

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 801

An Act to amend and reenact §§ 2.1-124, 4.1-212, 4.1-222, 4.1-225, 4.1-401, 4.1-500, 6.1-5, 6.1-17, 6.1-32.5, 6.1-32.11, 6.1-70, 6.1-194.56, 6.1-195.78, 6.1-195.80, 6.1-225.48, 8.01-94, 8.01-229, 8.01-249, 8.01-338, 8.01-581.12, 8.01-606, 8.01-670, 8.3A-308, 8.4-405, 13.1-603, 13.1-662, 13.1-803, 14.1-90, 15.1-244, 15.1-369, 16.1-69.28, 17-28, as it is currently effective and as it may become effective, 18.2-76, 19.2-141, 19.2-368.5, 19.2-390, 21-295, 21-310, 24.2-101, 24.2-404, 24.2-418, 24.2-427, 25-46.13, 25-46.28, 26-4, 26-5, 26-7, 26-7.1, 26-7.4, 26-17.10, 26-27, 26-45.2, 26-46, 26-60, 26-61, 26-62, 26-63, 26-66, 26-67, 29.1-801, 32.1-138, 37.1-87, 37.1-108, 37.1-109, 37.1-110, 37.1-111, 38.2-3415, 38.2-4200, 38.2-4500, 46.2-314, 46.2-322, 46.2-380, 46.2-1500, 46.2-1900, 46.2-1992, 46.2-1993, 50-73.28, 50-73.48, 50-73.109, 51.5-3, 53.1-40.1, 53.1-227, 54.1-601, 54.1-2409, 54.1-2915, 54.1-2916, 54.1-2917, 54.1-2970, 54.1-2983, 54.1-2992, 55-19, 55-29, 55-34.13, 55-118.5, 55-213, 55-276, 59.1-21.14, 59.1-347, 59.1-353, 62.1-117, 63.1-55.5, 63.1-107, 63.1-182.1, 64.1-57, 64.1-157, 64.1-180.1, 65.2-527, 65.2-528 and 65.2-701 of the Code of Virginia, relating to guardianships and conservatorships.

[S 1038]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-124, 4.1-212, 4.1-222, 4.1-225, 4.1-401, 4.1-500, 6.1-5, 6.1-17, 6.1-32.5, 6.1-32.11, 6.1-70, 6.1-194.56, 6.1-195.78, 6.1-195.80, 6.1-225.48, 8.01-94, 8.01-229, 8.01-249, 8.01-338, 8.01-581.12, 8.01-606, 8.01-670, 8.3A-308, 8.4-405, 13.1-603, 13.1-662, 13.1-803, 14.1-90, 15.1-244, 15.1-369, 16.1-69.28, 17-28, as it is currently effective and as it may become effective, 18.2-76, 19.2-141, 19.2-368.5, 19.2-390, 21-295, 21-310, 24.2-101, 24.2-404, 24.2-418, 24.2-427, 25-46.13, 25-46.28, 26-4, 26-5, 26-7, 26-7.1, 26-7.4, 26-17.10, 26-27, 26-45.2, 26-46, 26-60, 26-61, 26-62, 26-63, 26-66, 26-67, 29.1-801, 32.1-138, 37.1-87, 37.1-108, 37.1-109, 37.1-110, 37.1-111, 38.2-3415, 38.2-4200, 38.2-4500, 46.2-314, 46.2-322, 46.2-380, 46.2-1500, 46.2-1900, 46.2-1992, 46.2-1993, 50-73.28, 50-73.48, 50-73.109, 51.5-3, 53.1-40.1, 53.1-227, 54.1-601, 54.1-2409, 54.1-2915, 54.1-2916, 54.1-2917, 54.1-2970, 54.1-2983, 54.1-2992, 55-19, 55-29, 55-34.13, 55-118.5, 55-213, 55-276, 59.1-21.14, 59.1-347, 59.1-353, 62.1-117, 63.1-55.5, 63.1-107, 63.1-182.1, 64.1-57, 64.1-157, 64.1-180.1, 65.2-527, 65.2-528 and 65.2-701 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-124. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, and (vii) cases involving the practice of law without being duly authorized or licensed or the illegal practice of law, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, in his discretion, institute proceedings by information, presentment or indictment, as the one or the other may be appropriate, and conduct the same.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing and disposition of any appeal or habeas corpus proceeding involving the case or cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor; ~~or incapacitated or incompetent~~ victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus

proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

§ 4.1-212. Permits required in certain instances.

The Board may grant the following permits which shall authorize:

1. Wine and beer salesmen representing any out-of-state wholesaler engaged in the sale of wine and beer, or either, to sell or solicit the sale of wine or beer, or both in the Commonwealth.
2. Any person having any interest in the manufacture, distribution or sale of spirits or other alcoholic beverages to solicit any mixed beverage licensee, his agent, employee or any person connected with the licensee in any capacity in his licensed business to sell or offer for sale such spirits or alcoholic beverages.
3. Any person to keep upon his premises alcoholic beverages which he is not authorized by any license to sell and which shall be used for culinary purposes only.
4. Any person to transport lawfully purchased alcoholic beverages within, into or through the Commonwealth, except that no permit shall be required for any person shipping or transporting into the Commonwealth a reasonable quantity of alcoholic beverages when such person is relocating his place of residence to the Commonwealth in accordance with § 4.1-310.
5. Any person to keep, store or possess any still or distilling apparatus.
6. The release of alcoholic beverages not under United States custom bonds or internal revenue bonds stored in Board approved warehouses for delivery to the Board or to persons entitled to receive them within or outside of the Commonwealth.
7. The release of alcoholic beverages from United States customs bonded warehouses for delivery to the Board or to licensees and other persons enumerated in subsection B of § 4.1-131.
8. The release of alcoholic beverages from United States internal revenue bonded warehouses for delivery in accordance with subsection B of § 4.1-132.
9. A secured party or any trustee, curator, committee, ~~guardian~~ conservator, receiver or other fiduciary appointed or qualified in any court proceeding, to continue to operate under the licenses previously issued to any deceased or other person licensed to sell alcoholic beverages for such period as the Board deems appropriate.
10. The one-time sale of lawfully acquired alcoholic beverages belonging to any person, or which may be a part of such person's estate, including a judicial sale, estate sale, sale to enforce a judgment lien or liquidation sale to satisfy indebtedness secured by a security interest in alcoholic beverages, by a sheriff, personal representative, receiver or other officer acting under authority of a court having jurisdiction in the Commonwealth, or by any secured party as defined in § 8.9-105 (m) of the Virginia Uniform Commercial Code. Such sales shall be made only to persons who are licensed or hold a permit to sell alcoholic beverages in the Commonwealth or to persons outside the Commonwealth for resale outside the Commonwealth and upon such conditions or restrictions as the Board may prescribe.
11. Any person who purchases at a foreclosure, secured creditor's or judicial auction sale the premises or property of a person licensed by the Board and who has become lawfully entitled to the possession of the licensed premises. Such permit shall be temporary and shall (i) confer the privileges of any licenses held by the previous owner to the extent determined by the Board and (ii) authorize the permittee to continue to operate the establishment to the same extent as a person holding such licenses for a period not to exceed sixty days or for such longer period as determined by the Board. Such temporary permit may be issued in advance, conditioned on the above requirements.
12. The sale of wine and beer in kegs by any person licensed to sell wine or beer, or both, at retail for off-premises consumption.
13. The storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond in warehouses located in the Commonwealth.

Nothing in subdivision 9, 10, or 11 shall authorize any brewery, winery or affiliate or a subsidiary thereof which has supplied financing to a wholesale licensee to manage and operate the wholesale licensee in the event of a default, except to the extent authorized by subdivision B 3 a of § 4.1-216.

§ 4.1-222. Conditions under which Board may refuse to grant licenses.

A. The Board may refuse to grant any license if it has reasonable cause to believe that:

1. The applicant, or if the applicant is a partnership or association, any partner or member thereof, or if the applicant is a corporation, any officer, director, or manager thereof or shareholder owning ten percent or more of its capital stock:
 - a. Is not twenty-one years of age or older;
 - b. Has been convicted in any court of a felony or any crime or offense involving moral turpitude under the laws of any state, or of the United States;
 - c. Has been convicted, within the five years immediately preceding the date of the application for such license, of a violation of any law applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;
 - d. Is not a person of good moral character and repute;

- e. Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed;
- f. Has not demonstrated financial responsibility sufficient to meet the requirements of the business proposed to be licensed;
- g. Has maintained a noisy, lewd, disorderly or unsanitary establishment;
- h. Has demonstrated, either by his police record or by his record as a former licensee of the Board, a lack of respect for law and order;
- i. Is unable to speak, understand, read and write the English language in a reasonably satisfactory manner;
- j. Is a person to whom alcoholic beverages may not be sold under § 4.1-304;
- k. Has the general reputation of drinking alcoholic beverages to excess or is addicted to the use of narcotics;
- l. Has misrepresented a material fact in applying to the Board for a license;
- m. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false and fraudulent;
- n. Is violating or allowing the violation of any provision of this title in his establishment at the time his application for a license is pending;
- o. Is a police officer with police authority in the political subdivision within which the establishment designated in the application is located;
- p. Is physically unable to carry on the business for which the application for a license is filed or has been adjudicated ~~incompetent~~ *incapacitated*; or
- q. Is a member, agent or employee of the Board.
- 2. The place to be occupied by the applicant:
 - a. Does not conform to the requirements of the governing body of the county, city or town in which such place is located with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulation;
 - b. Is so located that granting a license and operation thereunder by the applicant would result in violations of this title, Board regulations, or violation of the laws of the Commonwealth or local ordinances relating to peace and good order;
 - c. Is so located with respect to any church; synagogue; hospital; public, private or parochial school, college or university; public or private playground or other similar recreational facilities; or any state, local or federal government-operated facility, that the operation of such place under such license will adversely affect or interfere with the normal, orderly conduct of the affairs of such facilities or institutions;
 - d. Is so located with respect to any residence or residential area that the operation of such place under such license will adversely affect real property values or substantially interfere with the usual quietude and tranquillity of such residence or residential area; or
 - e. Under a retail on-premises license is so constructed, arranged or illuminated that law-enforcement officers and special agents of the Board are prevented from ready access to and reasonable observation of any room or area within which alcoholic beverages are to be sold or consumed.
- 3. The number of licenses existent in the locality is such that the granting of a license is detrimental to the interest, morals, safety or welfare of the public. In reaching such conclusion the Board shall consider the (i) character of, population of, the number of similar licenses and the number of all licenses existent in the particular county, city or town and the immediate neighborhood concerned; (ii) effect which a new license may have on such county, city, town or neighborhood in conforming with the purposes of this title; and (iii) objections, if any, which may have been filed by a local governing body.
- 4. There exists any law, ordinance, or regulation of the United States, the Commonwealth or any political subdivision thereof, which warrants refusal by the Board to grant any license; or
- 5. The Board is not authorized under this chapter to grant such license.
- B. The Board may refuse to grant any retail wine and beer license, retail beer license or retail wine or winery license to any person who has not resided in the Commonwealth for at least one year immediately preceding application therefor, or to any corporation a majority of the stock of which is owned by persons who have not resided in the Commonwealth for at least one year immediately preceding application therefor, unless refusal to grant the license would in the opinion of the Board substantially impair the transferability of the real property upon which the licensed establishment would be located.

§ 4.1-225. Grounds for which Board may suspend or revoke licenses.

The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § 4.1-227, if it has reasonable cause to believe that:

- 1. The licensee, or if the licensee is a partnership or association, any partner or member thereof, or if

the licensee is a corporation, any officer, director, or manager thereof or shareholder owning ten percent or more of its capital stock:

- a. Has misrepresented a material fact in applying to the Board for such license;
 - b. Has defrauded or attempted to defraud the Board, or any federal, state or local government or governmental agency or authority, by making or filing any report, document or tax return required by statute or regulation which is fraudulent or contains a false representation of a material fact; or has willfully deceived or attempted to deceive the Board, or any federal, state or local government, or governmental agency or authority, by making or maintaining business records required by statute or regulation which are false or fraudulent;
 - c. Within the five years immediately preceding the date of the hearing held in accordance with § 4.1-227, has (i) been convicted of a violation of any law, ordinance or regulation of the Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ 4.1-300 et seq.) of this title; (iii) committed a violation of the Wine Franchise Act (§ 4.1-400 et seq.) or the Beer Franchise Act (§ 4.1-500 et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;
 - d. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;
 - e. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;
 - f. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;
 - g. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;
 - h. Has allowed noisy, lewd or disorderly conduct upon the licensed premises, or has maintained such premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;
 - i. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;
 - j. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;
 - k. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than twenty-one years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;
 - l. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;
 - m. Is physically unable to carry on the business conducted under such license or has been adjudicated ~~incompetent~~ *incapacitated*;
 - n. Has allowed any lewd, obscene or indecent literature, pictures or materials upon the licensed premises;
 - o. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises; or
 - p. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ 54.1-3400 et seq.); (ii) laundered money in violation of § 18.2-248.7; or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein.
2. The place occupied by the licensee:
 - a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;
 - b. Has been adjudicated a common nuisance under the provisions of this title or § 18.2-258; or
 - c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panders or habitual law violators. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

5. Any other cause authorized by this title.

§ 4.1-401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a winery and wine wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the winery's brands of wine. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by a winery for any wine to a wine wholesaler within the Commonwealth.

2. The payment by a wine wholesaler and the acceptance of payment by any winery for the shipment of an order of wine intended for sale in the Commonwealth.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a winery to identify a specific wine product and to distinguish that product from other wine produced or marketed by that winery or other wineries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same winery and which relies to a significant extent on the good will associated with such preexisting brand.

"Dual distributorships" means the existence of agreements between a single winery and more than one wholesaler, each selling a different brand, in a given territory as the result of a purchase of another winery.

"Nonsurviving winery" means any winery which is purchased by another winery as provided in § 4.1-405 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. Person also includes heirs, assigns, personal representatives and ~~guardians~~ conservators.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving winery" means the winery which purchases a nonsurviving winery as provided in § 4.1-405.

"Territory" or "sales territory" means the area of primary sales responsibility within the Commonwealth expressly or implicitly designated by any agreement between any wine wholesaler and winery for the brand or brands of any winery.

"Wine wholesaler" means any wholesale wine licensee offering wine for sale or resale to retailers or other wine wholesalers without regard to whether the business of the person is conducted under the terms of an agreement with a licensed winery.

"Winery" means every person, including any authorized representative of such person pursuant to § 4.1-218, which enters into an agreement with any Virginia wholesale wine licensee and (i) is licensed as a winery or is licensed as a Virginia farm winery, (ii) is licensed as a wine importer and is not simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in the Commonwealth or not, or (iv) without regard to whether such person is licensed in the Commonwealth, has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

§ 4.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a brewery and beer wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the brewery's brands of beer. The doing or accomplishment of any of the following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:

1. The shipment, preparation for shipment or acceptance of any order by any brewery for any beer to a beer wholesaler within the Commonwealth.

2. The payment by a beer wholesaler and the acceptance of payment by any brewery for the shipment of an order of beer intended for sale in the Commonwealth.

"Beer wholesaler," "wholesaler," "beer distributor," and "distributor" mean any wholesale beer licensee, including any successor-in-interest to such person, within the Commonwealth offering beer for sale or resale to retailers or other beer wholesalers without regard to whether the business of the person

is conducted under the terms of an agreement with a licensed brewery.

"Brand" means any word, name, group of letters, symbol or combination thereof adopted and used by a brewery to identify a specific malt beverage product and to distinguish that product from other beers produced or marketed by that brewery or other breweries. The use of general corporate logos or symbols or the use of advertising messages, whether appearing on the product packaging or elsewhere, shall not be considered to be a brand, brand extension, or part thereof as these terms are used in this chapter.

"Brand extension" and "extension of a brand" mean any brand, which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with such preexisting brand.

"Brewery" means every person, including any authorized representative of such person pursuant to § 4.1-218 which (i) is licensed as a brewery located within the Commonwealth, (ii) holds a beer importer's license and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products excluding licensed Virginia wholesalers and retailers or has the contractual right to distribute under its own brand any malt beverage product whether licensed in the Commonwealth or not, who enters into an agreement with any beer wholesaler licensed to do business in the Commonwealth.

"Dual distributorships" means the existence of agreements between a single brewery and more than one wholesaler in a given territory as the result of a purchase of another brewery.

"Nonsurviving brewery" means any brewery which is purchased by another brewery as provided in § 4.1-504 and, as a result, ceases to exist as an independent legal entity.

"Person" means a natural person, corporation, partnership, trust, agency, or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives and ~~guardians~~ *conservators*.

"Purchase" includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

"Surviving brewery" means a brewery which purchases a nonsurviving brewery as provided in § 4.1-504.

"Territory" or "sales territory" means the area of sales responsibility within the Commonwealth expressly or impliedly designated by any agreement between any beer wholesaler and brewery for the brand or brands of any brewer.

§ 6.1-5. Who shall not do a banking or trust business.

No person, copartnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this Commonwealth under authority of the laws of this Commonwealth or the United States, or which shall hereafter be incorporated under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, and except banks which may be authorized, after July 1, 1995, to establish and operate one or more branches in this Commonwealth under Article 5.1 (§ 6.1-44.1 et seq.) or 5.2 (§ 6.1-44.15 et seq.) of this chapter, shall engage in the banking business or trust business in this Commonwealth, and no foreign corporation, except as permitted in Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of this title, shall do a banking or trust business in this Commonwealth. Nothing in this chapter, however, shall:

(1) Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, *conservator*, committee or in any other fiduciary capacity,

(2) Prevent any person or copartnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3) Prevent any bank or trust company organized under the laws of this Commonwealth from qualifying and acting in another state or in the District of Columbia, as trustee, personal representative, guardian *of a minor*, *conservator* or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District.

Nothing in this section shall be construed to prevent banks or trust companies organized in this Commonwealth and chartered under the laws of the United States from transacting business in Virginia.

§ 6.1-17. Powers of banks and trust companies; national banks as fiduciaries.

All banks that are authorized to do a trust business, and all trust companies heretofore and hereafter chartered, shall have the following rights, powers and privileges, and shall be subject to the following regulations and restrictions:

(1) To act as agent for any person, corporation, municipality or state for the collection or disbursement of interest, or income or principal of securities.

