

# Virginia Conservatorship And Guardianship 2004: A Practical Guide For Lawyers and Social Workers

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## **I. The present law of Virginia guardianship and conservatorship was enacted effective January 1, 1998, pursuant to Acts, 1997, c. 921.**

- A. Powers and duties in the present law apply *prospectively* to guardians and conservators appointed by court order first entered on or after January 1, 1998, or an order which is modified on or after January 1, 1998, if the court directs.
- B. Abolition of office of committee; creation of office of conservator; redefinition and limitations of guardian's office; and elimination of "incompetent."
  - 1. The Act repeals *Va. Code* sections 37.1-128.01 through 37.1-134.5, 37.1-135, 37.1-138, 37.1-142, and 37.1-145. Sections 37.1-128.01 through Section 37.1-132 define and provide the process for appointment of guardians and committees. A committee was entitled to the plenary custody and control of the incapacitated person.
- C. 2004 General Assembly Bills introduced.
  - 1. HB 494 Guardianships; provisions for requests by child for incapacitated parent.<sup>1</sup>
  - 2. HB 961 Mentally retarded persons; appointment of guardian or conservator.<sup>2</sup>
  - 3. HB 984 Conservators & guardians; definition to include tax-exempt org. that provide services to incap. per.<sup>3</sup>
  - 4. HB 1103 Guardians of incapac. persons; prohib. from seeking change in marital status w/o court approval.<sup>4</sup>

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<sup>1</sup> Enacted into law. See *infra*.

<sup>2</sup> Carried over to 2005 Assembly.

<sup>3</sup> Enacted into law. See *infra*.

<sup>4</sup> Enacted into law. See *infra*.

5. SB 19 Guardians of incapacitated persons; prohibits change in marital status without prior court approval.
6. HB 1337 Power of attorney; revocation of authority for an incapacitated person.<sup>5</sup>

## II. Definitions.

- A. Since the term "committee" was not defined in the Act, the office has been effectively abolished, effective January 1, 1998.
- B. A "conservator" is the court appointee responsible for managing the estate and financial affairs of an incapacitated person, and may include a "limited conservator"<sup>6</sup> or a "temporary conservator." *Va. Code* § 37.1-134.6.<sup>7</sup>
- C. A "guardian" is the court appointee responsible for the personal affairs of an incapacitated person, including the responsibility to make decisions about the incapacitated person's support, care, health, safety, habilitation, education, therapeutic treatment, and if not inconsistent with an order of commitment, regarding the person's residence.<sup>8</sup> *Id.*
- D. A "limited guardian" is 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, *Va. Code* § 37.1-134.6.

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<sup>5</sup> See V., *infra*. Enacted into law, this Bill slightly amended *Virginia Code* § 11-9.1 to permit a circuit court to "revoke, suspend, or otherwise limit ~~such~~ the authority of the attorney-in-fact or other agent at the request of, and based upon information provided by, the conservator, guardian, committee, or other interested parties for an incapacitated individual." It is not clear whether "other interested parties" may include the petitioner in the proceeding to appoint the conservator / guardian, or whether the circuit court may only initiate that relief (in the absence of a petition by a guardian or conservator) in conformity with *Virginia Code* § 37.1-134.22 under the next sentence of amended *Virginia Code* § 11-9.1: "Furthermore, where no conservator, *guardian*, or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-134.22, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate."

<sup>6</sup> While the Act addresses and defines the offices of limited and temporary conservator, it does not specify the rights and obligations of a "temporary conservator." The petition may request appointment of 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. *Va. Code* §. 37.1-134.14.

<sup>7</sup> *Va. Code* citations in this work are available through links at <http://mh106.infi.net/~lawyers/99GCF.html>, the R. Shawn Majette web-site.

<sup>8</sup>In contrast, the similar bill of rights enumerated for patients in nursing facilities, specified in *Va. Code* § 32.1-138, expressly devolve upon the patient's guardian, next of kin, sponsoring agency or agencies, or representative payee.

1. *Va. Code* § 37.1-134.14 permits appointment of a limited guardian for the limited purpose of medical, residency, or other specific decisions regarding his personal affairs.
2. It appears that a definition for a "limited guardian" is superfluous. *Every* guardian under the Act meets the definition of a "limited guardian" because the order appointing any guardian must "define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself or herself and manage property to the extent he or she is capable" **under *Va. Code* § 37.1-134.14, and under *Va. Code* § 37.1-134.15, "[t]he powers granted to a guardian include only those powers enumerated in the court order."**<sup>9</sup>

### III. Process for appointment of conservator and guardian.<sup>10</sup>

- A. The petitioner files a petition<sup>11</sup> in the circuit court in which the incapacitated person is a resident or is located, or in which the incapacitated person was resident immediately before becoming a resident or patient in a nursing home, hospital, or similar facility. *Va. Code* § 37.1-134.7.
  1. There are strict requirements for the content of the petition, set forth in *Va. Code* § 37.1-134.8.
  2. These requirements are jurisdictional.<sup>12</sup>

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<sup>9</sup> The distinction is of more than academic interest because the Act imposes different pleading requirements depending upon whether the Petitioner seeks appointment of a guardian, or a limited guardian. *Va. Code* § 37.1-134.8 (5). A petition for appointment "of a guardian" requires a brief description of services provided for the respondent's health, care, safety, or rehabilitation, and a recommendation as to living arrangement and treatment plan. When the petition is for a limited guardian to be appointed, the Petitioner need only specify the areas of protection and assistance to be included in the order of appointment.

