authority to do all acts that a principal could do pursuant to subsection C of § 64.2-1622, a principal authorizes the agent, with respect to that subject, to:

1. Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

2. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

3. Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or

accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

5. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

6. Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

7. Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

8. Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

9. Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

10. Do any lawful act with respect to the subject and all property related to the subject.

§ 64.2-1625. Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

1. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

3. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

5. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

6. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

7. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

a. Selling or otherwise disposing of them;

b. Exercising or selling an option, right of conversion, or similar right with respect to them; and

c. Exercising any voting rights in person or by proxy;

8. Change the form of title of an interest in or right incident to real property; and

9. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

§ 64.2-1626. Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

1. Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

3. Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

5. Manage or conserve tangible personal property or an interest in tangible personal property on

behalf of the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

d. Moving the property from place to place;

e. Storing the property for hire or on a gratuitous bailment; and

f. Using and making repairs, alterations, or improvements to the property; and

6. Change the form of title of an interest in tangible personal property.

§ 64.2-1627. Stocks and bonds.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

1. Buy, sell, and exchange stocks and bonds;

2. Establish, continue, modify, or terminate an account with respect to stocks and bonds;

3. Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

4. Receive certificates and other evidences of ownership with respect to stocks and bonds; and

5. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

§ 64.2-1628. Commodities and options.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

1. Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

2. Establish, continue, modify, and terminate option accounts.

§ 64.2-1629. Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

1. Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

2. Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

3. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

4. Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

5. Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

6. Enter a safe deposit box or vault and withdraw or add to the contents;

7. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

8. Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

9. Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

10. Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

11. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§ 64.2-1630. Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

1. Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

2. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

3. Enforce the terms of an ownership agreement;

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or

accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

5. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

6. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

7. With respect to an entity or business owned solely by the principal:

a. Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

b. Determine (i) the location of its operation; (ii) the nature and extent of its business; (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; (iv) the amount and types of insurance carried; and (v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

c. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

8. Put additional capital into an entity or business in which the principal has an interest;

9. Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

10. Sell or liquidate all or part of an entity or business;

11. Establish the value of an entity or business under a buyout agreement to which the principal is a party;

12. Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

13. Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§ 64.2-1631. Insurance and annuities.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

1. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

2. Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment;

3. Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

4. Apply for and receive a loan secured by a contract of insurance or annuity;

5. Surrender and receive the cash surrender value on a contract of insurance or annuity;

6. Exercise an election;

7. Exercise investment powers available under a contract of insurance or annuity;

8. Change the manner of paying premiums on a contract of insurance or annuity;

9. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

10. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

11. Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

12. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

13. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

§ 64.2-1632. Estates, trusts, and other beneficial interests.

A. In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting

general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

1. Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

2. Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

3. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

4. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

5. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

6. Conserve, invest, disburse, or use anything received for an authorized purpose;

7. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and

8. Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

§ 64.2-1633. Claims and litigation.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

1. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

2. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

3. Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

4. Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

5. Submit to alternative dispute resolution, settle, and propose or accept a compromise;

6. Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

7. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

8. Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

§ 64.2-1634. Personal and family maintenance.

A. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

1. Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

a. The individuals legally entitled to be supported by the principal; and

b. The individuals whom the principal has customarily supported or indicated the intent to support;

2. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

3. Provide living quarters for the individuals described in subdivision 1 by:

a. Purchase, lease, or other contract; or

b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

4. Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subdivision 1;

5. Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision 1;

6. Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of the Commonwealth to consent to health care on behalf of the principal;

7. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subdivision 1;

8. Maintain credit and debit accounts for the convenience of the individuals described in subdivision 1 and open new accounts; and

9. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

B. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

§ 64.2-1635. Benefits from governmental programs or civil or military service.

A. In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation including, but not limited to, Social Security, Medicare, Medicaid, and the Department of Veterans Affairs.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

1. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision A 1 of § 64.2-1634, and for shipment of their household effects;

2. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

3. Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

4. Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

5. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

6. Receive the financial proceeds of a claim described in subdivision 4 and conserve, invest, disburse, or use for a lawful purpose anything so received.

§ 64.2-1636. Retirement plans.

A. In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

1. An individual retirement account under Internal Revenue Code 26 U.S.C. § 408, as amended;

2. A Roth individual retirement account under Internal Revenue Code 26 U.S.C. § 408A, as amended;

3. A deemed individual retirement account under Internal Revenue Code 26 U.S.C. § 408(q), as amended;

4. An annuity or mutual fund custodial account under Internal Revenue Code 26 U.S.C. § 403(b), as amended;

5. A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code 26 U.S.C. § 401(a), as amended;

6. A plan under Internal Revenue Code 26 U.S.C. § 457(b), as amended; and

7. A nonqualified deferred compensation plan under Internal Revenue Code 26 U.S.C. § 409A, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

1. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

2. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

3. Establish a retirement plan in the principal's name;

4. Make contributions to a retirement plan;

5. Exercise investment powers available under a retirement plan; and

6. Borrow from, sell assets to, or purchase assets from a retirement plan.

§ 64.2-1637. Taxes.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

1. Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code 26 U.S.C. § 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

3. Exercise any election available to the principal under federal, state, local, or foreign tax law; and

4. Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

§ 64.2-1638. Gifts.

A. In this section, a gift "for the benefit of" a person includes a gift to a trust, a custodial trust under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), an account under the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.), and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code 26 U.S.C. § 529, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

1. Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code 26 U.S.C. § 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

2. Consent, pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

C. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

1. The value and nature of the principal's property;

2. The principal's foreseeable obligations and need for maintenance;

3. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

4. Eligibility for a benefit, a program, or assistance under a statute or regulation; and

5. The principal's personal history of making or joining in making gifts.

Article 3.

Statutory Forms.

§ 64.2-1639. Agent's certification.

The following optional form may be used by an agent to certify facts concerning a power of attorney.

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AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
ATTORNEY AND AGENT'S AUTHORITY