(2) To act as the fiscal or transfer agent of any state, municipality, body politic or corporate, and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose.

(3) To act as trustee under any mortgage or bond issued by an individual, municipality, body politic

or corporate, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this Commonwealth.

(4) To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(5) To act as guardian, receiver or trustee of the estate of any minor and as depository of any money paid into court, whether for the benefit of any minor or other person, corporation or party.

(6) To take, accept and execute any and all such lawful trusts, duties and powers in regard to the holding and management and disposition of any estate, real and personal, and the rents and profits thereof, or the sale or lease thereof, as may be granted or confided to it by any circuit court, judge or clerk, or by any person, corporation, municipality or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(7) To take, accept and execute any and all such trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any circuit court, judge or clerk, and to receive and hold any property or estate, real or personal, which may be the subject of any such trust.

(8) To act as executor under the last will and testament or administrator of the estate of any deceased person; or as guardian of the person or of the estate of any infant; or as guardian, or ~~committee of the person or of the estate~~ *conservator* of any ~~mentally ill~~ *incapacitated* person or habitual drunkard or any person who by reason of advanced age or impaired health or physical disability has become mentally or physically incapable of taking proper care of his person or properly handling and managing his estate, or trustee or committee for any convict in the penitentiary, under appointment of any circuit court, judge or clerk thereof, having jurisdiction of the estate of such deceased person or other person. In the case of qualification before or after July 1, 1984, if the order of qualification of a bank as committee or guardian 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.

Nothing in this section shall ever be construed as authorizing the creation of a trust not lawful as between individuals nor to prohibit the deposit of funds by court and fiduciaries in banks of deposit and discount and savings banks.

All national banks which have been, or hereafter may be, permitted by law to act as trustee and in other fiduciary capacities, shall have the rights, powers, privileges and immunities conferred upon trust companies by this chapter.

§ 6.1-32.5. Permissible business.

The permissible business of a trust subsidiary shall be to engage in such trust business and activities as may be engaged in by a bank under § 6.1-17, and business incidental thereto. Such trust subsidiary shall not accept deposits or conduct any other business except as may be incidental to the trust business being conducted by it. No trust subsidiary, other than a wholly owned subsidiary of a national banking association, shall engage in such trust business without first obtaining a certificate of authority from the State Corporation Commission, or the Comptroller of the Currency if it is organized as a national banking association. The Commission shall not grant such certificate unless the capital and surplus of the trust subsidiary equal or exceed \$200,000 and the Commission is satisfied that the trust subsidiary is capable of complying with the provisions of this chapter and that the officers and directors have the moral fitness, and business qualifications necessary to manage the trust subsidiary. Except as permitted by this article, or by § 6.1-16, or § 6.1-17 or by federal law in the case of a national banking association having its main office in Virginia, no corporation, partnership or association shall qualify or act as a personal representative of a deceased person; guardian for an infant or an incapacitated person; committee; *conservator* for an incapacitated person; testamentary trustee, or trustee for any other trust if required by law to account to the commissioner of accounts of a circuit court in Virginia; or in any other fiduciary capacity required so to account.

§ 6.1-32.11. Definitions.

As used in this article:

"Affiliated trust company" means a trust company that is controlled by a trust company holding company. For purposes of this article, a trust company holding company or other person has control of a trust company or other legal entity if the person owns twenty-five percent or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), the person would be presumed to control the trust company or entity; or if the Commission determines that the person exercises a controlling influence over the management and policies of the trust company or entity.

"Agent" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.).

"Broker-dealer" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Commission" means the State Corporation Commission of the Commonwealth of Virginia.

"Fiduciary" means executor, administrator, conservator, guardian *of a minor*, committee, or trustee.

"Investment advisor" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment advisor representative" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment company" shall have the same meaning assigned to that term in the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq.

"Operating plan" means a plan submitted by an applicant for a certificate of authority, which plan establishes the policies and procedures a trust company will have in effect when the institution opens for business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and regulations.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent or greater interest in a nonstock corporation or a limited liability company.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, five percent or more of any class of capital stock of a broker-dealer, investment advisor or investment company and which also controls a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it controls a financial institution other than an affiliated trust company or another financial institution holding company.

§ 6.1-70. Payment of balance of deceased person or person under disability to personal representative, committee, etc.

Any bank may pay any balance on deposit to the credit of any deceased person or of any person under disabilities, to the personal representative, ~~guardian~~, curator, *conservator* or committee of such person upon a letter of qualification as such personal representative, ~~guardian~~, curator, *conservator* or committee, issued by any court of competent jurisdiction of this Commonwealth, and such letter shall be sufficient authority for such transfer. Any such bank making such transfer shall no longer be liable for such deposit to any person whomsoever. The presentation of a duly certified letter of qualification as personal representative, ~~guardian~~, curator, *conservator* or committee shall be conclusive proof of the jurisdiction of the court issuing the same. Payment to a fiduciary qualified under the law of a state other than Virginia shall be in accordance with § 26-60 et seq., and § 64.1-130.

§ 6.1-194.56. Powers of attorney on accounts.

Any savings institution may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals, either in whole or in part, from any account until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of death of the owner of the account shall constitute written notice of revocation of the authority of his attorney. Written notice of the adjudication of ~~incompetency~~ *incapacity* of an account owner shall constitute written notice of revocation of the authority of his attorney unless under the laws of the Commonwealth the authority of the attorney-in-fact survives such adjudication. Payment of the account in accordance with the provisions of this section shall constitute a full discharge and acquittance of the association as to such account.

§ 6.1-195.78. Definitions.

In addition to those definitions contained in § 6.1-194.2, the following definitions shall apply to this chapter, unless a different meaning is required by the context:

"Affiliate" means, with respect to an association, a bank holding company, as defined in 12 U.S.C. § 1841, or savings and loan holding company, as defined in § 6.1-194.87, of which the association is a subsidiary, a corporation which is also a subsidiary of a bank holding company or savings and loan holding company of which the association is a subsidiary, a corporation with respect to which the association owns twenty-five percent or more of the outstanding voting shares of such corporation, or any other corporation which the Commissioner determines is, in fact, controlled by the association.

"Fiduciary" means the status resulting from an association's undertaking to act alone, through an affiliate, or jointly with others, primarily for the benefit of another, and includes an association's acting as trustee, executor, administrator, committee, guardian, *conservator*, receiver, managing agent, registrar

of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare and profit sharing trusts, and in any other similar capacity.

"Fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

"Governing instrument" means the written document or documents pursuant to which an association undertakes to act in a fiduciary capacity, and includes a will, codicil, deed of trust, trust deed and other similar instruments.

~~"Guardian" means the guardian, conservator, trustee or committee of the estate of a person under a disability, as defined in § 8.01-2, or of a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.~~

"Investment authority" means the responsibility conferred by action of law or a provision of a governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

"Managing agent" means the fiduciary relationship assumed by an association upon the creation of an account which names the association as agent and confers investment authority upon the association.

"Trust account" means the account established pursuant to a trust, estate or other fiduciary relationship which has been established with an association.

"Trust department" means that group or groups of officers and employees of an association, or of an affiliate of an association, to whom are assigned the performance of fiduciary services by the association.

"Uniform Transfers to Minors Act" means Chapter 6 (§ 31-37 et seq.) of Title 31 or any comparable act in effect in any other state or territory of the United States or the District of Columbia.

§ 6.1-195.80. Commission to issue certificate; powers of associations authorized to offer trust services.

A. Upon granting the application of an association to exercise trust powers, the Commission shall issue a certificate authorizing the association or affiliate to exercise trust powers and offer fiduciary services. Unless such certificate otherwise provides, such association shall have the following rights, powers and privileges, and shall be subject to the following regulations and restrictions:

1. To act as agent for any person, corporation, municipality or state for the collection or disbursement of interest, or income or principal of securities;

2. To act as the fiscal or transfer agent of any state, municipality, or body public or corporate, and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose;

3. To act as trustee under any deed of trust, mortgage or bond issued by an individual, municipality, or body politic or corporate, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this Commonwealth;

4. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, and to transact any business in relation thereto;

5. To act as a guardian, *conservator*, as a custodian under the Uniform Transfers to Minors Act (§ 31-37 et seq.), and as depository of any money paid into court, whether for the benefit of a person under a disability or other person, corporation or party;

6. To take, accept and execute any and all trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any court of record, judge or clerk; to receive and hold any property or estate, real or personal, which may be the subject of any such trust; and to be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept; and

7. To act as executor under the last will and testament, or administrator of the estate, of any deceased person, under appointment of any court of record, judge or clerk thereof, having jurisdiction of the estate of such deceased person.

B. Nothing in this chapter shall be construed as authorizing the creation of a trust not lawful as between individuals, nor to prohibit the deposit of funds by courts and fiduciaries in savings and loan associations and savings banks.

C. All rights, powers and privileges, and all regulations, restrictions and limitations, granted to or made applicable to associations by the provisions of this chapter shall likewise apply to any affiliate of an association which is authorized by the Commission to exercise trust powers. However, any such affiliate shall be organized and operated solely for the purpose of offering trust services pursuant to the provisions of this chapter.

D. All federal savings and loan associations and federal savings banks, which have been, or hereafter may be, permitted by law to act in any fiduciary capacity, shall have the rights, powers, privileges, and

immunities conferred by this chapter to the extent permitted by federal law.

§ 6.1-225.48. Accounts of deceased or incapacitated person.

A credit union may pay any share balance due a deceased person or any person under a disability to the personal representative, guardian, *conservator*, curator, or committee of such person upon proper proof of the appointment and qualification of such fiduciary. Such qualification shall be sufficient authority for making such payment. A credit union making such payment shall no longer be liable for the amount so paid to any person. The presentation of a duly certified letter or certificate of qualification as personal representative, or other fiduciary, guardian, *conservator*, curator, or committee shall be conclusive proof of the jurisdiction of the court issuing the same.

A credit union which has received no written notice and does not have actual notice that a member is deceased or has been adjudicated ~~incompetent~~ *incapacitated*, may pay or deliver shares in such member's account in accordance with the provisions of the account contract without liability to any person for the amounts so paid.

§ 8.01-94. When sold, leased or exchanged.

Whenever an interest in property, real or personal, is held by a person, natural or artificial, with remainder or limitation over contingent upon any event, or for his life or for the life of another, and there is limited thereon any other estate, vested or contingent, to any other such person, whether in being or to be thereafter born or created in any manner whatsoever, such person holding an interest in the property so subject to remainder or limitation over or for his own life, or his committee, *guardian*, if a minor, or *conservator*, or, if the estate so held be for the life of another, then his heir or personal representative, as the case may be, may for the purpose of obtaining a sale or leasing or exchange of the fee simple interest or absolute estate in such property, if the sale or leasing or exchange thereof is not prohibited by the instrument creating the estate, and the remaindermen, or any of them, whether in being or hereafter to be born or created, are from any cause incapable at the time of filing the bill as herein provided or of giving their assent, or the remainder or limitation over is contingent or defeasible, file a bill in equity in the circuit court stating plainly the property to be sold or leased or exchanged and all facts calculated to show the propriety of such sale or lease or exchange. A like bill may be filed for the sale or leasing or exchange of the remainder in such estate by a remainderman, his guardian, *conservator* or committee. All persons interested in the property presently or contingently, other than the plaintiff, shall be made defendants, and if such remaindermen be not born or created at such time of filing such bill, such suit shall not for such cause abate, but such unborn person or uncreated artificial person shall be made defendant and subject to the decree of the court by the name of "person unknown or person yet to be born or created," and the court shall upon the filing of such bill appoint a guardian ad litem to defend the interest of such unborn person or uncreated artificial person. If it be clearly shown independently of any admissions in the pleadings that the interest of the plaintiff will be promoted and the rights of no other person will be violated thereby, the court may decree a sale or lease or exchange of the property or any part thereof, or of the remainder therein. In case of a sale on credit, the court shall take ample security. If such sale on credit be of real estate, a lien thereon shall be reserved. The title to any land acquired in any exchange herein provided for shall be held and owned by the same persons in the same way, to the same extent and subject to the same conditions that they owned the land given in such exchange.

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

A. Disabilities which toll the statute of limitations. - Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code,

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or ~~of unsound mind~~ *incapacitated*, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes ~~of unsound mind~~ *incapacitated*, the time during which he is ~~of unsound mind~~ *incapacitated* shall not be computed as any part of the period within which the action must be brought, except where a *conservator*, guardian or committee is appointed for such person in which case an action may be commenced by such *conservator*, committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2 of this subsection, a person shall be deemed ~~of unsound mind~~ *incapacitated* if he is so adjudged ~~insane~~ by a court of competent jurisdiction ~~to be mentally incapable of rationally conducting his own affairs~~, or if it shall otherwise appear to the court or jury determining the issue that such person is or was ~~so mentally incapable of rationally conducting his own~~

~~affairs~~ *incapacitated* within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be brought.

B. Effect of death of a party. - The death of a person entitled to bring an action or of a person against whom an action may be brought shall toll the statute of limitations as follows:

1. Death of person entitled to bring a personal action.-If a person entitled to bring a personal action dies with no such action pending before the expiration of the limitation period for commencement thereof, then an action may be commenced by the decedent's personal representative before the expiration of the limitation period including the limitation period as provided by subdivision E 3 or within one year after his qualification as personal representative, whichever occurs later.

2. Death of person against whom personal action may be brought.-a. If a person against whom a personal action may be brought dies before the commencement of such action and before the expiration of the limitation period for commencement thereof then a claim may be filed against the decedent's estate or an action may be commenced against the decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

b. If a person against whom a personal action may be brought dies before suit papers naming such person as defendant have been filed with the court, then such suit papers may be amended to substitute the decedent's personal representative as party defendant before the expiration of the applicable limitation period or within two years after the date such suit papers were filed with the court, whichever occurs later, and such suit papers shall be taken as properly filed.

3. Effect of death on actions for recovery of realty, or a proceeding for enforcement of certain liens relating to realty.-Upon the death of any person in whose favor or against whom an action for recovery of realty, or a proceeding for enforcement of certain liens relating to realty, may be brought, such right of action shall accrue to or against his successors in interest as provided in Article 2 (§ 8.01-236 et seq.) of this chapter.

4. Accrual of a personal cause of action against the estate of any person subsequent to such person's death.-If a personal cause of action against a decedent accrues subsequent to his death, an action may be brought against the decedent's personal representative or a claim thereon may be filed against the estate of such decedent before the expiration of the applicable limitation period or within two years after the qualification of the decedent's personal representative, whichever occurs later.

5. Accrual of a personal cause of action in favor of decedent.-If a person dies before a personal cause of action which survives would have accrued to him, if he had continued to live, then an action may be commenced by such decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

6. Delayed qualification of personal representative.-If there is an interval of more than two years between the death of any person in whose favor or against whom a cause of action has accrued or shall subsequently accrue and the qualification of such person's personal representative, such personal representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of such two-year period.

C. Suspension during injunctions. - When the commencement of any action is stayed by injunction, the time of the continuance of the injunction shall not be computed as any part of the period within which the action must be brought.

D. Obstruction of filing by defendant. - When the filing of an action is obstructed by a defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought.

E. Dismissal, abatement, or nonsuit

1. Except as provided in subdivision 3 of this subsection, if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.

2. If a judgment or decree is rendered for the plaintiff in any action commenced within the prescribed limitation period and such judgment or decree is arrested or reversed upon a ground which does not preclude a new action for the same cause, or if there is occasion to bring a new action by reason of the loss or destruction of any of the papers or records in a former action which was commenced within the prescribed limitation period, then a new action may be brought within one year after such arrest or reversal or such loss or destruction, but not after.

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, and the plaintiff may recommence his action within six months from the date of the order entered by the court, or within

the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

F. Effect of devise for payment of debts. - No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts or charging the same therewith, or containing any other provision for the payment of debts, shall prevent this chapter from operating against such debts, unless it plainly appears to be the testator's intent that it shall not so operate.

G. Effect of new promise in writing

1. If any person against whom a right of action has accrued on any contract, other than a judgment or recognizance, promises, by writing signed by him or his agent, payment of money on such contract, the person to whom the right has accrued may maintain an action for the money so promised, within such number of years after such promise as it might be maintained if such promise were the original cause of action. An acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this subsection.

2. The plaintiff may sue on the new promise described in subdivision 1 of this subsection or on the original cause of action, except that when the new promise is of such a nature as to merge the original cause of action then the action shall be only on the new promise.

H. Suspension of limitations in creditors' suits. - When an action is commenced as a general creditors' action, or as a general lien creditors' action, or as an action to enforce a mechanics' lien, the running of the statute of limitations shall be suspended as to debts provable in such action from the commencement of the action, provided they are brought in before the commissioner in chancery under the first reference for an account of debts; but as to claims not so brought in the statute shall continue to run, without interruption by reason either of the commencement of the action or of the order for an account, until a later order for an account, under which they do come in, or they are asserted by petition or independent action.

In actions not instituted originally either as general creditors' actions, or as general lien creditors' actions, but which become such by subsequent proceedings, the statute of limitations shall be suspended by an order of reference for an account of debts or of liens only as to those creditors who come in and prove their claims under the order. As to creditors who come in afterwards by petition or under an order of recommitment, or a later order of reference for an account, the statute shall continue to run without interruption by reason of previous orders until filing of the petition, or until the date of the reference under which they prove their claims, as the case may be.

I. When an action is commenced within a period of thirty days prior to the expiration of the limitation period for commencement thereof and the defending party or parties desire to institute an action as third-party plaintiff against one or more persons not party to the original action, the running of the period of limitation against such action shall be suspended as to such new party for a period of sixty days from the expiration of the applicable limitation period.

§ 8.01-249. When cause of action shall be deemed to accrue in certain personal actions.

