

Code of Virginia

§ 37.2-1000. Definitions.

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

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) local or regional program designated by the Department for the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for the Aging as a public guardian, it may also serve as a guardian for other individuals.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

(1997, c. 921, § 37.1-134.6; 1998, cc. 582, 787; 2004, c. 858; 2005, c. 716; 2006, c. 724.)

§ 37.2-1001. Filing of petition; jurisdiction; instructions to be provided.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, assisted living facility as defined in § 63.2-100, or any other similar institution or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person, the petition may be filed no earlier than the respondent's eighteenth birthday.

C. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide that information to each guardian and conservator upon notice of appointment.

D. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

(1997, c. 921, § 37.1-134.7; 2001, c. 274; 2002, c. 736; 2005, c. 716; 2006, c. 552.)

§ 37.2-1002. Who may file petition; contents.

A. Any person 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 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 step-children. 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;
3. 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;
4. 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 or any guardian, committee, or conservator currently acting, whether in this state or elsewhere, with a copy of any such documents, if available, attached by the petitioner;

5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;
6. 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 arrangement and treatment plan;
7. 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;
8. 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;
9. The native language of the respondent and any necessary alternative mode of communication;
10. 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;
11. 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
12. A request for appointment of a guardian ad litem.

(1997, c. 921, § 37.1-134.8; 2005, c. 716; 2006, c. 471.)

§ 37.2-1003. 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 §§ 37.2-1006 and 37.2-1007, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § 37.2-1006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian or conservator, such as personal supervision, financial management, or medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (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.

D. A health care 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.

(1997, c. 921, § 37.1-134.9; 2004, cc. 66, 1014; 2005, c. 716.)

§ 37.2-1004. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § 37.2-1003. A certification, in the guardian ad litem's report required by subsection B of § 37.2-1003, that the guardian ad litem personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first class mail by the petitioner at least seven days before the hearing to all adult individuals and to all entities whose names and post office addresses appear in the petition. For good cause shown, the court may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail by first class mail a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least 14-point type of the purpose of the proceedings and shall inform the respondent of the right to be represented by counsel pursuant to § 37.2-1006 and to a hearing pursuant to § 37.2-1007. Additionally, the notice shall include the following statement in conspicuous, bold print.

WARNING

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

E. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C and D.

(1997, c. 921, § 37.1-134.10; 2001, c. 30; 2005, c. 716.)

§ 37.2-1005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem or may order a report and delay the hearing until the report is prepared, filed, and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's

specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations, and assessments upon which the report is based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by that person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated therein and the results of the examination or evaluation referred to therein, unless counsel for the respondent or the guardian ad litem objects.

(1997, c. 921, § 37.1-134.11; 2005, c. 716.)

§ 37.2-1006. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel, upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. Counsel appointed by the court shall be paid a fee that is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § 37.2-1005.

(1997, c. 921, § 37.1-134.12; 2004, cc. 66, 1014; 2005, c. 716.)

§ 37.2-1007. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

In determining the need for a guardian or a conservator and the powers and duties of any needed guardian or conservator, consideration shall be given to the following factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives, including advance directives and durable powers of attorney; the extent to which it is necessary

to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person to be the guardian or the conservator or both, giving due deference to the wishes of the respondent.

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

(1997, c. 921, § 37.1-134.13; 2005, c. 716.)

§ 37.2-1008. Fees and costs.

The petitioner shall pay the filing fee, as provided in subdivision A 43 of § 17.1-275, and costs. Service fees and court costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefor, the court shall order that the petitioner be reimbursed from the estate for all costs and fees. If a guardian or conservator is not appointed and the court nonetheless finds that the petition is brought in good faith and for the benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to reimburse the petitioner for all costs and fees.

In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding that are fixed by the court or taxed as costs shall be borne by the Commonwealth.

(1998, c. 76, § 37.1-134.13:1; 2005, c. 716.)

§ 37.2-1009. Court order of appointment; limited guardianships and conservatorships.

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, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.2-1007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.

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.

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.

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 specified in the order.

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 § 37.2-1018 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.

(1997, c. 921, § 37.1-134.14; 1998, c. 582; 2005, c. 716.)

§ 37.2-1010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity or there is no guardian or conservator appointed within one month of adjudication pursuant to § 37.2-1015. The guidelines for determining indigency set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

(1998, c. 787, § 37.1-134.14:1; 2005, cc. 712, 716.)

§ 37.2-1011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

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.

Upon qualification, the clerk shall issue to the guardian or conservator a certificate with a copy of the order 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 § 37.2-1014, 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 to the local department of social services in the jurisdiction where the respondent then resides.

A conservator shall have all powers granted pursuant to § 37.2-1022 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 include only those powers enumerated in the court order.