State of ...................
County/City of ...................
I, ..................... (Name of Agent), certify under penalty of
perjury that ..................... (Name of Principal) granted me
authority as an agent or successor agent in a power of attorney
dated ...................
I further certify that to my knowledge:
(1) The Principal is alive and has not revoked the power of attorney
or my authority to act under the power of attorney and the power of
attorney and my authority to act under the power of attorney have
not terminated;
```

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and
(4) .....
.....
.....
.....
(Insert other relevant statements)
SIGNATURE AND ACKNOWLEDGMENT
....
Agent's Signature Date
.....
Agent's Name Printed
.....
.....
Agent's Address
.....
Agent's Telephone Number
This document was acknowledged before me on ....., (Date)
by .....
(Name of Agent)
.....
.....
Signature of Notary
My commission expires: ..... (Seal, if any)
Notary Registration Number: .....
This document prepared by:
.....

Article 4.
Miscellaneous Provisions.

§ 64.2-1640. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

§ 64.2-1641. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

§ 64.2-1642. Effect on existing powers of attorney.

Except as otherwise provided in this chapter, on July 1, 2010:

1. This chapter applies to a power of attorney created before, on, or after July 1, 2010;

2. This chapter applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010;

3. This chapter applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

4. Notwithstanding any other provision of this chapter, an act done before July 1, 2010, is not affected by this chapter.

PART C.
GUARDIANSHIP OF MINOR.
CHAPTER 17.
APPOINTMENT OF GUARDIAN.

§ 64.2-1700. Natural guardians.

The parents of an unmarried minor child are the joint natural guardians of the person of such child with equal legal powers and legal rights with regard to such child, provided that the parents are living together, are respectively competent to transact their own business, and are not otherwise unsuitable. Upon the death of either parent, the survivor shall be the natural guardian of the person of such child.

If either parent has abandoned the family, the other parent shall be the natural guardian of the person of such child.

§ 64.2-1701. Testamentary guardians.

A. Every parent may by will appoint (i) a guardian of the person of his minor child and (ii) a guardian for the estate bequeathed or devised by the parent to his minor child for such time during the minor's infancy as the parent directs. A guardian of a minor's estate shall have custody and control of the estate committed to his care. A guardian of the person of a minor other than a parent is not entitled to custody of the person of the minor so long as either of the minor's parents is living and such parent is a fit and proper person to have custody of the minor.

B. The appointment of any guardian pursuant to subsection A shall be void if the guardian (i) renounces the guardianship or (ii) fails to appear in the court in which the will is admitted to probate within six months after the probate to accept the guardianship and give any bond required under § 64.2-1704.

§ 64.2-1702. Appointment of guardians.

The circuit court or the circuit court clerk of any county or city in which a minor resides or, if the minor is an out-of-state resident, in which the minor has any estate may appoint a guardian for the estate of the minor, and may appoint a guardian for the person of the minor unless a guardian has been appointed for the minor pursuant to § 64.2-1701.

§ 64.2-1703. Nomination of guardians.

A. A minor who is at least 14 years old may, in the presence of the court or clerk, or in writing acknowledged before any officer qualified to take acknowledgments, nominate his own guardian for the estate or person of the minor, who shall be appointed if the court or clerk find that the guardian nominated is suitable and competent. If the guardian nominated by the minor is not appointed, if the minor resides without the Commonwealth, or if the court or clerk finds that the guardian nominated is not suitable and competent, the court or clerk may nominate and appoint a guardian for the minor in the same manner as if the minor were less than 14 years old.

B. In no case shall any person not related to the minor be appointed guardian until 30 days have elapsed since the death or disqualification of any natural or testamentary guardians, and the minor's next of kin have had an opportunity to petition the court for appointment and unless the court or clerk is satisfied that such nonrelated person is competent to perform the duties of his office.

§ 64.2-1704. Guardian's bond.

A. Before any person may be appointed the guardian for the estate of a minor, the person, in the circuit court or before the circuit court clerk, shall take an oath that he will faithfully perform the duties of his office to the best of his judgment and give his bond in an amount at least equal to the value of the minor's personal estate coming under his control.

B. Every guardian for the estate of a minor shall provide surety upon his bond unless it is waived pursuant to § 64.2-1411 or, in the case of a testamentary guardian, it is waived by the testator's will. However, upon the motion of the court or clerk or upon the motion of another interested person, the court or clerk may at any time require surety upon a guardian's bond. Every order appointing a guardian shall state whether or not surety is required.

C. If the same guardian qualifies upon the estate of two or more minors who are members of the same family, such guardian shall only be required to give one guardianship bond.

§ 64.2-1705. Redetermination of guardian's bond.

Upon a guardian's request, the clerk shall redetermine the penalty of the guardian's bond in light of any reduction in the current market value of the estate under the guardian's control, whether such reduction is due to disbursements, distributions, valuation of assets, or disclaimer of fiduciary power, if such reduction is reflected in an accounting that has been confirmed by the circuit court or an inventory that has been approved by the commissioner of accounts. This provision shall not apply to any bond set by the court.

§ 64.2-1706. When court may appoint temporary guardians; bond; powers and duties.

Until a guardian appointed by the circuit court or clerk has given his bond, or while there is no guardian, the court or clerk may appoint a temporary guardian, who shall give his bond pursuant to § 64.2-1704. Any temporary guardian during the period of his guardianship shall have all the powers and responsibilities of and shall perform all the duties of a guardian.

CHAPTER 18.
CUSTODY AND CARE OF WARD AND ESTATE.

§ 64.2-1800. Custody, care, and education of ward; ward's estate.

Unless a guardian of the person of a minor is appointed by a parent, the circuit court, or the circuit court clerk, and except as otherwise provided in §§ 64.2-1700 and 64.2-1701, a guardian of a minor's estate who is appointed pursuant to Chapter 17 (§ 64.2-1700 et seq.) shall have custody of his ward. The guardian of a minor's estate shall have the possession, care, and management of the minor's estate, real and personal, and, after first taking into account the minor's other sources of income, support rights, and other reasonably available resources of which the guardian is aware, shall provide for the minor's health, education, maintenance, and support from the income of the minor's estate and, if

income is not sufficient, from the corpus of the minor's estate.

§ 64.2-1801. Parental duty of support.

A. Notwithstanding the provisions of § 64.2-1800, a guardian of a minor's estate shall not make any distribution of income or corpus of the minor's estate to or for the benefit of a ward who has a living parent, whether or not the guardian is such parent, except to the extent that the distribution is authorized by (i) the deed, will, or other instrument under which the estate is derived or (ii) the circuit court, upon a finding that (a) the parent is unable to completely fulfill the parental duty of supporting the minor, (b) the parent cannot for some reason be required to provide such support, or (c) a proposed distribution is beyond the scope of parental duty of support in the circumstances of a specific case. The existence of a parent-child relationship shall be determined in accordance with the provisions of § 64.2-102. The circuit court's authorization may be contained in the order appointing the guardian or it may be obtained at any time prior to the distribution in question; however, in extenuating circumstances where the interests of equity so require, the court's authorization may be obtained after the distribution in question.

B. A guardian who desires to make any distribution specified in subsection A that is not authorized by an existing court order or a deed, will, or other instrument under which the estate is derived shall file a petition in the circuit court wherein his accounts may be settled. The petition shall name the ward as a defendant and set forth the reasons why such distribution is appropriate. If the ward is 14 years of age or older, the guardian shall give notice of the petition to the ward at least five days before filing the petition. The court or clerk shall appoint an attorney-at-law as guardian ad litem to represent the ward. Proceedings on the petition shall conform to the procedures governing a civil action and the evidence may be taken orally. No attorney fees shall be taxed in the costs and no writ tax shall be required upon the petition. The court may fix reasonable attorney fees for services in connection with the filing of the petition, and the court shall fix the guardian ad litem's fee. Such fees shall be paid out of the estate unless the court directs that they be paid personally by the guardian. The clerk shall receive a fee as provided in subdivision A 18 of § 17.1-275 for all services rendered thereon, to be paid by the guardian out of the estate. Any notice required to be served under this section may be served by any person other than the guardian.

C. Notwithstanding subsection B, if the court determines that an emergency exists, an order authorizing a distribution may be entered without the appointment of a guardian ad litem, provided that the court makes such further provisions in its order for the protection of the ward's estate as it may deem proper in each case.

§ 64.2-1802. Parental duty of support; limited authority of commissioner of accounts.

A commissioner of accounts for the jurisdiction where a guardian qualifies may authorize the same distributions under the same circumstances as the circuit court may authorize under subsection A of § 64.2-1801, except that (i) the total distributions authorized in any one year shall not exceed $3,000 and (ii) the commissioner of accounts shall, in his report to the court on the guardian's next accounting, explain the necessity for the distributions so authorized. The provisions of subsection B of § 64.2-1801 shall not apply to proceedings under this section, but the commissioner shall give five days' written notice of the scheduled hearing date to any minor who is 14 years of age or older. The commissioner of accounts shall not charge a fee in excess of $100 for such hearing.

§ 64.2-1803. Termination of guardianship.

Unless the guardian of a minor's estate dies, is removed, or resigns the guardianship, the guardian shall continue in office until the minor attains the age of majority or, in the case of testamentary guardianship, until the termination of the period set forth in the testator's will. At the expiration of the guardianship, the guardian shall deliver and pay all the estate and money in his possession, or with which he is chargeable, to the person entitled to receive such estate and money.

§ 64.2-1804. Powers of courts over guardians.

The circuit courts may hear and determine all matters between guardians and their wards, require settlements of guardianship accounts, remove any guardian for neglect or breach of trust and appoint another guardian for the ward, and make any order for the custody, health, maintenance, education, and support of a ward and the management, disbursement, preservation, and investment of the ward's estate.

§ 64.2-1805. Powers of guardian.

A. Whether appointed by a parent, the circuit court, or the circuit court clerk, a guardian of a ward's estate shall have the powers set forth in § 64.2-105 as of the date the guardian acts. A guardian of a ward's estate shall also have the following powers:

1. To ratify or reject a contract entered into by the ward;

2. To pay any sum distributable for the benefit of the ward by paying the sum directly to the ward, to the provider of goods and services that have been furnished to the ward, to any individual or facility that is responsible for or has assumed responsibility for care and custody of the ward, or to a ward's custodian under a Uniform Transfers to Minors Act, Uniform Gifts to Minors Act, or comparable law of any applicable jurisdiction;

3. To maintain life, health, casualty, and liability insurance for the benefit of the ward;

4. To manage the estate following the termination of the guardianship until its delivery to the ward

or successors in interest;

5. To execute and deliver all instruments, and to take all other actions that will serve the best interests of the ward;

6. To initiate a proceeding to seek a divorce, or to make an augmented estate election under § 64.2-302; and

7. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian deems advisable, including the power to borrow from the guardian, if the guardian is a bank, for any purpose; to mortgage or pledge such portion of the ward's personal estate, and real estate subject to subsection B, as may be required to secure such loan or loans; and, as maker or endorser, to renew existing loans.

B. A guardian may exercise the powers set forth in subsection A without prior authorization, except that the court or the commissioner of accounts, if a guardian is appointed other than by the court, may impose requirements to be satisfied by the guardian prior to the conveyance of any interest in real estate, including (i) increasing the amount of the guardian's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court or commissioner deems proper, and (iv) consulting with the commissioner of accounts.

1. If the court or commissioner of accounts imposes any requirements under this subsection, the guardian shall make a report of his compliance with each requirement, which shall be filed with the commissioner of accounts. Upon receipt of the guardian's report, the commissioner of accounts shall file promptly a report with the court stating whether the requirements imposed have been met and whether the conveyance is otherwise consistent with the guardian's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 64.2-1212, 64.2-1213, and 64.2-1214.

2. If the commissioner of accounts does not impose any requirements under this subsection, he shall, upon request of the guardian of the minor, issue a notarized statement providing that "The Commissioner of Accounts has declined to impose any requirements upon the power of (name of guardian), Guardian of (name of minor), to convey the following real estate of the minor: (property identification)." The conveyance shall not be closed until the guardian has furnished such a statement to the proposed grantee.

C. Any guardian may at any time irrevocably disclaim the right to exercise any of the powers conferred by this section by filing a written disclaimer with the clerk of the circuit court wherein his accounts may be settled. Such disclaimer shall relate back to the time when the guardian assumed the guardianship and shall be binding upon any successor guardian.

§ 64.2-1806. Powers of guardian; transition rule.

The provisions of Chapter 17 (§ 64.2-1700 et seq.) and this chapter are applicable to all guardianships, whenever created, except that a guardian who qualifies prior to July 1, 1999, shall have the power to make conveyances of his ward's estate only in accordance with the laws in effect on June 30, 1999, unless the guardian in office on June 30, 1999, has requalified on or after July 1, 1999.

CHAPTER 19.

VIRGINIA UNIFORM TRANSFERS TO MINORS ACT.

§ 64.2-1900. Definitions.

In this chapter, unless the context otherwise requires:

"Adult" means an individual who attained the age of 18 years.

"Benefit plan" means an employer's plan for the benefit of an employee or partner.

"Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

"Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

"Court" means the circuit court having appropriate jurisdiction.

"Custodial property" means (i) any interest in property transferred to a custodian under this chapter and (ii) the income from and proceeds of that interest in property.

"Custodian" means a person so designated under § 64.2-1908 or a successor or substitute custodian designated under § 64.2-1917.

"Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

"Legal representative" means an individual's personal representative or conservator.

"Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

"Minor" means an individual who has not attained the age of 18 years.

"Person" means an individual, corporation, organization, or other legal entity.

"Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

"Qualified minor's trust" means any trust, including a trust created by a custodian, that meets the requirements of § 2503(c) of the Internal Revenue Code of 1986 and the regulations implementing that section.

"State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"Transfer" means a transaction that creates custodial property under § 64.2-1908.

"Transferor" means a person who makes a transfer under this chapter.

"Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers.

§ 64.2-1901. Scope and jurisdiction.

A. This chapter applies to any transfer that refers to the Uniform Transfers to Minors Act or this chapter in the designation under subsection A of § 64.2-1908 by which the transfer is made if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the Commonwealth or the custodial property is located in the Commonwealth. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from the Commonwealth.

B. A person designated as custodian under this chapter is subject to personal jurisdiction in the Commonwealth with respect to any matter relating to the custodianship.

C. A transfer that purports to be made and that is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in the Commonwealth if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

§ 64.2-1902. Nomination of custodian.

A. A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights that is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

B. A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under subsection A of § 64.2-1908.

C. The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under § 64.2-1908. Unless the nomination of custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to § 64.2-1908.

§ 64.2-1903. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to § 64.2-1908.

§ 64.2-1904. Transfer authorized by will or trust.

A personal representative or trustee may make an irrevocable transfer pursuant to § 64.2-1908 to a custodian for the benefit of a minor as authorized in the governing will or trust. If the testator or settlor has nominated a custodian under § 64.2-1902 to receive the custodial property, the transfer shall be made to that person.

If the testator or settlor has not nominated a custodian under § 64.2-1902 or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection A of § 64.2-1908.

§ 64.2-1905. Other transfer by fiduciary.

A. Subject to subsection C, a personal representative or trustee may make an irrevocable transfer to an adult or trust company as custodian for the benefit of a minor pursuant to § 64.2-1908 in the absence of a will or under a will or trust that does not contain an authorization to do so.

B. Subject to subsection C, a conservator may make an irrevocable transfer to an adult or trust company as custodian for the benefit of the minor pursuant to § 64.2-1908.

C. A transfer under either subsection A or B may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds $10,000 in value or is made by a conservator.

§ 64.2-1906. Transfer by obligor.

A. Subject to subsections B and C, a person not subject to § 64.2-1904 or who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 64.2-1908.

B. If a person having the right to do so under § 64.2-1902 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

C. If no custodian has been nominated under § 64.2-1902, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value, in which event the transfer may be made if authorized by the court.

§ 64.2-1907. Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

§ 64.2-1908. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

A. Custodial property is created and a transfer is made whenever:

1. An uncertificated security or a certificated security in registered form is either:

a. Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act"; or

b. Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection B.

2. Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

3. The ownership of a life or endowment insurance policy or annuity contract is either:

a. Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act"; or

b. Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

4. An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

5. An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

6. A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

a. Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act"; or

b. Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

7. An interest in any property not described in subdivisions 1 through 6 is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection B.

Nothing in this subsection shall be deemed to prohibit the creation or transfer of custodial property from a personal representative, trustee, or conservator to himself as custodian pursuant to §§ 64.2-1904, 64.2-1905, and 64.2-1906.

B. An instrument in the following form satisfies the requirements of subdivisions A 1 b and A 7.

TRANSFER UNDER THE VIRGINIA UNIFORM TRANSFERS TO MINORS ACT

I, ... (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ..... (name of custodian), as custodian for .....

..... (name of minor) under the Virginia Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: .....

.....

(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Virginia Uniform Transfers to Minors Act.

Dated: .....

.....

(Signature of Custodian)

C. A transferor shall place the custodian in control of the custodial property as soon as practicable.

D. A transferor who transfers property to an individual under the age of 21 years pursuant to § 64.2-1903 or 64.2-1904 may expressly provide that the custodian shall deliver, convey, or pay the property to the individual on the individual's attaining the age of 21 by inclusion of the parenthetical "(21)" after the words "Virginia Uniform Transfers to Minors Act" or substantially similar language. In such case, the word "minor" as used in this chapter shall mean an individual who has not attained the age of 21 years.

§ 64.2-1909. Single and joint custodians.

A transfer may be made only for one minor, and up to two persons may be joint custodians. All custodial property held under this chapter by the same custodian or joint custodians for the benefit of the same minor constitutes a single custodianship. Unless otherwise specified in any document creating the custodial property, each joint custodian shall have full power and authority to act alone with respect to the custodial property. If either joint custodian resigns, dies, becomes incapacitated, or is removed, then the remaining joint custodian shall become sole custodian.

§ 64.2-1910. Validity and effect of transfer.

A. The validity of a transfer made in a manner prescribed in this chapter is not affected by:

1. Failure of the transferor to comply with subsection C of § 64.2-1908 concerning possession and control;

2. Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection A of § 64.2-1908; or

3. Death or incapacity of a person nominated under § 64.2-1902 or designated under § 64.2-1908 as custodian or the disclaimer of the office by that person.

B. A transfer made pursuant to § 64.2-1908 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this chapter and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

C. By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

§ 64.2-1911. Care of custodial property; duties of custodian.

A. A custodian shall take control of custodial property, register or record title to custodial property, if appropriate, and collect, hold, manage, invest, and reinvest custodial property.

B. In dealing with custodial property, a custodian shall observe the standard of care set forth in the Uniform Prudent Investor Act (§ 64.2-780 et seq.), except to the extent provided by § 64.2-1502. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

C. A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the beneficiary during the period of custodianship.

D. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for . . . . . (name of minor) under the Virginia Uniform Transfers to Minors Act."

E. A custodian shall keep records of all transactions with respect to custodial property, including the information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

§ 64.2-1912. Powers of custodian.

A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, which shall include but not be limited to those powers set forth in § 64.2-105 as of the date the custodian acts, but a custodian may exercise such rights, powers, and authority in that capacity only. However, this section does not relieve a custodian from liability for breach of a duty imposed under § 64.2-1911.

§ 64.2-1913. Use of custodial property.

A. A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor or (ii) any other income or property of the minor which may be applicable or available for that purpose.

B. At any time a custodian may, without court order, transfer all or part of the custodial property to a qualified minor's trust. Such a transfer terminates the custodianship to the extent of the custodial property transferred.

C. On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

D. A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 64.2-1914. Custodian's expenses, compensation, and bond.

A. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

B. A custodian, other than one who is a transferor under § 64.2-1903, has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

C. Except upon petition as provided in subsection F of § 64.2-1917, a custodian need not give a bond.

§ 64.2-1915. Exemption of third person from liability.

A third person may act in good faith and without court order on the instruction of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining (i) the validity of the purported custodian's designation, (ii) the propriety of, or the authority under this chapter for, any act of the purported custodian, (iii) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian, or (iv) the propriety of the application of any property of the minor delivered to the purported custodian.

§ 64.2-1916. Liability to third persons.

A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in a custodial capacity, whether or not the custodian or the minor is personally liable therefor.

A custodian is not personally liable on a contract properly entered into in the custodial capacity, unless the custodian fails to reveal that capacity and to identify the custodianship in the contract, or for an obligation arising from control of custodial property or for a tort committed during the custodianship, unless the custodian is personally at fault.

A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ 64.2-1917. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

A. A person nominated under § 64.2-1902 or designated under § 64.2-1908 as custodian may decline to serve by delivering written notice to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under § 64.2-1902, the person who made the nomination may nominate a substitute custodian under § 64.2-1902. Otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer. In either case the nomination or designation shall be made from among the persons eligible to serve as custodian for that kind of property under subsection A of § 64.2-1908. The custodian so designated has the rights of a successor custodian.

B. A custodian at any time may designate a trust company or an adult other than a transferor under § 64.2-1903 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, or becomes incapacitated.

C. A custodian may resign at any time by (i) delivering written notice to the minor, if the minor has attained the age of 14 years, and to the successor custodian and (ii) delivering the custodial property to

the successor custodian.

D. If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection B, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

E. A custodian who declines to serve under subsection A or resigns under subsection C, or the legal representative of a deceased or incapacitated custodian shall, as soon as practicable, put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

F. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor, if the minor has attained the age of 14 years, may petition the court to (i) remove the custodian for cause and to designate a successor custodian other than a transferor under § 64.2-1903 or (ii) require the custodian to give appropriate bond.

§ 64.2-1918. Accounting by and determination of liability of custodian.

A. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor, if the minor has attained the age of 14 years, may petition the court (i) for an accounting by the custodian or the custodian's legal representative or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under § 64.2-1916 to which the minor or the minor's legal representative was a party.

B. A successor custodian may petition the court for an accounting by the predecessor custodian.

C. The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

D. If a custodian is removed under subsection F of § 64.2-1917, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

§ 64.2-1919. Termination of custodianship.

The custodian shall transfer the custodial property to the minor or to the minor's estate in an appropriate manner upon the earlier of:

1. The minor's attainment of 18 years of age or if the transfer was made as provided in subsection D of § 64.2-1908, the minor's attainment of 21 years of age; or

2. The minor's death.

§ 64.2-1920. Applicability.

This chapter applies to a transfer within the scope of § 64.2-1901 made after July 1, 1988, if:

1. The transfer purports to have been made under the provisions of the Virginia Uniform Gifts to Minors Act (former §§ 31-26 through 31-36); or

2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

§ 64.2-1921. Effect on existing custodianships.

A. Any transfer of custodial property as now defined in this chapter made before July 1, 1988, is validated notwithstanding that there was no specific authority in the Virginia Uniform Gifts to Minors Act (former §§ 31-26 through 31-36) for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

B. This chapter applies to all transfers made before July 1, 1988, in a manner and form prescribed in the Virginia Uniform Gifts to Minors Act (former §§ 31-26 through 31-36) except insofar as the application impairs constitutionally vested rights.

§ 64.2-1922. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

PART D.
GUARDIANSHIP OF INCAPACITATED PERSONS.
CHAPTER 20.
GUARDIANSHIP AND CONSERVATORSHIP.
Article 1.
Appointment.

§ 64.2-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"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 (i) a local or regional program designated by the 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 established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for the Aging as a public conservator, it may also serve as a conservator for other individuals.

"Consumer" means a current direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services.

"Estate" includes both real and personal property.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department of Behavioral Health and Developmental Services, including the buildings and land associated with it.

"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, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the 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 established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for the Aging as a public guardian, it may also serve as a guardian for other individuals.

"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 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.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Property" includes both real and personal property.

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

§ 64.2-2001. Filing of petition; jurisdiction; instructions to be provided.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Article 2 (§ 64.2-2105 et seq.) of the Uniform Adult Guardianship and Protective Proceedings

Jurisdiction Act provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or conservator for an adult.

C. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person, the petition may be filed no earlier than the respondent's eighteenth birthday.

D. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide such information to each guardian and conservator upon notice of appointment.

E. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

§ 64.2-2002. Who may file petition; contents.

A. Any person may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;

2. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

3. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

4. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal or any guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney or advance directive, if available;

5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

6. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;

7. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;

8. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;