The cause of action in the actions herein listed shall be deemed to accrue as follows:

1. In actions for fraud or mistake and in actions for rescission of contract for undue influence, when such fraud, mistake, or undue influence is discovered or by the exercise of due diligence reasonably should have been discovered;

2. In actions or other proceedings for money on deposit with a bank or any person or corporation doing a banking business, when a request in writing be made therefor by check, order, or otherwise;

3. In actions for malicious prosecution or abuse of process, when the relevant criminal or civil action is terminated;

4. In actions for injury to the person resulting from exposure to asbestos or products containing asbestos, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or other disabling asbestos-related injury or disease is first communicated to the person or his agent by a physician. However, no such action may be brought more than two years after the death of such person;

5. In actions for contribution or for indemnification, when the contributee or the indemnitee has paid or discharged the obligation. A third-party claim permitted by subsection A of § 8.01-281 and the Rules of Court may be asserted before such cause of action is deemed to accrue hereunder;

6. In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or ~~incompetency~~ incapacity of the person, *upon removal of the disability of infancy or incapacity as provided in § 8.01-229 or, if the fact of the injury and its causal connection to the sexual abuse is not then known*, when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist. As used in this subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

7. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any

prosthetic device for breast augmentation or reconstruction, when the fact of the injury and its causal connection to the implantation is first communicated to the person by a physician;

8. In actions on an open account, from the later of the last payment or last charge for goods or services rendered on the account.

§ 8.01-338. Who disqualified.

The following persons shall be disqualified from serving as jurors:

1. Persons adjudicated ~~mentally incompetent~~ *incapacitated*;
2. Persons convicted of treason or a felony; or
3. Any other person under a disability as defined in § 8.01-2 and not included in subdivisions 1 or 2 above.

§ 8.01-581.12. Arbitration of medical malpractice claims.

A. Persons desiring to enter into an agreement to arbitrate medical malpractice claims which have then arisen or may thereafter arise may submit such matters to arbitration under the provisions of Chapter 21 (§ 8.01-577 et seq.) of this title and an agreement to submit such matters shall be binding upon the parties if the patient or claimant or his guardian, *conservator*, committee or personal representative is allowed by the terms of the agreement to withdraw therefrom, and to decline to submit any matter then or thereafter in controversy, within a period of at least sixty days after the termination of health care or, if the patient ~~be~~ *is* under disability by reason of age and at the time of termination without a guardian who could take such action for him, or if he ~~be insane~~ *is incapacitated* and without a ~~committee~~ *guardian or conservator* who could take such action for him, or if such termination ~~be~~ *is* by death or if death ~~occurs~~ *occurs* within sixty days after termination, then within a period of at least sixty days after the appointment and qualification of the guardian, *conservator* or committee or personal representative.

B. Proof of agreement to arbitrate and submission of a medical malpractice claim pursuant thereto shall be in accordance with Chapter 21 of this title, and a medical malpractice panel appointed under this article may be designated to arbitrate the matter, either by the arbitration agreement or by the parties to the agreement.

C. An insurer of a health care provider shall be bound by the award of an arbitration panel or arbitrators acting pursuant to a good faith submission hereunder to the extent to which it would have been obligated by a judgment entered in an action at law with respect to the matter submitted; provided, that such insurer has agreed prior to the submission to be bound by the award of such arbitration panel or arbitrators.

§ 8.01-606. Payment of small amounts to certain persons through court without intervention of fiduciary; authority of commissioners of accounts.

A. Whenever there is due to any person, any sum of money from any source, not exceeding \$10,000, the fund may be paid into the circuit court of the county or city in which the fund became due or such person resides. The court may, by an order entered of record, (i) pay the fund to the person to whom it is due, if the person is considered by the court competent to expend and use the same in his behalf, or (ii) pay the funds to some other person who is considered competent to administer it, for the benefit of the person entitled to the fund, without the intervention of a fiduciary, whether the other person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the person to whom the money is paid, which shall show the source from which it was derived, the amount, to whom it belongs, and when and to whom it was paid. The receipt shall be signed and acknowledged by the person receiving the money, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed.

Upon the payment into court the person owing the money shall be discharged of such obligation.

No bond shall be required of the party to whom the money is paid by the court.

B. Whenever (i) it appears to the court having control of a fund, tangible personal property or intangible personal property or supervision of its administration, whether a suit is pending therefor or not, that a person under a disability who has no fiduciary, is entitled to a fund arising from the sale of lands for a division or otherwise, or a fund, tangible personal property or intangible personal property as distributee of any estate, or from any other source, (ii) a judgment, decree, or order for the payment of a sum of money or for delivery of tangible personal property or intangible personal property to a person under a disability who has no fiduciary is rendered by any court, and the amount to which such person is entitled or the value of the tangible personal property or intangible personal property is not more than \$10,000, or (iii) a person under a disability is entitled to receive payments of income, tangible personal property or intangible personal property and the amount of the income payments is not more than \$10,000 in any one year, or the value of the tangible personal property is not more than \$10,000, or the current market value of the intangible personal property is not more than \$10,000, the court may, without the intervention of a fiduciary, cause such fund, property or income to be paid or delivered to any person deemed by the court capable of properly handling it, to be used solely for the education, maintenance and support of the person under a disability. In any case in which an infant is entitled to such fund, property or income, the court may, upon its being made to appear that the infant is of sufficient age and discretion to use the fund, property or income judiciously, cause the fund to be paid

or delivered directly to the infant.

Whenever a person is entitled to a fund or such property distributable by a fiduciary settling his accounts before the commissioner of accounts of the court in which the fiduciary qualified, and the amount or value of the fund or property, or the value of any combination thereof, is not more than \$10,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority herein conferred upon a court including exemption from filing further accounts where the value of the fund being administered is less than \$10,000.

Whenever an ~~incompetent~~ *incapacitated* person or infant is entitled to a fund or such property distributable by a fiduciary settling accounts before the commissioner of accounts of the court in which the fiduciary qualified and the will or trust instrument under which the fiduciary serves, authorizes the fiduciary to distribute the property or fund to the ~~incompetent~~ *incapacitated person* or infant without the intervention of a guardian, *conservator* or committee, and the amount or value of such fund or property, or the value of any combination thereof, is not more than \$10,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority hereinabove conferred upon a court or judge thereof.

Whenever a fiduciary is administering funds not exceeding \$10,000, the circuit court of the county or city in which the fund is being administered by order entered of record may authorize the fiduciary, when considered competent to administer the funds, to continue to administer the funds for the benefit of the person entitled to the fund without the necessity of filing any further accounts, whether such person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the fiduciary, which shall show the amount of the fund remaining, to whom it belongs, and the date the court entered the order exempting the filing of further accounts. The receipt shall be signed and acknowledged by the fiduciary, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed.

No bond shall be required of a fiduciary granted an exemption from filing any further accounts.

§ 8.01-670. In what cases awarded.

A. Except as provided by § 17-116.05, any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:

- a. The title to or boundaries of land,
 - b. The condemnation of property,
 - c. The probate of a will,
 - d. The appointment or qualification of a personal representative, guardian, *conservator*, committee, or curator,
 - e. A mill, roadway, ferry, wharf, or landing,
 - f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes,
 - g. The construction of any statute, ordinance, or county proceeding imposing taxes; or
2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ;

or

3. By a final judgment in any other civil case; or

B. Except as provided by § 17-116.05, any party may present a petition for an appeal to the Supreme Court in any case in chancery wherein there is an interlocutory decree or order:

1. Granting, dissolving or denying an injunction; or
2. Requiring money to be paid or the possession or title of property to be changed; or
3. Adjudicating the principles of a cause.

§ 8.3A-308. Proof of signatures and status as holder in due course.

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or ~~incompetent~~ *incapacitated* at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under § 8.3A-402 (a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under § 8.3A-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§ 8.4-405. Death or incompetence of customer.

(a) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by ~~incompetence~~ *the incapacity* of a

customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of ~~incompetence~~ *incapacity*. Neither death nor ~~incompetence~~ *incapacity* of a customer revokes the authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of ~~incompetence~~ *incapacity* and has reasonable opportunity to act on it.

(b) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

§ 13.1-603. Definitions.

In this chapter:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger, except a certificate of merger with a subsidiary pursuant to § 13.1-719, consolidation, serial designation, reduction or correction. It excludes articles of exchange filed by an acquiring corporation. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation, including any articles of serial designation, without the accompanying articles of amendment or merger.

"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation authorized by law to issue shares, irrespective of the nature of the business to be transacted, organized under this Act or existing pursuant to the laws of this Commonwealth on January 1, 1986, or which, by virtue of articles of incorporation, amendment, or merger, has become a domestic corporation of this Commonwealth, even though also being a corporation organized under laws other than the laws of this Commonwealth.

"Deliver" includes mail.

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in Article 8.1 (§ 13.1-672.1 et seq.) of Chapter 9 of this title, a foreign corporation.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness of the corporation; or otherwise. Distribution does not include acquisition by a corporation of its shares from the estate or personal representative of a deceased shareholder, or any other shareholder, but only to the extent the acquisition is effected using the proceeds of insurance on the life of such deceased shareholder and the board of directors approved the policy and the terms of the redemption prior to the shareholder's death.

"Domestic limited liability company" has the same meaning as specified in § 13.1-1002.

"Domestic limited partnership" has the same meaning as specified in § 50-73.1.

"Effective date of notice" is defined in § 13.1-610.

"Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes corporation and foreign corporation; nonstock corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States and foreign government.

"Foreign corporation" means a corporation authorized by law to issue shares, organized under laws other than the laws of this Commonwealth.

"Foreign limited liability company" has the same meaning as specified in § 13.1-1002.

"Foreign limited partnership" has the same meaning as specified in § 50-73.1.

"Government subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" includes the estate of an ~~incompetent~~ *incapacitated* or deceased individual.

"Means" denotes an exhaustive definition.

"Notice" is defined in § 13.1-610.

"Person" includes individual and entity.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of this Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action conducted by a governmental agency.

"Record date" means the date established under Article 7 (§ 13.1-638 et seq.) or Article 8 (§ 13.1-654 et seq.) of this chapter on which a corporation determines the identity of its shareholders for purposes of this chapter.

"Share" means the unit into which the proprietary interests in a corporation are divided.

"Shareholder" means the person in whose name shares are registered in the records of the corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation, or the beneficial owner of shares held in a voting trust.

"State" when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions; and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

§ 13.1-662. Voting entitlement of shares.

A. Except as provided in subsections B, C, D and E or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

B. Unless the articles of incorporation provide otherwise, in the election of directors each outstanding share, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the shareholder has a right to vote.

C. Redeemable shares are not entitled to vote on any matter and, except as to any right of conversion, shall not be deemed outstanding shares after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution with irrevocable instruction and authority to pay the holders the redemption price on surrender of the shares. Such instruction may provide that the amount so deposited and any interest thereon not claimed within five years after the redemption date shall be repaid to the corporation whose shares are so redeemed, and the persons entitled thereto shall thereafter have only the right to receive the redemption price as unsecured creditors of such corporation.

D. The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

E. If a corporation holds in a fiduciary capacity its own shares or shares of a second corporation that owns directly or indirectly a majority of shares entitled to vote for directors of the first corporation, such shares shall not be deemed to be outstanding and entitled to vote unless:

1. The corporation has authority to vote the shares only in accordance with directions of the principal or beneficiary; or

2. A co-fiduciary exists, pursuant to § 6.1-31.2 or otherwise, in which event the co-fiduciary may vote the shares.

F. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

G. Shares standing in the name of a partnership may be voted by any partner.

H. Shares held by two or more persons as joint tenants or tenants in common or tenants by the entirety may be voted by any of such persons. If more than one of such tenants votes such shares, the vote shall be divided among them in proportion to the number of such tenants voting.

I. Shares held by an administrator, executor, guardian, *conservator*, committee or curator representing the shareholder may be voted by him without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, but no trustee is entitled to vote shares held by him without a transfer of such shares into his name.

J. Shares standing in the name of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by him. Shares held by or under the control of a receiver or a trustee in proceedings under the Bankruptcy Reform Act of 1978 may be voted by him without the transfer thereof into his name if authority to do so is contained in an order of the court by which he was appointed.

K. Nothing herein contained shall prevent trustees or other fiduciaries holding shares registered in the name of a nominee pursuant to § 6.1-31 from causing such shares to be voted by such nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by a trustee or other

fiduciary without the necessity of transferring the shares to the name of the trustee or other fiduciary.

L. A shareholder whose shares are pledged is entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee is entitled to vote the shares so transferred.

M. The articles of incorporation may provide that the holders of bonds or debentures shall be entitled to vote on specified matters and such right shall not be terminated except upon consent of the holders of two-thirds in aggregate principal amount.

N. Subject to the provisions of § 13.1-665, where shares are held by more than one of the fiduciaries referred to in this section, the shares shall be voted as determined by a majority of such fiduciaries, except that: (i) if they are equally divided as to a vote, the vote of the shares is divided equally and (ii) if only one of such fiduciaries is present in person or by proxy at a meeting, the fiduciary shall be entitled to vote all the shares. A proxy apparently executed by one of several of such fiduciaries shall be presumed to be valid until challenged and the burden of proving invalidity shall rest on the challenger.

§ 13.1-803. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

"Articles of incorporation" means all documents constituting, at any particular time, the charter of a corporation. It includes the original charter issued by the General Assembly, a court or the Commission and all amendments including certificates of merger or consolidation. When the articles of incorporation have been restated pursuant to any articles of amendment or merger, it includes only the restated articles of incorporation without the accompanying articles of amendment or merger.

"Board of directors" means the group of persons vested with the management of the business of the corporation irrespective of the name by which such group is designated, and "director" means a member of the board of directors.

"Certificate," when relating to articles filed with the Commission, means the order of the Commission that makes the articles effective, together with the articles.

"Commission" means the State Corporation Commission of Virginia.

"Corporation" or "domestic corporation" means a corporation not issuing shares of stock irrespective of the nature of its business to be transacted, organized under this chapter or existing pursuant to the laws of this Commonwealth on January 1, 1986, or merged with a corporation of this Commonwealth in such manner as thereby to become a domestic corporation of this Commonwealth, even though also remaining a corporation of another state.

"Deliver" includes mail.

"Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

"Entity" includes corporation and foreign corporation; nonstock corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States and foreign government.

"Foreign corporation" means a corporation not issuing shares and organized under laws other than the laws of this Commonwealth.

"Individual" includes the estate of an ~~incompetent~~ *incapacitated* or deceased individual.

"Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

"Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

"Person" includes individual and entity.

"Principal office" means the office, in or out of this Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of this Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-936 shall be conclusive for purposes of this chapter.

"Proceeding" includes civil suit and criminal, administrative and investigatory action conducted by a governmental agency.

"Record date" means the date established under Article 7 (§ 13.1-837 et seq.) of this chapter on which a corporation determines the identity of its members for purposes of this chapter.

"Transact business" includes the conduct of affairs by any corporation that is not organized for profit.

"Voting group" means all members of one or more classes that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting. All members entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

§ 14.1-90. Services for which clerks may not charge.

A. No clerk shall charge for taking bond from, administering oath to, or making or copying orders as to the appointment or qualification of any judge, justice of the peace, sheriff, sergeant, treasurer, coroner, commissioner of the revenue, superintendent of the poor, or of a deputy or assistant of any of them, or of any escheator, supervisor, constable, or militia officer, or of a guardian *or conservator*, when

his bond is in a penalty not exceeding \$1,000.00, or for making or copying orders as to binding out poor children, or as to county allowances, or grand juries, and administering the necessary oaths.

B. No clerk shall charge for copying or making for or furnishing to the Department of Corrections or a federal probation officer a certified copy of a criminal judgment order or criminal sentencing order.

C. No clerk shall charge a fee for (i) executing any order of publication under § 14.1-198; (ii) keeping, preserving, and holding available for public inspection judgment records, and making entries in and indexing such judgments, or discharging, or marking satisfied, a lien under §§ 15.1-227.7 and 15.1-296; (iii) docketing judgment on forfeited recognizance or bond under § 19.2-147; (iv) making out reports to the Central Criminal Records Exchange under § 19.2-390; (v) recording a lien in the miscellaneous lien book under § 43-42 or § 43-43; or (vi) filing an appraiser's report under § 56-436.

D. No clerk shall charge a fee for (i) recording the reports of special receivers and commissioners as required by § 8.01-617; (ii) copying in the Induction and Discharge Record information obtained from draft boards or recording the discharge papers, or certified copy of such, of a person who has served in the armed forces of the United States; or (iii) receiving any mark of designation under § 59.1-103.

§ 15.1-244. How notice given; objections.

The notice required by § 15.1-243 may be given by personal service on all persons entitled to such notice, except that notice to an infant or ~~insane~~ *incapacitated* person may be served on his guardian, *conservator* or committee and notice to a nonresident may be mailed to him at his place of residence or served on any agent of his having the property in charge, or on the tenant of the freehold, or in any case when the owner is a nonresident, or when the owner's residence is not known, such notice may be given by publication in some newspaper published or having general circulation in the city or town once a week for four successive weeks. Or, in any case, in lieu of such personal service on the parties or their agents and of such publication, the notice to all parties may be given by publishing the same in some newspaper published or having general circulation in the city or town, once a week for two successive weeks. The second publication shall be made at least seven days before the parties are cited to appear. Any landowner wishing to make objections to an assessment or apportionment may appear in person or by counsel and state such objections.

§ 15.1-369. Notice to abutting landowner; how served.

The committee, officer or board, as the case may be, upon such ascertainment having been made, shall give written notice to all of the abutting owners of the amount of ascertainment made by them or him. The notice shall cite the owners to appear before such committee, officer or board, as the case may be, not less than ten days after the service thereof, at a time and place to be designated therein, to show cause, if any they can, against the ascertainment made as aforesaid. The notice may be given by personal service on each of the property owners, except that notice to an infant or ~~insane~~ *incapacitated* person may be served on his guardian, *conservator* or committee and notice to a nonresident may be mailed to him at his place of residence or served on any agent of his, resident in the city or town, or on his tenant occupying the premises, or, in any case, in lieu of such personal service on the parties or their agents, such notice may be given by publishing the same in some daily newspaper, published in the city or town once a week for two successive weeks, the last publication to be made at least ten days before the day on which the parties are cited to appear.

§ 16.1-69.28. Commitment of insane, etc., persons.

A judge of a district court shall have and may exercise, concurrently with special justices appointed for the purpose, the jurisdiction conferred by general law upon justices, and special justices in all matters in connection with the adjudication and commitment of ~~legally incompetent~~ *incapacitated persons*, including drug-addicted and inebriate persons, and the institution and conduct of proceedings thereof. Such proceedings may be had at any place within the jurisdiction of the court over which such judge presides.

