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HOUSE BILL NO. 1633

Offered January 13, 1999

A *BILL to amend and reenact §§ 26-17.4, 31-1 through 31-9, and 31-14 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 31-6.1, 31-8.1, and 31-14.1 and by adding in Chapter 3 of Title 31 a section numbered 31-18.1; and to repeal §§ 31-10 through 31-13, 55-44 and 55-45 of the Code of Virginia, relating to guardians and wards.*

Patron—Cantor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-17.4, 31-1 through 31-9, and 31-14 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 31-6.1, 31-8.1, and 31-14.1 and by adding in Chapter 3 of Title 31 a section numbered 31-18.1 as follows:

§ 26-17.4. Conservators, committees, trustees under § 37.1-134.20.

A. Within six months from the date of the qualification, conservators, committees, *and* trustees under § 37.1-134.20 ~~and receivers under § 55-44~~ shall exhibit before the commissioner of accounts a statement of all money and other property which such fiduciary has received, or become chargeable with, or has disbursed within four months from the date of qualification.

B. After the first account of the fiduciary has been filed and settled, the second and subsequent accounts for each succeeding twelve-month period will be due within four months from the last day of the twelve-month period commencing on the terminal date of the preceding account unless the commissioner of accounts extends the period for filing upon reasonable cause.

C. For fiduciaries acting on behalf of Medicaid recipients, the fees charged by the commissioners of accounts under subsection A or B shall not exceed twenty-five dollars.

§ 31-1. Natural guardians.

The father and mother of every legitimate unmarried minor child, if living together and being themselves respectively competent to transact their own business and not otherwise unsuitable, shall be the joint natural guardians of the person of such child, with equal legal powers and equal legal rights in regard to such child; and upon the death of either parent the survivor shall be the natural guardian of the person of such child. If either parent has abandoned his ~~or her~~ family, the other shall be the natural guardian of the person of such child.

§ 31-2. Testamentary guardians.

Every parent may by his last will and testament appoint (i) a guardian of the person of his minor child; and (ii) a guardian for the estate bequeathed by the parent to his minor child for such time during ~~its the child's~~ infancy as the parent shall direct. A guardian of a minor's estate shall have the custody and control of the estate committed to his care, but no guardian of the person of a minor other than a parent shall be entitled to the custody of the person of his ward so long as either parent survives and such surviving parent is a fit and proper person to have the custody of ~~such the~~ child.

§ 31-3. When appointments void.

If any person so appointed ~~shall renounce~~ *renounces* the ~~trust~~ *guardianship* or ~~fail~~ *fails* to appear in the court in which the will is proved within six months after the probate thereof and declare his acceptance of the ~~trust~~ *guardianship*, and give bond as hereinafter provided, such appointment shall be void.

APPOINTMENT OF GUARDIAN OR CURATOR BY COURT OR CLERK.

§ 31-4. Jurisdiction of appointments.

The circuit court ~~or the circuit court clerk~~ of any county or city in which ~~any a~~ minor resides or in which he has any estate, if he is an out-of-state resident, ~~or the clerk at any time~~, may appoint *a guardian for the estate of the minor, and may appoint a guardian for any such the person of the minor* unless he has a guardian appointed as aforesaid by his father or mother.

All appointments of guardians heretofore made by clerks of the courts are declared to be valid and of the same effect as if such appointments had been specifically authorized by law at the time they were made.

§ 31-5. How appointments made.

If the minor is under the age of fourteen years, the court or ~~official thereof~~ *having authority for appointment of guardians under the preceding section clerk* may nominate as well as appoint his guardian; if ~~he the minor~~ is above that age he may, in the presence of the court, or ~~of such official clerk~~, or in writing acknowledged before any officer qualified to take acknowledgments, nominate his

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own guardian, who, if approved by the court, or by such official clerk, shall be appointed accordingly; but if the guardian nominated by the minor ~~be~~ is not appointed or if the minor ~~reside~~ resides without the Commonwealth or if, after being summoned by the court or by such official clerk, he does not nominate a person deemed suitable and competent by the court or clerk or judge making the appointment, a guardian may be nominated and appointed in the same manner as if the minor were under the age of fourteen years. In no case shall any person not related to the infant, be appointed guardian until thirty days have elapsed since the death or disqualification of the natural or testamentary guardians, and the next of kin have had an opportunity to petition the court for appointment and unless the court or official ~~thereunto~~ authorized and acting clerk is satisfied that ~~he~~ such person is competent to perform the duties of his office.