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.

(1997, c. 921, § 37.1-134.15; 1998, c. 582; 2005, c. 716.)

§ 37.2-1012. 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 declare the incapacitated person restored to capacity; modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; terminate the guardianship or conservatorship; order removal of the guardian or conservator as provided in § 26-3; or order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

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 § 37.2-1004. 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 § 37.2-1004, and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification, or termination may be ordered 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 therefor;
3. The incapacitated person's understanding or capacity to manage the 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. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has, in the case of a guardianship, substantially regained his ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it shall declare the person restored to capacity and discharge the guardian or conservator.

In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a preponderance of the evidence that it is in the best interests of the incapacitated person to limit or reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to increase or expand the powers of the guardian or conservator, it shall so order.

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.

(1997, c. 921, § 37.1-134.16; 2005, c. 716.)

§ 37.2-1013. Standby guardianship or conservatorship for incapacitated persons.

A. For purposes of this section, the term "person" includes a child or a parent sharing a biological relationship with one another or having a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding that establishes parentage or orders legal guardianship. The term includes persons 18 years of age and over.

B. On petition of one or both parents, one or more children, or the legal guardian of an incapacitated person made to the circuit court in which the parent, parents, child, children, or legal guardian resides, the court may appoint a standby guardian of the person or a standby conservator of the property, or both, of the incapacitated person. The appointment of the standby fiduciary shall be affirmed biennially by the parent, parents, child, children, or legal guardian of the person and by the standby fiduciary prior to his assuming his position as fiduciary by filing with the court an affidavit that states that the appointee remains available and capable to fulfill his duties.

The standby fiduciary shall be authorized without further proceedings to assume the duties of his office immediately upon the death or adjudication of incapacity of the last surviving of the parents or children of the incapacitated person or of his legal guardian, subject to confirmation of his appointment by the circuit court within 60 days following assumption of his duties. If the incapacitated person is 18 years of age or older, the court, before confirming the appointment of the standby fiduciary, shall conduct a hearing pursuant to this article. The requirements of the court and the powers, duties, and liabilities that pertain to guardians and conservators govern the confirmation of the standby fiduciary and shall apply to the standby fiduciary upon the assumption of his duties.

(1997, c. 921, § 37.1-134.17; 2004, c. 135; 2005, c. 716.)

§ 37.2-1014. Clerk to index findings of incapacity or restoration; notice to Commissioner, commissioner of accounts, Secretary of Board of Elections, and CCRE.

A. A copy of the findings of the court, if the person is found to be incapacitated or restored to capacity, shall be filed by the judge with the clerk of the circuit court. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner in accordance with § 37.2-1029, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 37.2-1022 through 37.2-1024 and § 37.2-1027, and the Secretary of the State Board of Elections with the information required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under § 37.2-1012. The copy of the form and the order shall be kept

confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

(1997, c. 921, § 37.1-134.18; 1998, c. 582; 2001, cc. 478, 479, 507; 2005, c. 716.)

§ 37.2-1015. When no guardian or conservator appointed within one month of adjudication.

If a person is adjudicated incapacitated and in need of a guardian or conservator and the court has not identified any person to serve as guardian or conservator within one month from the adjudication, the court may appoint a local or regional program of the Virginia Public Guardian and Conservator Program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2. If there is no such local or regional program within the court's jurisdiction, the court may appoint any local or regional program within 60 miles of the residence of the incapacitated person as identified by the Department for the Aging. However, the court shall not appoint any such local or regional program that has reached or exceeded its ideal ratio of clients to staff pursuant to regulations adopted by the Department for the Aging under § 2.2-712.

If any person appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person, may appoint some other person as fiduciary, taking from the fiduciary the bond required, or shall commit the estate of the respondent to the sheriff of the county or city of which the respondent is an inhabitant; the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

(Code 1950, § 37-145; 1950, p. 923; 1968, c. 477, § 37.1-137; 1971, Ex. Sess., c. 155; 1976, c. 671; 1997, c. 921, § 37.1-134.19; 1998, c. 787; 2005, cc. 712, 716.)

§ 37.2-1016. Trustees for incapacitated ex-service persons and their beneficiaries.