§ 17-28. Order books.

Except as otherwise provided herein, each circuit court clerk shall keep two order books, to be known as the common-law order book and the chancery order book. In the common-law order book, all proceedings, orders and judgments of the court in all matters at common law shall be recorded. In the chancery order book, all decrees, and decretal orders of such court, in matters of equity and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, *conservators* and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of the court, by order entered of record, divide the common-law order book into two sections, to be known as the civil common-law order book and the criminal common-law order book. All proceedings, orders and judgments of the court in all matters at civil common law shall be recorded in the civil common-law order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal common-law order book. The action of any court which has established a separate criminal common-law order book prior to July 1, 1973, is hereby validated. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the common-law order book of the court. The recordation prior to January 1, 1974,

of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. Orders in cases appealed from the juvenile and domestic relations district courts shall be maintained as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

§ 17-28. (Delayed effective date) Order books.

Except as otherwise provided herein, each circuit court clerk shall keep two order books, to be known as the common-law order book and the chancery order book. In the common-law order book, all proceedings, orders and judgments of the court in all matters at common law shall be recorded. In the chancery order book, all decrees, and decretal orders of such court, in matters of equity and all matters pertaining to trusts, the appointment and qualification of trustees, committees, administrators, executors, *conservators* and guardians shall be recorded, except when the same are appointed by the clerk of court, in which event the order appointing such administrators or executors, shall be made and entered in the clerk's order book. In any circuit court, the clerk may, with the approval of the chief judge of the court, by order entered of record, divide the common-law order book into two sections, to be known as the civil common-law order book and the criminal common-law order book. All proceedings, orders and judgments of the court in all matters at civil common law shall be recorded in the civil common-law order book, and all proceedings, orders and judgments of the court in all matters at criminal law shall be recorded in the criminal common-law order book. The action of any court which has established a separate criminal common-law order book prior to July 1, 1973, is hereby validated. In any proceeding brought for the condemnation of property, all proceedings, orders, judgments and decrees of the court shall be recorded in the common-law order book of the court. The recordation prior to January 1, 1974, of all proceedings, orders, judgments and decrees in such cases, whether entered in the common-law order book or the chancery order book of any court, is hereby declared a valid and proper recordation of the same. Orders in cases appealed from the family courts shall be maintained as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

§ 18.2-76. Informed consent required.

Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided for in §§ 18.2-72, 18.2-73 or § 18.2-74, the physician shall obtain the informed written consent of the pregnant woman; provided, however, if such woman ~~shall be incompetent as~~ *has been* adjudicated *incapacitated* by any court of competent jurisdiction or if the physician knows or has good reason to believe that such woman is ~~incompetent~~ *incapacitated* as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to ~~such incompetent the woman,~~ may the physician perform ~~such the~~ abortion or otherwise terminate the pregnancy.

The physician shall inform the pregnant woman of the nature of the proposed procedure to be utilized and the risks, if any, in her particular case to her health in terminating or continuing the pregnancy.

§ 19.2-141. How recognizance taken for incapacitated or insane person or one under disability.

A recognizance which would be taken of a person but for his being a minor, insane or otherwise mentally ~~incompetent~~ *incapacitated*, may be taken of another person and without further surety, if such other person ~~be is~~ deemed sufficient, for the performance by such minor, insane or otherwise ~~mentally incompetent~~ *incapacitated* person, of the conditions of the recognizance.

§ 19.2-368.5. Filing of claims; deferral of proceedings.

A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is ~~mentally incompetent~~ *incapacitated*, the claim may be filed on his behalf by his guardian, *conservator* or such other individual authorized to administer his estate.

B. A claim must be filed by the claimant not later than 180 days after the occurrence of the crime upon which such claim is based, or not later than 180 days after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is ~~mentally incompetent~~ *incapacitated*, the provisions of subsection A of § 8.01-229 shall apply to toll the 180-day period and (ii) in cases involving claims made by a victim against profits of crime forfeited and held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) of this title, the claim shall be filed within five years of the date of the order of forfeiture. In all other cases, upon good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, two years after such occurrence.

C. Claims shall be filed in the office of the Commission in person or by mail. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If, within ten days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all

proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) after a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) after a verdict of acquittal by reason of insanity pursuant to § 19.2-182.2. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following his conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of a warrant or *capias* for the arrest of any person on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's name and other appropriate information required by the Department of State Police into the "information system", known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The report shall include the person's name, date of birth, social security number and such other known information which the State Police may require. Any unexecuted criminal process which has been entered into the VCIN system shall be removed forthwith by the entering law-enforcement agency when the criminal process has been ordered destroyed pursuant to § 19.2-76.1.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency *or incapacity*, *nolle prosequi*, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A of this section, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A of this section, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. Upon conviction of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, the clerk shall also submit a report to the Sex Offender Registry. The report to the Sex Offender Registry

shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or *capias* into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Sex Offender Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

§ 21-295. Form of petition; bond; summons of landowners not on petition.

Whenever a petition, signed by fifty-one ~~per centum~~ *percent* or more of the owners of land who own fifty-one ~~per centum~~ *percent* or more of the land, within a proposed drainage project, according to the county-land book or books or to the latest assessment lists of the county or counties in which such project is located, or by the heirs, guardians, *conservators* or executors of estates or by those having color of title, or by those in adverse possession, or by the officers of corporations, whose lands will be affected by or assessed for the expense of the proposed improvements, shall be filed in the office of the clerk of the circuit court of any county in which a part of the lands are located, setting forth that any specific body or district of land in the county or adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow, or too wet for cultivation, or in need of drainage, and the public benefit or utility or the public health, convenience or welfare, will be promoted by draining, ditching or leveeing the same, or by changing or improving the natural watercourse or courses; and setting forth therein, as far as practicable, the starting point, route and terminus and lateral tile or open branches, of the proposed improvement, and there is filed therewith a bond for the amount or product of ten dollars multiplied by the square root of the estimated number of acres within the bounds of the proposed project, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk, and conditioned for the payment of all costs and expenses incurred in the proceedings in case the court does not grant the prayer of the petition, the clerk shall issue a summons, to be served on all the defendant landowners, including any railway company, who have not joined in the petition and whose lands are affected or included in the proposed drainage district, to show cause, if any there be, why the lands in the proposed drainage project should not be drained or leveed.

§ 21-310. Guardian ad litem for infants and incapacitated adults.

These proceedings shall not be stayed because of infancy or ~~insanity~~ *incapacity*; but the court in which the petition was filed, ~~or the judge thereof in vacation,~~ shall appoint some discreet and competent attorney at law as guardian ad litem to any infant or ~~insane~~ *incapacitated* person who may own or be interested in any of the land affected by these proceedings, whether such ~~infants or insane~~ persons have

been served with process or not; ~~or~~ . If no such attorney ~~be~~ is found willing to act, the court, ~~or the judge thereof in vacation~~, shall appoint some other discreet and proper person as guardian ad litem, but the person so appointed shall not be liable to costs. Every guardian ad litem shall faithfully represent the interest or estate of the infant or ~~insane~~ *incapacitated* person for whom he is appointed, and it shall be the duty of the court to see that the estate of such defendant is so represented and protected. ~~And the court, or the judge thereof in vacation,~~ Wherever *the court is* of opinion that the interests of any infant or ~~insane~~ *incapacitated* person ~~require~~ *requires*, it, shall remove any guardian ad litem and appoint another in his stead.

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.) and 9 (§ 24.2-900 et seq.) of this title, "candidate" shall include any write-in candidate.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least ten percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Polling place" means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) eighteen years of age, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated to be ~~mentally incompetent~~ *incapacitated* shall be a qualified voter unless his ~~competency~~ *capacity* has been reestablished as provided by law.

"Qualified voter in a town" means a person who is a resident within the corporate boundaries of the town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified voter.

"Referendum" means any election held pursuant to law to submit a question to the voters for approval or rejection.

"Registered voter" means any person who is maintained on the Virginia voter registration system. All registered voters shall be maintained on the Virginia voter registration system with active status unless assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For purposes of applying the precinct size requirements of § 24.2-307, calculating election machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6 and determining the number of signatures required for candidate and voter petitions, "registered voter" shall include only persons maintained on the Virginia voter registration system with active status.

"Registration records" means all official records concerning the registration of qualified voters and shall include all records, lists, and files, whether maintained in books, on cards, on automated data bases, or by any other legally permitted record-keeping method.

"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. In determining domicile, consideration may be given to a person's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the person, motor vehicle and other personal property registration, and other factors reasonably necessary to determine the qualification of a person to register or vote.

"Special election" means any election which is held pursuant to law to fill a vacancy in office or to hold a referendum.

"State Board" or "Board" means the State Board of Elections.

"Virginia voter registration system" or "voter registration system" means the automated central record-keeping system for all voters registered within the Commonwealth which is maintained as provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4 of this title.

§ 24.2-404. Duties of State Board.

The State Board shall provide for the continuing operation and maintenance of a central record-keeping system, the Virginia Voter Registration System, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Board shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth.
2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.
3. Provide to each general registrar, voter registration cards for newly registered voters and for notice to registered voters on the system of changes and corrections in their registration records and polling places.
4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated ~~mentally incompetent~~ *incapacitated*, or (v) is otherwise no longer qualified to vote as may be provided by law.
5. Retain on the system for four years a separate record for registered voters whose names have been deleted, with the reason for deletion.
6. Provide to each general registrar, at least ten days prior to a general or primary election and three days prior to a special election, a list of all registered voters in the county or city, together with an alphabetical list of all registered voters in each precinct of the county, city, or town. These precinct lists shall be used as the official lists of qualified voters and shall constitute the precinct registered voter lists.
7. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the Board.
8. Use any source of information that may assist in carrying out the purposes of this section. All agencies of the Commonwealth shall cooperate with the State Board in procuring and exchanging identification information for the purpose of maintaining the voter registration system.
9. Reprint and impose a reasonable charge for the sale of any part of Title 24.2 of the Code of Virginia, lists of precincts and polling places, statements of election results by precinct, and any other items required of the State Board by law. Receipts from such sales shall be credited to the Board for reimbursement of printing expenses.

§ 24.2-418. Application for registration.

Each applicant to register shall provide, subject to felony penalties for making false statements pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless physically disabled, he shall sign the application. The application to register shall be only on a form or forms prescribed by the State Board.

The form of the application to register shall require the applicant to provide the following information: full name, including the maiden name and any other prior legal name; age; gender; date and place of birth; social security number, if any; whether the applicant is presently a United States citizen; address and place of abode and date of residence in the precinct; place of any previous registrations to vote; and whether the applicant has ever been adjudicated ~~to be mentally incompetent~~ *incapacitated* or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored.

The form shall permit any active or retired law-enforcement officer, as defined in § 9-169 and in 5 U.S.C.A. § 8331 (20) but excluding officers whose duties relate to detention as defined in paragraphs (A) through (D) of § 8331 (20), to furnish, in addition to his residence street address, a post office box address for his residence to be included in lieu of his street address on the lists of registered voters and persons who voted which are furnished pursuant to §§ 24.2-405 and 24.2-406.

The form shall permit any party granted a protective order as described in §§ 16.1-253.1, 16.1-253.4,

16.1-279.1 and 18.2-60.3 to furnish, in addition to his street address, a post office box address for his residence to be included in lieu of his street address on the lists of registered voters and persons who voted which are furnished pursuant to §§ 24.2-405 and 24.2-406.

§ 24.2-427. Cancellation of registration for persons known to be deceased or disqualified to vote.

The general registrar shall cancel the registration of (i) all persons known by him to be deceased or disqualified to vote by reason of a felony conviction or adjudication of ~~mental incompetency~~ *of incapacity* and (ii) all persons for whom a notice has been received, signed by the voter or the registration official of another jurisdiction, that the voter has moved from the county or city. The notice received in clause (ii) shall be considered as a written request from the voter to have his registration cancelled. A voter's registration may be cancelled at any time during the year in which the general registrar discovers that the person is no longer entitled to be registered.

§ 25-46.13. No notice required where owner is infant, incapacitated or a convict; appointment of guardian ad litem.

If any owner is an infant or ~~insane, incompetent~~ *incapacitated*, or a convict and has no guardian, conservator or committee in this Commonwealth, no notice need be issued for or served upon him and a guardian ad litem for such owner shall be appointed in the manner prescribed in § 8.01-9.

§ 25-46.28. Distribution of money paid into court.

Upon the award being paid into court and the confirmation of the report in the manner provided in § 25-46.24, the interest or estate of the owner or owners in the property taken or damaged shall terminate and they shall have such interest or estate in the fund and any interest accrued thereon so paid into court as they had in the property so taken or damaged, and all liens by a deed of trust, judgment or otherwise upon such property or any interest therein shall be transferred to the fund so paid into court. If the court is satisfied that the persons having an interest therein are before the court, the court shall make such distribution of such money and any interest accrued thereon as to it may seem proper, having due regard to the interest of all persons therein, and in what proportions such money is properly payable.

If it appears from the record in the proceedings or otherwise that the person or persons or classes of persons in the proceedings are vested with the superior right or claim of title in the land or estate or interest therein condemned, or in the proceeds of the award of just compensation, and that the record does not disclose any denial or dispute thereof, by any person or party in interest, the court may direct that the fund and any interest accrued thereon, after the payment therefrom of any taxes, be disbursed and distributed accordingly among the persons entitled thereto or to whomsoever they may by writing direct; except that with respect to any persons appearing to be infants, ~~incompetent~~ *incapacitated* or under any other legal disability, the court may inquire into their rights or claims, independent of any statement in the record, and any order for distribution shall conserve and protect the rights of such parties in and to the fund and any interest accrued thereon. The cost of a commissioner in chancery appointed by the court to assist in making the proper distribution in cases of legal disability as herein set forth may be taxed as a cost of the proceedings, to be paid by the petitioner.

If it appears to the court that there exists a controversy among claimants to the fund and any interest accrued thereon, or to the ownership of the property subject to the condemnation, the court shall enter an order setting a time for hearing the case and determining the rights and claims of all persons entitled to the fund or to any interest or share therein. In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court may appoint a commissioner in chancery to take evidence upon the conflicting claims. No costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund and any interest accrued thereon or the distribution thereof shall be taxed against the petitioner; provided, however, that in the event that the fund, exclusive of interest, is less than \$500, such costs shall be taxed against the petitioner.

Upon a determination by the court of the rights and claims of the persons entitled to the fund and any interest accrued thereon, an order shall be entered directing the disbursement among the persons entitled thereto or to whomsoever they may by writing direct. Any party aggrieved thereby may apply for an appeal as provided in § 25-46.26.

§ 26-4. When fiduciary may qualify without security.

The several courts in this Commonwealth and the clerks thereof, having jurisdiction to appoint personal representatives, guardians, *conservators* and committees may, in their discretion, when the amount coming into the hands or possession of the personal representative, guardian *of a minor*, *conservator* or committee does not exceed \$5,000, allow any such 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 exempted from giving surety on its bond as such under § 6.1-18 shall, unless the court shall otherwise direct, be likewise exempt.

§ 26-5. Liability for losses by negligence or failure to make defense.

If any fiduciary mentioned before in this chapter, or any agent or attorney at law, shall, by his negligence or improper conduct, lose 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.

If any personal representative, guardian, *conservator*, curator, or committee shall pay 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 same could be so prevented, no credit shall be allowed him therefor.

§ 26-7. Court order for payments due from fiduciaries; effect.

When a report of the accounts of any guardian, curator, *conservator*, committee, or trustee aforesaid, shall be confirmed, either in whole or in a qualified manner, the court, in the clerk's office of which such report is filed, may order payment of what shall appear due on such accounts to such persons as would be entitled to recover the same by suit in equity; and any guardian, curator, *conservator*, committee, or trustee who has, in good faith, in compliance with the order of such court, paid and delivered the money and other estate in his hands to whomsoever the court has adjudged entitled thereto, shall be fully protected against the demands of creditors and all other persons.

§ 26-7.1. Execution of fiduciary bond designates clerk as attorney for service of process.

Every person who qualifies in a court or clerk's office of this Commonwealth as personal representative of a decedent, guardian, ~~curator~~ *conservator*, committee, trustee or receiver, and the surety upon any such fiduciary's bond, shall by executing the bond required of him, 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 such person upon whom service of any notice, process or rule issuing from a court of this Commonwealth or a commissioner of such court, of the nature hereinafter set forth, may be executed, whenever the said person cannot be found and served within the Commonwealth of Virginia after the exercise of due diligence; provided, however, that the object of the proceeding shall relate 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; and provided, further, that the foregoing designation shall terminate and be no longer in effect when the fiduciary's final account shall "stand confirmed," as provided in § 26-33, or by order of court.

§ 26-7.4. Environmental liability of fiduciaries.

A. As used in this section:

"Fiduciary" includes guardians, committees, *conservators*, trustees, executors, administrators and administrators with the will annexed, curators of decedent's wills, and attorneys-in-fact or agents acting for principals under written powers of attorney; and the singular term includes 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.

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

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.

§ 26-17.10. Miscellaneous.

A. The commissioner shall state, settle and report to the court an account of the transactions of such fiduciary, as provided by law. Every such fiduciary shall also, at the request of the commissioner, exhibit 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.

B. If a personal representative of a decedent's estate, a testamentary trustee, a guardian, *conservator* or a committee dies prior to the filing and settlement of such 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.

§ 26-27. Commissioners 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 any circuit court of his county or city, or during the first week of each month, post at the front door of the courthouse of such circuit court a list of the fiduciaries whose accounts are before him for settlement, stating the names of such

fiduciaries, the nature of their accounts, whether as personal representative, guardian, *conservator*, curator, committee, or trustee, and the name of their decedents, or of the persons for whom they are guardians, *conservators*, curators, or committees, or under whose deed or other instrument of trust they are acting. No account of any fiduciary shall be completed by any commissioner until ten days after the list containing the name of such fiduciary as aforesaid shall have been so posted.

§ 26-45.2. Placing certain trust assets in designated financial institutions; waiver or reduction of bond of fiduciary officer.