§ 31-6. Guardians to give bond; surety thereon.

Before the appointment of any guardian for the estate of a minor, the person seeking appointment shall, in the court or before the clerk making the appointment, take an oath that he will faithfully perform the duties of his office to the best of his judgment and give his bond in an amount at least equal to the full value of the minor's personal estate coming under his control. If any judge or clerk fails to require such a bond, he shall be liable to the ward for any damages the minor may sustain thereby.

Every guardian for the estate of a minor shall provide surety upon his bond unless it is waived pursuant to § 26-4 or, in the case of a testamentary guardian, the testator's will waives surety; however, the court or clerk, or the court on its or his own motion or the motion of another, may at any time, require surety upon a guardian's bond. Every order appointing a guardian shall state whether or not surety is required.

When the same guardian qualifies upon the estate of two or more wards who are members of the same family, only one qualification and one guardianship bond shall be required.

§ 31-6.1. Redetermination of guardian's bond.

Upon a guardian's request, the clerk shall redetermine the penalty of the guardian's bond in light of any reduction in the current market value of the estate under the guardian's control, whether such reduction is due to disbursements, distributions, valuation of assets, or disclaimer of fiduciary power, if such reduction is reflected in an accounting that has been confirmed by the court or an inventory that has been approved by the commissioner of accounts. This provision shall not apply to any bond set by the court.

§ 31-7. When court may appoint temporary guardians; bond; powers and duties.

Until a guardian ~~shall have~~ appointed by the court or clerk has given bond, or while there is no guardian, the court or judge clerk may, from time to time, appoint a ~~curator~~ temporary guardian, who shall give bond as aforesaid, and during the continuance of his ~~trust~~ guardianship have all the powers and perform all the duties of a guardian, and be responsible in the same way.

§ 31-8. Custody, care and education of wards; ward's estate.

Unless a guardian of the person of a minor is appointed by a parent or, the court or the clerk, a guardian of a minor's estate who is appointed as aforesaid, and gives bond when it is required, shall have the custody of his ward, except as otherwise provided in §§ 31-1, 31-2, and 31-15 and. The guardian of a minor's estate shall have the possession, care, and management of his the minor's estate, real and personal, and out of the proceeds of such estate, after first taking into account the minor's other sources of income, support rights and other reasonably available resources of which the guardian is aware, shall provide for his the minor's health, education, maintenance and education support from the income of such estate and, if income is not sufficient, from the corpus thereof.

§ 31-8.1. Parental duty of support.

A. Notwithstanding the provisions of § 31-8, a guardian of a minor's estate shall not make any distribution of income or corpus to or for the benefit of a ward who has a living parent, whether or not the guardian is such parent, except to the extent that the distribution is authorized by (i) the deed, will or other instrument under which the estate is derived, or (ii) the court, upon a finding that (a) the parent is unable to completely fulfill the parental duty of supporting the child, (b) the parent cannot for some reason be required to provide such support, or (c) a proposed distribution is beyond the scope of parental duty of support in the circumstances of a specific case. The existence of a parent-child relationship shall be determined in accordance with the provisions of § 64.1-5.1. The court's authorization may be contained in the order appointing the guardian or it may be obtained at any time prior to the disbursement in question; however, in extenuating circumstances where the interests of equity so require, the court's authorization may be obtained after the disbursement in question.

B. A guardian who desires to make any distribution specified in subsection A when neither (i) an existing court order nor (ii) the deed, will or other instrument under which the estate is derived authorizes it, shall file a petition in the court wherein his accounts may be settled, naming the ward as a defendant and setting forth the reasons why such distribution is appropriate. The court or clerk shall appoint an attorney-at-law as guardian ad litem to represent the ward. Proceedings on the petition shall otherwise conform in all respects to a bill in chancery, except that the evidence may be taken orally and

the petition may be filed in court upon five days' notice to the ward, unless it is shown that he is under the age of fourteen. No attorney's fees shall be taxed in the costs, nor shall there be any writ tax upon the petition. The court may fix reasonable attorney's fees for services in connection with the filing of the petition. The clerk shall receive a fee of one dollar for all services rendered thereon, to be paid by the guardian, out of the estate. Any notice required to be served under this section may be served by any person other than the guardian. Notwithstanding the preceding provisions of this subsection, if the court determines that an emergency exists, an order authorizing a distribution may be entered without the appointment of a guardian ad litem, with the court making such further provisions in its order for the protection of the ward's estate as it may deem proper in each case.