9. The native language of the respondent and any necessary alternative mode of communication;

10. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;

11. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and

12. A request for appointment of a guardian ad litem.

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

C. In the report required by clause (iv) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or conservator after consideration of the person's geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential

placement of the respondent.

D. A health care provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.

§ 64.2-2004. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice of the hearing, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § 64.2-2003. A certification, in the guardian ad litem's report required by subsection B of § 64.2-2003, that the guardian ad litem personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first-class mail by the petitioner at least seven days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. The court, for good cause shown, may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first-class mail a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least 14-point type of the purpose of the proceedings and shall inform the respondent of the right to be represented by counsel pursuant to § 64.2-2006 and to a hearing pursuant to § 64.2-2007. Additionally, the notice shall include the following statement in conspicuous, bold print.

WARNING

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

E. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C, and D.

§ 64.2-2005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown absent any objection by the guardian ad litem, or may order a report and delay the hearing until the report is prepared, filed, and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations, and assessments upon which the report is based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by that person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated in the report and the results of the examination or evaluation referred to in the report, unless counsel for the respondent or the guardian ad litem objects.

§ 64.2-2006. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. Counsel

appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § 64.2-2005.

§ 64.2-2007. Hearing on petition to appoint.

A. The respondent is entitled to a jury trial upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

B. The court or the jury, if a jury is requested, shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

C. In determining the need for a guardian or a conservator and the powers and duties of any guardian or conservator, if needed, consideration shall be given to the following factors: (i) the limitations of the respondent; (ii) the development of the respondent's maximum self-reliance and independence; (iii) the availability of less restrictive alternatives, including advance directives and durable powers of attorney; (iv) the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; (v) the actions needed to be taken by the guardian or conservator; and (vi) the suitability of the proposed guardian or conservator.

D. If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person, who may be the spouse of the respondent, to be the guardian or the conservator or both, giving due deference to the wishes of the respondent.

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

§ 64.2-2008. Fees and costs.

A. The petitioner shall pay the filing fee set forth in subdivision A 43 of § 17.1-275 and costs. Service fees and court costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed, the court shall order that the petitioner be reimbursed from the estate for all costs and fees if the estate of the incapacitated person is available and sufficient to reimburse the petitioner. If a guardian or conservator is not appointed and the court nonetheless finds that the petition is brought in good faith and for the benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to reimburse the petitioner for all costs and fees.

B. In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth.

§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 64.2-2007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.

B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs. The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes that are specified in the order.

C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive

setting suitable for the person's condition.

D. A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

§ 64.2-2010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 64.2-2015. The court shall use the guidelines for determining indigency set forth in § 19.2-159 in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

§ 64.2-2011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

A. A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;

2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and

3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

B. Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § 64.2-2014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order to the local department of social services in the jurisdiction where the respondent then resides.

C. A conservator shall have all powers granted pursuant to § 64.2-2021 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to the limitations that are prescribed in the order. The powers granted to a guardian shall only be those powers enumerated in the court order.

D. Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification may presume that the guardian or conservator is properly authorized to act as to any matter or transaction, except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

§ 64.2-2012. Petition for restoration, modification, or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or upon motion of the court, the court may (i) declare the incapacitated person restored to capacity; (ii) modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; (iii) terminate the guardianship or conservatorship; (iv) order removal of the guardian or conservator as provided in § 64.2-1410; or (v) order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 64.2-2004. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court, and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 64.2-2004, and any other person or entity as the court may require,

the court shall hold a hearing.

C. An order appointing a guardian or conservator may be revoked, modified, or terminated upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;

2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need of the incapacitated person;

3. The incapacitated person's understanding or capacity to manage his estate and financial affairs or to provide for his health, care, or safety has so changed as to warrant such action; or

4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. The court shall declare the person restored to capacity and discharge the guardian or conservator if, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has substantially regained his ability to (i) care for his person in the case of a guardianship or (ii) manage and handle his estate in the case of a conservatorship.

In the case of a petition for modification of a guardianship or conservatorship, the court shall order (a) limiting or reducing the powers of the guardian or conservator if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to do so, or (b) increasing or expanding the powers of the guardian or conservator if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to do so.

The court may order a new bond or other appropriate relief upon finding by a preponderance of the evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or of the estate.

E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship.

A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if ordered by the court, following a hearing on the petition of any interested person.

F. The court may allow reasonable compensation from the estate of the incapacitated person to any guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed shall be taxed as costs of the proceeding.

§ 64.2-2013. Standby guardianship or conservatorship for incapacitated persons.

A. For purposes of this section, the term "person" includes a child or a parent sharing a biological relationship with one another or having a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding that establishes parentage or orders legal guardianship. The term includes persons 18 years of age and over.

B. On petition of one or both parents, one or more children, or the legal guardian of an incapacitated person made to the circuit court for the jurisdiction where the parent, parents, child, children, or legal guardian resides, the court may appoint a standby guardian or a standby conservator, or both, of the incapacitated person. The appointment of the standby fiduciary shall be affirmed biennially by the parent, parents, child, children, or legal guardian of the person and by the standby fiduciary prior to his assuming his position as fiduciary by filing with the court an affidavit that states that the standby fiduciary remains available and capable to fulfill his duties.

C. The standby fiduciary shall be authorized without further proceedings to assume the duties of his office immediately upon the death or adjudication of incapacity of the last surviving of the parents or children of the incapacitated person or of his legal guardian, subject to confirmation of his appointment by the circuit court within 60 days following assumption of his duties. If the incapacitated person is 18 years of age or older, the court, before confirming the appointment of the standby fiduciary, shall conduct a hearing pursuant to this article. The requirements of the court and the powers, duties, and liabilities that pertain to guardians and conservators govern the confirmation of the standby fiduciary and shall apply to the standby fiduciary upon the assumption of his duties.

§ 64.2-2014. Clerk to index findings of incapacity or restoration; notice of findings.

A. A copy of the court's findings that a person is incapacitated or has been restored to capacity, or a copy of any order appointing a conservator or guardian pursuant to § 64.2-2115, shall be filed by the judge with the clerk of the circuit court. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner of Behavioral Health and Developmental Services in accordance with § 64.2-2028, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 64.2-2021, 64.2-2022, 64.2-2023, and 64.2-2026, and the Secretary of the State Board of Elections with the information required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction

where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article, any order appointing a conservator or guardian pursuant to § 64.2-2115, and any order of restoration of capacity under § 64.2-2012. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

§ 64.2-2015. When no guardian or conservator appointed within one month of adjudication.

A. If a person is adjudicated incapacitated and in need of a guardian or conservator and the court has not identified any person to serve as guardian or conservator within one month from the adjudication, the court may appoint a local or regional program of the Virginia Public Guardian and Conservator Program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2. If there is no such local or regional program within the court's jurisdiction, the court may appoint any local or regional program within 60 miles of the residence of the incapacitated person as identified by the Department for the Aging. However, the court shall not appoint any such local or regional program that has reached or exceeded its ideal ratio of clients to staff pursuant to regulations adopted by the Department for the Aging under § 2.2-712.

B. If any person appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person, may appoint some other person as fiduciary, taking from the fiduciary the bond required, or shall commit the estate of the respondent to the sheriff of the county or city where the respondent is an inhabitant; and the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

§ 64.2-2016. Trustees for incapacitated veterans and their beneficiaries.

A. Whenever any veteran of the armed forces of the United States or the beneficiary of any veteran is found to be incapacitated by the medical authorities of the U.S. Department of Veterans Affairs, on motion of the U.S. Department of Veterans Affairs or any interested person, and after reasonable notice to the veteran or beneficiary, the circuit court of the county or the city in which the veteran or beneficiary resides, in lieu of appointing a conservator or finding him to be incapacitated, shall appoint a trustee for the veteran or the beneficiary of the veteran where it appears to the court that a trustee is needed for the purpose of receiving and administering pension, compensation, insurance, or other benefits that might be paid by the United States government. Any motion shall be accompanied by a certificate of the Secretary of Veterans Affairs or his duly authorized representative certifying that the veteran or beneficiary has been rated incapacitated by the U.S. Department of Veterans Affairs and that the appointment of a trustee is a condition precedent to the payment of any moneys due the veteran or the beneficiary.

B. Upon his qualification, the trustee, in addition to administering the funds payable through the U.S. Department of Veterans Affairs, shall administer the entire estate of the veteran or the beneficiary regardless of the source from which it is derived and, in such administration, shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a conservator pursuant to this chapter. The trustee, in addition to the duties and obligations imposed upon him under his trust by the federal government, shall be subject to the state laws that are applicable to the appointment and administration of conservators for incapacitated persons.

C. The court that appointed the trustee for a veteran or beneficiary pursuant to this section may subsequently find that the veteran or beneficiary has been restored to capacity.

§ 64.2-2017. Payments from U.S. Department of Veterans Affairs.

Monthly payments of pension, compensation, insurance, or other benefits from the U.S. Department of Veterans Affairs made to a trustee or other fiduciary shall be considered as income and not principal, but the accumulation of such monthly payments received by a trustee or other fiduciary and in his possession at the end of the accounting year may be carried over as principal and converted into the corpus of the estate when the accumulation amounts to $200 or more.

§ 64.2-2018. Taking of bond by clerk of court.

Whenever this title provides for the appointment of a fiduciary by a circuit court, the clerk of the court also shall have the authority to take the required bond, set the penalty thereof, and pass upon the sufficiency of the surety thereon.

Article 2.

Powers, Duties, and Liabilities.

§ 64.2-2019. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance

directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.

§ 64.2-2020. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305 with the local department of social services for the jurisdiction in which he was appointed. It shall be the duty of that local department to forward the report to the local department of the jurisdiction where the incapacitated person then resides. The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of $5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

B. The report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;

2. A description of the person's living arrangements during the reported period;

3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;

4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;

5. A statement of whether the guardian agrees with the current treatment or habilitation plan;

6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and

7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify that the information contained in the report is true and correct to the best of his knowledge.

§ 64.2-2021. General duties and liabilities of conservator.

A. At all times the conservator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the incapacitated person. To the extent known to him, a conservator shall consider the expressed desires and personal values of the incapacitated person.

B. Subject to any conditions or limitations set forth in the conservatorship order, the conservator shall take care of and preserve the estate of the incapacitated person and manage it to the best advantage. The conservator shall apply the income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of reasonable compensation to himself and to any guardian appointed, and to the maintenance of the person and of his legal dependents, if any, and, to the extent that the income is not sufficient, he shall so apply the corpus of the estate.