(1) Whenever it shall be the judgment of any court having jurisdiction of any estate in process of administration by any guardian, *conservator*, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of such officer shall seem burdensome or for other cause, the court may order such portion or all of the personal assets of the estate, as it shall deem 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 this Commonwealth, consideration being given to any bank, trust company or savings institution, proposed by the officer. When the original assets are accordingly placed with a designated financial institution, such financial institution shall issue in the name of the estate and file with the court a receipt or receipts therefor and shall give the officer a duplicate copy thereof. Such receipt or receipts shall acknowledge:

(a) The original assets received by the financial institution, or the duly collected proceeds therefrom, 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 officer as are authorized by orders of the court directed to the financial institution; and

(b) Accountings therefor shall be made to the officer at reasonably frequent intervals agreeable to the officer. After the receipt or receipts of the financial institution for the original assets placed with such financial institution have been filed with the court, the court thereupon shall, by an order, waive the bond to be given or previously given by such officer or reduce it so that it shall apply only to the estate remaining in the hands of such officer, whichever the court shall deem best for the estate.

(2) Whenever the court has ordered any assets of an estate to be placed with a financial institution designated as provided herein, any person or corporation having possession or control of any of such 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 officer has duly qualified or not, pay and deliver such 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.

(3) Any bank, trust company or savings institution as above described which may be designated by the court under this section, shall be at liberty to accept or reject such 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 such designation within fifteen days after actual knowledge of such designation shall have come to the attention of that financial institution. In the event of acceptance such bank, trust company or savings institution shall be allowed as a proper charge against the assets placed with such financial institution, such reasonable amount for its services and expenses as the court making such designation may by its order allow and provide.

§ 26-46. Resignation by fiduciary of his trust.

Any personal representative, guardian, *conservator* or committee may be allowed by the court in which or before the clerk of which he qualified ~~or, when he qualified in a county court or in a corporation or hustings court which has been or may be abolished, by the circuit court for such county or corporation~~, to resign his trust after his accounts as such fiduciary have been stated and settled in the mode prescribed by law; but such resignation shall not invalidate any act done or affect any liability incurred by him while holding such trust.

§ 26-60. How property of nonresident infant, incapacitated person, or other person under physical or mental disability transferred to foreign guardian, conservator or committee.

When any infant or ~~insane incapacitated person or other person under physical or mental disability~~, entitled to property or money in this Commonwealth, resides out of it, a petition to remove such property or money to the domicile of such infant or ~~insane incapacitated person or other person under physical or mental disability~~ may be filed by his guardian, *conservator* or committee, or other fiduciary lawfully appointed and qualified in the state or country of his residence, in the circuit court of the county; or ~~the circuit or corporation court or some other court of the city having chancery jurisdiction~~, in which the property or money, or some part thereof, is *located*. If entitlement to such property or money was acquired other than by a will or was acquired by a will that restricts such transfer out of this Commonwealth, the infant or ~~insane~~ *incapacitated* person, and the guardian of such infant or the ~~committee, guardian~~ *conservator* or other fiduciary of such ~~insane incapacitated person or other person under physical or mental disability~~ appointed in this Commonwealth, if there ~~be~~ *is* one, shall be made parties defendant to this petition; ~~and~~. The court shall appoint a guardian ad litem ~~to such infant or insane for the~~ defendant ~~or other person under physical or mental disability~~, who, as well as the

~~guardian, committee~~ *conservator* or other fiduciary, if there ~~be 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 such property or money was acquired by a will that does not restrict such transfer out of the Commonwealth, the court may order the ~~guardian or committee in the Commonwealth, if there be one,~~ *fiduciary* to pay and deliver to such foreign guardian, *conservator*, committee or fiduciary, or his agent or attorney, all personal property and money in his hands belonging to ~~such the~~ *the* infant or ~~insane~~ *incapacitated* person, and authorize ~~such the~~ *the* foreign guardian, *conservator*, committee or fiduciary to sue for, recover, and receive all money or personal property which belongs to the infant or ~~insane~~ *incapacitated* person, including the accruing rents of his real estate, in like manner as if he were appointed a guardian, *conservator*, committee or fiduciary of such infant or ~~insane~~ *incapacitated* person in the Commonwealth, and remove the same to the state or country in which ~~such foreign guardian, committee or the foreign~~ *such foreign guardian, committee or the foreign* fiduciary was appointed and qualified.

§ 26-61. Transfer of proceeds of sale of real estate of nonresident beneficiary to foreign guardian, etc.

When the proceeds of sale of the real estate of an infant, ~~insane~~ *incapacitated* person, or cestui que trust, under the laws now in force, are invested, or required to be invested under the direction of a court, and such infant, ~~insane~~ *incapacitated* person, or cestui que trust ~~reside~~ *resides* out of this Commonwealth, on the petition of a guardian, committee, *conservator* or trustee lawfully appointed or qualified in the state or country of the residence of such infant, ~~insane~~ *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 this Commonwealth who would be the heirs of such infant, ~~insane~~ *incapacitated* person, or cestui que trust, if he were dead, order such proceeds to be paid and delivered to such 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. But the court may refuse to grant the prayer of the petitioner whenever, in its judgment, the removal of the trust subject will defeat or conflict with the provisions of the deed, will, or other instrument creating the trust.

§ 26-62. Notice and bond required prior to such transfer.

No such order as is mentioned in §§ 26-60 and 26-61 shall be made until notice of the application ~~shall have~~ *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 ~~be is~~ none so published, then in an adjoining county, nor until it shall be shown by authentic documentary evidence that ~~such the~~ *the* foreign guardian, *conservator* or committee has, where he qualified, given bond with surety, sufficient to insure his accountability for the whole amount of the ward's or ~~insane~~ *incapacitated* person's estate in his hands or which will probably be received by him as such guardian, *conservator* or committee, nor until the court ~~shall be is~~ satisfied that the removal of such money or property from this Commonwealth will not impair the rights or be prejudicial to the interests either of the ward or ~~insane~~ *incapacitated* person or of any other person.

§ 26-63. When bond may be dispensed with.

In any case in which it shall be made to appear to the satisfaction of the court that the laws of the foreign state or country, in which the infant or ~~insane~~ *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 such foreign ~~guardian~~ *fiduciary* although he has not given the bond required by § 26-62.

§ 26-66. Sale of property and payment of proceeds to nonresident trustee.

If, in any proceeding under § 26-60 or § 26-64, or in case of an interest in property acquired by a will that does not restrict the transfer of property out of this Commonwealth upon petition under § 26-60, it shall appear to the court to be proper, it may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian, *conservator* or committee or nonresident trustee.

§ 26-67. Discharge of resident guardian, committee, conservator or trustee, from liability.

When any guardian, committee, *conservator*, trustee or other person in this Commonwealth shall pay over, transfer, or deliver any estate in his hands or vested in him, under any order or decree made in pursuance of this chapter, he shall be discharged from all responsibility therefor.

§ 29.1-801. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Board" means the Board of Game and Inland Fisheries.

"Certificate of origin" means the document provided by the manufacturer of a new watercraft, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised new watercraft dealers, and the original purchaser not for resale.

"Department" means the Department of Game and Inland Fisheries.

"Director" means the director of the Department.

"Distributor" means a person who sells or distributes new watercraft pursuant to a written agreement with the manufacturer, to new watercraft dealers in this Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of watercraft to watercraft dealers or for directing or supervising, in whole or in part, its representatives in this Commonwealth.

"Distributor representative" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of watercraft dealt in by it or for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

"Established place of business" means a salesroom in a permanent enclosed building or structure, either owned in fee or leased, at which a permanent business of bartering, trading and selling of watercraft will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place. It shall not mean residence, tents, temporary stands or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a watercraft dealer, as herein defined.

"Factory branch" means a branch office, maintained by a person for the sale of watercraft to distributors or for the sale of watercraft to watercraft dealers, or for directing or supervising, in whole or in part, its representatives in this Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles watercraft or by a factory branch for the purpose of making or promoting the sale of its watercraft or for supervising or contacting its dealers, prospective dealers, or representatives in this Commonwealth.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering, selling and servicing new watercraft manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the watercraft or its manufacturer or distributor.

"Manufacturer" means a person engaged in the business of constructing or assembling new watercraft.

"New watercraft" means any watercraft which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental or demonstration watercraft, or for the personal and business transportation of the manufacturer or dealer or any of their employees, or for any use other than the limited use necessary in testing the watercraft prior to delivery to a customer, (iii) is transferred by a certificate of origin, and (iv) has the manufacturer's certification that it conforms to all applicable federal watercraft safety standards.

"New watercraft dealer" means a dealer in new watercraft or new and used watercraft.

"Person" means any natural person or individual, partnership, firm, association, corporation or other entity.

"Retail installment sale" means and includes every sale of one or more watercraft to a buyer for his use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a conditional sale, bailment lease, chattel mortgage or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a watercraft to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to watercraft dealers or wholesalers other than to consumers or a sale to one who intends to resell.

"Used watercraft" means any watercraft other than a new watercraft as defined herein.

"Used watercraft dealer" means a dealer in used watercraft that does not deal in new watercraft.

"Watercraft" means that as defined in § 29.1-712 except that (i) United States naval watercraft, (ii) watercraft which have a valid marine document issued by the United States Coast Guard, other than recreational watercraft under seventy feet in length and (iii) watercraft documented outside the United States shall not be included in such definition for purposes of this chapter.

"Watercraft dealer" means any person which:

1. For commission, money or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage or otherwise howsoever, or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase or exchange of an interest in, new watercraft or new and used watercraft or used watercraft alone whether or not such watercraft are owned by such person; or

2. Is engaged, wholly or in part, in the business of selling new watercraft or new and used watercraft, or used watercraft only, whether or not such watercraft are owned by such person; or

3. Sells, offers to sell, displays or permits the display for sale, of two or more watercraft, within any twelve consecutive months.

For the purpose of this chapter the term "watercraft dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, *conservators* or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific

performance of their duties as such employees; or

2. Public officers, their deputies, assistants or employees, while performing their official duties; or
3. Persons, other than corporations or other business entities primarily engaged in the leasing or renting of watercraft to others, (i) when selling or offering such watercraft for sale at retail, or (ii) disposing of watercraft acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter; or
4. Any corporation duly chartered or authorized to do a banking or trust business under the authority of the laws of this Commonwealth, or the United States, which may have received title to a watercraft in the normal course of its business by reason of a foreclosure, other taking, repossession or voluntary reconveyance to said corporation arising or occurring as a result of any loan secured by a lien on said watercraft; or
5. An employee of an organization arranging for the purchase or lease by the organization of watercraft for use in the organization's business; or
6. Any person who permits the operation of a watercraft show or permits the display of watercraft for sale by any watercraft dealer licensed under this chapter; or
7. An insurance company licensed or otherwise authorized to do business in this Commonwealth that sells or disposes of watercraft under a contract with their insured and in the regular course of its business.

"Watercraft salesman" or "salesman" means any person who is employed as a salesman by, or has an agreement with, a watercraft dealer to sell or exchange watercraft.

"Watercraft show" means a display of watercraft to the general public at a location other than a dealer's location licensed under this chapter where such watercraft may be offered for sale or exchange during or as part of the display.

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions, certification of compliance.

A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;
2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;
3. Is fully informed by a physician of his medical condition unless medically contraindicated as documented by a physician in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;
4. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;
5. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;
6. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;
7. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;
8. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;
9. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
10. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
11. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;
12. May meet with and participate in activities of social, religious and community groups at his

discretion, unless medically contraindicated as documented by his physician in his medical record;

13. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician in his medical record; and

14. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician in the medical record.

B. All established policies and procedures regarding the rights and responsibilities of patients shall be printed in at least twelve point type and posted conspicuously in a public place in all nursing home facilities required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter. These policies and procedures shall include the name and telephone number of the complaint coordinator in the Division of Licensure and Certification of the Virginia Department of Health as well as the toll-free number for the Virginia Long-Term Care Ombudsman Program and any substate ombudsman program serving the area. Copies of such policies and procedures shall be given to patients upon admittance to the facility and made available to patients currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public.

C. The provisions of this section shall not be construed to restrict any right which any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A hereof and § 32.1-138.1 as they pertain to (i) a patient adjudicated ~~incompetent~~ *incapacitated* in accordance with state law, (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee, except when the facility itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social Security Act.

F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution to which the provisions of § 32.1-128 are applicable.

G. It shall be the responsibility of the Commissioner to insure that the provisions of this section and the provisions of § 32.1-138.1 are observed and implemented by nursing home facilities. Each nursing home facility to which this section and § 32.1-138.1 are applicable shall certify to the Commissioner that it is in compliance with the provisions of this section and the provisions of § 32.1-138.1 as a condition to the issuance or renewal of the license required by Article 1 (§ 32.1-123 et seq.) of this chapter.

§ 37.1-87. Admission raises no presumption of legal incapacity.

The admission of any person to a hospital shall not, of itself, create a presumption of legal incapacity or ~~incompetency~~.

§ 37.1-108. Department to investigate financial ability to pay expenses.

The Department shall make investigation and ascertain which of the patients, or which of the parents, guardians, *conservators*, trustees, committees, or other persons legally responsible therefor, are financially able to pay the expenses of the care, treatment and maintenance, and such patient, parent, guardian, *conservator*, trustee, committee, or other person legally responsible therefor shall be notified of such expenses and, in general, of the provisions of this article.

§ 37.1-109. Assessments and contracts by Department.

The Department may assess or contract with any patient, patient's parent, guardian, trustee, *conservator*, committee, or the person legally liable for his support and maintenance, and in arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the patient, his present and future needs and the present and future needs of his lawful dependents, and, whenever deemed necessary, to protect him or his dependents, may assess or agree to accept a monthly sum for his maintenance less than the actual per capita cost of his maintenance; provided, however, that the estate of such patient other than income shall not be depleted below the sum of \$500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per capita cost of care, treatment, and maintenance and the financial condition and estate of any patient, his present and future needs and the present and future needs of his lawful dependents and entering into a new agreement with the patient, patient's parent, guardian, *conservator*, trustee, committee, or the person liable for his support and maintenance, increasing or decreasing the sum to be paid for the patient's care, treatment, and maintenance.

All contracts made by and between the Department and any person acting in a fiduciary capacity for any patient adjudicated to be ~~legally incompetent because of mental illness or mental retardation~~ *incapacitated* under the provisions of Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 (~~§ 37.1-128.01 et seq.~~) of this title and all assessments made by the Department upon such patients or their fiduciaries, providing for payment of the expenses of such patient in any state hospital, shall be subject to the approval of any court of record having jurisdiction over the ~~incompetent's~~ *incapacitated person's* estate

or for the county or city of which he is a legal resident or from which he was admitted to said hospital.

§ 37.1-110. Application for order to compel payment of expenses.

When any patient or his guardian, *conservator*, committee, trustee or the person or persons legally liable for his expenses fails to pay such expenses, and it appears from investigation that such patient, his guardian, *conservator*, committee, trustee or the person or persons legally liable for the support of the patient is able or has sufficient estate to pay such expenses, the Department shall petition the appropriate court having jurisdiction over the estate of the patient or the court for the county or city of which the patient is a legal resident or from which he was admitted to a state hospital for an order to compel payment of such expenses by persons liable therefor. In any case in which a person or persons legally liable for the support of the patient is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which such person or persons legally liable for the support of the patient reside.

The patient and his estate shall first be liable for the payment of his expenses and thereafter, the person or persons legally liable for the support of the patient. Such person or persons shall be the father, mother, husband, wife and child or children of the patient, who have attained the age of majority. Such persons shall be jointly and severally liable. The Department shall collect such part or all of such expenses from the several sources as appears proper under the circumstances and may proceed against all of such sources, except that principal or income or both from a trust created for the benefit of the patient shall be liable for payment only as provided in § 55-19. In evaluating the circumstances, the Department may consider any events related to the admission of the patient for treatment which have affected the person or persons legally liable, such as the infliction of serious injury by the patient on any person who is legally liable. The proceedings for the collection of such expenses shall conform to the procedure for collection of debts due the Commonwealth.

§ 37.1-111. Notice of hearing.

Notice of any hearing, on the petition of the Department for an order to compel payment of such expenses, shall be served on the patient, and, if there ~~be~~ *is* one, upon his committee, guardian, *conservator* or trustee, or upon the person or persons legally responsible for the support of the patient, or upon the person or persons against whom the proceedings are instituted, at least fifteen days prior to the hearing, and in the manner provided for the service of civil process.

§ 38.2-3415. Exclusion or reduction of benefits for certain causes prohibited.

No group accident and sickness insurance policy, nor any group subscription contract, delivered or issued for delivery in this Commonwealth or renewed, reissued or extended if already issued, shall contain any provision excluding or reducing the benefits of any insured or subscriber because benefits have been paid or are payable under any individually underwritten and individually issued policy or subscription contract providing exclusively for accident and sickness benefits and for which the entire premium has been paid by the insured, a member of the insured's family, or the insured's guardian *or conservator*.

§ 38.2-4200. Applicability of chapter.

A. Except as otherwise provided by law, no plan shall be organized, conducted or offered in this Commonwealth other than in the manner set forth in this chapter.

B. Nothing contained in this chapter shall prohibit any physician (i) as an individual, (ii) in partnership with other physicians, or (iii) as part of a professional corporation of physicians, from entering into agreements directly with his own patients, or with a parent, guardian, *conservator*, spouse or other family member acting in a patient's behalf, involving payment for professional services to be rendered or made available in the future.

§ 38.2-4500. Applicability of chapter.

A. Except as otherwise provided by law, no arrangement for furnishing prepaid dental services or prepaid optometric services shall be organized, conducted or offered in this Commonwealth other than in the manner set forth in this chapter.

B. Nothing contained in this chapter prohibits any dentist or optometrist individually, in partnership with other dentists or optometrists, or as part of a professional corporation of dentists or optometrists from entering into agreements directly with his own patients, or with a parent, guardian, *conservator*, spouse or other family member acting in a patient's behalf, involving payment for professional services to be rendered or made available in the future.

§ 46.2-314. Mental incapacity.

