Developments in Virginia Trusts & Estates Law 2023 – 2024

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I. CASES (VIRGINIA COURT OF APPEALS)

A. No-Contest Clause. *Hunter v. Hunter*, 77 Va. App. 468 (2023)

Charles and Theresa Hunter had two children, Chip and Eleanor, and separate revocable trusts. In the last few years of Mr. and Mrs. Hunter's lives, Eleanor and Mrs. Hunter served as co-trustees of both trusts. Mr. Hunter predeceased Mrs. Hunter, and the assets of his trust were payable to Mrs. Hunter. Upon Mrs. Hunter's subsequent death, Eleanor became the sole trustee of both trusts. Chip, Eleanor, and a trust for the benefit of Eleanor's daughter, Sharon, were the beneficiaries of Mrs. Hunter's trust, with Chip being entitled to the smallest share. Both trusts contained no-contest provisions.

In an earlier action, Chip, employing the "alternative-pleading model," sought a determination that Eleanor was not entitled to withhold from him certain information regarding a significant decline in the value of Mrs. Hunter's trust in the final years of his parents' lives, provided that his seeking such determination would not violate the no-contest clause in Mrs. Hunter's trust. *Hunter v. Hunter* (*Hunter I*), 298 Va. 414 (2020). His request was determined not to violate the no-contest clause and was granted.

In this action (*Hunter II*), Chip again employed the alternative-pleading model, seeking a determination that his substantive claims would not violate the no-contest clause before actually making those claims. His substantive claims were, in effect, that Eleanor procured certain gifts from their parents through undue influence and fraud. Eleanor counterclaimed, alleging the transactions at issue were not gifts but rather discretionary distributions she made as trustee, and that Chip, in seeking to set those transactions aside, violated the no-contest clause. The trial court ruled that Chip's claims did not violate the no-contest clause but certified its order for interlocutory appeal. On appeal, Eleanor argued that the trial court improperly granted Chip a declaratory judgment on the no-contest clause issue.

The Court of Appeals did not find any of Eleanor's six assignments of error persuasive.

Perhaps most notably, Eleanor claimed there was no justiciable controversy to warrant a declaratory judgment, because Chip did not prove Eleanor had threatened his claims would violate the no-contest clause. The Court of Appeals disagreed, finding that Eleanor's previous attempts to use the no-contest clause to disinherit Chip gave him "good reason to think this time would be no different."

Eleanor also asserted that for Chip to obtain a declaratory judgment providing that his claims, if true, would not violate the no-contest clause, he had to present evidence in support of those claims. The Court of Appeals again disagreed with Eleanor, finding that the complaint and trust were sufficient evidence to provide a basis for the trial court's determination.

So, Chip's declaratory judgment (that his claims would not violate the no-contest clause) stands. But the Court of Appeals cautioned that Chip "proceeds at his peril

if. . . he makes additional arguments or claims beyond those contained in the complaint that violate the no-contest provision."

B. Commissioner of Accounts. *Minor v. Heishman*, Record No. 0980224 (Va. Ct. App. 10/10/2023)

On her petition to the Fairfax Circuit Court, Kishna was appointed the guardian and conservator of her incapacitated grandfather, Eric Wilder. The order appointing Kishna gave her power over Mr. Wilder's assets and any accounts he owned jointly with his wife. Kishna posted bond with Liberty Mutual as her surety.

Kishna filed her inventory, amended inventory, and first account, all of which were approved by the office of the Commissioner of Accounts.[1] Mr. Wilder died during the second accounting period, and Kishna filed a second and final account shortly after his death. Before the second account was approved, Eric, one of Mr. Wilder's children, wrote to the Commissioner raising concerns about Kishna's management of the assets. Cynthia, another of the Wilder children, joined in Eric's complaints, and they subsequently requested the Commissioner hold a hearing under Va. Code § 64.2-1209 and the production of certain bank records.

The hearing occurred in 3 parts, having been continued twice. In the earliest of the hearings, Kishna confirmed the existence of an undisclosed bank account. She had opened two accounts, one being reported to the commissioner and the other being, according to Kishna, a "guardian account" reported only to the "state." After that hearing, Kishna, by counsel, argued that the proceeding was a "nullity" because Eric and Cynthia were not "interested persons" with standing or the right to request a hearing under Va. Code § 64.2-1209. In another of the hearings, the Commissioner made statements to the effect that the Commissioner herself was an "interested person," she "had standing in the case," and she was not "neutral."

Between the hearings, the Commissioner subpoenaed and obtained statements for both accounts. The funds in the undisclosed account were Mr. Wilder's, and among the expenditures were the following: $25,437.92 in furniture at Restoration Hardware, $2,018.20 on a Carnival cruise, and $2,489 on a Peloton bike. Also, $166,813.57 in "transf to Kishna" transactions appear on the statements. The explanations for these transactions offered by Kishna's counsel after the hearings was that the "funds went to address perceived inequities or improprieties within the family" and "to prepare an in-law suite for [Mr. Wilder] in [Kishna's] house." No evidence to support the propriety of these transactions was provided.

The circuit court issued a show cause summons, following a the Commissioner's summons to Kishna to file a proper account, Kishna's failure to do so, and the Commissioner's filing of a report of noncompliance. Kishna's counsel argued that the proceeding was a nullity and the Commissioner was not an impartial adjudicator. The circuit court entered an order directing the Commissioner to hold a hearing to determine whether Kishna should be removed and in what amount, if

[1] Commissioner Heishman took over the supervision of this matter from her predecessor after the second account was filed.

any, her bond should be forfeit. On the same date, the Commissioner filed a petition for Kishna's removal and the forfeiture of her bond.

The Commissioner held the hearing ordered by the circuit court to determine the extent, if any, of the bond forfeiture. The Commissioner's report, filed with the circuit court, recommended a bond forfeiture. Kishna and Liberty Mutual filed exceptions. The report was confirmed, and no appeal was noted.

Following a later hearing on the Commissioner's petition, the circuit court issued a letter opinion determining the Commissioner was correct in holding a hearing and acted within the scope of her powers. Kishna and Liberty Mutual appealed.

1. Confirmed Report as Final Order

On appeal, the Commissioner argued that the circuit court's order confirming her report was a final, appealable order from which Kishna and Liberty Mutual did not note their appeal, and their subsequent appeals should have been procedurally barred.

The Court of Appeals disagreed that the circuit court's confirmation of the Commissioner's report was a final order for purposes of appeal. According to the Court of Appeals, the language of Va. Code § 64.2-1213 does not alter the traditional analysis of whether an order is a final, appealable order, and under the traditional analysis, the order was not a final one. The order did not "dispose[] of the entire matter" because issues remained to be decided and the Commissioner's petition to remove Kishna and forfeit her bond was still pending.

2. "Interested Persons" under 64.2-1209

Kishna and Liberty Mutual again argued that the whole proceeding was a "nullity" because it started with Eric and Cynthia's improper request for a hearing under Va. Code § 64.2-1209. The Court of Appeals did not agree. Instead, the Court of Appeals agreed with the circuit court that Va. Code § 64.2-1209 is not the only way a commissioner can hold a hearing, and the Commissioner's activities were proper under her other authority.

3. The Commissioner's Impartiality

Kishna and Liberty Mutual argued that the Commissioner was not an impartial arbiter based on the statements she made during the hearing, and she was impermissibly acting as judge and prosecutor.

The Court of Appeals did not agree. The court said the Commissioner's statements during the investigatory hearings were taken out of context. Also, the Commissioner acted appropriately pursuant to her statutory duties and did not act as a prosecutor. She made, as required by the statutory scheme, findings of fact and recommendations to the circuit court in her report, and she otherwise acted consistently with her other statutory obligations, which can require her to initiate proceedings against a fiduciary.

4. The Joint Accounts

Kishna and Liberty Mutual assigned error to the Commissioner's not having considered certain evidence. The Court of Appeals declined to find error, since the appellants failed to offer that evidence before the Commissioner and did not proffer what evidence they would have offered.

One of the arguments relating to evidence was about the Wilders' intentions regarding their joint accounts. As to those accounts, the appellants also argued that Kishna should not be held responsible for the funds originating from them because the funds should have been viewed as Mrs. Wilder's. The Court of Appeals noted that the order appointing Kishna gave her power over the joint accounts, and she therefore had a duty to account for and not misappropriate any funds from them.

C. Will Interpretation. *Stack v. Larsen*, Record No. 1301223 (Va. Ct. App. 09/26/2023)

In his will, Erik Larsen left his residence and the 101 acres on which it lies to his two adult children, Pamela and Kirk, subject to the right of his wife, Sandra, "to reside in [the] home. . . for as long as she is physically and mentally able to do so." Mr. Larsen's will also gave Sandra the right to "receive the monthly rental payments" from a cell-tower lease on the property, "as provided for in the [lease a]greement. . . for as long as she resides in [the] home."

Previously, in *Larsen v. Stack*, 298 Va. 683 (2020), the Virginia Supreme Court determined that Sandra did not have a life estate in the property. Rather, the children's rights in the property were concurrent with Sandra's, as long as the children did not "interfere with [Sandra's] ability to live on the property by herself."

Following the 2020 Supreme Court's decision, this litigation arose over (a) the children's demands that the cell tower rent be paid to them for distribution to Sandra, rather than to Sandra directly, and (b) the parties' relative rights to and responsibility for the residence.

As to the cell-tower rental payments, the circuit court, interpreting the will, determined they were properly being made directly to Sandra. The circuit court's order went as far as to say that "the lease payments regarding the cell phone tower payable by Beacon Towers (or its successor) shall be made directly to Sandra," even though Beacon Towers was not a party to the proceeding. On appeal, the children sought to vacate that provision of the order, assigning error to the circuit court's interpretation of the will and raising for the first time the failure to join Beacon Towers as a necessary party. The Court of Appeals declined to vacate the provision, finding no error in the circuit court's interpretation of the will and, based on precedent and Va. Code § 8.01-678, determining that the children could not set aside a judgment where they failed to join a necessary party, waited until the appeal to raise that objection, and received a fair trial on the merits.

As to the residence, the parties' disagreements were over (i) Pamela's plans to occupy the second floor of the residence and divide the house into two apartments;

(ii) the children's demands that Sandra pay rent; and (iii) the children's demands that they be allowed to inspect the property at any time.

The circuit court declined to divide the residence into two apartments as the children had proposed on the grounds that doing so would materially interfere with Sandra's rights under the will, as interpreted in *Larsen v. Stack*. For the division to occur, Sandra would have had to vacate her bedroom on the second floor, her occupancy would have been restricted to the first floor (of which she would not have exclusive use), her privacy would have been limited, and major renovations to the house would have been required. On appeal, the children argued that the circuit court should have followed *White v. White*, 183 Va. 239 (1944) and divided the residence. The Court of Appeals found no abuse of discretion in the circuit court's decision not to divide the residence and distinguished *White*.

The children's argument for rent was that in giving Sandra exclusive use of the residence, the circuit court effectively ousted them, and they, as something akin to tenants in common with Sandra, should be entitled to rent from her. The Court of Appeals disagreed, saying the circuit court did not alter the children's rights—their rights were always subject to Sandra's. Having never been entitled to exclude Sandra from the second floor of the house, the children were not ousted.

The circuit court gave the children the right to "periodically inspect the residence for waste as long as they give at least 24 hours' notice to Sandra. . . [at] an agreeable time for all parties for such inspection," with Sandra being prohibited from unreasonably withholding her consent. On appeal, the children argued that as fee-simple owners, they should be allowed to enter and inspect the property at any time. The Court of Appeals again found no abuse of discretion, noting it was reasonable for the chancellor to have determined 24 hours' notice alone would not have been sufficient to protect Sandra's privacy.