C. A conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs. A conservator also shall consider the size of the estate, the probable duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator to be available, and the recommendations of the guardian.

D. A conservator stands in a fiduciary relationship to the incapacitated person for whom he was appointed conservator and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate, unless he reveals the representative

capacity and identifies the estate in the contract. Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor. A successor conservator is not personally liable for the contracts or actions of a predecessor.

E. A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Part A (§ 64.2-1200 et seq.) of this subtitle, specifically including the duty to account set forth in § 64.2-1305.

§ 64.2-2022. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the powers set forth in § 64.2-105 as of the date the conservator acts as well as the following powers, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;

2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;

3. To maintain life, health, casualty, and liability insurance for the benefit of the incapacitated person or his legal dependents;

4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person or successors in interest;

5. To execute and deliver all instruments and to take all other actions that will serve in the best interests of the incapacitated person;

6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) or (ii) to make an augmented estate election under § 64.2-302; and

7. To borrow money for periods of time and upon terms and conditions for rates, maturities, renewals, and security that to the conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge the portion of the incapacitated person's estate that may be required to secure the loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court deems proper, (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian, and (v) requiring the use of a common source information company, as defined in § 54.1-2130, when listing the property. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the conservator's report, the commissioner of accounts shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 64.2-1212, 64.2-1213, and 64.2-1214.

§ 64.2-2023. Estate planning.

A. In the order appointing a conservator entered pursuant to § 64.2-2009 or in a separate proceeding brought on petition, the court may authorize a conservator to (i) make gifts from income and principal of the incapacitated person's estate not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind or (ii) disclaim property as provided in Chapter 26 (§ 64.2-2600 et seq.). A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person if he were dead as of the date of the filing of the petition or beneficiaries under any known will of the incapacitated person. The court may authorize the hearing to proceed without notice to any heir, distributee, or beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients, and proportions of any gifts of the estate and the advisability of any disclaimer after considering (a) the size and composition of the estate; (b) the nature and probable duration of the incapacity; (c) the effect of the gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care, and maintenance needs; (d) the incapacitated person's estate plan; (e) prior patterns of assistance or gifts to the proposed donees; (f) the tax effect of the proposed gifts or disclaimers; (g) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (h) other factors that the

court may deem relevant.

B. If the gifts by the conservator under subsection A do not exceed $100 to each donee in a calendar year and do not exceed a total of $500 in a calendar year, the conservator may make such gifts without a hearing under subsection A, the appointment of a guardian ad litem, or giving notification to the incapacitated person or any heir, distributee, or beneficiary. Prior to the making of such a gift, the conservator shall consider clauses (a) through (h) set forth in subsection A and shall also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where the transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325. The conservator also may contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract, described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

D. A conservator may exercise the incapacitated person's power to revoke or amend a trust or to withdraw or demand distribution of trust assets only with the approval of the court for good cause shown, unless the trust instrument expressly provides otherwise.

§ 64.2-2024. Fiduciary to take possession of incapacitated person's estate; suits relative to estate; retaining estate for fiduciary's own debt.

Subject to any conditions or limitations set forth in the order appointing him, the fiduciary shall take possession of the incapacitated person's estate and may sue and be sued in respect to all claims or demands of every nature in favor of or against the incapacitated person and the incapacitated person's estate. The fiduciary shall have the same right of retaining for his own debt as an administrator would have.

§ 64.2-2025. Fiduciary to prosecute and defend actions involving incapacitated person.

Subject to any conditions or limitations set forth in the order appointing the fiduciary, the fiduciary shall prosecute or defend all actions or suits to which the incapacitated person is a party at the time of qualification of the fiduciary and all such actions or suits subsequently instituted after 10 days' notice of the pendency of the action or suit. Such notice shall be given by the clerk of the court in which the action or suit is pending.

§ 64.2-2026. Surrender of incapacitated person's estate.

A. If the incapacitated person is restored to capacity, the fiduciary shall surrender the incapacitated person's estate or that portion for which he is accountable to the incapacitated person.

B. If the incapacitated person dies prior to being restored to capacity, the fiduciary shall surrender the real estate to the incapacitated person's heirs or devisees and the personal estate to his executors or administrators. If, at the time of the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is $15,000 or less, (ii) a personal representative has not qualified within 60 days of the incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse or, if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the fiduciary's final accounting submitted to the commissioner of accounts.

§ 64.2-2027. Use of estate of incapacitated person in a state facility not limited by provisions relating to expenses.

Nothing in Article 2 (§ 37.2-715 et seq.) of Chapter 7 of Title 37.2 shall be construed to relieve the fiduciary of any consumer in a state facility from paying to the state facility a sum for extra comforts or to make it unlawful for the fiduciary to make voluntary gifts that the fiduciary may deem conducive to the happiness and comfort of the consumer.

§ 64.2-2028. Department of Behavioral Health and Developmental Services to be notified in certain cases.

In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any state facility, the Department of Behavioral Health and Developmental Services shall receive notice of the suit or action, and the clerk of any court in which the suit or action is pending shall notify the Commissioner of Behavioral Health and Developmental Services of that fact.

§ 64.2-2029. Application to guardians and conservators appointed pursuant to § 64.2-2115.

Except as otherwise provided in an order entered pursuant to § 64.2-2115, a guardian or conservator appointed pursuant to § 64.2-2115 shall be subject to the provisions of §§ 64.2-2011 and 64.2-2012 and this article.

CHAPTER 21.
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.
Article 1.
General Provisions.

§ 64.2-2100. Definitions.

In this chapter:

"Adult" means an individual who has attained 18 years of age.

"Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Chapter 20 (§ 64.2-2000 et seq.).

"Conservatorship order" means an order appointing a conservator.

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a guardianship or conservatorship order or an entity authorized under the law of another state to establish, enforce, or modify a guardianship or conservatorship order.

"Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter 20 (§ 64.2-2000 et seq.).

"Guardianship order" means an order appointing a guardian.

"Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

"Incapacitated person" means an adult for whom a guardian has been appointed.

"Individually identifiable health information" means health information, including demographic information, collected from an individual that (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse and (ii) identifies the individual, or there is a reasonable basis to believe that the information can be used to identify the individual, and relates to (a) the past, present, or future physical or mental health or condition of the individual, (b) the provision of health care to the individual, or (c) the past, present, or future payment for the provision of health care to the individual.

"Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

"Person," except in the term "incapacitated person" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Protected health information" means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form.

"Protected person" means an adult for whom a conservatorship order has been issued.

"Protective proceeding" means a judicial proceeding in which a conservatorship order is sought or has been issued.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Respondent" means an adult for whom a conservatorship order or the appointment of a guardian is sought.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

§ 64.2-2101. International application of chapter.

A court of the Commonwealth may treat a foreign country as if it were a state for the purpose of applying this article and Articles 2 (§ 64.2-2105 et seq.), 3 (§ 64.2-2114 et seq.), and 5 (§ 64.2-2119 et seq.).

§ 64.2-2102. Communication between courts.

A. A court of the Commonwealth may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection B, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

B. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

§ 64.2-2103. Cooperation between courts.

A. In a guardianship or protective proceeding in the Commonwealth, a court in the Commonwealth may request the appropriate court of another state to do any of the following:

1. Hold an evidentiary hearing;

2. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

3. Order that an evaluation or assessment be made of the respondent;

4. Order any appropriate investigation of a person involved in a proceeding;

5. Forward to the court of the Commonwealth a certified copy of the transcript or other record of a hearing under subdivision 1 or any other proceeding, any evidence otherwise produced under subdivision 2, and any evaluation or assessment prepared in compliance with an order under subdivision 3 or 4;

6. Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for either court to make a determination, including the respondent or the incapacitated or protected person; and

7. Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information.

B. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection A, a court of the Commonwealth has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ 64.2-2104. Taking testimony in another state.

A. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in the Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

B. In a guardianship or protective proceeding, a court in the Commonwealth may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court in the Commonwealth shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of the Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Article 2.
Jurisdiction.

§ 64.2-2105. Definitions; significant connection factors.

A. In this article:

"Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

"Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a conservatorship order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

"Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

B. In determining under § 64.2-2107 and subsection E of § 64.2-2114 whether a respondent has a significant connection with a particular state, the court shall consider:

1. The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

2. The length of time the respondent at any time was physically present in the state and the duration of any absence;

3. The location of the respondent's property; and

4. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

§ 64.2-2106. Exclusive basis.

This article provides the exclusive jurisdictional basis for a court of the Commonwealth to appoint a guardian or issue a conservatorship order for an adult.

§ 64.2-2107. Jurisdiction.

A court of the Commonwealth has jurisdiction to appoint a guardian or issue a conservatorship order for a respondent if:

1. The Commonwealth is the respondent's home state;

2. On the date the petition is filed, the Commonwealth is a significant-connection state and:

a. The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the Commonwealth is a more appropriate forum; or

b. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(1) A petition for an appointment or order is not filed in the respondent's home state;

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(3) The court in the Commonwealth concludes that it is an appropriate forum under the factors set forth in § 64.2-2110;

3. The Commonwealth does not have jurisdiction under either subdivision 1 or 2, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because the Commonwealth is the more appropriate forum, and jurisdiction in the Commonwealth is consistent with the Constitutions of Virginia and the United States; or

4. The requirements for special jurisdiction under § 64.2-2108 are met.

§ 64.2-2108. Special jurisdiction.

A. A court of the Commonwealth lacking jurisdiction under the provisions of § 64.2-2107 has special jurisdiction to do any of the following:

1. Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth;

2. Issue a conservatorship order with respect to real or tangible personal property located in the Commonwealth; or

3. Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to § 64.2-2114.

B. If a petition for the appointment of a guardian in an emergency is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

§ 64.2-2109. Exclusive and continuing jurisdiction.

Except as otherwise provided in § 64.2-2108, a court that has appointed a guardian or issued a conservatorship order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§ 64.2-2110. Appropriate forum.

A. A court of the Commonwealth having jurisdiction under § 64.2-2107 to appoint a guardian or issue a conservatorship order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

B. If a court of the Commonwealth declines to exercise its jurisdiction under subsection A, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a conservatorship order be filed promptly in another state.

C. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

1. Any expressed preference of the respondent;

2. Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

3. The length of time the respondent was physically present in or was a legal resident of the Commonwealth or another state;

4. The distance of the respondent from the court in each state;

5. The financial circumstances of the respondent's estate;

6. The nature and location of the evidence;

7. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

8. The familiarity of the court of each state with the facts and issues in the proceeding; and

9. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§ 64.2-2111. Jurisdiction declined by reason of conduct.

A. If at any time a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a conservatorship order because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court may:

1. Decline to exercise jurisdiction;

2. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a conservatorship order is filed in a court of another state having jurisdiction; or

3. Continue to exercise jurisdiction after considering:

a. The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

b. Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection C of § 64.2-2110; and

c. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of § 64.2-2107.

B. If a court of the Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a conservatorship order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against the Commonwealth or a governmental subdivision, agency, or instrumentality of the Commonwealth unless authorized by law other than this chapter.

§ 64.2-2112. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a conservatorship order is brought in the Commonwealth and the Commonwealth was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of the Commonwealth, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in the Commonwealth.

