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HOUSE BILL NO. 615

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice)

on February 1, 1996)

(Patron Prior to Substitute—Delegate Howell)

A *BILL to amend and reenact § 37.1-132.1 of the Code of Virginia, relating to discovery of information regarding the actions of certain agents and attorneys-in-fact.*

Be it enacted by the General Assembly of Virginia:

1. That § 37.1-132.1 of the Code of Virginia is amended and reenacted as follows:

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

A. ~~Any~~ After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, 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 the request under § 11-9.6 was made 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 a committee or guardian has been appointed for the principal, in the court which made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal if no guardian or committee 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 attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce such further orders respecting discovery as would be proper in a civil action subject to such Rules, and may award expenses, including reasonable attorney's 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, and the attorney-in-fact or agent had been informed of the intention of the petitioner to file a petition hereunder if the request were not fully honored, pursuant to § 11-9.6, may, in its discretion upon finding that the failure to comply with the request for information was unreasonable, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

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

A "person interested in the welfare of a principal" ~~includes~~ is any member of the principal's family; persons who are co-agents or co-attorneys-in-fact and alternate and successor agents and attorneys-in-fact; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and; if none of the preceding individuals are these persons is reasonably available and willing to act, the adult protective services unit of the local social services board for the city or county where the principal resides or is located at the time of the request. ~~Members~~ A "member of the principal's family" shall include is an adult parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, spouse or surviving spouse of the principal.

D. 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 attorney-in-fact or other agent.

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