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HOUSE BILL NO.1697

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 5, 1995)

(Patron Prior to Substitute—Delegate Howell)

A BILL to amend and reenact § 11-9.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 11 a section numbered 11-9.6 and by adding a section numbered 37.1-132.1, relating to discovery of information and records regarding actions by attorneys in fact and other agents of a principal.

Be it enacted by the General Assembly of Virginia:

1. That § 11-9.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 11 a section numbered 11-9.6 and by adding a section numbered 37.1-132.1 as follows:

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability; exception.

Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney-in-fact or other agent, shall contain the words "This power of attorney (or his authority) shall not terminate on disability of the principal" or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney-in-fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law. All acts done by the attorney-in-fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefit of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any guardian or committee shall thereafter be appointed for the principal, the attorney-in-fact or agent shall, during the continuance of such appointment, account to such guardian or committee as he would otherwise be obligated to account to the principal. ~~However, the guardian or committee shall have the same right and power, which the principal would have, in the absence of such disability, incompetence or incapacity, to revoke, suspend or terminate all or any part of the power and authority of the attorney-in-fact or agent if granted such power of revocation by the circuit court that appointed him in a proceeding to which the attorney-in-fact or agent was made a party.~~

The appointment of a guardian or committee pursuant to Title 37.1 shall not of itself revoke or limit the authority of the attorney-in-fact or other agent. However, in a proceeding in which the attorney-in-fact or other agent is made a party, the court which appointed the guardian or committee may revoke, suspend, or otherwise limit such authority. Furthermore, where no guardian or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-132.1, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate.

§ 11-9.6. Certain duties of attorneys-in-fact and agents empowered to act under § 11-9.1.

An attorney-in-fact or other agent empowered to act under § 11-9.1 shall, on reasonable request made by a person interested in the welfare of a principal who is unable to properly attend to his affairs, as set forth in § 37.1-132.1, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal within the past two years from the date of the request, and shall permit reasonable inspection of records pertaining to such actions by such person unless such disclosure or inspection is specifically prohibited by the terms of the instrument under which he acts.

§ 37.1-132.1. Discovery of information and records regarding actions of certain agents and attorneys-in-fact.

A. Any person interested in the welfare of a principal believed to be unable to properly attend to his affairs, may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter or (ii) terminating, suspending or limiting the authority of an attorney-in-fact or other agent, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken within the past two years from the date the petition is filed pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1.

B. Such petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or if a nonresident, in any court in which a determination of incompetency, incapacity or impairment of the principal is proper under this title, or, if

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60 a committee or guardian has been appointed for the principal, in the court which made the appointment.
61 The court, after reasonable notice to the attorney-in-fact or agent and to the principal if no guardian or
62 committee has been appointed, may conduct a hearing on the petition. The court, upon the hearing on
63 the petition and upon consideration of the interest of the principal and his estate, may dismiss the
64 petition or may enter such order or orders respecting discovery as it may deem appropriate, including
65 an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might
66 employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure
67 of the agent or attorney-in-fact to make discovery, the court may make and enforce such further orders
68 respecting discovery as would be proper in a civil action subject to such Rules, and may award
69 expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of
70 discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the
71 information or records that are the subject of ordered discovery, and the attorney-in-fact or agent had
72 been informed of the intention of the petitioner to file a petition hereunder if the request were not fully
73 honored, may, in its discretion, order the attorney-in-fact or agent to pay the petitioner's expenses in
74 obtaining discovery, including reasonable attorney's fees.

75 C. A "principal believed to be unable to properly attend to his affairs" means an individual believed
76 in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental
77 deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other causes to
78 the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

79 A "person interested in the welfare of a principal" includes any member of the principal's family,
80 persons who are co-agents or co-attorneys-in-fact and alternate and successor agents and
81 attorneys-in-fact designated under the power of attorney or other writing described in § 11-9.1 and the
82 adult protective services unit of the local social services board for the city or county where the principal
83 resides or is located at the time of the request. "Members of the principal's family" shall include an
84 adult parent, brother or sister, child or other descendent, spouse of a child of the principal, or surviving
85 spouse of the principal.

86 D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be
87 considered a finding regarding the competence, capacity or impairment of the principal, nor shall the
88 granting or denial of discovery hereunder preclude the availability of other remedies involving
89 protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or
90 other agent.