§ 64.2-2113. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a conservatorship order limited to property located in the Commonwealth under subdivision A 1 or A 2 of § 64.2-2108, if a petition for the appointment of a guardian or issuance of a conservatorship order is filed in the Commonwealth and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

1. If the court in the Commonwealth has jurisdiction under § 64.2-2107, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to § 64.2-2107 before the appointment or issuance of the order.

2. If the court in the Commonwealth does not have jurisdiction under § 64.2-2107, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in the Commonwealth shall dismiss the petition unless the court in the other state determines that the court in the Commonwealth is a more appropriate forum.

Article 3.

Transfer of Guardianship or Conservatorship.

§ 64.2-2114. Transfer of guardianship or conservatorship to another state.

A. A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

B. Notice of a petition under subsection A shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.

C. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection A.

D. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

1. The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

2. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

3. Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

E. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

1. The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in subsection B of § 64.2-2105;

2. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

3. Adequate arrangements will be made for management of the protected person's property.

F. The court shall issue a final order confirming the transfer and terminating the guardianship or

conservatorship upon its receipt of:

1. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to § 64.2-2115; and

2. The documents required to terminate a guardianship or conservatorship in the Commonwealth.

§ 64.2-2115. Accepting guardianship or conservatorship transferred from another state.

A. To confirm transfer of a guardianship or conservatorship transferred to the Commonwealth under provisions similar to § 64.2-2114, the guardian or conservator shall petition the court in the Commonwealth to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

B. Notice of a petition under subsection A shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a conservatorship order in both the transferring state and the Commonwealth. The notice shall be given in the same manner as notice is required to be given in the Commonwealth.

C. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection A.

D. The court shall issue an order provisionally granting a petition filed under subsection A unless:

1. An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

2. The guardian or conservator is ineligible for appointment in the Commonwealth.

E. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the Commonwealth upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to § 64.2-2114 transferring the proceeding to the Commonwealth.

The final order accepting transfer of a guardianship or conservatorship shall contain a determination of whether the guardianship or conservatorship needs to be modified to conform to the laws of the Commonwealth.

F. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

G. The denial by a court of the Commonwealth of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in the Commonwealth under Chapter 20 (§ 64.2-2000 et seq.) if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Article 4.

Registration and Recognition of Orders from Other States.

§ 64.2-2116. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Commonwealth, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the Commonwealth by filing as a foreign judgment in a court, in any appropriate county or city of the Commonwealth, certified copies of the order and letters of office.

§ 64.2-2117. Registration of conservatorship orders.

If a conservator has been appointed in another state and a petition for a conservatorship order is not pending in the Commonwealth, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the conservatorship order in the Commonwealth by filing as a foreign judgment in a court of the Commonwealth, in any county or city in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

§ 64.2-2118. Effect of registration.

A. Upon registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in the Commonwealth all powers authorized in the order of appointment except as prohibited under the laws of the Commonwealth, including maintaining actions and proceedings in the Commonwealth and, if the guardian or conservator is not a resident of the Commonwealth, subject to any conditions imposed upon nonresident parties.

B. A court of the Commonwealth may grant any relief available under this chapter and other laws of the Commonwealth to enforce a registered order.

Article 5.

Miscellaneous Provisions.

§ 64.2-2119. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 64.2-2120. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

SUBTITLE V.
PROVISIONS APPLICABLE TO PROBATE AND NONPROBATE TRANSFERS.
CHAPTER 22.
UNIFORM SIMULTANEOUS DEATH ACT.

§ 64.2-2200. Definitions.

As used in this chapter:

"Co-owners with right of survivorship" includes parties to a joint account, joint tenants, tenants by the entireties, and other co-owners of property held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

"Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or a donative, appointive, or nominative instrument of any other type.

"Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

§ 64.2-2201. Requirement of survival by 120 hours for statutory rights.

Except as provided in § 64.2-2205, if the (i) title to property, (ii) devolution of property, or (iii) right to elect an interest in property, an augmented estate share or exempt property, or homestead or family allowance depends upon an individual surviving another, an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other. However, this section does not apply if its application would result in a taking of an intestate estate by the Commonwealth.

§ 64.2-2202. Requirement of survival by 120 hours under donative dispositions in governing instruments.

Except as provided in § 64.2-2205 for purposes of a donative provision of a governing instrument, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

§ 64.2-2203. Co-owners with right of survivorship; requirement of survival by 120 hours.

Except as provided in § 64.2-2205, if (i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours and (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

§ 64.2-2204. Evidence of death or status.

In addition to otherwise applicable rules of evidence, the following rules relating to a determination of death and status shall apply:

1. Death occurs when an individual is determined to be dead in accordance with the provisions of § 54.1-2972 or Chapter 23 (§ 64.2-2300 et seq.).

2. A certified or authenticated copy of a death certificate purporting to be issued by a governmental official or agency, domestic or foreign, of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

3. A certified or authenticated copy of any record or report purporting to be issued by a governmental official or agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status of the individual and of the dates, times, identities, circumstances, and places disclosed by the record or report.

4. In the absence of prima facie evidence of death under subdivision 2 or 3, the facts of death may be established by clear and convincing evidence, including circumstantial evidence.

5. In the absence of evidence disputing the time of death stated on a document described in subdivision 2 or 3, such a document that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

§ 64.2-2205. Exceptions.

Survival by 120 hours is not required if:

1. The governing instrument contains language dealing explicitly with (i) simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case, (ii) deaths under circumstances where the order of death cannot be established by proof, or (iii) the marital deduction, or the governing instrument contains a provision to or for the benefit of the decedent's spouse where it is the decedent's intent, as manifested from the governing instrument or external evidence, that the

decedent's estate receive the benefit of the federal estate tax marital deduction;

2. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event, including the death of another individual, for a specified period; but survival of the event, another individual, or the specified period shall be established by clear and convincing evidence;

3. The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under the Uniform Statutory Rule Against Perpetuities (§§ 55-12.1 through 55-12.6); but survival shall be established by clear and convincing evidence; or

4. The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival shall be established by clear and convincing evidence.

§ 64.2-2206. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

A. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

Written notice of a claimed lack of entitlement shall be mailed to the main office or home of the payor or other third party, or to the registered agent of either, by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as process in a civil action. Upon receipt of the written notice of a claimed lack of entitlement, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates as provided in § 64.2-443 or 64.2-502. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

B. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit, nor liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter, is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled, is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted.

§ 64.2-2207. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ 64.2-2208. Effective date.

An act done before July 1, 1994, in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before July 1, 1994, the provisions remain in force with respect to that right.

Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before July 1, 1994, unless there is a clear indication of a contrary intent.

CHAPTER 23.
PERSONS PRESUMED DEAD.

§ 64.2-2300. Presumption of death from absence or disappearance; when applicable.

A. 1. Any person who is a resident of the Commonwealth shall be presumed to be dead if such person:

a. Leaves and does not return to the Commonwealth for seven successive years and is not heard

from;

b. Disappears for seven successive years and is not heard from; or

c. Disappears in a foreign country, his body has not been found, and he is not known to be alive, and a report of presumptive death by the Department of State of the United States has been issued.

2. Any person who is not a resident of the Commonwealth, but who owns real or personal property located within the Commonwealth, shall be presumed to be dead if such person disappears for seven successive years from the place of his residence outside of the Commonwealth and is not heard from.

3. The presumption created by this subsection shall be applicable in any action where the person's death is in question, unless proof is offered that the person was alive within the time specified or, in the case of a presumed death in a foreign country, at any time following the person's disappearance, whether before or after the report of presumptive death was issued.

B. The fact that any person was exposed to a specific peril of death may be a sufficient basis for determining at any time after the exposure that the person is presumed to have died less than seven years after the person was last heard from.

C. Any person on board any ship or vessel underway on the high seas who disappears from such ship or vessel, or any person on board an aircraft that disappears at sea, who is not known to be alive and whose body has not been found or identified prior to a hearing of a board of inquiry as to such disappearance, shall be presumed to be dead upon the findings of a board of inquiry that the person is presumed dead, or six months after the date of such disappearance, whichever occurs first.

D. Before any final order or decree is entered in a cause under subsection A, B, or C in favor of the alleged heirs, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of the presumed decedent, or persons claiming by, through, or under them, or any of them, proceedings shall be held in conformity with §§ 64.2-2303 through 64.2-2306.

E. The heirs at law, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of the person presumed dead under subsection A, B, or C may be made parties defendant to proceedings in respect to real or personal property in which the presumed decedent may have an undivided interest by order of publication or other process as provided by law. The proceedings shall not be stayed in respect to the division, sale, or other disposition of the entire property. The provisions of subsection D shall be applicable only to the portion of the property set apart or to the share of the proceeds to which such person would be entitled.

§ 64.2-2301. Distribution of fund when presumption of death not applicable.

A. In any civil action wherein any estate or fund is to be distributed, if the interest of any person to the estate or fund depends upon his having been alive at a particular time and it is not known and cannot be shown by the exercise of reasonable diligence whether such person was alive at that time, and if the legal presumption of death does not apply, the court may enter an order distributing the estate or fund to those who would be otherwise entitled thereto if it were shown that such person was dead at such particular time.

B. Before any distribution is made pursuant to subsection A, the court shall require that, until the person is determined to be dead in accordance with § 64.2-2300, the heir at law, devisee, next of kin, legatee, beneficiary, survivor, or other successor in interest shall give a refunding bond with surety in such form as the court directs upon condition to account for the estate or fund to any person who may establish title thereto adverse to that of such heir at law, devisee, next of kin, legatee, beneficiary, survivor, or other successor in interest.

C. No motion shall be made hereunder except after reasonable notice to all parties upon whom service may be had. Nothing in this section shall be construed to affect in any way any requirement of law as to service of process.

§ 64.2-2302. Appointment of curator when presumption of death not applicable.

A circuit court, upon good cause shown, may appoint in accordance with the provisions of § 64.2-451 a curator for the estate of a resident of the Commonwealth in a case where the legal presumption of death is not applicable if (i) at least one year has expired since the date that the resident was last heard from and (ii) it is not known and cannot with reasonable diligence be shown whether such person is alive. In determining whether good cause exists, the court shall consider the existence and efficacy of any durable power of attorney.

§ 64.2-2303. Persons presumed dead; authority of clerk.

A clerk of the circuit court has no authority to (i) admit to probate a will of a person presumed to be dead, (ii) grant administration upon the estate of a person presumed to be dead, or (iii) appoint a curator pursuant to § 64.2-2302.

§ 64.2-2304. Petition seeking determination of death; hearing; evidence; notice.

A. Whenever a petition is filed seeking a judicial determination that a person is dead, the court that would have jurisdiction over the person's probate estate if such person were dead shall hear evidence concerning the alleged absence of the presumed decedent and the circumstances and duration of such absence. The court shall require that notice of the filing of the petition be published once a week for four successive weeks in a newspaper published in the county or city where the petition is filed, and the notice shall include the date of the hearing, which shall be at least two weeks after the last publication.

B. At the hearing, the court shall hear all admissible evidence offered for the purpose of determining whether or not the presumption of death is applicable. If the court determines that the legal presumption of death is applicable, the court shall enter an order in accordance with § 64.2-2305, provided, however, that if the evidence shows that the length of a presumed decedent's absence is less than 10 years, the court shall immediately require notice of the order to be published once a week for two successive weeks in a newspaper published in the county or city where the petition is filed and, when practicable, in a newspaper published at or near the place where the presumed decedent had his residence when last heard from. The notice shall require the presumed decedent, if alive, or any person for him, produce to the court satisfactory evidence that the presumed decedent is alive within two weeks from the date of the last publication. If no satisfactory evidence is produced within this period, the court shall enter an order in accordance with § 64.2-2305.