D. Fees and Costs. *Bradshaw v. Owens* (unpublished), Record No. 1782222 (Va. Ct. App. 02/27/2024)

Keith Bradshaw was the beneficiary of a testamentary trust. Keith's brother, Steven Bradshaw, was named as the trustee. Keith was incarcerated and serving a life sentence, which made the trust difficult to administer by its terms. Steven asked that the circuit court allow him to resign and either replace him or terminate the trust and distribute the funds to an inmate account for Keith.

The circuit court appointed a guardian ad litem for Keith. The GAL agreed to Steven's resignation and the termination of the trust. Keith appeared by phone at the hearing and represented himself, since the GAL did not appear. The judge granted the relief requested and asked Steven's counsel to prepare an order. The order, which was signed after the hearing, granted the relief discussed at the hearing *and* awarded reasonable attorney's fees and costs to Steven's counsel and $1250 to the GAL (the amount on her invoice), all to be paid from the trust assets.

Upon receiving a copy of the order, Keith sent letters to the GAL and the judge expressing discontent with the fee awards and appealed the circuit court's order.

The Court of Appeals addressed, sua sponte, whether Keith's assignment of error was preserved, given that it was not made contemporaneously with the order. The court determined it was: since Keith did not see the final order or know of the fee awards until after the order was entered, he did not have the opportunity to object contemporaneously.

As to the propriety of the fee awards, Keith argued that they should not have been included in the order since they were not included in the judge's oral pronouncements at the hearing. The Court of Appeals disagreed, pointing out that the basis for Keith's argument was in criminal sentencing cases, and the logic does not extend to this case. Keith also argued that various provisions of the will under which the trust was established prevented the fees from being paid from his trust or directed payment from another source. The court said the provison directing payment of the decedent's debts, taxes, and expenses from his residuary estate applied to the decedent's debts, taxes, and expenses, not Keith's. Also, the ostensible spendthrift provision did not preclude a court from awarding fees and costs from the trust principal. Finally, the will contains provisions indicating the testator did not envision the trust being completely insulated from its costs, and Virginia law contemplates trust assets being used for trust expenses.

Judge Causey dissented. She would have found error in several of the circuit court's determinations, including the fee awards.

Because Keith did not oppose Steven's resignation or the termination of the trust and circuit court was willing to enter an agreed order without a hearing, "there was no need for aid and direction." Consequently, the fees of Steven's counsel did not aid the fiduciary in the performance of his duties and benefit the estate, as is required for fees to be awarded in an aid and direction suit.

The fee award was also in error for the following reasons:

- The circuit court did not expressly find that that the attorney's fees were trust expenses.
- The attorney did not make a prima facia case for the fees.
- The award was not included in the ruling from the bench.
- Keith should have been given notice of and an opportunity to be heard on the matter of the attorney's fees before he was "deprived of a property interest."

According to the dissent, "if attorney fees must be granted, they must be granted from the residuary estate" [i.e., "as an expense of the administration of the [decedent's] estate,"] rather than from the trust.

The dissent also takes issue with the award of the GAL's fee. Because Keith was not named as a defendant in the action, Va. Code § 8.01-9 could not provide a basis for the appointment of a GAL for him. Therefore, the appointment of a GAL under Va. Code § 8.01-9 was error. Since the appointment was in error (and he neither requested nor received counsel), Keith should not have been made to bear the GAL's fees.

Even if the GAL was properly appointed, her service did not constitute "substantial service in representing [Keith's] interest" meriting compensation.

An additional error was allowing Keith to waive his right to counsel (the GAL) and represent himself during the hearing without ensuring he was making a voluntary, knowing, and intelligent waiver was also error, given the circuit court's determination that Keith required a GAL.

Finally, the dissent made a case that "all civil defendants should be entitled to the right to counsel, regardless of disability."

E. Ademption by Extinction. *Atkins v. Williams* (unpublished), Record No. 0751223 (Va. Ct. App. 08/01/2023)

Betty Atkins's husband and brother-in-law owned a piece of land. Mrs. Atkins inherited her husband's share of this land upon his death. She and her brother-in-law partitioned the land, and Mrs. Atkins's received approximately 142 acres.

Mrs. Atkins gave 1 acre to Timothy, one of her 4 children. Later, she gave the remaining approximately 141 acres to Curtis, another of her children. But, soon after making the gift to Curtis, she sought to void it. She and Curtis settled the dispute over the gift, with Curtis retaining approximately 58 acres and conveying approximately 83 acres to Timothy.

Timothy died intestate, and Mrs. Atkins, as Timothy's sole heir at law, inherited back his 84 acres.

Mrs. Atkins died testate 2 months after Timothy. Her will contained the following devise of the land:

> "[t]o my sons, Timothy Lee Atkins and Curtis Glen Atkins, as joint tenants with the right of survivorship as existed at common law, so that upon the death of one of the parties, the entire fee simple interest in said real estate shall immediately become vested in the survivor, any and all interest which I may receive from my said husband in the farm at Maybrook, Giles County, Virginia, which farm is currently jointly owned by my husband and my brother-in-law. . . ."

Curtis sought a determination from the circuit court that the devise under the will entitled him to the 84 acres Mrs. Atkins inherited from Timothy. The circuit court determined the devise in the will was adeemed by extinction. The court reasoned that the various inter vivos conveyances "completely change[d] the nature of the property and negated [Mrs. Atkins's] intent," and Mrs. Atkins's reacquisition of the 84 acres from Timothy did not revive the devise. The ademption of the devise caused the land to pass under the residuary clause to Joseph, another of Mrs. Atkins's children. Curtis appealed.[2]

Curtis argued that Va. Code § 64.2-413 precluded the application of the common law ademption by extinction doctrine. According to him, Mrs. Atkins's reacquisition of the 84 acres gave her the "power to dispose of" the property, reviving the devise. The Court of Appeals, having looked to North Carolina's similar statute and the cases interpreting it, said Curtis's reading of the statute was

[2] Discussion of the evidentiary assignment of error is omitted here.

too broad, and Va. Code § 64.2-413 "merely establishes that the only effect of a subsequent conveyance is an ademption." So, according to the Court of Appeals, Va. Code § 64.2-413 only applies in this case to establish that Mrs. Atkins's inter vivos conveyances of the land do not revoke her entire will, and who inherits the property depends on whether the devise was adeemed.

According to the Court of Appeals, the interest devised in the will, i.e., the "interest which I may receive from my husband in the farm at Maybrook, Giles County[,]" was extinguished by Mrs. Atkins's inter vivos conveyance of the 141 acres to Curtis. The 84 acres she inherited from Timothy was not the same interest because it was inherited from Timothy, not Mr. Atkins. So, the devise was adeemed.

Va. Code § 64.2-416 provides that failed devises become part of the residue, unless the testator expressed a contrary intention in the will. Curtis argued that the will indicated such a contrary intention in providing that Timothy and Curtis should receive the land as joint tenants with the right of survivorship. The Court of Appeals did not find that language sufficient to establish Mrs. Atkins's contrary intention with the requisite level of certainty, since the language was written before the inter vivos conveyances, the inter vivos conveyances occurred separately and without survivorship, and nothing indicates Mrs. Atkins anticipated reacquiring an interest in the land.

Judge Chaney dissented from the majority opinion.

According to the dissent, the reference in the will to the land as the "interest which [Mrs. Atkins] may receive from [her] husband" was merely descriptive of the land and attributable to the circumstances of its ownership when the will was made. The majority's formalistic focus on those words erroneously led it to conclude that the inter vivos conveyances caused the land Mrs. Atkins inherited from Timothy to be materially different from that she inherited from her husband. In fact, the land Mrs. Atkins inherited from Timothy was the same land that she inherited from her husband, and the land itself did not change.

Additionally, the dissent took issue with the majority's reliance on the manner of Mrs. Atkins's inter vivos conveyances, since those did not modify, and therefore should not bear on the interpretation of, her will. Mrs. Atkins could have changed the devise at issue when she executed a codicil to change her executors after her husband's death, but she did not.

In the view of the dissent, since the land Mrs. Atkins held was that received from her husband, Va. Code § 64.2-413 would require the land to be distributed to Curtis.

Also, according to the dissent, the majority read Va. Code § 64.2-413 so narrowly as to limit its applicability to cases where the devised property was only partially disposed of during the testator's life, adding a restriction not imposed in the statute.

F. Validity of Will. *Shorter v. Cherry* (unpublished), Record No. 1904224 (Va. Ct. App. 11/21/2023)

JoAnne Cherry's 2002 will named her 3 children as beneficiaries. She purportedly executed another will naming Wayne Shorter, with whom she lived for more than 10 years before her death, as the beneficiary when she signed her advance medical directive at a UPS store in 2021.

The circumstances of the purported execution of the 2021 will were as follows: Ms. Cherry, her sister Sherry Johnson, and Wayne went to a UPS store. They brought with them Ms. Cherry's advance medical directive and, according to some witnesses, the 2021 will and its self-proving affidavit. The notary, a UPS store employee, reviewed the documents and had Ms. Cherry initial and sign them. He then had Sherry and another employee sign as witnesses. He notarized the documents and returned them to Ms. Cherry or Wayne.

After Ms. Cherry's death, the children sought to probate the 2002 will, and Wayne sought to probate the 2021 will.

At trial, Sherry testified that Ms. Cherry asked her only to witness an advance medical directive and that she was never presented with the will. She was certain the signature adjacent to her name on the self-proving affidavit was not hers, based on the writing style and the misspelling of her name. The children's handwriting expert, after studying examples of Ms. Cherry's and Sherry's handwriting, testified that Ms. Cherry's initials and signatures on the will and self-proving affidavit were not genuine, nor was Johnson's signature on the affidavit. The UPS store employees could not recall the signing of these particular documents, but, based on their usual procedures for witnessing and notarizing such documents, they confirmed all of the signatures on the advance medical directive, will, and affidavit. Though, the notary admitted he improperly notarized the advance medical directive, which contained a blank signature block, and did not place the signers under oath (which was his usual practice).

The circuit court found the 2021 will to be invalid and admitted the 2002 will to probate. Wayne appealed.[3]

Wayne argued that the testimony of the notary and the UPS-store-employee witness established that the will was properly executed, and he had therefore met his burden to establish the 2021 as valid. He further argued that the evidence for invalidating the 2021 will was not clear and convincing.

The Court of Appeals disagreed with Wayne and found no error in the circuit court's ruling. According to the Court of Appeals, there was clear and convincing evidence for the circuit court to have found Ms. Cherry's and Sherry's signatures to have been forged. The expert's testimony was uncontroverted, Sherry denied that she was asked to witness a will and that her signature was on the affidavit, and the

[3] Discussion of the evidentiary assignments of error (relating to the admissibility of certain testimony) is omitted here.

trial court was entitled to give little weight to and consider discredited the testimony of the UPS store employees.

II. LEGISLATION

All legislation goes into effect on July 1, 2024, except as otherwise noted.

A. Procedure for Termination of Small Trusts (§ 64.2-732)

Senate Bill 63 (2024 Acts, ch. 336) and House Bill 332 (2024 Acts, ch. 224), recommended by the Virginia Bankers Association, amend Va. Code § 64.2-732 to clarify certain aspects of the procedure for terminating a trust with a value under $100,000. Specifically:

- the trust can be terminated without court approval;
- the required notice is as defined in Va. Code § 64.2-707;
- Va. Code § 64.2-779 can be used in conjunction with § 64.2-732; and
- expenses incurred by the trustee in the termination "shall" be paid from the trust estate.