No driver's license shall be issued to any applicant who has previously been adjudged ~~legally incompetent~~ *incapacitated* and who has not, at the time of such application, been (i) adjudged restored to ~~competency~~ *capacity* by judicial decree or (ii) released from a hospital for the mentally ill on a certificate of the superintendent of the hospital that the person is ~~competent~~ *capable*. In either case, no driver's license shall be issued to him unless the Department is satisfied that he is competent to drive a motor vehicle with safety to persons and property.

§ 46.2-322. Examination of licensee believed incompetent; suspension, or restriction of license; license application to include questions as to physical or mental conditions of applicant; false answers; examination of applicant; physician's statement.

A. If the Department has good cause to believe that a driver is ~~physically or mentally incompetent~~ *incapacitated and therefore unable* to drive a motor vehicle safely, after written notice of at least fifteen days to the person, it may require him to submit to an examination to determine his fitness to drive a motor vehicle. If the driver so requests in writing, the Department shall give the Department's reasons for the examination, including the identity of all persons who have supplied information to the Department regarding the driver's fitness to drive a motor vehicle. However, the Department shall not supply the reasons or information if its source is a relative of the driver or a physician treating the driver.

B. As a part of its examination, the Department may require a physical examination by a licensed physician and a report on the results thereof. When it has completed its examination, the Department shall take whatever action may be appropriate and may suspend the license or privilege to drive a motor vehicle in the Commonwealth of the person or permit him to retain his license or privilege to drive a motor vehicle in the Commonwealth, or may issue a license subject to the restrictions authorized by § 46.2-329. Refusal or neglect of the person to submit to the examination or comply with restrictions imposed by the Department shall be grounds for suspension of his license or privilege to drive a motor vehicle in the Commonwealth.

C. The Commissioner shall include, as a part of the application for an original driver's license, or renewal thereof, questions as to the existence of physical or mental conditions which impair the ability of the applicant to drive a motor vehicle safely. Any person knowingly giving a false answer to any such question shall be guilty of a Class 2 misdemeanor. If the answer to any such question indicates the existence of such condition, the Commissioner shall require an examination of the applicant by a licensed physician as a prerequisite to the issuance of the driver's license. The report of the examination shall contain a statement that, in the opinion of the physician, the applicant's physical or mental condition at the time of the examination does or does not preclude his safe driving of motor vehicles.

§ 46.2-380. Reports made under certain sections open to inspection by certain persons; copies.

Any report of an accident made pursuant to §§ 46.2-372, 46.2-373, 46.2-375, or § 46.2-377 shall be open to the inspection of any person involved or injured in the accident or as a result thereof, or his attorney or any authorized representative of any insurance carrier reasonably anticipating exposure to civil liability as a consequence of the accident or to which the person has applied for issuance or renewal of a policy of automobile insurance. The Commissioner or Superintendent, or the area or division offices of the Department of State Police having a copy of the report, shall on written request of the person or attorney or any authorized representative of any insurance carrier reasonably anticipating exposure to civil liability as a consequence of the accident or to which the person has applied for issuance or renewal of a policy of automobile insurance, furnish a copy of the report at the expense of the person, attorney, or representative. Any such report shall also be open to inspection by the personal representative of any person injured or killed in the accident, including his guardian, *conservator*, executor, committee, or administrator, or, if the person injured or killed is under eighteen years old, his parent or guardian. The Commissioner or Superintendent shall only be required to furnish under this section copies of reports required by the provisions of this article to be made directly to the Commissioner or Superintendent, or to the area or division offices of the Department of State Police having a copy of any such report, as the case may be. The Commissioner and the Superintendent, acting jointly, may set a reasonable fee for furnishing a copy of any report, provide to whom payment shall be made, and establish a procedure for payment. Nothing contained in this section shall require any division office of the Department of State Police to furnish any copy when duplicating equipment is not available.

§ 46.2-1500. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Board" means the Motor Vehicle Dealer Board.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and who sells or distributes new motor vehicles pursuant to a written agreement with the manufacturer, to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or

contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motor vehicles of a particular line-make or late model or factory repurchase motor vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motor vehicle dealer" means a dealer in late model or factory repurchase motor vehicles, including a franchised new motor vehicle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase motor vehicles.

"Franchised motor vehicle dealer" means a dealer in new motor vehicles that has a franchise agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

"Fund" means the Motor Vehicle Dealer Board Fund.

"Independent motor vehicle dealer" means a dealer in used motor vehicles.

"Late model motor vehicle" means a motor vehicle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor.

"Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by the final manufacturer or assembler of the truck.

"Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter, it shall not include (i) trailers and semitrailers; (ii) mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (iii) motor homes; (iv) motorcycles; (v) nonrepairable vehicles, as defined in § 46.2-1600; and (vi) salvage vehicles, as defined in § 46.2-1600.

"Motor vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or

2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any twelve consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, *conservators* or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith

and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a mobile home or similar vehicle in conjunction with the sale of the parcel of land on which the mobile home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

"Motor vehicle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a motor vehicle dealer to sell or exchange motor vehicles. It shall also mean any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles.

"Motor vehicle show" means a display of motor vehicles to the general public at a location other than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or exchange during or as part of the display.

"New motor vehicle" means any vehicle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motor vehicle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the vehicle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal motor vehicle safety and emission standards. Notwithstanding provisions (i) and (iii), a motor vehicle that has been previously sold but not titled shall be deemed a new motor vehicle if it meets the requirements of provisions (ii), (iv), and (v).

"Relevant market area" means as follows:

1. In metropolitan localities, the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of ten miles but in no case less than seven miles.

2. If the population in an area within a radius of ten miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of fifteen miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the fifteen-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of twenty miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market area shall be the greater of an area within a radius of twenty miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

"Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.

§ 46.2-1900. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Certificate of origin" means the document provided by the manufacturer of a new T&M vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised T&M vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new T&M vehicles pursuant to a written agreement with the manufacturer, to franchised T&M vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of T&M vehicles to T&M vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of T&M vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of T&M vehicles to distributors or for the sale of T&M vehicles to T&M vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles T&M vehicles, or by a factory branch for the purpose of making or promoting the sale of its T&M vehicles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase T&M vehicle" means a T&M vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the T&M vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the T&M vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new T&M vehicles of a particular line-make or late model or factory repurchase T&M vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the T&M vehicle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase T&M vehicle dealer" means a dealer in late model or factory repurchase T&M vehicles, including a franchised new T&M vehicle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase T&M vehicles.

"Franchised T&M vehicle dealer" or "franchised dealer" means a dealer in new T&M vehicles that has a franchise agreement with a manufacturer or distributor of new T&M vehicles.

"Independent T&M vehicle dealer" means a dealer in used T&M vehicles.

"Late model T&M vehicle" means a T&M vehicle of the current model year and the immediately preceding model year.

"Manufacturer" means a person engaged in the business of constructing or assembling new T&M vehicles or a person engaged in the business of manufacturing engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by the final manufacturer or assembler of the motor home.

"Motor home" means a motor vehicle with a normal seating capacity of not more than ten persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle dealer," "motor vehicle manufacturer," "motor vehicle factory branch," "motor vehicle distributor," "motor vehicle distributor branch," "motor vehicle factory representative," and "motor vehicle distributor representative" mean the same as provided in § 46.2-1500.

"New T&M vehicle" means any T&M vehicle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration T&M vehicle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the T&M vehicle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal T&M vehicle safety and

emission standards. Notwithstanding provisions (i) and (iii), a T&M vehicle that has been previously sold but not titled shall be deemed a new T&M vehicle if it meets the requirements of provisions (ii), (iv), and (v) of this definition.

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than seven miles.

2. If the population in an area within a radius of ten miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of fifteen miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the fifteen-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of twenty miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market area shall be the greater of an area within a radius of twenty miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more T&M vehicles to a buyer for his use and not for resale, in which the price of the T&M vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a T&M vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to T&M vehicle dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"T&M vehicle" means motor homes and travel trailers as defined in this section.

"T&M vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new T&M vehicles, new and used T&M vehicles, or used T&M vehicles alone, whether or not the T&M vehicles are owned by him;

2. Is wholly or partly engaged in the business of selling new T&M vehicles, new and used T&M vehicles, or used T&M vehicles only, whether or not the T&M vehicles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more T&M vehicles within any twelve consecutive months.

The term "T&M vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, *conservators* or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of T&M vehicles to others when selling or offering such vehicles for sale at retail, disposing of T&M vehicles acquired for their own use and actually so used, when the T&M vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including T&M vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1919, 46.2-1920 and 46.2-1949.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a T&M vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the T&M vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of T&M vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a mobile home or similar vehicle in conjunction with the sale of the parcel of land on which the mobile home or similar vehicle is located.

8. Any person who permits the operation of a T&M vehicle show or permits the display of T&M vehicles for sale by any T&M vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of

T&M vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of T&M vehicles owned by others.

11. Any person dealing solely in the sale or lease of T&M vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a T&M vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

"T&M vehicle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a T&M vehicle dealer to sell or exchange T&M vehicles.

"T&M vehicle show" means a display of T&M vehicles to the general public at a location other than a dealer's location licensed under this chapter where the T&M vehicles are not being offered for sale or exchange during or as part of the display.

"Travel trailer" means a vehicle designed to provide temporary living quarters of such size or weight as not to require special highway movement permits when towed by a motor vehicle and having a gross trailer area less than 320 square feet.

"Used T&M vehicle" means any T&M vehicle other than a new T&M vehicle as defined in this section.

"Wholesale auction" means an auction of T&M vehicles restricted to sales at wholesale.

§ 46.2-1992. Definitions.

Unless the context otherwise requires, the following words and terms, for the purpose of this chapter, shall have the following meanings:

"Certificate of origin" means the document, provided by the manufacturer or distributor of a new trailer, that is the only valid indication of ownership between the manufacturer, its distributor, its franchised trailer dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new trailers, pursuant to a written agreement with the manufacturer, to franchised trailer dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of trailers to trailer dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed, by a distributor or by a distributor branch, for the purpose of making or promoting the sale of trailers or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of trailers to distributors, for the sale of trailers to trailer dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed either by a person who manufactures or assembles trailers or by a factory branch for the purpose of (i) making or promoting the sale of its trailers or (ii) for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase trailer" means a trailer that is (i) sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the trailer will be resold or otherwise retransferred only to the manufacturer or distributor of the trailer, and (ii) reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new trailers of a particular line-make or late model or factory repurchase trailers of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the trailer or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase trailer dealer" means a dealer in late model or factory repurchase trailers, including a franchised new trailer dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase trailers.

"Franchised trailer dealer" or "franchised dealer" means a dealer in new trailers that has a franchise agreement with a manufacturer or distributor of new trailers.

"Independent trailer dealer" means a dealer in used trailers.

"Late model trailer" means a trailer of the current model year and the immediately preceding model

year.

"Manufacturer" means a person engaged in the business of constructing or assembling new trailers.

"New trailer" means any trailer which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration trailer, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the trailer prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal trailer safety and emission standards. Notwithstanding provisions (i) and (iii), a trailer that has been previously sold but not titled shall be deemed a new trailer if it meets the requirements of provisions (ii), (iv), and (v).

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than seven miles.

2. If the population in an area within a radius of ten miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of fifteen miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the fifteen-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of twenty miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market area shall be the greater of an area within a radius of twenty miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more trailers to a buyer for his use and not for resale, in which the price of the trailer is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a trailer to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to trailer dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including semitrailers but not mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36, and not (i) watercraft trailers as defined in this section or (ii) travel trailers as defined in § 46.2-1900.

"Trailer dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, arranges, offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new trailers, new and used trailers, or used trailers alone, whether or not the trailers are owned by him;

2. Is wholly or partly engaged in the business of selling new trailers, new and used trailers, or used trailers only, whether or not the trailers are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more trailers within any twelve consecutive months.

The term "trailer dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, *conservators* or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of trailers to others when selling or offering such trailers for sale at retail, disposing of trailers acquired for their own use and actually so used, when the trailers have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral trailers, including trailers adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1992.17, 46.2-1992.18 and 46.2-1992.41.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a trailer in the normal course of

its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the trailer.

6. An employee of an organization arranging for the purchase or lease by the organization of trailers for use in the organization's business.

7. Any person who permits the operation of a trailer show or permits the display of trailers for sale by any trailer dealer licensed under this chapter.

8. An insurance company authorized to do business in the Commonwealth that sells or disposes of trailers under a contract with its insured in the regular course of business.

9. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of trailers owned by others.

10. Any person dealing solely in the sale or lease of trailers designed exclusively for off-road use.

11. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a trailer dealer.

"Trailer salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a trailer dealer to sell or exchange trailers.

"Trailer show" means a display of trailers to the general public at a location other than a dealer's location licensed under this chapter where the trailers are not being offered for sale or exchange during or as part of the display.

"Used trailer" means any trailer other than a new trailer as defined in this section.

"Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1 who obtains a certificate of dealer registration under this chapter.

"Wholesale auction" means an auction of trailers restricted to sales at wholesale.

§ 46.2-1993. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Certificate of origin" means the document provided by the manufacturer of a new motorcycle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motorcycle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new motorcycles pursuant to a written agreement with the manufacturer, to franchised motorcycle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of motorcycles to motorcycle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motorcycles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motorcycles to distributors or for the sale of motorcycles to motorcycle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles motorcycles, or by a factory branch for the purpose of making or promoting the sale of its motorcycles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motorcycle" means a motorcycle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motorcycle will be resold or otherwise retransferred only to the manufacturer or distributor of the motorcycle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motorcycles of a particular line-make or late model or factory repurchase motorcycles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motorcycle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motorcycle dealer" means a dealer in late model or

factory repurchase motorcycles, including a franchised new motorcycle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase motorcycles.

"Franchised motorcycle dealer" or "franchised dealer" means a dealer in new motorcycles that has a franchise agreement with a manufacturer or distributor of new motorcycles.

"Independent motorcycle dealer" means a dealer in used motorcycles.

"Late model motorcycle" means a motorcycle of the current model year and the immediately preceding model year.

"Manufacturer" means a person engaged in the business of constructing or assembling new motorcycles.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in § 46.2-100.

"Motorcycle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motorcycles, new and used motorcycles, or used motorcycles alone, whether or not the motorcycles are owned by him;

2. Is wholly or partly engaged in the business of selling new motorcycles, new and used motorcycles, or used motorcycles only, whether or not the motorcycles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motorcycles within any twelve consecutive months.

The term "motorcycle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, *conservators* or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motorcycles to others when selling or offering such motorcycles for sale at retail, disposing of motorcycles acquired for their own use and actually so used, when the motorcycles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motorcycle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the motorcycle.

5. An employee of an organization arranging for the purchase or lease by the organization of motorcycles for use in the organization's business.

6. Any person who permits the operation of a motorcycle show or permits the display of motorcycles for sale by any motorcycle dealer licensed under this chapter.

7. An insurance company authorized to do business in the Commonwealth that sells or disposes of motorcycles under a contract with its insured in the regular course of business.

8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motorcycles owned by others.

9. Any person dealing solely in the sale or lease of motorcycles designed exclusively for off-road use.

10. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motorcycle dealer.

"Motorcycle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a motorcycle dealer to sell or exchange motorcycles.

"Motorcycle show" means a display of motorcycles to the general public at a location other than a dealer's location licensed under this chapter where the motorcycles are not being offered for sale or exchange during or as part of the display.

"New motorcycle" means any motorcycle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motorcycle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the motorcycle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal motorcycle safety and emission standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than

seven miles.

2. If the population in an area within a radius of ten miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of fifteen miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the fifteen-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of twenty miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market area shall be the greater of an area within a radius of twenty miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motorcycles to a buyer for his use and not for resale, in which the price of the motorcycle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motorcycle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motorcycle dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"Used motorcycle" means any motorcycle other than a new motorcycle as defined in this section.

"Wholesale auction" means an auction of motorcycles restricted to sales at wholesale.

§ 50-73.28. Events of withdrawal.

Except as approved by the written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in § 50-73.37;
2. The general partner ceases to be a member of the limited partnership as provided in § 50-73.45;
3. The general partner is removed as a general partner in accordance with the partnership agreement;
4. Unless otherwise provided in writing in the partnership agreement, the general partner (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegation of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

5. Unless otherwise provided in writing in the partnership agreement, if within 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or if within 90 days after the expiration of any such stay, the appointment is not vacated;

6. In the case of a general partner who is an individual, (i) his death, or (ii) the entry by a court of competent jurisdiction of an order or decree adjudicating him ~~incompetent to manage his person or his estate~~ *incapacitated*;

7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

8. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

9. In the case of a general partner that is a corporation or other legal or commercial entity, the termination of its existence; or

10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

§ 50-73.48. Power of estate of deceased or incapacitated partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be ~~incompetent to manage his person or his property~~ *incapacitated*, the partner's executor, administrator, ~~guardian~~, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property including any power the partner had to give an

assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

§ 50-73.109. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to withdraw as a partner on a later date specified by the partner in the notice or, if no later date is specified, the date of notice;
2. An event agreed to in the partnership agreement as causing the partner's dissociation;
3. The partner's expulsion pursuant to the partnership agreement;
4. The partner's expulsion by the unanimous vote of the other partners if:
 - a. It is unlawful to carry on the partnership business with that partner; or
 - b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest which, in either case has not been foreclosed.
5. On application by the partnership or another partner, the partner's expulsion by judicial determination because:
 - a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under § 50-73.102; or
 - c. The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
6. The partner's:
 - a. Becoming a debtor in bankruptcy;
 - b. Executing an assignment for the benefit of creditors;
 - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - d. Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;
7. In the case of a partner who is an individual:
 - a. The partner's death;
 - b. The appointment of a guardian, committee or ~~general~~ conservator for the partner; or
 - c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
9. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative;
10. Termination of a partner who is not an individual, partnership, corporation, limited liability company, trust, or estate;
11. The expiration of 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution or the equivalent, its existence has been terminated or its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, if there is no revocation of the certificate of dissolution or no reinstatement of its existence, its charter or its right to conduct business; or
12. A partnership or limited liability company that is a partner has been dissolved and its business is being wound up.

§ 51.5-3. Definitions.

As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

"Board" means the Board of Rehabilitative Services.