<sup>10</sup> When a guardian is desired for purposes of giving medical consent only and there are willing family members to act, consider avoiding the necessity of litigation by recourse to the surrogate procedure set forth in *Va. Code* § 54.1-2986, which permits family members to make health care decisions for non-objecting patients when physicians certify that the incapacitated person is indeed incapacitated. When there is no family member to serve, the circuit court or its special justice is available to provide for judicial consent pursuant to *Va. Code* § 37.1-134.2. Amendments to this section in 1999 permit the court to consent to the "the provision, withholding or withdrawal of" treatment or other medical actions.

<sup>11</sup> The writer's copyrighted, annotated forms of pleadings are published as appendices to his treatment of the topic, "The New guardianship process in Virginia," in the Sixth Annual Elder Law Seminar, published by the Virginia Law Foundation, P.O. Box 4468, Charlottesville, Virginia 22905. <http://www.vacle.org/> Phone: (800) 979-8253, Fax: (804) 979-3147.

<sup>12</sup> See *In Re Zacher*, Circuit Court of Fairfax County, Fiduciary No. 61066 (June 9, 1998), holding that failure to observe "technical" pleading requirements of the statute mandated dismissal of the petition.

3. A data collection form is appended to this outline and is available online<sup>13</sup> which will supply all the necessary information for the pleadings to be completed.
- B. A uniform filing fee for the petition to appoint is set by Code at \$10.00. The statute provides for waiver of service fees and court costs when the Respondent's estate is alleged under oath to be unavailable<sup>14</sup> or insufficient. *Va. Code* § 37.1-134.7 (C), incorporating amended *Va. Code* § 14.1-112 (51).
1. Reimbursement of costs and fees. When a guardian or conservator is appointed and the estate is sufficient, the Act provides that the petitioner shall be reimbursed from the estate for all costs and fees. *Va. Code* § 37.1-134.7 (C).
- C. Requirement of prompt hearing; reasonable notice and personal service of notice of hearing, petition, and copy of order appointing guardian ad litem. *Va. Code* § 37.1-134.10 (A,B).
1. The Act requires that upon filing the petition, the court must "promptly set a date, time and location for a hearing." The respondent must be personally served with the petition, notice, and order appointing a guardian ad litem; the respondent may not waive notice.<sup>15</sup>
  2. The Act provides that "failure to properly notify the respondent shall be jurisdictional."
  3. Personal service is required, but may be effected by the guardian *ad litem*.<sup>16</sup>
  4. Advance notice to family members: seven days unless waived for good cause shown.<sup>17</sup> *Va. Code* § 37.1-134.10 (C).

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<sup>13</sup> <http://www.geocities.com/hana+zushi/99gcf.htm>

<sup>14</sup> In petitions to appoint a conservator, the Respondent's estate is almost always "unavailable," which is the reason a petition must be filed in the first place.

<sup>15</sup> In practice, there will be an inevitable delay between the filing of the petition, the selection and notification of a guardian ad litem, and the return of the order appointing the guardian ad litem to counsel for the petitioner for service upon the respondent.

<sup>16</sup> "A certification, in the guardian ad litem's report required by subsection B of § [37.1-134.9](#), 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." *Va. Code Ann.* § 37.1-134.10 (B).

<sup>17</sup> The writer has used the following allegations in the petition to show "good cause" to adjudicate the matter when incapacitated person is in a hospital and needs a guardian or conservator to be discharged from a hospital: [ \_\_\_\_\_ is located in an acute care hospital and requires the services of a limited guardian or conservator, or both, to be discharged to home, or to a congregate care facility, and a delay of more than seven days will financially devastate the estate of \_\_\_\_\_. ]