Whenever any ex-service person of the United States or the beneficiary of any ex-service person is found to be incapacitated by the medical authorities of the U.S. Department of Veterans Affairs, on motion of the U.S. Department of Veterans Affairs or any person in interest, accompanied by a certificate of the Secretary of Veterans Affairs or his duly authorized representative certifying that the person has been rated incapacitated by the U.S. Department of Veterans Affairs and that the appointment of a trustee is a condition precedent to the payment of any moneys due the ex-service person or any beneficiary of the ex-service person, and after reasonable notice to the person, the circuit court of the county or the city in which the ex-service person or beneficiary resides, in lieu of appointing a conservator or finding him to be incapacitated, shall appoint a trustee for the ex-service person or the beneficiary of the ex-service person where it appears to the court that a trustee is needed for the purpose of receiving and administering pension, compensation, insurance, or other benefits that might be paid by the United States government. Upon his qualification, the trustee, in addition to administering the funds payable through the U.S. Department of Veterans Affairs, shall administer the entire estate of the ex-service person or the beneficiary regardless of the source from which it is derived and, in such administration, shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a conservator pursuant to this chapter. The trustee, in addition to the duties and obligations imposed upon him under his trust by the federal government, shall be subject to the state laws that are applicable to the appointment and administration of conservators for incapacitated persons.

Any person for whom a trustee has been appointed under the provisions of this section may thereafter be adjudged restored to capacity by the court that appointed the trustee.

(1997, c. 921, § 37.1-134.20; 2005, c. 716.)

§ 37.2-1017. Payments from U.S. Department of Veterans Affairs.

Monthly payments of pension, compensation, insurance, or other benefits from the U.S. Department of Veterans Affairs made to a trustee or other fiduciary shall be considered as income and not principal, but the accumulation of such monthly payments received by a trustee or other fiduciary and in his hands at the end of the accounting year may be carried over as principal and converted into the corpus of the estate when the accumulation amounts to \$200 or more.

(Code 1950, § 37-150.1; 1966, c. 310; 1968, c. 477, § 37.1-143; 2005, c. 716.)

§ 37.2-1018. Discovery of information and records regarding actions of certain agents and attorneys-in-fact.

A. For purposes of this section:

"Member of the principal's family" means an adult who is a parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, and spouse or surviving spouse of the principal.

"Person who is or was interested in the welfare of a principal" means any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and, if none of these persons is reasonably available and willing to act, the adult protective services unit of the local department of social services for the city or county where the principal resides or is located at the time of the request or where a deceased principal resided at the time of his death. Further, in the case of a deceased principal, the term also means a personal representative of the estate of a deceased principal.

"Principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental retardation, physical illness or disability, substance abuse, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, any person interested in the welfare of a principal believed to be unable to properly attend to his affairs may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter; (ii) terminating, suspending, or limiting the authority of an attorney-in-fact or other agent; or (iii) bringing a proceeding to hold the attorney-in-fact or other agent, or a transferee from such attorney-in-fact or other agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1 within the time periods set forth under § 11-9.6.

C. The petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under this title, or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal, if no guardian or conservator has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 11-9.6, may, upon finding that the failure to

comply with the request for information was unreasonable, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

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

(1997, c. 921, § 37.1-134.22; 2005, c. 716; 2007, cc. 385, 520.)

§ 37.2-1019. Taking of bond by clerk of court.

Whenever in this title provision is made for the appointment of a fiduciary by a circuit court, the clerk of the court also shall have the authority to take the required bond, set the penalty thereof, and pass upon the sufficiency of the surety thereon.

(Code 1950, § 37-144.1; 1958, c. 277; 1968, cc. 383, 477, § 37.1-136; 1976, c. 671; 2005, c. 716.)

§ 37.2-1020. 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 § 11-9.1. Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1- 2981 et seq.) and in accordance with the procedures of § 37.2-1012, 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. The guardian shall visit the incapacitated person as often as necessary.

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.

(1997, c. 921, § 37.1-137.1; 2005, c. 716.)

§ 37.2-1021. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 26-17.4 with the local department of social services for the jurisdiction in which he was appointed. It shall be the duty of that local department to forward the report to the local department of the jurisdiction where the incapacitated person

then resides. The 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. 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 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 § 26-17.4.

B. The 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;
2. A description of the person's living arrangements during the reported period;
3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;
4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;
5. A statement of whether the guardian agrees with the current treatment or habilitation plan;
6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify that the information contained in the report is true and correct to the best of his knowledge.

(1997, c. 921, § 37.1-137.2; 1998, c. 582; 2000, c. 198; 2003, c. 527; 2005, c. 716.)

§ 37.2-1022. General duties and liabilities of conservator.

A. At all times, the conservator shall exercise reasonable care, diligence, and prudence and shall act in the best interest of the incapacitated person. To the extent known to him, a conservator shall consider the expressed desires and personal values of the incapacitated person.

B. Subject to any conditions or limitations set forth in the conservatorship order, the conservator shall take care of and preserve the estate of the incapacitated person and manage it to the best advantage. The conservator shall apply the income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of reasonable compensation to himself and to any guardian appointed, and to the maintenance of the person and of his legal dependents, if any, and, to the extent that the income is not sufficient, he shall so apply the corpus of the estate.

