

HOUSE BILL NO. 115

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Sullivan)

A BILL 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.

**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;

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

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

33 5a. The name, location, and post office address of the respondent's primary health care provider,  
34 if any;

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

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

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

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

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

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

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

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

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

56            **§ 64.2-2011. Qualification of guardian or conservator; clerk to record order and issue**  
57 **certificate; reliance on certificate.**

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

60            1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance  
61 with all provisions of this chapter;

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

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

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

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

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

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

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

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

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

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

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

98 **§ 64.2-2020. Annual reports by guardians.**

99 A. ~~A~~ Within six months from the date of qualification, a guardian appointed pursuant to § 64.2-  
100 2009 shall file an initial annual report in compliance with the filing deadlines in § 64.2-1305 reflecting  
101 the first four months of guardianship since qualification with the local department of social services for  
102 the jurisdiction where the incapacitated person then resides. After such initial annual report has been filed,  
103 the second and subsequent annual reports for each succeeding 12-month period shall be due within four  
104 months from the last day of the 12-month period covered by the previous annual report. The annual report  
105 shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be

106 accompanied by a filing fee of \$5. To the extent practicable, the annual report shall be formatted in a  
107 manner to encourage standardized and detailed responses from guardians. The local department shall  
108 retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in  
109 need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy  
110 of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the  
111 court papers pertaining to the guardianship case. Twice each year the local department shall file with the  
112 clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual  
113 report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also  
114 be filed with the commissioner of accounts as provided in § 64.2-1305.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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