B. Deemed Release of Trustee (§ 64.2-800)

House Bill 678 (2024 Acts, ch. ___) and Senate Bill 566 (2024 Acts, ch. ___),[4] recommended by the Virginia Bankers Association, amend § 64.2-800 to provide that upon the termination of a trust or the trustee's ceasing to serve, a beneficiary who fails to make a timely objection after being provided with certain information will be deemed to have released and ratified all conduct of the trustee.

To obtain such a release, the trustee must send the beneficiary the following:

- a report (under 64.2-775(C)) for the preceding 2 years;
- the amounts of any remaining payments to be made or reserves retained;
- notice of the termination, the time for objection, and the trustee's being unaware of any undisclosed information that could give rise to a claim by the beneficiary; and
- if the trust is terminating, a description of any property not yet received and a proposed distribution.

The beneficiary has 60 days from the trustee's sending of the information to notify the trustee in writing of any objection. The effect of the beneficiary's failure to object (or the resolution of any objections) and the trustee's distribution is "as if a court had entered a final order approving the trustee's. . . account." Also, "a beneficiary *or other party* who received the notice and statements, and either consented, or did not object [is] prohibited from bringing a claim against the trustee." (emphasis added). Quarae who an "other party" might be and the scope of the preclusive effect. A trustee who is not released under this procedure is not precluded from obtaining a release by other means.

[4] As of the date of this writing, the Governor has not yet acted on all of the legislation, and his action deadline (April 8, 2024) has not yet passed.

This procedure is not available for transactions under Va. Code §§ 64.2-779.1 et seq. (Virginia Trust Decanting Act).

C. List of Tangible Personal Property in Trust (§ 64.2-400)

Senate Bill 102 (2024 Acts, ch. ___),[4] recommended by the Legislative Committee of the Virginia Bar Association's Wills, Trusts & Estates Section as part of its ongoing project to the laws applicable to wills and trusts more consistent, amends Va. Code § 64.2-400 to apply to revocable trusts.

These amendments allow the settlor of a revocable trust to dispose of specific items tangible personal property by memorandum in the same was as testators can under current law.

D. Nonexoneration (§ 64.2-531)

Also in Senate Bill 102 (2024 Acts, ch. ___)[4] are changes to Va. Code § 64.2-531.

These changes extend the nonexoneration default rule currently applicable to wills and transfer on death deeds to revocable trusts. Consequently, real property specifically devised in a revocable trust will pass subject to any existing mortgage or other lien, unless the trust expresses a contrary intent or the lien was granted by an agent, conservator, guardian, or committee acting for an incapacitated settlor.

E. Powers of Attorney (§ 64.2-1625)

House Bill 336 (2024 Acts, ch. 283) Senate Bill 471 (2024 Acts, ch. 123), recommended by the Legislative Committee of the Virginia Bar Association's Wills, Trusts & Estates Section, amend Va. Code §§ 55.1-124 et seq. to clarify that creating, changing, or revoking a transfer on death deed is, in general, a creation or change of a beneficiary designation rather than an ordinary conveyance of property. So, an agent must have the "hot" powers to create or change a beneficiary designation to create, change, or revoke a transfer on death deed.

F. Rule Against Perpetuities (§§ 55.1-127 et seq.)

House Bill 836 (2024 Acts, ch. 52) and Senate Bill 470 (2024 Acts, ch. 52), recommended by the Legislative Committee of the Virginia Bar Association's Wills, Trusts & Estates Section, amend the Virginia Statutory Rule Against Perpetuities (Va. Code §§ 55.1-127 et seq.) to resolve uncertainty in whether the Delaware Tax Trap could be triggered as to a Virginia perpetual trust.

Triggering the "Delaware Tax Trap" of Internal Revenue Code § 2041(a)(3) (and § 2514(d)) causes the inclusion of property subject to a limited power of appointment in the powerholder's estate as though the power were a general power. To trigger the Delaware Tax Trap, the limited power of appointment must be exercised in further trust to extend the time for vesting "for a period ascertainable without regard to the date of the creation of the first power." IRC § 2041(a)(3).

Virginia has allowed perpetual trusts since July 1, 2000, by permitting settlors to opt out of the rule against perpetuities for trusts of personal property. Va. Code § 55.1-127(A)(8). Whether the Delaware Tax Trap can be triggered in a perpetual trust (i.e., whether a perpetual or indefinite perpetuities period can be restarted and extended by the exercise of a power of appointment in further trust), and the tax consequences of an attempt to trigger the trap, are open questions.

HB 836/SB 470 eliminate the uncertainty regarding the Delaware Tax Trap by eliminating perpetual trusts in Virginia. As of July 1, 2024, settlors will no longer be able to opt out of the rule against perpetuities under Virginia law. The maximum time for vesting under the Virginia Statutory Rule Against Perpetuities as to personal property held in trust will become 1,000 years (increased for 90 years).

G. Advance Directives

1. Revocation on Divorce (§ 54.1-2985)

House Bill 436 (2024 Acts, ch. 81) amends Va. Code § 54.1-2984 to revoke the authority of an agent under an advance directive upon the filing of either (i) an action for the divorce or annulment of the marriage between the declarant and the agent or (ii) a petition for custody or visitation of a child born of the declarant and agent.

This provision is similar to the revocation-on-divorce provision of the Virginia Power of Attorney Act (§ 64.2-1608), though (a) an action for separate maintenance does not trigger revocation for an advance directive, and (b) as to petitions for custody or visitation, § 54.1-2984 seems to require that the child be "born of" the principal and agent while § 64.2-1608 requires only "a child in common."

2. Registry Renamed (§§ 54.1-2994 and 54.1-2995)

House Bill 188 (2024 Acts, ch. 274) and Senate Bill 154 (2024 Acts, ch. 231) amend Va. Code §§ 54.1-2994 and 54.1-2995 to allow submission to the state's registry for advance directives of other documents that "support advance healthcare planning, including Durable Do Not Resuscitate Orders and portable medical order forms." The acts also change the name of the registry to the "Advance Health Care Planning Registry." (It was previously the "Advance Health Care Directive Registry.")

H. Funeral Arrangements (§§ 54.1-2708.01 and 54.1-2708.03)

House Bill 652 (2024 Acts, ch. 200) amends Va. Code § 54.1-2708.01 to add protections for funeral service establishments handling funeral arrangements or the disposition of remains over which the next of kin disagree.

- These new procedures ostensibly require one of the next of kin to notify the funeral service establishment of the dispute within 48 hours, and, upon receiving such notice, the establishment is required to cease making

arrangements until the next of kin agree or a court rules on a petition filed by a next of kin.

- Also, if there is a disagreement over the identity of the persons entitled to make the arrangements, the establishment is not liable for refusing to dispose of the remains or complete arrangements for the final disposition without a court order or agreement among the disputing next of kin. The establishment may take measures to preserve the body while the dispute is pending, and the person ultimately empowered to make the arrangements is responsible for the costs of those measures.

The act also adds § 54.1-2708.03, which allows funeral service licensees to require a person claiming next-of-kin status to execute a document affirming such status. The section also allows funeral service licensees to rely on a decedent's will naming a person as "to serve as next of kin for making funeral and burial arrangements," regardless of whether the will has been probated, "as part of affirming such person is next of kin under this section."

I. Assignments of Inheritance Rights (§ 6.2-303)

House Bill 648 (2024 Acts, ch. ___)[4] amends Va. Code § 54.1-2984 to provide that a cash advance for an assignment of an inheritance right under a will is to be treated as a loan, and any amount the inheritor is contractually obligated to pay in excess of the amount advanced is to be treated as interest and subject to the usury limit of 12% per year.

J. Notaries

1. Fees (§ 47.1-19)

House Bill 986 (2024 Acts, ch. 310) amends Va. Code § 47.1-19 to increase the fees notaries can charge for acknowledgments, oaths, affidavits, and certifying copies from $5 to $10.

2. KBA (§§ 47.1-2, 47.1-16, 47.1-20.1)

House Bill 1372 (2024 Acts, ch. ___) amends Va. Code §§ 47.1-2, 47.1-16, and 47.1-20.1 to allow notaries to use knowledge-based authentication as satisfactory evidence of identity and provide criteria for such authentications.

K. Guardianships & Conservatorships

1. Report of GAL (§ 64.2-2003)

Senate Bill 292 (2024 Acts, ch. ___)[4] amends Va. Code § 64.2-2003 to require a guardian ad litem to address in his or her report the following additional areas of concern regarding a prospective guardian or conservator: whether the person works full-time as a professional guardian, the person's expected capacity as a guardian, and whether the person is named as a perpetrator in any substantiated adult protective services complaint involving the respondent following allegations of abuse.

2. Order (§§ 64.2-2002, 64.2-2011, and 64.2-2020)

Senate Bill 290 (2024 Acts, ch. 156) and House Bill 115 (2024 Acts, ch. 17) amend Va. Code §§ 64.2-2002, 64.2-2011, and 64.2-2020.

A form cover sheet, on a form to be published by the Office of the Executive Secretary of the Supreme Court of Virginia, will be required with any a petition for the appointment of a guardian or conservator.

The changes also clarify the filing deadlines for annual reports of guardians and the time periods to be covered by each report. The first report is to reflect the first four months of guardianship and must be filed within six months of qualification. Subsequent reports, covering each succeeding 12-month period, are due "within four months from the last day of the last 12-month period covered by the previous annual report."

The clerk will be required to send additional documents to certain agencies upon the qualification of a guardian or conservator.

3. Restoration and Modification (§§ 64.2-2009, 64.2-2012)

House Bill 786 (2024 Acts, ch. ___)[4] amends Va. Code §§ 64.2-2009 and 64.2-2012 to allow the ward of a guardianship or conservatorship who is not represented by counsel to initiate the process of having his or her capacity restored or the guardianship or conservatorship modified or terminated by informal written communication to the court rather than by petition. Upon receipt of such an informal communication, the court may set a hearing, not set a hearing, or order other appropriate relief. The court must communicate its decision to the ward and any guardian, conservator, and guardian ad litem then serving. That communication may also be an informal writing.

4. Training for Guardians (§§ 51.5-150, 64.2-2019, 64.2-2020)

Senate Bill 291 (2024 Acts, ch. ___)[4] amends Va. Code §§ 51.5-150, 64.2-2019, and 64.2-2020 to require the Department for Aging and Rehabilitative Services to provide training for court-appointed guardians by July 1, 2025. Guardians appointed on or after July 1, 2025, will be required to complete the training within 120 days of qualification. Guardians appointed before that date will be required to complete the training by January 1, 2027. The training will also be required for any skilled professionals a guardian retains to perform guardianship duties. The guardian's annual report will require a statement about whether the required training has been completed.

L. PR for Personal Injury or Wrongful Death (§§ 64.2-454, 8.01-262)

House Bill 779 (2024 Acts, ch. 50) and Senate Bill 138 (2024 Acts, ch. 340), recommended by the Boyd-Graves Conference, amend Va. Code §§ 64.2-454 and 8.01-262 to remove the venue-related condition on where a personal representative may be appointed in connection with a personal injury or wrongful death action in § 64.2-454. As a result of the change, the appointment can be made by "by the

clerk of a circuit court," rather than only the clerk in which jurisdiction and venue would have been properly laid for the action had the decedent survived. The act moves the venue-related provision to § 8.01-262, so that in actions where an administrator is appointed under § 64.2-454, permissible venue lies only where venue would have been properly laid had the decedent survived.

M. Electronic Signatures on Court Papers (§ 8.01-271.1)

House Bill 171 (2024 Acts, ch. 20), also recommended by the Boyd-Graves Conference, amends Va. Code § 8.01-271.1 to provide that the required signature of an attorney on "every pleading, motion, or other paper" may be "an electronic signature as defined in § 59.1-480 or a digital image of a signature."