C. A conservator 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 the estate and his financial affairs. A conservator also shall consider the size of the estate, the probable duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator to be available, and the recommendations of the guardian.

D. A conservator stands in a fiduciary relationship to the incapacitated person for whom he was appointed

conservator and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate, unless he reveals the representative capacity and identifies the estate in the contract. Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor. A successor conservator is not personally liable for the contracts or actions of a predecessor.

E. A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Title 26, specifically including the duty to account set forth in § 26-17.4.

(1997, c. 921, § 37.1-137.3; 2005, c. 716.)

§ 37.2-1023. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the following powers and the powers set forth in § 64.1-57 as of the date the conservator acts, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;
2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;
3. To maintain life, health, casualty, and liability insurance for the benefit of the incapacitated person or his legal dependents;
4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person or successors in interest;
5. To execute and deliver all instruments and to take all other actions that will serve in the best interests of the incapacitated person;
6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of § 11-9.1 or (ii) to make an augmented estate election under § 64.1-13; and
7. To borrow money for periods of time and upon terms and conditions for rates, maturities, renewals, and security that to the conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge the portion of the incapacitated person's estate that may be required to secure the loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court deems proper, (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian, and (v) requiring the use of a common source information company, as defined in § 54.1-2130, when listing the property. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the

conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

(1997, c. 921, § 37.1-137.4; 2004, cc. 652, 756; 2005, c. 716; 2007, c. 694.)

§ 37.2-1024. Estate planning.

A. In the order appointing a conservator entered pursuant to § 37.2-1009 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind or (ii) disclaim property as provided in Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person, if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person. The court may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients, and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of the gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care, and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) other factors that the court may deem relevant.

B. The conservator may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the requirements of a court-appointed guardian ad litem, of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person, if he were dead, or a beneficiary under any known will of the incapacitated person, and of a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where the transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325. The conservator also may contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract, described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

D. A conservator may exercise the incapacitated person's power to revoke or amend a trust or to withdraw or demand distribution of trust assets only with the approval of the court for good cause shown, unless the trust instrument expressly provides otherwise.

(1997, c. 921, § 37.1-137.5; 2003, cc. 253, 528; 2005, c. 716.)

§ 37.2-1025. Taking possession of incapacitated person's estate and suits relative thereto; retaining for his own debt.

Subject to any conditions or limitations set forth in the order appointing him, the fiduciary shall take possession of the incapacitated person's estate and may sue and be sued in respect to all claims or demands of every nature in favor of or against the incapacitated person and any other of the incapacitated person's estate, and he shall have the same right of retaining for his own debt as an administrator would have.

(Code 1950, § 37-147; 1968, c. 477, § 37.1-139; 1980, c. 582; 2005, c. 716.)

§ 37.2-1026. Fiduciary to prosecute and defend.

All actions or suits to which the incapacitated person is a party at the time of qualification of the fiduciary and all such actions or suits subsequently instituted shall, subject to any conditions or limitations set forth in the order appointing him, be prosecuted or defended, as the case may be, by the fiduciary, after 10 days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending.

(Code 1950, § 37-149; 1968, c. 477, § 37.1-141; 1976, c. 671; 1980, c. 582; 2005, c. 716.)

§ 37.2-1027. Surrender of incapacitated person's estate.

The fiduciary shall surrender the incapacitated person's estate or that portion for which he is accountable to the incapacitated person, if the incapacitated person is restored to capacity.

If the incapacitated person dies prior to the restoration, the fiduciary shall surrender the real estate to the incapacitated person's heirs or devisees and the personal estate to his executors or administrators. If, upon the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is \$15,000 or less, (ii) a personal representative has not qualified within 60 days of the incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse or, if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the fiduciary's final accounting submitted to the Commissioner of Accounts.

(Code 1950, § 37-151; 1968, c. 477, § 37.1-144; 1995, c. 344; 1997, c. 921; 2003, c. 195; 2005, c. 716.)

§ 37.2-1028. Surrender of incapacitated person's estate not limited by provisions relating to expenses.

Nothing in §§ 37.2-715 through 37.2-721 shall be construed to relieve the fiduciary of any consumer in a state facility from paying to the state facility a sum for extra comforts or to make it unlawful for the fiduciary to make voluntary gifts that the fiduciary may deem conducive to the happiness and comfort of the consumer.

(Code 1950, § 37-153; 1950, p. 924; 1968, c. 477, § 37.1-146; 2005, c. 716.)

§ 37.2-1029. Department to be notified in certain cases.

In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any state facility, the Department shall receive notice of the suit or action, and the clerk of any court in which the suit or action is pending shall notify the Commissioner of that fact.

(Code 1950, § 37-153.1; 1950, p. 924; 1968, c. 477, § 37.1-147; 2005, c. 716.)