"Case management" is a dynamic collaborative process which utilizes and builds on the strengths and resources of consumers to assist them in identifying their needs, accessing and coordinating services, and achieving their goals. The major collaborative components of case management services include advocacy, assessment, planning, facilitation, coordination, and monitoring.

"Case management system" is a central point of contact linking a wide variety of evolving services and supports that are (i) available in a timely, coordinated manner, (ii) physically and programmatically accessible, and (iii) consumer-directed with procedural safeguards to ensure responsiveness and accountability.

"Client" means any person receiving a service provided by the personnel or facilities of a public or

private agency, whether referred to as a client, participant, patient, resident, or other term.

"Commissioner" means the Commissioner of Rehabilitative Services.

"Consumer" is, with respect to case management services, a person with a disability or his designee, guardian, *conservator* or committee.

"Mental impairment" means (i) a disability attributable to mental retardation, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual. For the purposes of § 51.5-41, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease or defect that has been successfully asserted by an individual as a defense to any criminal charge.

"Otherwise qualified person with a disability" means a person with a disability who:

1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or
2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs.

"Person with a disability" means any person who has a physical or mental impairment which substantially limits one or more of his major life activities or has a record of such impairment and which:

1. For purposes of § 51.5-41 is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion;
2. For purposes of § 51.5-42 is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution;
3. For purposes of § 51.5-44 is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service;
4. For purposes of § 51.5-45 is unrelated to the individual's ability to acquire, rent, or maintain property.

"Physical impairment" means any physical condition, anatomic loss, or cosmetic disfigurement which is caused by bodily injury, birth defect, or illness.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

§ 53.1-40.1. Medical and mental health treatment of prisoners incapable of giving consent.

A. The Director or his designee may petition the circuit court or judge, as defined in § 37.1-1, herein referred to as the court, of the county or city in which the prisoner is located for an order authorizing treatment of a prisoner sentenced and committed to the Department of Corrections. The court shall authorize such treatment in a facility designated by the Director upon finding, on the basis of clear and convincing evidence, that the prisoner is ~~incompetent or~~ incapable, either mentally or physically, of giving informed consent to such treatment and that the proposed treatment is in the best interests of the prisoner.

B. Prior to the court's authorization of such treatment, the court shall appoint an attorney to represent the interests of the prisoner. Evidence shall be presented concerning the prisoner's condition and proposed treatment, which evidence may, in the court's discretion and in the absence of objection by the prisoner or the prisoner's attorney, be submitted by affidavit.

C. Any order authorizing treatment pursuant to subsection A shall describe the treatment authorized and authorize generally such examinations, tests, medication and other treatment as are in the best interests of the prisoner but may not authorize nontherapeutic sterilization, abortion, or psychosurgery. Such order shall require the licensed physician, psychiatrist or clinical psychologist acting within his area of expertise who is treating the prisoner to report to the court and the prisoner's attorney any change in the prisoner's condition resulting in restoration of the prisoner's ~~competence or~~ capability to consent prior to completion of the authorized treatment and related services. Upon receipt of such report, the court may enter such order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order is subsequently executed.

D. Any order of a judge under subsection A may be appealed de novo within ten days to the circuit court for the jurisdiction where the prisoner is located, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within ten days to the Court of Appeals, which shall give such appeal priority and hear the appeal as soon as possible.

E. Whenever the director of any hospital or facility reasonably believes that treatment is necessary to protect the life, health, or safety of a prisoner, such treatment may be given during the period allowed for any appeal unless prohibited by order of a court of record wherein the appeal is pending.

F. Upon the advice of a licensed physician, psychiatrist or clinical psychologist acting within his area of expertise who has attempted to obtain consent and upon a finding of probable cause to believe that a

prisoner is incapable, due to any physical or mental condition, of giving informed consent to treatment and that the medical standard of care calls for testing, observation, or other treatment within the next twelve hours to prevent death, disability or a serious irreversible condition, the court or, if the court is unavailable, a magistrate shall issue an order authorizing temporary admission of the prisoner to a hospital or other health care facility and authorizing such testing, observation or other treatment. Such order shall expire after a period of twelve hours unless extended by the court as part of an order authorizing treatment under subsection A.

G. Any licensed health professional or licensed facility providing services pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent it is based on lack of consent to such services. Any such professional or facility providing services with the consent of the prisoner receiving treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such services, and such denial was based on an affirmative finding that the prisoner was capable of making an informed decision regarding the proposed services.

H. Nothing in this section shall be deemed to limit or repeal any common law rule relating to consent for medical treatment or the right to apply, or the authority conferred by, any other applicable statute or regulation relating to consent.

§ 53.1-227. When and how real estate of prisoner sold or encumbered.

The real estate of a prisoner may be leased or sold, when necessary for the payment of his debts, ~~in the same manner as the real estate of an incompetent person in the hands of a committee in accordance with Article 8 (§ 8.01-67 et seq.) of Chapter 3 of Title 8.01.~~ Any such real estate or the real estate in which such prisoner is interested with others, infants or adults, may be sold, exchanged for other real estate, or encumbered for the purpose of borrowing money to be used to erect buildings or other improvements on the same; ~~in the same manner as the real estate of an incompetent person in the hands of a committee.~~

§ 54.1-601. Exemptions.

The provisions of this chapter and the terms "Virginia licensed auctioneer," "auctioneer" or "auction firm," as defined in § 54.1-600, shall not apply to:

1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;
 2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, *conservator*, administrator, or executor, or any person acting under order of a court;
 3. A trustee acting under a trust agreement, deed of trust, or will;
 4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;
 5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;
 6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;
 7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;
 8. Sale at auction of automobiles conducted under the provisions of § 43-34 or by a motor vehicle dealer licensed under the provisions of Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;
 9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;
 10. Sales conducted by and on behalf of any charitable, religious, civic club, fraternal, or political organization if the person conducting the sale receives no compensation, either directly or indirectly, therefor and has no ownership interest in the merchandise being sold or financial interest in the entity providing such merchandise;
 11. Sales, not exceeding one sale per year, conducted by or on behalf of a civic club or organization;
- or
12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1 through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.

Upon receipt of documentation by a court or agency, state or federal, that a person licensed, certified or registered by a board within the Department of Health Professions has had his license, certificate or registration to practice the same profession or occupation revoked or suspended in another jurisdiction and has not had his license, certificate or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged ~~legally incompetent~~ *incapacitated*, the Director of the Department shall immediately suspend, without a hearing, the license, certificate or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian, *conservator*, trustee, committee or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the order of such court or

agency, certified by the Director as the order received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate or registration has been reinstated by the Board.

The clerk of any court in which a conviction of a felony or an adjudication of ~~incompetence~~ *incapacity* is made, who has knowledge that a person licensed, certified or registered by a board within the Department has been convicted or found ~~incompetent~~ *incapacitated*, shall have a duty to report these findings promptly to the Director.

When a conviction has not become final, the Director may decline to suspend the license, certificate or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

Any person whose license, certificate or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf.

The reinstatement of the applicant's license, certificate or registration shall require the affirmative vote of three-fourths of the members of the board. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate or registration upon such terms and conditions as it deems appropriate.

§ 54.1-2915. Refusal; suspension or revocation; other disciplinary actions.

A. The Board may refuse to admit a candidate to any examination, refuse to issue a certificate or license to any applicant, and may suspend for a stated period of time or indefinitely, or revoke any certificate or license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of any branch of the healing arts;
2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;
3. Unprofessional conduct as defined in this chapter;
4. Gross ignorance or carelessness in his practice, or gross malpractice;
5. Mental or physical *incapacity or incompetence* to practice his profession with safety to his patients and the public;
6. Restriction of a license to practice a branch of the healing arts in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

The Board shall refuse to admit a candidate to any examination and shall refuse to issue a certificate or license to any applicant if the candidate or applicant has had his certificate or license to practice a branch of the healing arts revoked or suspended, and has not had his certificate or license to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

B. The Board may direct any licensee under a disciplinary order to furnish it at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee unable to practice the healing arts with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action. Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice the healing arts with reasonable skill and safety to patients.

§ 54.1-2916. Additional grounds for refusal; suspension or revocation.

A. The Board may refuse to admit a candidate to any examination, refuse to issue a license or a certificate to any applicant, and suspend or revoke any certificate or license if it finds that the candidate, applicant or licensee:

1. Has been convicted in any state, territory or country of any felony or of any crime involving moral turpitude;
2. Has been adjudged legally incompetent *or incapacitated* in any state if such adjudication is in effect and the person has not been declared restored to competence *or capacity*.

B. The conviction of an offense in another state, territory or country, which if committed in Virginia would be a felony, shall be treated as a felony conviction under this section regardless of its designation in the other state, territory or country.

§ 54.1-2917. Mandatory suspension or revocation by Board; reinstatement; appeal.

Upon proper notification in writing by any person or agency, state or federal, that any person licensed to practice any of the healing arts in this Commonwealth has had his certificate or license to practice a branch of the healing arts revoked or suspended, and has not had his certificate or license to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction or has been convicted of a felony or has been adjudged legally incompetent *or*

incapacitated which notification shall be accompanied by a certified abstract or copy of the judgment of conviction or adjudication of incompetence *or incapacity*, the Board shall immediately suspend or revoke, without a hearing, the certificate or license of any person so disciplined, convicted or adjudged. The Board shall notify such person or his legal guardian, *conservator*, trustee, committee or other representative of the suspension or revocation, in writing. Such notice shall include a copy of the order of such court or agency, certified by the Director as the order received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his certificate or license has been reinstated by the Board.

The clerk of any court in which a conviction of a felony or an adjudication of incompetence *or incapacity* is made, who has knowledge that a practitioner of the healing arts has been convicted or found to be *incapacitated or incompetent*, shall have a duty to report these findings promptly to the Board.

When a conviction has not become final, the Board may decline to suspend or revoke the certificate or license until the conviction becomes final after considering the likelihood of irreparable damage to the practitioner if his certificate or license should be suspended or revoked during the pendency of an ultimately successful appeal, the likelihood of injury or damage to patients or the public if the license or certificate is not suspended or revoked, and the seriousness of the offense.

Any person whose certificate or license has been suspended or revoked as provided in this section may apply to the Board for reinstatement of his certificate or license. Such person shall be entitled to a hearing not later than the next regular meeting of the Board after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf.

The Board may employ a stenographer and summon witnesses. The reinstatement of the applicant's certificate or license shall require the affirmative vote of three-fourths of the members at the hearing. The Board may order the reinstatement without further examination. The proceedings at the hearing shall be recorded formally and shall be certified by the president of the Board or his designee.

§ 54.1-2970. Medical treatment for certain persons incapable of giving informed consent.

When a delay in treatment might adversely affect recovery, a licensed health professional or licensed hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be prohibited from providing surgical or medical treatment to an individual who is a patient or resident of a hospital or facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and who is ~~incompetent to give~~ *incapable of giving* informed consent to the treatment by reason of mental illness or mental retardation under the following conditions:

1. No legally authorized guardian or committee was available to give consent;
2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical or medical treatment;
3. No reasonable objection is raised by the alleged ~~incompetent~~ *incapacitated person*; and
4. Two physicians state in writing that they have made a good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is ~~incompetent~~ *incapacitated and unable* to consent to the treatment by reason of mental illness or mental retardation and that delay in treatment might adversely affect recovery.

The provisions of this section shall apply only to the treatment of physical injury or illness and not to any treatment for mental, emotional or psychological condition.

Treatment of an individual's mental, emotional or psychological condition when the resident is unable to make an informed decision and when no legally authorized guardian or committee is available to provide consent shall be governed by regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board under § 37.1-84.1 of this Code.

§ 54.1-2983. Procedure for making advance directive; notice to physician.

Any competent adult may, at any time, make a written advance directive authorizing the providing, withholding or withdrawal of life-prolonging procedures in the event such person should have a terminal condition. A written advance directive may also appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses.

Further, any competent adult who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive to authorize the providing, withholding or withdrawing of life-prolonging procedures or to appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. In the event the declarant is comatose, ~~incompetent~~ *incapacitated* or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive. An attending physician who is so notified shall

promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

§ 54.1-2992. Preservation of existing rights.

The provisions of this article are cumulative with existing law regarding an individual's right to consent or refuse to consent to medical treatment and shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or ~~incompetent~~ *incapacitated* patient, or a patient's family may have in regard to the providing, withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth.

§ 55-19. Estates in trust subject to debts of beneficiaries; exception for certain trusts.

A. Except as otherwise provided in this section, all trust estates shall be subject to the debts and charges of the persons who are beneficiaries of such trusts as if those persons owned a similar interest in the trust estate.

B. Any trust estate not exceeding \$600,000 in actual value may be held in trust upon condition that the trust corpus and income, or either of them, shall in the case of a simple trust or, in the case of a complex trust, may in the discretion of the fiduciary be paid to or applied by the trustee for the benefit of the beneficiaries without being subject to their liabilities or to alienation by them. However, no such trust shall operate to the prejudice of any existing creditor of the creator of such trust. The exception for spendthrift trusts shall not apply to an interest in a trust, contract, or other fund maintained in conjunction with an employee benefit plan, as defined in § 1002 (3) of Title 29 of the United States Code, or a similar plan or arrangement regardless of whether the beneficiary may claim the exemption provided under § 34-34. In addition, as to any claim first accruing on or after the effective date of the 1990 amendments to this section, and subject to the limitation of subsection D, no such trust condition shall operate to the prejudice of the United States or this Commonwealth or any county, city or town.

C. If the creator of a trust is also a beneficiary of the trust and the creator's interest is held upon condition that it is not subject to the creator's liabilities or to alienation by the creator, such condition is invalid against creditors and transferees of the creator, but shall not otherwise affect the validity of the trust. A transferee or creditor of the creator may, in addition to amounts required to be paid to or for the benefit of the creator, also reach the maximum amount that the trustee, in the exercise of discretion, could pay to or for the benefit of the creator under the trust instrument, which shall not exceed the amount of the creator's proportionate contribution to the trust. When a trust is funded by amounts attributable to any claim possessed by a beneficiary, whether paid pursuant to a structured settlement or otherwise, the beneficiary shall be considered a creator of the trust to the extent so funded.

D. Notwithstanding any contrary condition in the trust instrument, if a statute or regulation of the United States or the Commonwealth makes a beneficiary liable for reimbursement to 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 the head of the state agency having responsibility for the program may file a petition in chancery in an appropriate circuit court having jurisdiction over the trustee seeking reimbursement without first obtaining a judgment. The beneficiary, or his guardian, *conservator* or committee, if any, shall be made a party. 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 or both to or for the benefit of the beneficiary. A duty in the trustee under the instrument to make disbursements in a manner or in amounts that do not cause the beneficiary to suffer a loss of eligibility for public assistance to which the beneficiary might otherwise be entitled shall not be considered a right possessed by the beneficiary to compel such payments.

2. Whether or not the beneficiary has the right to compel the trustee to pay income or principal or both 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 the future payments, if any, that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion granted under the trust.

No order shall be made pursuant to this subsection D if the beneficiary is an individual 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.

§ 55-29. Appointment of trustees to hold such gifts, etc.; suits by and against them; settlement of their accounts and enforcement of the execution of the trust.

When any such gift, grant or will is recorded and no trustee has been appointed, or the trustee dies or refuses to act, the circuit court of the county or ~~the circuit or corporation court of the city~~ in which the trust subject or any part thereof is, in the case of a gift or grant, or in which the will is recorded, may, on motion of the attorney for the Commonwealth in such court (whose duty it shall be to make such motion), appoint one or more trustees to carry the same into execution. The trustees, whether appointed by, under, or by authority of such instrument, or under a charter of incorporation granted for the purpose of carrying out its provisions or under this section, may sue and be sued in the same manner as if they were trustees for the benefit of a certain natural person, or as such charter of

incorporation may provide. The trustees shall annually render and state before the commissioner of accounts for the county or city wherein the trust subject, or the greater part thereof, is situated an account showing the investment of the trust funds, the receipts from such investment, or from other sources, and the disbursements of the same, in like manner as is required of every personal representative, guardian, *conservator*, curator, or committee, under Chapter 2 (§ 26-8 et seq.) of Title 26. In enforcing the execution of any such trust a suit may be maintained against the trustees in the name of the Commonwealth when there is no other party capable of prosecuting such suit. The term "trustees" as herein used shall be construed to mean the persons, or governing body, charged with the execution of the trust, whether designated as "trustees," "directors" or otherwise. A motion under this section may be made before any court in the clerk's office of which such gift, grant or will is recorded.

§ 55-34.13. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor.

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 § 55-34.3 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 § 55-34.3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

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.

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 § 55-34.3 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 ninety 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.

If a successor custodial trustee is not designated as provided in this paragraph, 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.

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.

A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian ~~of the person~~ 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.

§ 55-118.5. Meaning of "acknowledged before me."

The words "acknowledged before me" mean

- (1) That the person acknowledging appeared before the person taking the acknowledgment,
- (2) That he acknowledged he executed the instrument,
- (3) That, in the case of:
 - (i) A natural person, he executed the instrument for the purposes therein stated;
 - (ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;
 - (iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;
 - (iv) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;
 - (v) A person acknowledging as a public officer, trustee, administrator, guardian, *conservator* or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

§ 55-213. Also guardian or conservator.

If a guardian *or conservator* commit waste of the estate of his ward, he shall be liable to the ward, at the expiration of his guardianship *or conservatorship*, for damages.

§ 55-276. Commutation in case of persons under disability.

In any case in which under the laws of this Commonwealth provision is made for commutation in money of a life estate when all the parties interested are under no disability, such provision shall also apply when any of the parties interested are under disability, and in any such latter case the court, ~~or the judge thereof in vacation~~, may, upon application of the guardian, *conservator*, committee, or trustee, if any, and, if not, by a guardian ad litem appointed by the clerk or judge of said court, of any such person, on behalf of his ward, and upon hearing evidence satisfactory to such court or judge, enter an order authorizing such guardian, *conservator*, committee, trustee or guardian ad litem, to consent on behalf of such person under disability to such commutation. Such consent when so given shall be as valid and effective as if the person on whose behalf it was given were sui juris and had given such consent. All judicial orders and decrees entered prior to July 1, 1960, authorizing any such commutation where persons under disability were interested, are hereby validated and confirmed; providing that nothing in this section contained shall be construed as intended to impair any vested right.