4875-9254-3659, v. 1

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 64.2-732 of the Code of Virginia, relating to modification or termination of uneconomic trust; notice.

[S 63]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-732 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-732. Modification or termination of uneconomic trust.

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust *without court approval* if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. *Notice required by this section shall be sent in accordance with § 64.2-707.*

B. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust *and may simultaneously utilize the provisions of § 64.2-779.*

D. This section does not apply to an easement for conservation or preservation.

E. Expenses incurred by the trustee incident to the termination of a trust pursuant to this section shall be paid by the trust estate.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 64.2-800 of the Code of Virginia, relating to trusts; release or ratification of trustee by beneficiary.

[H 678]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-800 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-800. Beneficiary's consent, release, or ratification.

A. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

B. A beneficiary shall be deemed to have released a trustee and ratified all actions of a trustee for the administration of the trust if, when the trust terminates or the trustee ceases to serve:

1. The trustee sends the beneficiary the following:

a. A report as described in subsection C of § 64.2-775, for the immediately preceding two years;

b. The amount of any taxes, expenses, or fees, including trustee fees and any reserves, remaining to be paid;

c. Notice that (i) the trust is terminating or that the trustee is ceasing to serve; (ii) if the beneficiary does not object in writing to the trustee within 60 days after the trustee sent the notice and information, the beneficiary shall be deemed to have released the trustee and ratified all actions of the trustee; and (iii) the trustee is unaware of any undisclosed information that could give rise to a claim by the beneficiary; and

d. If the trust is terminating, a description of any trust property or interests reasonably anticipated but not yet received and a proposal for distribution; and

2. The beneficiary does not notify the trustee of the beneficiary's objection in writing within 60 days after the trustee sent the notice and information pursuant to subdivision 1.

C. The provisions of subsection B shall not apply to a transaction pursuant to Article 8.1 (§ 64.2-779.1 et seq.) of Chapter 7.

D. In the event the trustee is not released and his actions ratified pursuant to the process provided by subsection B, the trustee shall not be precluded from obtaining a release of liability by another permitted method.

E. When a trustee complies with the provisions of subsection B, has received no objection or has resolved any objection, and distributes the assets of a terminating trust to a beneficiary or to a successor trustee, such action shall have the same legal and preclusive effect as if a court had entered a final order approving the trustee's final account or approving the trustee's interim accounts. A beneficiary or other party who received the notice and statements and either consented or did not object shall be prohibited from bringing a claim against the trustee.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 64.2-400 and 64.2-531 of the Code of Virginia, relating to wills and trusts; tangible personal property; nonexoneration.

[S 102]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-400 and 64.2-531 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-400. Separate writing identifying recipients of tangible personal property; liability for distribution; action to recover property.

A. *For the purposes of this section, "revocable," "settlor," "trustee," and "trust instrument" mean the same as those terms are defined in § 64.2-701.*

B. If a will *or a trust instrument that was revocable immediately before the settlor's death* refers to a written statement or list to dispose of items of tangible personal property not otherwise specifically bequeathed, the statement or list shall be given effect to the extent that it describes items of tangible personal property and their intended recipients with reasonable certainty and is signed by the testator *or settlor* although it does not satisfy the requirements for a will *or trust instrument*. Bequests of a general or residuary nature, whether referring only to personal property or to the entire estate, are not specific bequests for the purpose of this section.

~~B.~~ *C.* The written statement or list may be (i) referred to as one that is in existence at the time of the testator's *or settlor's* death, (ii) prepared before or after the execution of the will *or trust instrument,* (iii) altered by the testator *or settlor* at any time, and (iv) a writing that has no significance apart from its effect on the dispositions made by the will *or trust instrument*. When distribution is made pursuant to such a written statement or list *referred to in a will*, a copy thereof shall be furnished to the commissioner of accounts along with the legatee's receipt.

~~C.~~ *D.* A personal representative *or trustee* shall not be liable for any distribution of tangible personal property to the apparent ~~legatee~~ *recipient* under the ~~testator's~~ will *or trust instrument* made without actual knowledge of the existence of a written statement or list, nor shall he have any duty to recover property so distributed. However, a person named to receive certain tangible personal property in a written statement or list that is effective under this section may recover that property, or its value if the property cannot be recovered, from an apparent ~~legatee~~ *recipient* to whom it has been distributed in an action brought for that purpose within one year after the probate of the testator's will *if such written statement or list was referred to in a testator's will or within one year of the settlor's death if such written statement or list was referred to in a trust instrument.*

~~D.~~ *E.* This section shall not apply to a writing admitted to probate as a will and, except as provided herein, shall not otherwise affect the law of incorporation by reference.

§ 64.2-531. Nonexoneration; payment of lien if granted by agent.

A. *For the purposes of this section, "revocable," "settlor," "trustee," and "trust instrument" mean the same as those terms are defined in § 64.2-701.*

B. Unless a contrary intent is clearly set out in the will, *the trust instrument,* or ~~in~~ a transfer on death deed, (i) real or personal property that is the subject of a specific devise or bequest in the will *or the trust instrument that was revocable immediately before the settlor's death* or (ii) real property subject to a transfer on death deed passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator *or settlor,* without the right of exoneration. A general directive in the will *or trust instrument* to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated prior to passing to the legatee.

~~B.~~ *C.* The personal representative may give written notice to the creditor holding any debt to which subsection ~~A~~ *B* applies that there is no right of exoneration for such debt pursuant to this section. Such notice shall include a copy of this section. Any such notice shall be sent by certified mail (i) to the address the creditor last provided to the debtor as the address to which notices to the creditor are to be sent; (ii) if the personal representative cannot reasonably determine the address to which notices to the creditor are to be sent, to the address the creditor last provided to the debtor as the address at which payments to the creditor are to be made; or (iii) if the personal representative cannot reasonably determine either the address to which notices to the creditor are to be sent or at which payments to the creditor are to be made, to (a) the address of the creditor's registered agent on file with the Virginia State Corporation Commission or (b) if there is no such registered agent on file, to the creditor's last known address. The creditor holding such debt may file a claim for such debt with the commissioner of

accounts pursuant to § 64.2-552 on or before the later of one year after the qualification of the personal representative of the decedent's estate or six months after the personal representative gives such written notice to the creditor. Once the personal representative has given notice to the creditor as provided in this section, unless the creditor files a timely claim against the estate as set forth in this subsection, the liability of a personal representative or his surety for such debt shall not exceed the assets of the decedent remaining in the possession of the personal representative and available for application to the debt pursuant to § 64.2-528 at the time the creditor presents a demand for payment of such debt to the personal representative. Nothing in this section shall affect either the liability of the estate for such debt to the extent of the decedent's assets remaining at the time a claim is filed or the liability of the beneficiaries that receive the decedent's assets to the extent of such receipt.

In the event that any such claim is timely filed with the commissioner of accounts, the personal representative shall give the specific beneficiary receiving such real or personal property written notice, within 90 days after such claim is filed, to obtain from the creditor the release of the estate from such claim. The notice to a beneficiary may be made to the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney-in-fact for a beneficiary, a guardian or conservator of an incapacitated beneficiary, a committee of a convict or insane beneficiary, or the duly qualified guardian of a minor or, if none exists, a custodial parent of a minor. If the estate has not been released from such claim after the later of 180 days from such notice or one year from qualification, the personal representative may ~~(a)~~ *(1)* sell the real or personal property that is the subject of a specific devise or bequest and that is also subject to the claim, ~~(b)~~ *(2)* apply the proceeds of sale to the satisfaction of the claim, and ~~(c)~~ *(3)* distribute any excess proceeds from such sale of the specific beneficiary of such property. If the proceeds of such sale are insufficient to satisfy the debt in full, the deficiency shall remain a debt of the estate to be satisfied from the other assets of the estate in accordance with applicable law. If such real property is subject to a transfer on death deed and is also subject to the claim, the personal representative may proceed as provided in § 64.2-634 to enforce the liability for such claim against such property.

~~C.~~ *D.* Subsection ~~A~~ *B* shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator *or settlor* against any specifically devised or bequeathed real or personal property, or any real property subject to a transfer on death deed, that was granted by an agent acting within the authority of a durable power of attorney for the testator *or settlor* while the testator *or settlor* was incapacitated. For the purposes of this section, (i) no adjudication of the testator's *or settlor's* incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an incapacitated testator *or settlor*, and (iii) an incapacitated testator *or settlor* is one who is impaired by reason of mental illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause creating a lack of sufficient understanding or capacity to make or communicate responsible decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest, or other lien granted by the agent on the specific property is thereafter ratified by the testator *or settlor* while he is not incapacitated or (b) if the durable power of attorney was limited to one or more specific purposes and was not general in nature.

~~D.~~ *E.* Subsection ~~A~~ *B* shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of the death of the testator *or settlor* against any specific devise or bequest of any real or personal property, or any real property subject to a transfer on death deed, that was granted by a conservator, guardian, or committee of the testator *or settlor*. This subsection shall not apply if, after the mortgage, pledge, security interest, or other lien granted by the conservator, guardian, or committee, there is an adjudication that the testator's *or settlor's* disability has ceased and the testator *or settlor* survives that adjudication by at least one year.

~~E.~~ *F.* Nothing in this section shall affect the priority of a secured debt with respect to the collateral securing such debt.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 64.2-1625 of the Code of Virginia, relating to certain powers of attorney; transfer on death deeds.

[H 336]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-1625 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-1625. Real property.

A. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

1. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

3. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

4. Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

5. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

6. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

7. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

a. Selling or otherwise disposing of them;

b. Exercising or selling an option, right of conversion, or similar right with respect to them; and

c. Exercising any voting rights in person or by proxy;

8. Change the form of title of an interest in or right incident to real property; and

9. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

B. An agent under a power of attorney acting under the authority of this section shall not have the authority to create, change, or revoke a transfer on death deed on behalf of the owner of property unless such agent is granted the power to create or change a beneficiary designation as required by subdivision A 4 of § 64.2-1622. This subsection shall not be construed to prohibit such agent from exercising any authority under subsection A, even if the effect of exercising of such authority may be to revoke a transfer on death deed.

CHAPTER 52

An Act to amend and reenact §§ 55.1-124, 55.1-125, 55.1-127, and 55.1-128 of the Code of Virginia, relating to Uniform Statutory Rule Against Perpetuities; trusts; certain nonvested property interests or powers of appointment over property or property interests.

[H 836]

Approved March 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-124, 55.1-125, 55.1-127, and 55.1-128 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-124. Uniform Statutory Rule Against Perpetuities.

A. A nonvested property interest is invalid unless:

1. When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

2. The interest either vests or terminates within 90 years after its creation.

B. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

D. In determining whether a nonvested property interest or a power of appointment is valid under subdivision A 1, B 1, or C 1, the possibility that a child will be born to an individual after the individual's death is disregarded.

E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

F. For any nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, if such interest or power is created on or after July 1, 2024, §§ 55.1-124 through 55.1-129 shall apply to such interest or power by substituting "1,000 years" in each instance in which the term "90 years" appears in §§ 55.1-124 through 55.1-129. This subsection shall not extend to a nonvested property interest in, or a power of appointment over, real property held in trust or a power of appointment over real property granted under a trust. For the purposes of this subsection, real property does not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property.

§ 55.1-125. When nonvested property interest or power of appointment created.

A. Except as provided in ~~subsections B and C~~ *this section* and in *subsection B of* § 55.1-128, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

B. For the purposes of §§ 55.1-124 through 55.1-129, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsection B or C ~~in~~ *of* § 55.1-124, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

C. For the purposes of §§ 55.1-124 through 55.1-129, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original

contribution was created.