C. For the purposes of subsections A and B, if there is no newspaper published in the county or city in which the publication required may be had, then the court shall order that the required notice be published in a newspaper having general circulation in such county or city. The cost of the publication pursuant to this section shall be paid by the petitioner.

§ 64.2-2305. Entry of order that presumption of death is applicable; effect.

A. If, after the hearing conducted pursuant to § 64.2-2304 and any subsequent publication required pursuant to that section, the court determines that the presumption of death is applicable, the court shall enter an order determining that the presumed decedent is in fact dead. Upon entry of such order, the court shall proceed to admit any will to probate, issue letters of administration to the party entitled thereto, or order that the claim of the heirs at law, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest of the presumed decedent be established. If the order is subsequently revoked pursuant to § 64.2-2307, all acts done in pursuance of or in reliance on the order shall be as valid as if the presumed decedent were actually dead.

B. The court's order determining a person to be dead shall state the person's date of death to be:

1. The date of the expiration of the seven-year period in a proceeding governed by subsection A of § 64.2-2300, except that in a proceeding governed by subdivision A 1 c of § 64.2-2300 it shall be the date of the Department of State's issuance of a report of presumptive death unless the evidence shows the likelihood of death at an earlier date;

2. The date of the person's exposure to the specific peril of death in a proceeding governed by subsection B of § 64.2-2300; or

3. The date of the person's disappearance in a proceeding governed by subsection C of § 64.2-2300.

C. A certified copy of the court's order determining that the presumed decedent is in fact dead shall be accepted as proof of death in all situations in which a certificate of death issued by the State Registrar of Vital Records of the Virginia Department of Health would have been accepted as such proof.

§ 64.2-2306. Distribution of property; refunding bond.

Before any distribution of the proceeds of the estate of a person determined to be dead pursuant to this chapter or the payment or transfer of any of his other property is made, and before the sale of any real or personal property passing in kind by persons claiming such property as heirs at law, devisees, next of kin, legatees, beneficiaries, survivors, or other successors in interest, the persons entitled to receive such proceeds or property in kind shall give a refunding bond without surety upon condition that if the person determined to be dead is in fact alive at that time, they will respectively refund to such person the proceeds or property, or proceeds of such property, received by each on demand, without interest thereon.

§ 64.2-2307. Revocation of determination of death; effect on previous acts; title of purchasers.

The court, after reasonable notice to the parties interested, may revoke a determination of death at any time based on satisfactory evidence that the presumed decedent is in fact alive. If a determination of death is revoked, all powers of any personal representative shall terminate, however, if the personal representative has complied with the provisions of § 64.2-2306, all receipts and disbursements of assets and other acts previously done by the personal representative and the title of bona fide purchasers of property under sales made by the personal representative or by any heir at law, devisee, next of kin, legatee, survivor, beneficiary, or other successor in interest shall remain as valid as if no revocation had been made. Any personal representative shall settle his account and all assets remaining in his possession or in the possession of such heir at law, devisee, next of kin, legatee, survivor, beneficiary, or other successor in interest, and the proceeds of such assets, shall be transferred to the person who had been determined to be dead or to his duly authorized agent or attorney. Nothing in this section shall validate the title of any person to any money or property received as an heir at law, devisee, next of kin, legatee, survivor, beneficiary, or other successor in interest of such presumed decedent, and such money or property may be recovered from them as if the order determining death had not been granted.

§ 64.2-2308. Substitution of presumed decedent in pending actions; reopening of judgments; effect of judgments.

A. After revocation of the order determining death, the person who had been determined to be dead may:

1. Be substituted as plaintiff in all actions previously brought by his personal representative, whether prosecuted to judgment or otherwise, on suggestion filed by such person; and

2. Be substituted as defendant in all actions previously brought against his personal representative, on suggestion filed by such person or the plaintiff to the action. If such person is substituted as defendant, he shall not be compelled to go to trial in less than three months from the time that such suggestion is filed.

B. Upon application by the presumed decedent, judgments recovered against the personal representative before revocation of the order determining death may be opened. Such application by the presumed decedent shall be made within three months from the date of the revocation and shall be supported by an affidavit that specifically denies the cause of the action, in whole or in part, or specifically alleges the existence of facts that would constitute a valid defense. However, if no application is made during the three-month period, or, if an application is made but the facts exhibited are adjudged to be insufficient to constitute a defense, the judgment shall be conclusive for all intents. After the substitution of the presumed decedent as defendant to any judgment pursuant to subdivision A 2, the judgment shall become a lien upon his real estate and shall so continue as other judgments.

§ 64.2-2309. Costs.

The costs attendant to the issuing of an order determining death or the revocation of such order shall be paid out of the estate of the presumed decedent. If the petition for the issuance or revocation of an order determining death is not granted, the costs shall be paid by the petitioner.

CHAPTER 24.

CONSERVATORS OF PROPERTY OF ABSENTEES.

§ 64.2-2400. Appointment of conservator; jurisdiction and procedure.

A. For purposes of this chapter:

"Absentee" means a person who is a resident of the Commonwealth or a nonresident of the Commonwealth who has an interest in any property located within the Commonwealth who (i) disappears or absents himself from his usual place of residence, (ii) is reported or listed as missing or missing in action, or (iii) is interned in a neutral country or captured by an enemy country.

B. Upon the filing of a petition for the appointment of a conservator, the court having probate jurisdiction in the city or county of the absentee's legal residence or, if such absentee is a nonresident, the court having probate jurisdiction in the city or county where the property is located, may appoint, upon good cause shown, a conservator to take charge of the absentee's estate. If the absentee is a nonresident, the petition shall allege the facts and show the necessity for providing for the care of the property of the absentee. The petition may be filed by any person who would have an interest in the property of the absentee were he deceased, including a creditor of the absentee, or made on the court's own motion, and after notice is given to the heirs and next of kin of such absentee, as provided by law.

§ 64.2-2401. Bond; orders as to management of estate; support of dependents.

The court shall require that any conservator appointed pursuant to § 64.2-2400 post a bond in an amount deemed sufficient by the court. The court shall also enter any orders it deems necessary (i) directing the conservator in the management, operation, and control of the estate and (ii) requiring the conservator to make ample and suitable provisions out of the estate in his possession, subject to the rights of creditors, for the support of the absentee's wife and minor children, as well as any other person dependent upon the absentee for support and maintenance. The court shall require the conservator to make reports from time to time as the court may deem expedient.

§ 64.2-2402. Proceedings to sell property of absentee after failure to locate heirs.

Any duly appointed conservator of the estate of a person who is known to be dead or who is presumed to be dead pursuant to Chapter 23 (§ 64.2-2300 et seq.), after making a diligent but unsuccessful effort to locate the heirs of such person for a period of at least two years after the person's death became known or presumed, may petition the court having jurisdiction over real property owned by the decedent for permission to sell such property. Proceedings under this section shall conform as nearly as practicable to proceedings relating to judicial sales of real property owned by an infant. The conservator shall account for the proceeds of the sale, and the net proceeds of the sale, after disbursement of costs, shall be conserved in such manner as the court deems proper.

§ 64.2-2403. Termination of conservatorship.

At any time upon petition of the absentee, or upon the petition of a duly constituted attorney-in-fact of the absentee, if the court is of the opinion that such power of attorney is valid, the court shall terminate the conservatorship and shall transfer all property held for such absentee to him, or to such attorney-in-fact. However, if the court finds that during the pendency of the conservatorship the absentee has died, and an administrator or executor has been appointed for the absentee's estate, the court shall order the conservator to settle the accounts of his transactions before the court and shall direct the payment or transfer of such estate then remaining to the administrator or executor.

§ 64.2-2404. Expenses and compensation.

The court may allow to such conservator such expenses and compensation as the court determines to be fair and reasonable for services performed under his appointment.

CHAPTER 25.

ACTS BARRING PROPERTY RIGHTS.

§ 64.2-2500. Definitions.

As used in this chapter:

"Decedent" means any person whose life has been taken as a result of murder or voluntary manslaughter.

"Property" includes any real and personal property and any right or interest therein.

"Slayer" means any person (i) who is convicted of the murder or voluntary manslaughter of the decedent or, (ii) in the absence of such conviction, who is determined, whether before or after his death, by a court of appropriate jurisdiction by a preponderance of the evidence to have committed one of the offenses listed in clause (i) resulting in the death of the decedent. For the purposes of clause (ii), the party seeking to establish that a decedent was slain by such person shall have the burden of proof.

§ 64.2-2501. Slayer not to acquire property as result of slaying.

A slayer, or any transferee, assignee, or other person claiming through the slayer, shall not in any way acquire any property or receive any benefits as the result of the death of the decedent, but such property or benefits shall pass as provided in this chapter.

§ 64.2-2502. Property passing by will or intestate succession; surviving spouse.

A. The slayer shall be deemed to have predeceased the decedent as to property that would have passed from the estate of the decedent to the slayer by intestate succession or that the slayer would have acquired by statutory right as the decedent's surviving spouse. An heir or distributee who establishes his kinship to the decedent by way of his kinship to a slayer shall be deemed to be claiming from the decedent and not through the slayer.

B. The slayer shall be deemed to have predeceased the decedent as to property that would have passed to the slayer by the will of the decedent; however, the antilapse provisions of § 64.2-418 are applicable to such property.

§ 64.2-2503. Concurrent ownership with or without survivorship.

A. The death of the decedent caused by the slayer results in the vesting of the slayer's interest in property held by the decedent and the slayer as tenants by the entirety or any other form of ownership with the right of survivorship in the estate of the decedent as though the slayer had predeceased the decedent.

B. The death of the decedent caused by the slayer results in the severance of the slayer's interest in property held by the decedent and the slayer as joint tenants, joint owners, or joint obligees without the right of survivorship and the share of the decedent passes as a part of his estate.

§ 64.2-2504. Reversions and vested remainders.

Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent, if the decedent held the particular estate, during the period of the life expectancy of the decedent, or if the particular estate is held by a third person and measured by the life of the decedent, it shall remain in the possession of the third person during the period of the life expectancy of the decedent.

§ 64.2-2505. Interests dependent on survivorship or continuance of life.

Any interest in property, whether vested or not, held by the slayer subject to be divested, diminished in any way, or extinguished if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately after the death of the slayer or the reaching of such age.

§ 64.2-2506. Contingent remainders and future interests.

A. As to any contingent remainder or executory or other future interest held by the slayer subject to become vested in him or increased in any way for him upon the death of the decedent, the slayer shall be deemed to have predeceased the decedent if the interest would not have become vested or increased if the slayer had predeceased the decedent.

B. Notwithstanding subsection A, any contingent remainder or executory or other future interest shall not be vested in the slayer or increased in any way for him during the period of the life expectancy of the decedent.

§ 64.2-2507. Powers of appointment.

A. The slayer shall be deemed to have predeceased the decedent as to any exercise in the decedent's will of a power of appointment in favor of the slayer and the appointment shall be deemed to have lapsed.

B. Property held either presently or in remainder by the slayer subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent. Property held by the slayer subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons shall pass to such person or persons or in equal shares to the members of such class of persons, exclusive of the slayer.

§ 64.2-2508. Proceeds of insurance; bona fide payment by insurance company or obligor.

A. Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance or bond or other contractual agreement on the life of the decedent or as the survivor of a joint life policy shall be paid to the estate of the decedent, unless the policy or certificate

designates some person as an alternative beneficiary to the slayer.

B. If the decedent is the beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as an alternative beneficiary, or unless the slayer, by naming a new beneficiary or by assigning the policy, performs an act which would have deprived the decedent of his interest in the policy if he had been living.

C. No insurance company shall be subject to liability on a policy insuring the life of the decedent if (i) as a part of the slayer's plan to murder the decedent, such policy was procured and maintained by the slayer or as a result of actions taken or participated in by the slayer whether directly or indirectly and (ii) the decedent's death resulted from the slayer's act committed within two years from the date such policy was issued by the insurance company.

D. Any insurer making payment according to the terms of its policy or contract or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this section if such payment or performance is made without notice of circumstances bringing it within the provisions of this section.

§ 64.2-2509. Persons acquiring from slayer protected.

The provisions of this chapter shall not affect the right of any person who, before the interests of the slayer have been adjudicated, acquires from the slayer for adequate consideration property or an interest therein that the slayer would have received except for the terms of this chapter, provided that such property or interest is acquired without notice of circumstances tending to bring it within the provisions of this chapter. All consideration received by the slayer shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall be liable for any portion of such consideration that he may have dissipated and for any difference between the actual value of the property and the amount of such consideration.

§ 64.2-2510. Admissibility of judicial record determining slayer.

The record of the judicial proceeding in which a person is determined to be a slayer shall be admissible in evidence for or against a claimant of property in any civil action arising under this chapter. A conviction shall be conclusive evidence of the guilt of the slayer.

§ 64.2-2511. Construction.