§ 31-9. Termination of guardianship.

Unless the guardian ~~shall sooner die dies, be is removed, or resign his trust~~ resigns the guardianship, he shall continue in office until the minor ~~shall attain~~ attains the age of eighteen years, or a receiver be appointed under § 55-44 to hold his property for him, majority or, in the case of testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust the guardianship, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to the person entitled to receive the same.

§ 31-14. Powers of courts over guardians.

The circuit and corporation courts in chancery may hear and determine all matters between guardians and their wards, require settlements of the guardianship accounts, remove any guardian for neglect or breach of trust, and appoint another in his stead, and make any order for the custody and tuition, health, maintenance, education and support of an infant and the management, disbursement, preservation and investment of his estate.

§ 31-14.1. Powers of guardian.

A. Whether appointed by a parent, the court or clerk, a guardian of a minor's estate shall have the following powers and the powers set forth in § 64.1-57 as of the date the guardian acts which, subject to the provisions of subsection B, may be exercised without any prior authorization:

1. To ratify or reject a contract entered into by the minor;

2. To pay any sum distributable for the benefit of the ward by paying the sum directly to the ward, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a ward's custodian under a Uniform Transfers (or Gifts) to Minors Act of any applicable jurisdiction;

3. To maintain life, health, casualty and liability insurance for the benefit of the ward;

4. To manage the estate following the termination of the guardianship until its delivery to the ward or successors in interest;

5. To execute and deliver all instruments, and to take all other actions that will serve in the best interests of the ward;

6. To initiate a proceeding to seek a divorce, or to make an augmented estate election under § 64.1-13; and

7. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security as the guardian deems advisable, including the power to borrow from the guardian, if the guardian is a bank, for any purpose; to mortgage or pledge such portion of the ward's personal estate, and real estate subject to subsection B, as may be required to secure such loan or loans; and, as maker or endorser, to renew existing loans.

B. The court or the commissioner of accounts, if a guardian is appointed other than by the court, may impose requirements to be satisfied by the guardian prior to the conveyance of any interest in real estate, including but not limited to (i) increasing the amount of the guardian's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court or commissioner deems proper, and (iv) consulting by the guardian with the commissioner of accounts.

1. If the court or commissioner imposes any such requirements, the guardian shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the guardian's report, the commissioner shall file a report with the court stating whether the requirements imposed have been met and whether the conveyance is otherwise consistent with the guardian's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

2. If the commissioner does not impose any such requirements, he shall, upon request of the guardian of the minor, issue a notarized statement providing that "The Commissioner of Accounts has declined to impose any requirements upon the power of (name of guardian), Guardian of (name of minor), to convey the following real estate of the minor: (property identification)." The conveyance shall not be closed until the guardian has furnished such a statement to the proposed grantee.

C. Any guardian may at any time irrevocably disclaim the right to exercise any of the powers conferred by this section by filing a suitable written disclaimer with the clerk of the court wherein his

183 *accounts may be settled. Such disclaimer shall relate back to the time when the guardian assumed the*
184 *guardianship and shall be binding upon any successor guardian.*

185 *§ 31-18.1. Transition rule.*

186 *The provisions of this act are applicable to all guardianships, whenever created, except that a*
187 *guardian who qualifies prior to July 1, 1999, shall have the power to make conveyances of his ward's*
188 *estate only in accordance with the laws in effect on June 30, 1999. The limitation of the preceding*
189 *sentence shall not be applicable to a guardian in office on June 30, 1999, who requalifies after that*
190 *date.*

191 **2. That §§ 31-10 through 31-13, 55-44 and 55-45 of the Code of Virginia are repealed.**