

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 31

An Act to amend and reenact §§ 64.2-2001 and 64.2-2009 of the Code of Virginia, relating to guardianship and conservatorship petitions; respondents who are under the age of 18.

[H 1267]

Approved February 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2001 and 64.2-2009 of the Code of Virginia are amended and reenacted as follows:

§ 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, or by any other person and there is no living 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 such a petition is brought, a court may enter an order appointing the parent or guardian of the respondent, or other person if there is no living parent or guardian, as guardian or conservator prior to the respondent's eighteenth birthday. Such order shall specify whether it takes effect immediately upon entry or on the respondent's eighteenth birthday.* Where the petition is brought by any other person and there is a living parent or guardian of a respondent who is under the age of 18, 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.

§ 64.2-2009. 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; *and (vii) where a petition is brought prior to the incapacitated person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect immediately upon entry or on the incapacitated person's eighteenth birthday.*

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.