A. This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of the Commonwealth that no person shall be allowed to profit by his own wrong, wherever committed. In furtherance of this policy, the provisions of this chapter are not intended to be exclusive and all common law rights and remedies that prevent one who has participated in the willful and unlawful killing of another from profiting by his wrong shall continue to exist in the Commonwealth.

B. If this chapter or any part thereof is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, any person who, not for value, receives a payment, an item of property, or any other benefit to which he is not entitled under this chapter, shall return that payment, item of property, or other benefit or be liable for the amount of the payment or the value of the property or benefit to the person who would have been entitled to it were this chapter or part thereof not preempted.

C. The Uniform Simultaneous Death Act (§ 64.2-2200 et seq.) shall not apply to cases governed by this chapter.

CHAPTER 26.
UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§ 64.2-2600. Definitions.

As used in this chapter:

"Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

"Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

"Disclaimer" means the refusal to accept an interest in or power over property.

"Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

"Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property and includes, without limitation, property held as tenants by the entirety.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally

acknowledged by a state.

"Trust" means (i) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and (ii) a trust created pursuant to a statute, judgment, or decree, which requires the trust to be administered in the manner of an express trust.

§ 64.2-2601. Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever created.

§ 64.2-2602. Chapter supplemented by other law.

A. Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

B. This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

§ 64.2-2603. Power to disclaim; general requirements; when irrevocable.

A. A person may disclaim in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

B. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of the Commonwealth or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

C. A custodial parent of a minor for whom no guardian of the property has been appointed may disclaim, in whole or in part, an interest in or power over property, including a power of appointment, that, but for the custodial parent's disclaimer, would have passed to the minor as the result of another disclaimer. The custodial parent may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

D. To be effective, a disclaimer shall be in writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in § 64.2-2610. In this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

E. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of power, or any other interest or estate in the property.

F. A disclaimer becomes irrevocable when it is delivered or filed pursuant to § 64.2-2610 or when it becomes effective as provided in §§ 64.2-2604 through 64.2-2609, whichever occurs later.

G. A disclaimer made under this chapter is not a transfer, assignment, or release.

§ 64.2-2604. Disclaimer of interest in property.

A. In this section:

"Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

"Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

B. Except for a disclaimer governed by § 64.2-2605 or 64.2-2606, the following rules apply to a disclaimer of an interest in property:

1. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

2. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

3. If the instrument does not contain a provision described in subdivision 2, the following rules apply:

a. If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive at the time of distribution.

b. If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

4. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§ 64.2-2605. Disclaimer of rights of survivorship in jointly held property.

A. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the greater of (i) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or (ii) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

B. A disclaimer under subsection A takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

C. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§ 64.2-2606. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§ 64.2-2607. Disclaimer of power of appointment or other power not held in a fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§ 64.2-2608. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

A. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

B. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§ 64.2-2609. Disclaimer of power held in fiduciary capacity.

A. If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

B. If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

C. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

§ 64.2-2610. Delivery or filing.

A. In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of (i) an annuity or insurance policy; (ii) an account with a designation for payment on death; (iii) a security registered in beneficiary form; (iv) a pension, profit-sharing, retirement, or other employment-related benefit plan; or (v) any other nonprobate transfer at death.

B. Subject to subsections C through L, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

C. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, (i) a disclaimer shall be delivered to the personal representative of the decedent's estate or (ii) if no personal representative is then serving, it shall be filed with a court having jurisdiction to appoint the personal representative.

D. In the case of an interest in a testamentary trust, (i) a disclaimer shall be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate or (ii) if no personal representative is then serving, it shall be filed with a court having jurisdiction to enforce the trust.

E. In the case of an interest in an inter vivos trust, (i) a disclaimer shall be delivered to the trustee then serving; (ii) if no trustee is then serving, it shall be filed with a court having jurisdiction to enforce the trust; or (iii) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it shall be delivered to the settlor of a revocable trust or the transferor of the interest.

F. In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer shall be delivered to the person making the beneficiary designation.

G. In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer shall be delivered to the person obligated to distribute the interest.

H. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer shall be delivered to the person to whom the disclaimed interest passes.

I. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created, (i) the disclaimer shall be delivered to the holder of the power

or to the fiduciary acting under the instrument that created the power or (ii) if no fiduciary is then serving, it shall be filed with a court having authority to appoint the fiduciary.

J. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, (i) the disclaimer shall be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power or (ii) if no fiduciary is then serving, it shall be filed with a court having authority to appoint the fiduciary.

K. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer shall be delivered as provided in subsection C, D, or E, as if the power disclaimed were an interest in property.

L. In the case of a disclaimer of a power by an agent, the disclaimer shall be delivered to the principal or the principal's representative.

§ 64.2-2611. When disclaimer barred or limited.

A. A disclaimer is barred by a written waiver of the right to disclaim.

B. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective: (i) the disclaimant accepts the interest sought to be disclaimed; (ii) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or (iii) a judicial sale of the interest sought to be disclaimed occurs.

C. A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

D. A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

E. A disclaimer is barred or limited if so provided by law other than this chapter.

F. A disclaimer of a power over property, which is barred by this section, is ineffective. A disclaimer of an interest in property, which is barred by this section, takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

§ 64.2-2612. Tax qualified disclaimer.

Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

§ 64.2-2613. Recording of disclaimer.

If an instrument transferring title to real property is disclaimed, a copy of the disclaimer shall be recorded in the office of the clerk of the circuit court for the jurisdiction where the real property is located. If any other interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§ 64.2-2614. Application to existing relationships.

Except as otherwise provided in § 64.2-2611, an interest in or power over property existing on July 1, 2003, as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

CHAPTER 27.
RELEASE OF POWERS OF APPOINTMENT.

§ 64.2-2700. Definitions.

As used in this chapter:

"Donee" means any person, whether a resident or nonresident of the Commonwealth, who has the right to exercise a power either alone or with another.

"Object" means the person in whose favor the power may be exercised.

"Power" includes (i) any power to appoint or designate to whom property shall go; (ii) any power to invade property; (iii) any power to alter, amend, or revoke any instrument under which an estate or trust is held or created or to terminate any right or interest thereunder; and (iv) any power remaining when one or more partial releases have been made with respect to a power, regardless of (a) whether the power is vested, contingent, or conditional; (b) whether the power is classified in law or known as a power in gross, a power appendant, a power appurtenant, a collateral power, a general, special or limited power, an exclusive or nonexclusive power, or otherwise; and (c) when, in what manner, or in whose favor, it may be exercised.

"Property" means any real or personal property and any interest in or income from property that is subject to the power.

"Release" means renunciation, relinquishment, surrender, refusal to accept, extinguishment, or any other form of release.

§ 64.2-2701. Right to release.

Unless the instrument creating the power specifically provides to the contrary, the donee of a power may:

1. Completely release the power; and

2. Release the power as to any property that is subject to the power; as to any one or more of the objects of the power; or so as to limit in any other respect the extent to which the power may be exercised.

§ 64.2-2702. Manner of effecting release.

A release of a power, whether partial or complete, shall be valid and effective, with or without a consideration, when the donee executes an instrument evidencing his intent to make the release that is signed and acknowledged in the manner prescribed for the execution of deeds, and delivers the instrument or causes it to be delivered as follows:

1. To an adult person who may take any of the property that is subject to the power in the event of its nonexercise or to one in whose favor it may be exercised after such partial release;

2. To any trustee or any cotrustee of the property that is subject to the power; or

3. By recording the instrument in the clerk's office that is designated for the recordation of deeds in the county or city in which any of the property is located, in which either the donee or the trustee in control of the property resides, in which the trustee has its principal office, or in which the instrument creating the power is probated or recorded.

§ 64.2-2703. Notice of release; recordation; fee.

A. A fiduciary or other person, association, or corporation having possession or control of any property subject to a power of appointment, other than the donee of such power, shall not be deemed to have notice of a release of the power until the original or a copy of the release is delivered to such fiduciary or other person, association, or corporation.

B. A purchaser or mortgagee of any real property subject to a power of appointment, without actual notice of the release, shall not be deemed to have notice of a release of the power until (i) the original or a copy of the release is recorded in the circuit court clerk's office in the county or city in which the real property is located, (ii) the deed, will, or other instrument creating the power, or a certified copy thereof, is recorded in the same clerk's office, and (iii) an appropriate notation is entered on the margin of the will or deed book where the instrument creating the power is recorded referring to the deed book and page where the release is recorded.

C. No release shall be invalid or ineffective for failing to comply with subsection A or B.

D. The clerk shall record a release of a power of appointment in the deed book and index the release in the daily and general indexes with the name of the donee being entered on the grantor index. For each such recordation, the clerk shall be paid a fee in the amount applicable to the recordation of deeds as set forth in subdivision A 2 of § 17.1-275 and an additional fee of $5.

§ 64.2-2704. Right of release not exclusive; interaction with disclaimer rules.

A. The provisions of this chapter for the release of a power are not exclusive, but are in addition to any other right or authority of a donee to release a power in whole or in part.

B. A release made in accordance with Chapter 26 (§ 64.2-2600 et seq.) is effective as a disclaimer, and nothing in this chapter shall operate as a limitation on the provisions of Chapter 26.

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Titles 26, 31, 37.2, 55, and 64.1 or any other title of the Code of Virginia as such titles existed prior to October 1, 2012, are transferred in the same or modified form to a new section or chapter of Title 64.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 64.2 or any other title, all references to any such former section or chapter of Titles 26, 31, 37.2, 55, and 64.1 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Titles 26, 31, 37.2, 55, and 64.1 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 64.2 so as to give effect to other laws enacted by the 2012 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Titles 26 and 31; Chapters 10 and 10.1 of Title 37.2; Chapter 2.1, Article 1.2 of Chapter 15, and Chapters 15.1, 16, 22, and 31 of Title 55; and Title 64.1, effective as of October 1, 2012, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Titles 26 and 31; Chapters 10 and 10.1 of Title 37.2; Chapter 2.1, Article 1.2 of Chapter 15, and Chapters 15.1, 16, 22, and 31 of Title 55; and Title 64.1 nor the enactment of Title 64.2 shall apply to offenses committed prior to October 1, 2012, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purpose of this

enactment, an offense was committed prior to October 1, 2012, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2012, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 64.2 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, or section of Title 64.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 64.2 are declared severable.

8. That the provisions of former § 64.1-55, which provide that holographic wills admitted to probate in the Commonwealth prior to March 20, 1922, where the handwriting was proved by one disinterested witness instead of two disinterested witnesses are validated and are as binding and effectual as if proved by two witnesses shall continue to apply, and shall apply only, to such holographic wills.

9. That the provisions of former § 26-57, which provide that the actions of substitute trustees who have been appointed without sufficient notice or any notice to any interested party done prior to July 27, 1942, are validated and effectual as if notice was given shall continue to apply, and shall apply only, to the actions of such substitute trustees.

10. That the repeal of Titles 26 and 31; Chapters 10 and 10.1 of Title 37.2; Chapter 2.1, Article 1.2 of Chapter 15, and Chapters 15.1, 16, 22, and 31 of Title 55; and Title 64.1, effective as of October 1, 2012, shall not affect the validity, enforceability, or legality of any will, trust instrument, power of attorney, or other instrument or of any fiduciary relationship, or any right established or accrued under such instrument or by such relationship, that existed prior to such repeal.

11. That Titles 26 (§§ 26-1 through 26-116) and 31 (§§ 31-1 through 31-59), Chapters 10 (§§ 37.2-1000 through 37.2-1030) and 10.1 (§§ 37.2-1031 through 37.2-1052) of Title 37.2, Chapter 2.1 (§§ 55-34.1 through 55-34.19), Article 1.2 (§§ 55-268.11 through 55-268.20) of Chapter 15, and Chapters 15.1 (§§ 55-277.1 through 55-277.33), 16 (§§ 55-278 through 55-286.2), 22 (§§ 55-401 through 55-415), and 31 (§§ 55-541.01 through 55-551.06) of Title 55, and Title 64.1 (§§ 64.1-01 through 64.1-206.8) of the Code of Virginia are repealed.

12. That the provisions of this act shall become effective on October 1, 2012.