D. For the purposes of §§ 55.1-124 through 55.1-129, except as provided in subsection B of § 55.1-128, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such other nongeneral or testamentary power is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

§ 55.1-127. Exclusions from statutory rule against perpetuities.

A. Section 55.1-124 does not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement; (ii) a separation or divorce settlement; (iii) a spouse's election; (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; (v) a contract to make or not to revoke a will or trust; (vi) a contract to exercise or not to exercise a power of appointment; (vii) a transfer in satisfaction of a duty of support; or (viii) a reciprocal transfer;

2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

3. A power to appoint a fiduciary;

4. A discretionary power of trustee to distribute principal before termination of a trust to a beneficiary having an indefensibly vested interest in the income and principal;

5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

7. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the Commonwealth; or

8. A nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, if the trust instrument, by its terms, provides that § 55.1-124 shall not apply, *provided that such interest or power was created between July 1, 2000, and June 30, 2024. If a nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, was created on or after July 1, 2024, the provisions of the first sentence of this subdivision shall not apply, and any terms in the trust instrument providing that § 55.1-124 does not apply shall not be operative and shall not prevent the application of § 55.1-124 to such interest or power.*

B. The exception to the Uniform Statutory Rule Against Perpetuities under *the first sentence of* subdivision A 8 shall not extend to real property held in trust. For purposes of this subsection, real property does not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property.

§ 55.1-128. Prospective application.

A. Sections 55.1-124 through 55.1-129 apply to a nonvested property interest or a power of appointment that is created on or after July 1, 2000.

B. For purposes of ~~this section~~ *subsection A, the first sentence of subsection F of § 55.1-124, and subdivision A 8 of § 55.1-127,* a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

CHAPTER 81

An Act to amend and reenact § 54.1-2985 of the Code of Virginia, relating to revocation of advance directive; divorce or annulment; custody or visitation.

[H 436]

Approved March 14, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2985 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2985. Revocation of an advance directive.

A. ~~An~~ *Except as provided by subsection A1, an* advance directive may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. A declarant may make a partial revocation of his advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article. Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

A1. The filing of either (i) an action for the divorce or annulment of the marriage of the declarant and agent or (ii) a petition for custody or visitation of a child or children born to the declarant and agent shall revoke the authority of the agent. In the event of such revocation upon such filing, subsequent decisions about health care shall be made consistent with the provisions of this article.

B. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter, any revocation of such directive shall also be notarized before being submitted to the Department of Health for removal from the registry. However, failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of the revocation, as long as it meets the requirements of ~~subsection~~ *subsection* A *or A1*.

2. That the provisions of this act shall apply to advance directives executed on or after July 1, 2024.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 54.1-2994 and 54.1-2995 of the Code of Virginia, relating to Advance Health Care Planning Registry; amendment of regulations.

[H 188]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2994 and 54.1-2995 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2994. Advance Health Care Planning Registry established.

The Department of Health shall make available a secure online central registry for advance health care ~~directives~~ *planning*.

§ 54.1-2995. Filing of documents with the registry; regulations; fees.

A. A person may submit any of the following documents and the revocations of these documents to the Department of Health for filing in the Advance Health Care ~~Directive~~ *Planning* Registry established pursuant to this article:

1. A health care power of attorney.

2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) or a subsequent act of the General Assembly.

3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).

4. Any other document that supports advance health care planning, including Durable Do Not Resuscitate Order or portable medical order forms.

B. The document may be submitted for filing only by the person who executed the document or his legal representative or designee and shall be accompanied by any fee required by the Department of Health.

C. All data and information contained in the registry shall remain confidential and shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. The Board of Health shall promulgate regulations to carry out the provisions of this article, which shall include, but not be limited to (i) a determination of who may access the registry, including physicians, other licensed health care providers, the declarant, and his legal representative or designee; (ii) a means of annually reminding registry users of which documents they have registered; and (iii) fees for filing a document with the registry. Such fees shall not exceed the direct costs associated with development and maintenance of the registry and with the education of the public about the availability of the registry, and shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. No fee shall be charged for the filing of a document revoking any document previously filed with the registry.

2. That the Department of Health shall amend the Advance Health Care Planning Registry regulations to include advance health care planning documentation in the list of documents that may be submitted to the registry pursuant to § 54.1-2995 of the Code of Virginia, as amended by this act.

3. That the Department of Health shall amend the Advance Health Care Planning Registry regulations to allow licensed health care providers licensed in the Commonwealth access to the registry for the purpose of collecting advance health care planning information on patients with whom who they have a treatment relationship.

CHAPTER 200

An Act to amend and reenact § 54.1-2807.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2807.03, relating to funeral arrangements; disputes between next of kin; proof of next of kin status.

[H 652]

Approved March 28, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2807.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2807.03 as follows:

§ 54.1-2807.01. When next of kin disagree.

A. In the absence of a designation under § 54.1-2825, when there is a disagreement among a decedent's next of kin concerning the arrangements for his funeral or the disposition of his remains, any of the next of kin may petition the circuit court where the decedent resided at the time of his death to determine which of the next of kin shall have the authority to make arrangements for the decedent's funeral or the disposition of his remains. The court may require notice to and the convening of such of the next of kin as it deems proper.

B. In determining the matter before it, the court shall consider the expressed wishes, if any, of the decedent, the legal and factual relationship between or among the disputing next of kin and between each of the disputing next of kin and the decedent, and any other factor the court considers relevant to determine who should be authorized to make the arrangements for the decedent's funeral or the disposition of his remains.

C. When there is a disagreement among a decedent's next of kin concerning the arrangements for his funeral or the disposition of his remains, at least one of the next of kin shall, within 48 hours of the funeral service establishment receiving the decedent's remains, notify such funeral service establishment of the dispute, at which time the funeral service establishment shall immediately stop making arrangements for the decedent's funeral or for the disposition of the decedent's remains until such time as an agreement is reached by the disputing next of kin or a court of appropriate jurisdiction has ruled on any petition filed by such disputing next of kin.

D. If there is a dispute regarding the identity of any persons who have the right to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of such decedent's remains, a funeral service establishment shall not be liable for refusing to dispose of the decedent's remains or complete the arrangements for the final disposition of such remains until the funeral service establishment receives a court order or written agreement signed by the disputing next of kin that establishes the final disposition of the decedent's remains. If the funeral service establishment retains the decedent's remains for final disposition while any such dispute is pending, the funeral service establishment may embalm or refrigerate and shelter the decedent's body for preservation purposes until the dispute is resolved. Any person or persons adjudged or agreed to have the right to make arrangements and otherwise be responsible for the decedent's funeral and the disposition of the decedent's remains shall be responsible for any costs incurred by the funeral service establishment pursuant to this subsection.

§ 54.1-2807.03. Proof of next of kin status.

A. A funeral service licensee may require that a person claiming next of kin status, in accordance with the definition of next of kin in § 54.1-2800, execute a document affirming that such person is the next of kin. Upon execution of this form, the funeral service licensee is exempt from any liability for allowing such person to proceed with funeral planning for the decedent.

B. A funeral service licensee may, as a part of affirming that such person is next of kin under this section, rely on the decedent's will that names such person as the individual the decedent wishes to serve as next of kin for making funeral and burial arrangements, regardless of whether the will has been probated.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 6.2-303 of the Code of Virginia, relating to contracts assigning rights to inheritance funds; legal rate of interest.

[H 648]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-303 of the Code of Virginia is amended and reenacted as follows:

§ 6.2-303. Contracts for more than legal rate of interest.

A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan at a rate that exceeds 12 percent per year.

B. Laws that permit payment of interest at a rate that exceeds 12 percent per year are set out, without limitation, in:

1. Article 4 (§ 6.2-309 et seq.) of this chapter;

2. Chapter 15 (§ 6.2-1500 et seq.), relating to powers of consumer finance companies;

3. Chapter 18 (§ 6.2-1800 et seq.), relating to short-term loans;

4. Chapter 22 (§ 6.2-2200 et seq.), relating to interest chargeable by motor vehicle title lenders;

5. § 36-55.31, relating to loans by the Virginia Housing Development Authority;

6. § 38.2-1806, relating to interest chargeable by insurance agents;

7. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by premium finance companies;

8. § 54.1-4008, relating to interest chargeable by pawnbrokers; and

9. § 58.1-3018, relating to interest and origination fees payable under third-party tax payment agreements.

C. In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

D. Any provision of this chapter that provides that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate. Such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

E. The provisions of subsection A shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever, including:

1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or otherwise; (ii) money; (iii) goods; or (iv) things in action;

2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and

3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

F. Any contract made in violation of this section is void and no person shall have the right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the contract.

G. Any contract entered into on or after July 1, 2024, pursuant to which a person receives a cash advance for assigning to a company or other entity a portion of such person's rights to receive inheritance funds from a will that has been, or is anticipated to be, offered for probate in a circuit court of the Commonwealth shall be considered a loan. Any funds such person is obligated to pay under the terms of such contract in addition to the total of the cash advance shall be considered interest. Such contract shall be subject to the provisions of subsection A.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 47.1-19 of the Code of Virginia, relating to notaries; fees.

[H 986]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 47.1-19 of the Code of Virginia is amended and reenacted as follows:

§ 47.1-19. Fees.

A. A notary may, for taking and certifying the acknowledgment of any writing, or administering and certifying an oath, or certifying affidavits and depositions of witnesses, or certifying that a copy of a document is a true copy thereof, charge a fee up to ~~$5~~ *$10*.

B. A notary may, for taking and certifying the acknowledgement of any electronic document, or administering and certifying an oath or affirmation, or certifying electronic affidavits and depositions of witnesses, or certifying that a copy of an electronic document is a true copy thereof, charge a fee not to exceed $25.

C. Any person appointed as a member of an electoral board or a general registrar shall be prohibited from collecting any fee as a notary during the time of such appointment. Any person appointed as a deputy registrar or officer of election shall be prohibited from collecting any fee as a notary for services relating to the administration of elections or the election laws.

D. It shall be unlawful for any notary to charge more than the fee established herein for any notarial act; however, a notary may recover, with the agreement of the person to be charged, any actual and reasonable expense of traveling to a place where a notarial act is to be performed if it is not the usual place in which the notary performs his office.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 47.1-2, 47.1-16, and 47.1-20.1 of the Code of Virginia, relating to notaries; definitions; knowledge-based authentication assessment.

[H 1372]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 47.1-2, 47.1-16, and 47.1-20.1 of the Code of Virginia are amended and reenacted as follows:

§ 47.1-2. Definitions.

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

"Acknowledgment" means a notarial act in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

"Affirmation" means a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) makes a vow of truthfulness or fidelity on penalty of perjury.

"Commissioned notary public" means that the applicant has completed and submitted the registration forms along with the appropriate fee to the Secretary of the Commonwealth and the Secretary of the Commonwealth has determined that the applicant meets the qualifications to be a notary public and issues a notary commission and forwards same to the clerk of the circuit court, pursuant to this chapter.

"Copy certification" means a notarial act in which a notary (i) is presented with a document that is not a public record; (ii) copies or supervises the copying of the document using a photographic or electronic copying process; (iii) compares the document to the copy; and (iv) determines that the copy is accurate and complete.

"Credential analysis" means a process or service that independently affirms the veracity of a government-issued identity credential by reviewing public or proprietary data sources and meets the standards of the Secretary of the Commonwealth.

"Credible witness" means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to confirm that individual's identity.

"Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including a record as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

"Electronic notarial act" or "electronic notarization" means an official act by a notary under § 47.1-12 or as otherwise authorized by law that involves electronic documents.

"Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, and other required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular notarization. The "electronic notarial certificate" shall indicate whether the notarization was done in person or by remote online notarization.