§ 59.1-21.14. Producer or refiner not to terminate, etc., agreement without notice and reasonable cause; nonrenewal by franchisor.

A. A producer or refiner shall not terminate, cancel, or fail to renew a petroleum products franchise unless he furnishes prior written notification pursuant to this paragraph to each dealer affected thereby. Such notification shall contain a statement of intention to terminate, cancel, or not renew with the reasons therefor; the date on which such action shall take effect; and shall be sent to such dealer by certified mail not less than sixty days prior to the date on which such petroleum products franchise will be terminated, canceled, or not renewed. In circumstances where it would not be reasonable to provide advance notice of sixty days, the producer or refiner shall provide notice at the earliest date as is reasonably practicable. Termination, cancellation, or failure to renew shall be effective immediately upon notice given by certified mail to the dealer at his last known address in situations involving:

1. Failure of the dealer to open for business during reasonable business hours for five consecutive days, or
2. Criminal conduct or violations of law by the dealer involving moral turpitude, or
3. Bankruptcy, an assignment for the benefit of creditors by the dealer, or a petition for reorganization by the dealer, or
4. Condemnation or other taking of the premises, in whole or in part, pursuant to the power of eminent domain, or
5. Mutual agreement of the parties to terminate the franchise, or
6. Death, ~~incompetency~~ *incapacity*, or permanent and total disability of the dealer.

B. A producer or refiner shall not terminate, cancel, or fail to renew, a petroleum products franchise, except for reasonable cause.

C. Reasonable cause shall include, but not be limited to:

1. A failure of the dealer to comply substantially with the express provisions of such petroleum products franchise, or
2. A failure of the dealer to act in good faith in carrying out the terms of such petroleum products franchise, and federal and state laws, which shall include, but not be limited to:
 - (a) Adulteration of the producer's or refiner's products, or
 - (b) Misbranding of gasoline, or
 - (c) Misleading or deceiving consumers, or
 - (d) Trademark violations, or
 - (e) False or deceptive representations to the producer or refiner, or
3. Receipt and documentation by the supplier of repeated customer complaints uncorrected by the dealer within a reasonable time, or
4. A total withdrawal by the producer or refiner from the sale of motor fuels in commerce for sale in the county, city or standard statistical metropolitan area in which the franchise is situated, or
5. The occurrence of any of the situations set out in subsection A hereof, not requiring sixty days' notice.

D. A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of premises, in the event the franchisor:

1. Sells or leases such premises to other than a subsidiary or affiliate of the franchisor for any use; or
2. Sells or leases such premises to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such premises for the retail sale of motor fuels; or
3. Converts such premises to a use other than the retail sale of motor fuels; or
4. Has leased such premises from a person not the franchisee and such lease is terminated, canceled

or not renewed; or

5. Determines, in the case of any retail service station opened after July 1, 1979, under a franchise term of at least three years, in good faith and in the normal course of business that renewal of the petroleum products franchise is likely to be uneconomical to the producer or refiner despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the dealer.

E. The provisions of this section shall apply to any petroleum products franchise entered into or renewed on and after July 1, 1976.

§ 59.1-347. Supplier's duty to repurchase.

A. Whenever a dealer enters into a dealer agreement under which the dealer agrees to maintain an inventory, and the agreement is terminated by either party as provided in this chapter, the supplier, upon written request of the dealer filed within thirty days of the effective date of the termination, shall repurchase the dealer's inventory as provided in this chapter. However, there shall be no requirement for the supplier to repurchase inventory pursuant to this section if (i) the supplier and dealer have made a written agreement with respect to repurchase, (ii) the dealer has made an intentional and material misrepresentation as to his financial status, (iii) the dealer has defaulted under a chattel mortgage or other security agreement between the dealer and supplier, or (iv) the dealer has filed a voluntary petition in bankruptcy.

B. Whenever a dealer enters into a dealer agreement in which the dealer agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes ~~incompetent~~ *incapacitated*, the supplier shall, at the option of the heir, personal representative, or ~~guardian~~ *conservator* of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement had been terminated. The heir, personal representative, ~~guardian~~, *conservator* or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this chapter.

§ 59.1-353. Chapter title; definitions.

This chapter may be cited as the "Heavy Equipment Dealer Act." As used in this chapter unless the context requires otherwise:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a supplier and a dealer pursuant to which the dealer has been authorized to distribute one or more of the supplier's heavy equipment products, and attachments and repair parts therefor, and in connection therewith to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

"Dealer" means a person in Virginia (i) engaged in the business of selling or leasing heavy equipment at retail, (ii) who customarily maintains a total inventory, valued at over \$250,000, of new heavy equipment and attachments and repair parts therefor, and (iii) who provides repair services for the heavy equipment sold.

"Heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses, as such terms are commonly used and understood as a usage of trade in accordance with § 8.1-205 (2). The term "heavy equipment" shall not include (i) motor vehicles requiring registration and certificates of title in accordance with § 46.2-600, (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers subject to the provisions of Chapter 27 (§ 59.1-344 et seq.) of this title, or (iii) equipment that is "consumer goods" within the meaning of § 8.9-109.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity.

"Person" also includes heirs, assigns, personal representatives ~~and~~, guardians *and conservators*.

"Supplier" means every person, including any agent of such person, or any authorized broker acting on behalf of that person, that enters into an "agreement" with a dealer.

§ 62.1-117. Notice required.

Of such application ten days' previous notice shall be given in the manner prescribed in §§ 25-46.9 through 25-46.13 to each tenant, or the guardian, *conservator* or committee of the tenant, of the freehold of any lands not owned by the applicant, upon which it is desired to abut a dam, or through which it is desired to cut or enlarge a canal, or construct the work aforesaid.

§ 63.1-55.5. Same; involuntary protective services.

A. If an adult lacks the capacity to consent to receive protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.1-55.6 or through the appointment of a guardian pursuant to ~~§ 37.1-128.1 or § 37.1-132 Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1.~~

B. In ordering involuntary protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary protective services, unless such payment is

authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing protective services to the adult, excluding administrative costs.

§ 63.1-107. Application for assistance.

Except as provided for in the state plan for medical assistance services pursuant to § 32.1-325, application for assistance shall be made to the local board and filed with the local superintendent of the county or city in which the applicant resides. The application shall be in writing on forms prescribed by the Commissioner and shall be signed by the applicant under penalty of perjury in accordance with § 63.1-107.1. Such application shall contain a statement of the amount of property, real and personal, in which the applicant has an interest and of all income which he may have at the time of the filing of the application and such other information as the Commissioner may require.

In the case of aid to families with dependent children, the application shall be made by the relative with whom the child is living and one application may be made for several children if they reside with the same person.

In the case of auxiliary grants, social services to the blind or visually handicapped, and general relief, if the condition of the potential recipient is such as to preclude his signing an application, the application may be made in his behalf by his guardian, *conservator* or committee. If no guardian, *conservator* or committee has been appointed for such potential recipient, such application may be made by any adult member of his family or other competent adult person having knowledge of the potential recipient's financial affairs, until such time as a guardian, *conservator* or committee is appointed by a court.

§ 63.1-182.1. Rights and responsibilities of residents of adult care residences; certification of licensure.

A. Any resident of an adult care residence has the rights and responsibilities enumerated in this section. The operator or administrator of an adult care residence shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the adult care residence:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the residence and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or ~~guardian of such person~~ *conservator* has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the residence; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the residence for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the residence except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the residence, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the residence and the right to refuse treatment;

7. Is not required to perform services for the residence except as voluntarily contracted pursuant to a voluntary agreement for services which states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the residence;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do

so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the residence to respond to unmanageable behavior in an emergency situation which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health related consultations the resident may have at the residence;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services;

f. In visits with his spouse; if both are residents of the residence they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the residence shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions which affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The residence shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the regional licensing supervisor of the Department of Social Services as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Department for the Rights of Virginians With Disabilities.

D. The residence shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right which any resident has under law.

F. Each residence shall provide appropriate staff training to implement each resident's rights included in this section.

G. The State Board of Social Services shall promulgate regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner of Social Services to ensure that the provisions of this section are observed and implemented by adult care residences as a condition to the issuance, renewal, or continuation of the license required by this article.

§ 64.1-57. Incorporation by reference of certain powers of fiduciaries into will or trust instrument.

(1) 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:

(a) To keep and retain any or all investments and property, real, personal or mixed, including stock in the fiduciary institution, if the same be a corporation, as they may be at the time they come into the custody of said fiduciary, regardless of the character of same or 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 shall deem best, and to dispose of such property by sale, exchange, or otherwise as and when such fiduciary shall deem advisable.

(a1) 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.

(b) To sell, assign, exchange, transfer and convey or otherwise dispose of, any or all of the investments and property, either real, personal or mixed, which may be 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, may deem advisable, at either public or private sale, either for cash or deferred payments or other consideration, as such fiduciary may determine; and for the purpose of selling, assigning,

exchanging, transferring or conveying the same, 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 such fiduciary may deem 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.

(b1) 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.

(c) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in stocks, common and preferred, and common trust funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa.

(c1) To invest and reinvest all of the funds of the estate as said fiduciary, in his sole discretion, may deem best, including investment in interests in investment trusts and mutual funds, without being restricted to those investments expressly approved by statute for investment by fiduciaries; and to change investments from realty to personalty, and vice versa.

(d) To lease any or all of the real estate, which may be included in or at any time become a part of the trust or estate, upon such terms and conditions as said fiduciary, in his sole judgment and discretion, may deem advisable, and any lease or leases made by such fiduciary may extend beyond the term of the trust or administration of the estate and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments, in such form and with such covenants and warranties as such fiduciary may deem expedient and proper.

(e) To vote any stocks, bonds, or other securities held by such 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.

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

(f1) 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 so used, 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 shall not be liable in any way for any loss resulting to the trust or estate by reason of the exercise of this authority.

(g) 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 shall deem best, and his decision shall be conclusive.

(h) 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.

(i) [Repealed.]

(i1) To determine whether any part of the trust or estate or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax or assessment shall be charged against income or principal, or partially against income and partially against principal, provided that this determination be made so as to balance fairly the interests of the income beneficiary and the remainderman.

(j) To repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by such fiduciary and to construct such buildings and improvements thereon as such fiduciary may, in his discretion, deem advisable.

(k) To employ and compensate, out of the principal or the income or both as to the fiduciary shall seem 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 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.

(l) To rely upon any affidavit, certificate, letter, notice, telegram, or other paper or upon any telephone conversation believed by such fiduciary to be genuine and upon any other evidence believed by such fiduciary to be sufficient, and to be protected and saved harmless in 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.

(m) To retain any interest held by such 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; to 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 which 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; to participate in any incorporation, reorganization, merger, consolidation, recapitalization or liquidation thereof; to 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; to 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; to accept as correct financial or other statements rendered by the business from time to time as to his conditions and operations except when having actual notice to the contrary; to regard the business as an entity separate from the trust or estate with no duty to account to any court as to his operations; to 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 to 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 it is intended that in no event shall there be a liability of the fiduciary, and if the fiduciary shall be held liable, such fiduciary shall be entitled to indemnification from the business and the trust or estate in the order named. Such fiduciary shall be 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 such fiduciary from the business or from other assets or from both as the fiduciary, in his discretion, may determine to be advisable; the amount of such additional compensation, however, shall be subject to the final approval of the court.

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

(o) To hold property in his name or in the name of nominees.

(p) During the minority, incapacity or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: (1) directly to said beneficiary; (2) to a relative, friend, guardian, *conservator* or committee, to be expended by such person for the education, maintenance, support or benefit of said beneficiary; (3) by himself expending the same for the education, maintenance, support or benefit of said beneficiary; (4) to an adult person or bank authorized to exercise trust powers as custodian for a minor beneficiary under the Uniform Transfers to Minors Act (§ 31-37 et seq.) to be held by such custodian under the terms of such act; or (5) to an adult person or bank authorized to exercise trust powers as custodial trustee for an incapacitated beneficiary under the Uniform Custodial Trust Act (§ 55-34.1 et seq.) to be held as custodial trustee under the terms of such act.

(q) To continue and carry on any farming operation transferred to him and to operate such farms and any other farm which may be acquired and, in so doing, by way of illustration and not in limitation of his powers, to operate the farm with hired labor, tenants or sharecroppers; to hire a farm manager or a professional farm management service to supervise the farming operations; to lease or rent the farm for cash or for a share of the crops; to purchase or otherwise acquire farm machinery and equipment and livestock; to construct, repair and improve farm buildings of all sorts needed, in its judgment, for the operation of the farm; to make loans or advances or to obtain such from any source, including the fiduciary at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock; to employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil; to 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; to ditch and drain damp or wet fields and areas of the farm when and where needed; to 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 such a livestock program; to 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 in general, to employ the methods of carrying on the farming operation that are in common use by the community in which the farm is located, inasmuch as the duties the fiduciary is requested to assume with respect to farming operations may considerably enlarge and increase his usual responsibility and work as fiduciary,

it is agreed that the fiduciary shall be entitled to such additional reasonable compensation as is commensurate with the time, effort and responsibility involved in his performance of such services.

(r) To purchase and hold policies of life insurance 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 he 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 policy of life insurance by the trustee of such trust.

(s) To make any election 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, but not limited to, elections concerning the timing of payment of any such tax or assessment, the valuation of any property subject to any such tax or assessment, the alternative use of items of deduction in computing any tax or assessment and including specifically elections permitted by statutes enacted after the date of execution of the will or trust instrument.

(t) To comply with environmental law:

1. 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;

2. 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;

3. 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;

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

5. 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;

6. For purposes of this subdivision, "environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health and "hazardous substances" means any substances defined as hazardous or toxic or otherwise regulated by any environmental law.

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

(2) As used in the section, the term "fiduciary" shall mean and include one or more individuals or corporations having trust powers and the use of the male gender shall include the female; and any substitute, added or successor fiduciary shall have all of the powers hereby provided for the fiduciary named in the will or trust instrument. The provisions of this section may by reference hereto be made applicable to a fiduciary of the estate of a decedent as well as to the trustee of an inter vivos or testamentary trust.

(3) Any fiduciary upon whom a document confers any or all of the powers set forth in subsection (1) may irrevocably disclaim the right to exercise any or all of the powers conferred by filing a suitable written disclaimer with the clerk of court where the document is recorded or probated or, if the document is not recorded, by sending a written disclaimer by registered or certified mail to the last known address of all persons then living entitled to receive the principal or income. Such disclaimer shall relate back to the time when the disclaiming fiduciary originally assumed such fiduciary capacity and shall be binding upon any successor fiduciary. For the purpose of this subsection, a fiduciary shall not be deemed to have assumed a fiduciary capacity under a revocable document until the same becomes irrevocable.

(4) 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 (§ 31-37 et seq.).

(5) This section is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in subdivision (a) of § 26-45.1.

(6) In the event that the will or trust instrument shall contain a provision in favor of a surviving

spouse of the testator or grantor, the powers above enumerated shall in no way be construed or interpreted in any fashion which might 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, which action is otherwise reasonable under the circumstances, shall incur no responsibility for acts taken in good faith which are otherwise thereafter contended to be in a fashion which might cause disqualification for the marital deduction. The provision of this subsection shall apply without regard to the time the will or trust was executed or probated or the testator died in relation to the effective date of this section or amendments thereto.

§ 64.1-157. Order in which debts of decedents to be paid.

When the assets of the decedent in the hands of his personal representative are not sufficient for the satisfaction of all demands against him, they shall be applied in the following order to the payment of:

1. Costs and expenses of administration;
2. The allowances provided in Article 5.1 (§ 64.1-151.1 et seq.) of this chapter;
3. Funeral expenses not to exceed \$2,000;
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 this Commonwealth;
7. Debts due as trustee for persons under disabilities, as receiver or commissioner under decree of court of this Commonwealth, as personal representative, guardian, *conservator* or committee, when the qualification was in this 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. 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.

§ 64.1-180.1. Payment of bequests, etc., 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 ~~incompetent~~ *incapacitated* person or an infant pursuant to authorization under subdivision (1) (p) of § 64.1-57 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.

§ 65.2-527. When employee's rights exercised by guardian or trustee.

If an injured employee is ~~mentally incompetent~~ *incapacitated* or is under eighteen years of age at the time when any right or privilege accrues to him under this title, his guardian, trustee or ~~committee~~ *conservator* may in his behalf claim and exercise such right or privilege.

§ 65.2-528. Time limitations on persons under disability.

No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is ~~mentally incompetent~~ *incapacitated* or under eighteen years of age, so long as he has no guardian, trustee, or ~~committee~~ *conservator*.

§ 65.2-701. Agreement as to compensation; penalty.

A. If after injury or death, the employer and the injured employee or his dependents reach an agreement in regard to compensation or in compromise of a claim for compensation under this title, a memorandum of the agreement in the form prescribed by the Commission shall be filed with the Commission for approval. The agreement may be prepared by the employee, the employer or the compensation carrier. If approved, the agreement shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable as provided by § 65.2-710. If not approved, the same agreement shall be void. Such agreement may be approved only when the Commission, or any member thereof, is clearly of the opinion that the best interests of the employee or his dependents will be served thereby. The approval of such agreement shall bind infant or ~~incompetent~~ *incapacitated* dependents affected thereby. Any agreement entered into during the pendency of an appeal to the Court of Appeals shall be effective only with the approval of the Commission as herein provided.

B. An employer or insurance carrier which fails to file a memorandum of such agreement with the Commission within fourteen calendar days of the date of its complete written execution as indicated thereon may be subject to a fine not to exceed \$1,000 and to any other appropriate sanctions of the Commission.

C. Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer, but rather to encourage them, so long as the amount of compensation and the time and manner of payment are approved by the Commission. A copy of such settlement agreement shall be filed with the Commission by the employer.

2. That the provisions of this act shall become effective on January 1, 1998. The powers granted and duties imposed pursuant to this act shall apply prospectively to guardians and conservators appointed by court order entered on or after that date, or modified on or after that date if the

court so directs, without regard to when the petition was filed. The procedures specified in this act governing proceedings for appointment of a guardian or conservator or termination or other modification of a guardianship shall apply on and after that date without regard to when the petition therefor was filed or the guardianship or conservatorship created.