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HOUSE BILL NO. 1266

Offered January 20, 2016

A *BILL to amend and reenact §§ 64.2-2011 and 64.2-2014 of the Code of Virginia, relating to guardianship appointments, modifications, and terminations; notice to the Department of Medical Assistance Services.*

Patron—Habeeb

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2011 and 64.2-2014 of the Code of Virginia are amended and reenacted as follows:
§ 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 *and to the Department of Medical Assistance Services.*

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.

§ 64.2-2014. 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 for the county or city where the hearing took place as soon as practicable, but no later than the close of business on the next business day following the completion of the hearing. 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 Commissioner 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 *and to the Department of Medical Assistance Services.* 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, if different from the department to which the original order was forwarded, and to the Department of Medical Assistance Services.~~

B. The clerk shall, as soon as practicable, but no later than the close of business on the following business day, certify and forward upon receipt 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

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59 capacity under § 64.2-2012. Except as provided in subdivision A 1 of § 19.2-389, the copy of the form
60 and the order shall be kept confidential in a separate file and used only to determine a person's
61 eligibility to possess, purchase, or transfer a firearm.