"Electronic notary public" or "electronic notary" means a notary public who has been commissioned by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under § 47.1-7.

"Electronic notary seal" or "electronic seal" means information within a notarized electronic document that confirms the notary's name, jurisdiction, and commission expiration date and generally corresponds to data in notary seals used on paper documents.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

"Identity proofing" means a process or service that independently verifies an individual's identity in accordance with § 2.2-436.

"Knowledge-based authentication assessment" means an identity assessment formulated from public or private data sources for which the principal has not provided a prior answer that meets the following requirements:

1. The principal shall answer a quiz composed of at least five questions related to the principal's personal history or identity;

2. At least five possible answer choices shall be available for each question;

3. The principal shall pass the quiz if he achieves a score of 80 percent or higher;

4. The principal shall have two minutes to answer the questions on the quiz;

5. If the principal fails to achieve a score of at least 80 percent, the principal may attempt up to two additional quizzes within 48 hours following the first failed quiz; and

6. No more than 60 percent of the questions from the initial quiz can be reused on additional quizzes.

"Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or 47.1-13 or as otherwise authorized by law.

"Notarial certificate" or "certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, notary registration number, and other required information concerning the date and place of the notarization and states the facts attested to or certified by the notary public in a particular notarization.

"Notary public" or "notary" means any person commissioned to perform official acts under the title, and includes an electronic notary except where expressly provided otherwise.

"Oath" shall include "affirmation."

"Official misconduct" means any violation of this title by a notary, whether committed knowingly, willfully, recklessly or negligently.

"Personal knowledge of identity" or "personally knows" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

"Principal" means (i) a person whose signature is notarized or (ii) a person, other than a credible witness, taking an oath or affirmation from the notary.

"Record of notarial acts" means a device for creating and preserving a chronological record of notarizations performed by a notary.

"Remote online notarization" means an electronic notarization under this chapter where the signer is not in the physical presence of the notary.

"Satisfactory evidence of identity" means identification of an individual based on (i) examination of one or more of the following unexpired documents bearing a photographic image of the individual's face and signature: a United States Passport Book, a United States Passport Card, a certificate of United States citizenship, a certificate of naturalization, a foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in clause (i). In the case of an individual who resides in an assisted living facility, as defined in § 63.2-100, or a nursing home, licensed by the State Department of Health pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or exempt from licensure pursuant to § 32.1-124, an expired United States Passport Book, expired United States Passport Card, expired foreign passport, or expired state issued driver's license or state issued identification card may also be used for identification of such individual, provided that the expiration of such document occurred within five years of the date of use for identification purposes pursuant to this title. In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video and audio conference technology, in accordance with the standards for electronic video and audio communications set out in subdivisions B 1, 2, and 3 of § 19.2-3.1, that permits the notary to communicate with and identify the principal at the time of the notarial act, provided that such identification is confirmed by (a) personal knowledge~~,~~ *or* (b) an oath or affirmation of a credible witness *who personally knows the principal and is either personally known to the notary~~,~~* or ~~(c)~~ *is identified by* at least two of the following: (1) credential analysis of an unexpired government-issued identification bearing a photograph of the principal's face and signature~~,~~*;* (2) identity proofing by an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority, *including any supplements thereto or revisions thereof;* (3) another identity proofing method authorized in guidance documents, regulations, or standards adopted pursuant to § 2.2-436~~,~~ ~~or~~*;* (4) a valid digital certificate accessed by biometric data or by use of an interoperable

Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof, including the specifications published by the Federal Chief Information Officers Council in "Personal Identity Verification Interoperability for Non-Federal Issuers."*; or (5) a knowledge-based authentication assessment.*

"Seal" means a device for affixing on a paper document an image containing the notary's name and other information related to the notary's commission.

"Secretary" means the Secretary of the Commonwealth.

"State" includes any state, territory, or possession of the United States.

"Verification of fact" means a notarial act in which a notary reviews public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based.

§ 47.1-16. Notarizations to show date of act, official signature and seal, etc.

A. Every notarization shall include the date upon which the notarial act was performed and the county or city and state in which it was performed. Every electronic notarial certificate *completed by an electronic notary public commissioned in the Commonwealth* shall include the county or city within the Commonwealth where the electronic notary public was physically located at the time of the notarial act. The electronic notarial certificate shall indicate whether the notarization was done in person or by remote online notarization.

B. A notarial act shall be evidenced by a notarial certificate or electronic notarial certificate signed by a notary in a manner that attributes such signature to the notary public identified on the commission.

C. Upon every writing that is the subject of a notarial act, the notary shall, after his certificate, state the date of the expiration of his commission in substantially the following form:

"My commission expires the ____ day of _____, ____ "

Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

D. The notary shall attach the official electronic signature and electronic seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident.

E. An electronic notary's electronic signature and electronic seal shall conform to the standards for electronic notarization developed in accordance with § 47.1-6.1.

§ 47.1-20.1. Validation of certain acts.

A. Oaths of office administered by a notary public on or before July 1, 1982, are hereby deemed to be valid and actions of any public officer taking such oaths are hereby deemed valid.

B. No notarial act performed by a notary public shall be invalidated solely because of the failure of such notary public to perform a duty or meet a requirement specified in this title. However, the validity of a notarial act shall not prohibit an aggrieved person from seeking to invalidate the record or transaction that is the subject of such notarial act or from seeking other remedies authorized by the laws of the Commonwealth or laws of the United States. Nothing in this subsection shall be construed to validate a purported notarial act performed by an individual who is not authorized to perform such notarial acts.

2. That the provisions of subsection B of § 47.1-20.1 of the Code of Virginia, as amended by this act, shall apply retroactively to any notarial act that was performed before July 1, 2024.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 64.2-2003 of the Code of Virginia, relating to guardianship and conservatorship; report of guardian ad litem.

[S 292]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-2003 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-2003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C; (vi) making a good faith effort to consult directly with the respondent's primary health care provider, if any, unless the evaluation report required by § 64.2-2005 is prepared in whole or in part by such provider; and (vii) personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and transition plan and include the results of his review in the report required by clause (v).

C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or conservator after consideration of *(a)* the person's geographic location, *(b) the person's* familial or other relationship with the respondent, *(c) the person's* ability to carry out the powers and duties of the office, *(d) the person's* commitment to promoting the respondent's welfare, *(e)* any potential conflicts of interests, *(f) whether the person works as a professional guardian on a full-time basis, (g) the person's expected capacity as a guardian, (h) the* wishes of the respondent, ~~and~~ *(i) the* recommendations of relatives*, and (j) whether the person is named as a perpetrator in any substantiated adult protective services complaint involving the respondent following allegations of abuse or neglect*; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate. If the guardian ad litem was unable to consult directly with the respondent's primary health care provider, such information shall also be included in such report.

D. Any individual or entity with information, records, or reports relevant to a guardianship or conservatorship proceeding, including any (i) health care provider, local school division, or local department of social services; (ii) criminal justice agency as that term is defined in § 9.1-101, unless the disclosure of such information, records, or reports would impede an ongoing criminal investigation or proceeding; and (iii) financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in § 13.1-501, or other financial service provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad litem shall be accompanied by a copy of the court order (a) appointing the guardian ad litem for the respondent and (b) that allows the release of the respondent's nonpublic personal information to the guardian ad litem. All such information, records, and reports shall be provided to the

guardian ad litem at no charge. Disclosures, records, and reports can be provided in electronic form to the guardian ad litem and may be accompanied by a statement of expenses or an invoice, which shall be filed with the report of the guardian ad litem to be considered by the court when awarding costs among the parties pursuant to § 64.2-2008. Absent gross negligence or willful misconduct, the person or entity making disclosures, and their staff, shall be immune from civil or criminal liability for providing information or records to a court-appointed guardian ad litem pursuant to this section.

CHAPTER 156

An Act to amend and reenact §§ 64.2-2002, 64.2-2011, and 64.2-2020 of the Code of Virginia, relating to guardians and conservators; order of appointment and certificate of qualification; annual report.

[S 290]

Approved March 26, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2002, 64.2-2011, and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2002. Who may file petition; contents.

A. Any person, including a community services board and any other local or state governmental agency, may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, post office address, and the sealed filing of the social security number;

2. The basis for the court's jurisdiction under the provisions of Article 2 (§ 64.2-2105 et seq.) of Chapter 21;

3. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order;

4. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody;

5. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal, and any guardian, committee, or conservator currently acting, whether in this state or elsewhere, and the petitioner shall attach a copy of any such durable power of attorney, advance directive, or order appointing the guardian, committee, or conservator, if available;

5a. The name, location, and post office address of the respondent's primary health care provider, if any;

6. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

7. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangements and treatment plan;

8. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment and, if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment;

9. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent and that person's relationship to the respondent;

10. The native language of the respondent and any necessary alternative mode of communication;

11. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts, contained in a separate confidential addendum, pursuant to § 64.2-2000.1;

12. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; and

13. A request for appointment of a guardian ad litem.

C. The petitioner shall complete and file with the petition for appointment of a guardian, a conservator, or both, a cover sheet on a form prepared by the Office of the Executive Secretary of the Supreme Court of Virginia. Such cover sheet shall contain such information as the Executive Secretary deems necessary.

§ 64.2-2011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

A. A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with

all provisions of this chapter;

2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and

3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

B. Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order *of appointment* appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § 64.2-2014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order *of appointment and a copy of the certificate of qualification* to the local department of social services in the jurisdiction where the respondent then resides and *a copy of the order of appointment* to the Department of Medical Assistance Services.

C. A conservator shall have all powers granted pursuant to § 64.2-2021 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to the limitations that are prescribed in the order. The powers granted to a guardian shall only be those powers enumerated in the court order.

D. Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification may presume that the guardian or conservator is properly authorized to act as to any matter or transaction, except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

1. A person that refuses in violation of this subsection to accept a certificate of qualification is subject to (i) a court order mandating acceptance of the certificate of qualification and (ii) liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the certificate of qualification or mandates acceptance of the certificate of qualification.

2. A person shall either accept or reject a certificate of qualification no later than seven business days after presentation of such certificate of qualification for acceptance. A person is not required to accept a certificate of qualification for a transaction if:

a. Engaging in the transaction with the guardian or conservator would be inconsistent with state or federal law;

b. The person has actual knowledge of the termination of the authority of the guardian or conservator or of the certificate of qualification before exercise of the power;

c. The person in good faith believes that the certificate of qualification is not valid or that the guardian or conservator does not have the authority to perform the act requested; or

d. The person believes in good faith that the transaction may involve, facilitate, result in, or contribute to financial exploitation.

§ 64.2-2020. Annual reports by guardians.

A. ~~A~~ *Within six months from the date of qualification, a* guardian *appointed pursuant to § 64.2-2009* shall file an *initial* annual report ~~in compliance with the filing deadlines in § 64.2-1305~~ *reflecting the first four months of guardianship since qualification* with the local department of social services for the jurisdiction where the incapacitated person then resides. *After such initial annual report has been filed, the second and subsequent annual reports for each succeeding 12-month period shall be due within four months from the last day of the 12-month period covered by the previous annual report.* The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of $5. To the extent practicable, the annual report shall be formatted in a manner to encourage standardized and detailed responses from guardians. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

B. The annual report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person, including any change in diagnosis or assessment of any such condition of such incapacitated person by any medical provider since the last report;

2. A description of the incapacitated person's living arrangements during the reported period, including a specific assessment of the adequacy of such living arrangement;

3. The medical, educational, vocational, social, recreational, and any other professional services and activities provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care. The information required by this subdivision shall include (i) the specific

names of the medical providers that have treated the incapacitated person and a description of the frequency or number of times the incapacitated person was seen by such providers; (ii) the date and location of and reason for any hospitalization of such incapacitated person; and (iii) a description of the educational, vocational, social, and recreational activities in which such incapacitated person participated;

4. A statement of whether the guardian agrees with the current treatment or habilitation plan;

5. A statement of whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such incapacitated person;

6. A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;

7. The name of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted and the reasons for such restriction;

8. A self-assessment by the guardian as to whether he feels he is able to continue to carry out the powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment pursuant to § 64.2-2009;

9. Unless the incapacitated person resides with the guardian, a statement of the frequency and nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee who is directly supervised or contracted by the guardian, including the name of the designee performing such visit. If any visit described in this section is made virtually, the guardian shall include such information in the annual report;

10. If no visit is made within a 120-day period, the guardian shall describe any challenges or limitations in completing such visit;

11. A general description of the activities taken on by the guardian for the benefit of the incapacitated person during the past year;

12. Any other information deemed necessary by the Office of the Executive Secretary of the Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of the incapacitated person;

13. Any other information useful in the opinion of the guardian; and

14. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than $500. Such penalty shall be collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall be deposited into the general fund.

C. If the local department of social services files notice that the annual report has not been timely filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons or rule to show cause why the guardian has failed to file such annual report.

2. That nothing in this act shall be construed to preclude the clerk of a circuit court from establishing and maintaining his own case management system or other independent technology system provided by a private vendor or the locality. Any data from such clerk's independent system may be provided directly from such clerk to designated state agencies or through an interface with the technology systems operated by the Office of the Executive Secretary of the Supreme Court of Virginia.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 64.2-2009 and 64.2-2012 of the Code of Virginia, relating to guardianship and conservatorship; restoration or modification or termination of order; informal written communication.

[H 786]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2009 and 64.2-2012 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

A. The court's order appointing a guardian or conservator shall (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, § 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 64.2-2007; (vi) set the bond of the guardian and the bond and surety, if any, of the conservator; and (vii) where a petition is brought prior to the incapacitated person's eighteenth birthday, pursuant to subsection C of § 64.2-2001, whether the order shall take effect immediately upon entry or on the incapacitated person's eighteenth birthday.

A1. Beginning July 1, 2023, the court shall set a schedule in the order of appointment for periodic review hearings, to be held no later than one year after the initial appointment and no later than every three years thereafter, unless the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine. Any such determination to waive the hearing or use a schedule differing from that prescribed in this subsection shall be supported in the order and address the reason for such determination, including (i) the likelihood that the respondent's condition will improve or the respondent will regain capacity, (ii) whether concerns or questions were raised about the suitability of the person appointed as a guardian or conservator at the time of the initial appointment, and (iii) whether the appointment of a guardian or conservator or the appointment of the specifically appointed guardian or conservator was contested by the respondent or another party.

The court shall not waive the initial periodic review hearing scheduled pursuant to this subsection where the petitioner for guardianship or conservatorship is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123; an assisted living facility, as defined in § 63.2-100, or any other similar institution; or a health care provider other than a family member. If the petitioner is a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to § 32.1-123 or an assisted living facility as defined in § 63.2-100, nothing in this chapter shall require such petitioner to attend any periodic review hearing.

Any person may file a petition, which may be on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date set forth in the order of appointment. The court shall hold an earlier hearing upon good cause shown. At such a hearing, the court shall review the schedule set forth in the order of appointment and determine whether future periodic review hearings are necessary or may be waived.

A2. If the court has ordered a hearing pursuant to subsection A1, the court shall appoint a guardian ad litem, who shall conduct an investigation in accordance with the stated purpose of the hearing and file a report. The incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis. The guardian ad litem shall provide notice of the hearing to the incapacitated person and to all individuals entitled to notice as identified in the court order of appointment. Fees and costs shall be paid in accordance with the provisions of §§ 64.2-2003 and 64.2-2008. The court shall enter an order reflecting any findings made during the review hearing and any modification to the guardianship or conservatorship.

B. The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs. The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes that are specified in the order.

C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition.

D. A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive. A guardian need not be appointed for a person where a health care decision is made pursuant to, and within the scope of, the Health Care Decisions Act (§ 54.1-2981 et seq.).

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to the Uniform Power of Attorney Act (§ 64.2-1600 et seq.) that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

E. All orders appointing a guardian shall include the following statements in conspicuous bold print in at least 14-point type:

1. Pursuant to § 64.2-2009 of the Code of Virginia, (name of guardian), is hereby appointed as guardian of (name of respondent) with all duties and powers granted to a guardian pursuant to § 64.2-2019 of the Code of Virginia, including but not limited to: (enter a statement of the rights removed and retained, if any, at the time of appointment; whether the appointment of a guardian is a full guardianship, public guardianship pursuant to § 64.2-2010 of the Code of Virginia, limited guardianship pursuant to § 64.2-2009 of the Code of Virginia, or temporary guardianship; and the duration of the appointment).

2. Pursuant to the provisions of subsection E of § 64.2-2019 of the Code of Virginia, a guardian, to the extent possible, shall encourage the incapacitated person to participate in decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known, and shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

3. Pursuant to § 64.2-2020 of the Code of Virginia, an annual report shall be filed by the guardian with the local department of social services for the jurisdiction where the incapacitated person resides.

4. Pursuant to § 64.2-2012 of the Code of Virginia, all guardianship orders are subject to petition for restoration of the incapacitated person to capacity; modification of the type of appointment or areas of protection, management, or assistance granted; or termination of the guardianship. *In lieu of such a petition, if the person subject to the guardianship is not represented by counsel, such person may initiate the process by sending informal written communications to the court. All orders appointing a guardian, conservator, or both shall include the current mailing address, email address, and physical address of the court issuing the order and to which such informal written communication shall be directed.*

§ 64.2-2012. Petition for restoration, modification, or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person or upon motion of the court, the court may (i) declare the incapacitated person restored to capacity; (ii) modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; (iii) terminate the guardianship or conservatorship; (iv) order removal of the guardian or conservator as provided in § 64.2-1410; or (v) order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 42 of § 17.1-275.

A1. Instead of the filing of a petition or upon motion provided by subsection A, if the person subject to the guardianship or conservatorship is not represented by counsel, such person may initiate the process to be restored to capacity or have guardianship or conservatorship modified or terminated by informal written communication to the court.

Upon receipt of such informal written communication, the court shall review the communication to determine whether there is good cause to take action and may (i) set the matter for hearing pursuant to the provisions of this section, (ii) take no action if there is not good cause for such a hearing, or (iii)

order other appropriate relief. The court shall communicate its decision to the incapacitated person and any guardian, conservator, and guardian ad litem then serving. The court's response may be made by the same mode of informal written communication as used to make the request to the court.

No filing fee shall be assessed for the receipt of such informal communication.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § 64.2-2004. The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court, and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § 64.2-2004, and any other person or entity as the court may require, the court shall hold a hearing. *Upon the filing of any petition or submission of informal written communications pursuant to subsection A1, the incapacitated person has a right to be represented by counsel, and the provisions of § 64.2-2006 shall apply, mutatis mutandis.*

C. An order appointing a guardian or conservator may be revoked, modified, or terminated upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;

2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need of the incapacitated person;

3. The incapacitated person's understanding or capacity to manage his estate and financial affairs or to provide for his health, care, or safety has so changed as to warrant such action; or

4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. The court shall declare the person restored to capacity and discharge the guardian or conservator if, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has substantially regained his ability to (i) care for his person in the case of a guardianship or (ii) manage and handle his estate in the case of a conservatorship.

In the case of a petition for modification of a guardianship or conservatorship, the court shall order (a) limiting or reducing the powers of the guardian or conservator if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to do so, or (b) increasing or expanding the powers of the guardian or conservator if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to do so.

The court may order a new bond or other appropriate relief upon finding by a preponderance of the evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or of the estate.

E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship.

A guardianship or conservatorship shall terminate upon the death of the incapacitated person or, if ordered by the court, following a hearing on the petition of any interested person.

F. The court may allow reasonable compensation from the estate of the incapacitated person to any guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed shall be taxed as costs of the proceeding.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 51.5-150, 64.2-2019, and 64.2-2020 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.5-150.1, relating to Department for Aging and Rehabilitative Services; training; powers and duties of guardian; annual reports by guardians; information required.

[S 291]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-150, 64.2-2019, and 64.2-2020 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 51.5-150.1 as follows:

§ 51.5-150. Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall, *with respect to the public guardian and conservator programs*:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 2.2-4300 et seq.);

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia public guardian and conservator programs in those cases in which a court, pursuant to §§ 64.2-2010 and 64.2-2015, determines that a person is eligible to have a public guardian or conservator appointed;

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as appropriate to implement, administer, and manage the state and local or regional programs authorized by this article, including, but not limited to, the adoption of:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff-to-client ratios for the programs, and adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff-to-client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts; sheriffs, where appropriate; and the Department;

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff-to-client ratios, which shall include a process for evaluating any program that has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has, had, or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that evaluations occur no less frequently than every six months and shall continue until the staff-to-client ratio returns to within the ideal range; and

d. Person-centered practice procedures that shall:

(1) Focus on the preferences and needs of the individual receiving public guardianship services; and

(2) Empower and support the individual receiving public guardianship services, to the extent feasible, in defining the direction for his life and promoting self-determination and community involvement.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia public guardian and conservator programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for separation in programs that may be fee-generating;

5. Establish recordkeeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate, and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received;

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person, and such other information as the Department may by regulation require;

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided;

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of

all local and regional programs;

9. Maintain statistical data on the operation of the programs and report such data to the General Assembly on or before January 1 of each even-numbered year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the Virginia Public Guardian and Conservator Program and the identified operational needs of the program. Such report shall be posted on the Department's website. In addition, the Department shall enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and public administration to conduct an evaluation of local public guardian and conservator programs from funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report with recommendations to the Department and to the Public Guardian and Conservator Advisory Board established pursuant to § 51.5-149.1. Trends identified in the report, including the need for public guardians, conservators, and other types of surrogate decision-making services, shall be presented to the General Assembly. The Department shall request such a report from an appropriate research entity every four years, provided the General Assembly appropriates funds for that purpose;

10. Decennially review the ideal range of staff-to-client ratios for local and regional public guardian and conservator programs in the Commonwealth and make recommendations as to whether the ratio should be revised to ensure that public guardians are able to meet their obligations to incapacitated persons pursuant to this article and report its findings and conclusions to the Governor and the General Assembly by December 1 of each year in which such review is performed; and

11. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2 with an entity that may also provide privately funded surrogate decision-making services, including guardian and conservator services funded with fees generated by the estates of incapacitated persons, provided such private programs are administered by the contracting entity entirely separately from the local or regional Virginia public guardian and conservator programs, in conformity with regulations established by the Department in that respect.

D. In accordance with the Public Procurement Act (§ 2.2-4300 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity that does not provide services to incapacitated persons as guardian or conservator to administer the *public guardian and conservator* program, and, if it does, the term "Department" when used in this article shall refer to the contract administrator.

§ 51.5-150.1. Powers and duties of the Department with respect to guardian training.

The Department shall develop and provide training for guardians pursuant to § 64.2-2019 that shall include training on the responsibilities and duties of guardians, how to complete annual guardianship reports, how to involve and encourage participation of incapacitated adults in decisions made by such guardians, medical advocacy, and decision-making on behalf of other persons.

§ 64.2-2019. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by the Uniform Power of Attorney Act (§ 64.2-1600 et seq.). Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.) and in accordance with the procedures of § 64.2-2012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities and as needed to comply with the duties imposed upon him pursuant to the order of appointment and this section and any other provision of law. The guardian shall visit the incapacitated person as often as necessary and at least three times per year, with at least one visit occurring every 120 days. Except as otherwise provided in subsection C1, of the three required visits, at least two visits shall be conducted by the guardian. The guardian shall conduct at least one of such visits in person; the second such visit may be conducted by the guardian via virtual conference or video call between the guardian and incapacitated person, provided that the technological means by which such conference or call can take place are readily available.

The remaining visit may be conducted (i) by the guardian; (ii) by a person other than the guardian, including (a) a family member or friend monitored by the guardian or (b) a skilled professional retained

by the guardian to perform guardianship duties on behalf of the guardian and who is experienced in the care of individuals, including older adults or adults with disabilities; or (iii) via virtual conference or video call between either the guardian or such family member or friend monitored by the guardian or skilled professional and the incapacitated person, provided that the technological means by which such conference or call can take place are readily available. If a person other than the guardian conducts any such visit, he shall provide a written report to the guardian regarding any visit conducted by such person.

A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

C1. If for reasons outside the guardian's control the guardian cannot make an in-person visit to an incapacitated person, then such visit may be conducted in person by an individual designated by the guardian pursuant to subsection C. If either the guardian or such individual designated by the guardian is unable to conduct an in-person visit, then such visit may be conducted virtually through electronic means such as a virtual conference or video call, or, if such technological means are not readily available, by telephone.

C2. In the event of a state of emergency or public health crisis in which a facility in which the incapacitated person resides is not allowing in-person visitation, visitation requirements required pursuant to subsection C may be met via a virtual conference or video call between the guardian and incapacitated person, to the extent feasible for the facility to provide the technological means by which such conference or call can take place. A telephone call shall meet the requirements of this subsection only if such technological means are not readily available.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence. A guardian shall not restrict an incapacitated person's ability to communicate with, visit, or interact with other persons with whom the incapacitated person has an established relationship, unless such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of the incapacitated person. Such restrictions shall only be imposed pursuant to § 64.2-2019.1.

E1. A guardian and any skilled professional retained by such guardian to perform guardianship duties on behalf of the guardian pursuant to clause (ii) (b) of subsection C shall complete the training developed by the Department for Aging and Rehabilitative Services pursuant to § 51.5-150.1 within 120 days after the date of the qualification of such guardian, unless such training was completed within the past 36 months in conjunction with another guardianship appointment made pursuant to § 64.2-2009. No guardian or skilled professional retained by such guardian shall be required to complete such training more frequently than once every 36 months.

F. A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, memorialization, inurnment, or scattering of the cremains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements as set forth in § 54.1-2825. A guardian shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian. The funeral service licensee, funeral service establishment, registered crematory, cemetery, cemetery operator, or guardian shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

§ 64.2-2020. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305 with the local department of social services for the jurisdiction where the incapacitated person then resides. The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of $5. To the extent practicable, the annual report shall be formatted in a manner to encourage standardized and detailed responses from guardians. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of

services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

B. The annual report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person, including any change in diagnosis or assessment of any such condition of such incapacitated person by any medical provider since the last report;

2. A description of the incapacitated person's living arrangements during the reported period, including a specific assessment of the adequacy of such living arrangement;

3. The medical, educational, vocational, social, recreational, and any other professional services and activities provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care. The information required by this subdivision shall include (i) the specific names of the medical providers that have treated the incapacitated person and a description of the frequency or number of times the incapacitated person was seen by such providers; (ii) the date and location of and reason for any hospitalization of such incapacitated person; and (iii) a description of the educational, vocational, social, and recreational activities in which such incapacitated person participated;

4. A statement of whether the guardian agrees with the current treatment or habilitation plan;

5. A statement of whether the incapacitated person has been an alleged victim in a report of abuse, neglect, or exploitation made pursuant to Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2, to the extent known, and whether there are any other indications of abuse, neglect, or exploitation of such incapacitated person;

6. A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;

7. The name of any persons whose access to communicate, visit, or interact with the incapacitated person has been restricted and the reasons for such restriction;

8. A self-assessment by the guardian as to whether he feels he is able to continue to carry out the powers and duties imposed upon him by § 64.2-2019 and as specified in the court's order of appointment pursuant to § 64.2-2009;

9. *A statement as to whether the guardian and any skilled professional retained by such guardian to perform guardianship duties on behalf of the guardian have completed the training required by subsection E1 of § 64.2-2019;*

10. Unless the incapacitated person resides with the guardian, a statement of the frequency and nature of any (i) in-person visits from the guardian with the incapacitated person over the course of the previous year and (ii) visits over the course of the previous year from a designee who is directly supervised or contracted by the guardian, including the name of the designee performing such visit. If any visit described in this section is made virtually, the guardian shall include such information in the annual report;

~~10.~~ *11.* If no visit is made within a 120-day period, the guardian shall describe any challenges or limitations in completing such visit;

~~11.~~ *12.* A general description of the activities taken on by the guardian for the benefit of the incapacitated person during the past year;

~~12.~~ *13.* Any other information deemed necessary by the Office of the Executive Secretary of the Supreme Court of Virginia or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of the incapacitated person;

~~13.~~ *14.* Any other information useful in the opinion of the guardian; and

~~14.~~ *15.* The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than $500. Such penalty shall be collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall be deposited into the general fund.

C. If the local department of social services files notice that the annual report has not been timely filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons or rule to show cause why the guardian has failed to file such annual report.

2. That the Department for Aging and Rehabilitative Services shall develop and implement the training specified by § 51.5-150.1 of the Code of Virginia, as created by this act, by July 1, 2025.

3. That guardians appointed pursuant to § 64.2-2009 of the Code of Virginia prior to July 1, 2025, and any skilled professional retained by such guardian to perform guardianship duties on behalf of such guardian, shall complete the training required by § 64.2-2019 of the Code of Virginia, as amended by this act, by January 1, 2027.

4. That the Office of the Executive Secretary of the Supreme Court of Virginia shall prepare the annual report form specified by § 64.2-2020 of the Code of Virginia, as amended by this act, by July 1, 2025.

5. That the Department for Aging and Rehabilitative Services shall consult with the Virginia State Bar, the Supreme Court of Virginia, and the Office of the Executive Secretary of the Supreme Court of Virginia to ensure that the training program developed pursuant to § 51.5-150.1, as created by this act, is in compliance with the rules and regulations regarding the Mandatory Continuing Legal Education (MCLE) program and is eligible for attorneys taking such course to receive MCLE credits.

CHAPTER 50

An Act to amend and reenact §§ 8.01-262 and 64.2-454 of the Code of Virginia, relating to permissible venue; personal injury and wrongful death actions; appointment of administrator on behalf of estate of decedent.

[H 779]

Approved March 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-262 and 64.2-454 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-262. Category B or permissible venue.

In any actions to which this chapter applies except those actions enumerated in Category A where preferred venue is specified, one or more of the following counties or cities shall be permissible forums, such forums being sometimes referred to as "Category B" in this title:

1. Wherein the defendant resides or has his principal place of employment or, if the defendant is not an individual, wherein its principal office or principal place of business is located;

2. Wherein the defendant has a registered office, has appointed an agent to receive process, or such agent has been appointed by operation of the law; or, in case of withdrawal from the Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

3. Provided there exists any practical nexus to the forum including, but not limited to, the location of fact witnesses, plaintiffs, or other evidence to the action, wherein the defendant regularly conducts substantial business activity, or in the case of withdrawal from the Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

4. Wherein the cause of action, or any part thereof, arose;

5. In actions to recover or partition personal property, whether tangible or intangible, the county or city:

a. Wherein such property is physically located; or

b. Wherein the evidence of such property is located;

c. And if subdivisions a and b do not apply, wherein the plaintiff resides.

6. In actions against a fiduciary as defined in § 8.01-2 appointed under court authority, the county or city wherein such fiduciary qualified;

7. In actions for improper message transmission or misdelivery wherein the message was transmitted or delivered or wherein the message was accepted for delivery or was misdelivered;

8. In actions arising based on delivery of goods, wherein the goods were received;

9. If there is no other forum available in subdivisions 1 through 8 of this category, then the county or city where the defendant has property or debts owing to him subject to seizure by any civil process; or

10. Wherein any of the plaintiffs reside if (i) all of the defendants are unknown or are nonresidents of the Commonwealth or if (ii) there is no other forum available under any other provisions of § 8.01-261 or this section.

Notwithstanding the provisions of this section, in actions in which an administrator has been appointed pursuant to § 64.2-454, permissible venue shall only lie in a county or city in which venue would have been properly laid if the person for whom such appointment is made had survived.

§ 64.2-454. Appointment of administrator for prosecution of action for personal injury or wrongful death against or on behalf of estate of deceased resident or nonresident.

An administrator may be appointed in any case in which it is represented that either a civil action for personal injury or death by wrongful act, or both, arising within the Commonwealth is contemplated against or on behalf of the estate or the beneficiaries of the estate of a resident or nonresident of the Commonwealth who has died within or outside the Commonwealth if at least 60 days have elapsed since the decedent's death and an executor or administrator of the estate has not been appointed under § 64.2-500 or 64.2-502, solely for the purpose of prosecution or defense of any such actions, by the clerk of ~~the~~ *a* circuit court ~~in the county or city in which jurisdiction and venue would have been properly laid for such actions if the person for whom the appointment is sought had survived~~. An administrator appointed pursuant to this section may prosecute actions for both personal injury and death by wrongful act.

If a fiduciary has been appointed in a foreign jurisdiction, the fiduciary may qualify as administrator. The appointment of a fiduciary in a foreign jurisdiction shall not preclude a resident or nonresident from qualifying as an administrator for the purposes of maintaining a wrongful death action pursuant to § 8.01-50 or a personal injury action in the Commonwealth.

A resident and nonresident may be appointed as coadministrators.

CHAPTER 20

An Act to amend and reenact § 8.01-271.1 of the Code of Virginia, relating to signing of pleadings, motions, and other papers; electronic signatures.

[H 171]

Approved March 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-271.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions.

A. Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member in good standing of the Virginia State Bar in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address. The signature of a person other than counsel of record who is an active member in good standing of the Virginia State Bar or a pro se litigant is not a valid signature. A minor who is not represented by an attorney shall sign his pleading, motion, or other paper by his next friend. Either or both parents of such minor may sign on behalf of such minor as his next friend. However, a parent may not sign on behalf of a minor if such signature is otherwise prohibited by subdivision 6 of § 64.2-716. *The signature required by this section may be an electronic signature as defined in § 59.1-480 or a digital image of a signature.* If a pleading, motion, or other paper is not signed in compliance with this paragraph, it is defective. Such a defect renders the pleading, motion, or other paper voidable.

B. The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C. An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

D. If a pleading, motion, or other paper is signed or made in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including reasonable attorney fees.

E. Failure to raise the issue of a signature defect in a pleading, motion, or other paper before the trial court's jurisdiction expires pursuant to Rule 1:1 (a) and Rule 1:1B waives any challenge to that pleading, motion, or other paper based on such a defect.

F. Signature defects in appellate filings, including the notice of appeal, shall be raised in the appellate court where the appeal is taken. Failure to timely raise the issue of a defective signature in an appellate pleading, motion, or other paper while the case is pending before the appellate court waives any challenge to that pleading, motion, or other paper based on such a defect.

G. If a signature defect is not timely and properly cured after it is brought to the attention of the pleader or movant, the pleading, motion, or other paper is invalid and shall be stricken. A signature defect shall be cured within 21 days after it is brought to the attention of the pleader or movant. If a signature defect is timely and properly cured, the pleading, motion, or other paper shall be valid and relate back to the date it was originally served or filed.