5. The circuit court then appoints a guardian *ad litem* from a list of certified attorneys<sup>18</sup> maintained by the Supreme Court.<sup>19</sup> *Va. Code* § 37.1-134.9. The order appointing the guardian *ad litem*, together with the statutorily required form of notice, must be personally served upon the incapacitated person. *Va. Code* § 37.1-134.10 (B).
  - a. The guardian *ad litem* must file a written report of his findings, the content of which is dictated by statute. *Id.*
6. The petitioner must file an evaluation report 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 incapacitated person detailing the nature, extent and probable duration of the alleged incapacity. *Va. Code* § 37.1-134.11.
  - a. A copy of the report must be given to the guardian *ad litem* a reasonable time before the hearing on the petition.
  - b. The report must address specific diagnostic and prognostic issues.<sup>20</sup>
  - 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 duties under *Va. Code* § 37.1-134.11.<sup>21</sup>
7. The incapacitated person is entitled to independent counsel in the proceeding, *Va. Code* § 37.1-134.12.
  - a. The Court may appoint counsel for the Respondent.
  - b. If appointed, counsel is paid such amount as is awarded by the Court. If the Respondent is indigent, the Supreme Court will authorize the same fee paid to counsel appointed in a proceeding under *Va. Code Ann.* § 37.1-134.21. Such fee

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<sup>18</sup> The limitation to such list does not appear in the Code. See Ch. 971, 1997 Acts of Assembly (2).

<sup>19</sup> The Court publishes the list, with contact information, at its web site, <http://www.courts.state.va.us/>.

<sup>20</sup> A form of report is published in the writer's 1997 Elder Law Symposium, and is also available online at <http://mh106.infi.net/~lawyers/docrpt.html>, the R. Shawn Majette web-site.

<sup>21</sup> To avoid reluctance on the part of physicians and others completing the report based on client confidentiality, the order appointing the guardian *ad litem* (which will be entered before a hearing on the case, and usually before the report is prepared) should include a provision expressly authorizing health care providers and all others to disclose information and complete the evaluation report required by the Code section. If the reporter balks at providing the report to the petitioner's attorney, the form can be submitted to the guardian *ad litem* to provide to the Court under a specific exception to the Virginia Patient Health Records Privacy Act, *Va. Code Ann.* § 32.1-127.1:03 (B)(11).

as of this publication is set by Va. Code Ann. § 37.1-89, and is set at \$43.25.<sup>22</sup>

8. At the hearing, the circuit court requires proof of the incapacity allegations by clear and convincing evidence, *Va. Code* § 37.1-143.13, and if satisfied, may appoint a guardian, conservator, or both under an order which, pursuant to *Va. Code* § 37.1-134.14, must specifically:
  - (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 or herself and manage property to the extent he or she 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;<sup>23</sup>
  - (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.1-134.13; and
  - (vi) set the bond of the guardian,<sup>24</sup> and the bond and surety, if any, of the conservator.<sup>25</sup>
9. The circuit court clerk must certify the order determining incapacity as follows:
  - a. Unless specifically ordered otherwise, to the State Board of Elections, so as to remove the incapacitated person from the voter records. *Va. Code* § 24.2-410.
  - b. Unless specifically ordered otherwise, to the Commissioner of Motor Vehicles, for purposes of revoking the incapacitated person's license to operate a motor vehicle. *Va. Code* § 46.2-400.

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<sup>22</sup> See Virginia Supreme Court, *Court-Appointed Counsel - Public Defender Procedures And Guidelines Manual*, 2002. See Appendix A, *Chart of Allowances*, at page 61, for fees to be paid to guardians *ad litem* for indigent, incapacitated adults.

<sup>23</sup> See Clerk's reporting duties, below.

<sup>24</sup> Surety is not required on the bond of the guardian.

<sup>25</sup> A guardian *shall* be permitted to qualify without the necessity of surety on his bond, and a conservator *may* qualify without such surety, in the court's discretion. *Va. Code* § 37.1-134.15.

**IV. Standby Guardian and Conservator. Va. Code § 37.1-134.17.**

- A. Parents for disabled children, and as of July 1, 2004, children for disabled parents may petition in advance of the death of the last surviving parent, child, or legal guardian for the appointment of a standby guardian and conservator for an incapacitated person (not necessarily adult).
- B. The appointment is summary, and is 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 which states that the appointee remains available and capable to fulfill his duties.
- C. Immediately upon the death or adjudication of incapacity of the last surviving of the parents *or children* of such incapacitated person or of his legal guardian, the standby guardian or conservator (or both) “shall without further proceedings be empowered to assume the duties of his office.”
- D. The appointment is subject to confirmation by the circuit court within 60 days following assumption of duties.
- E. If the incapacitated person is 18 years of age or older, the court, before confirming the appointment of the standby fiduciary, must conduct an ordinary conservatorship / guardianship hearing subject to all of the requirements of Title 37.1.
  - 1. It is unclear whether the term “incapacitated person” includes only adults. The foregoing sentence would indicate that the term might apply to persons under the age of 18. However, the last sentence of the statute states that the term “person” includes “persons 18 years of age and over.”
- F. *A person is defined to include 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 which establishes parentage or orders legal guardianship.*

**V. Relationship between guardian and agents under durable powers of attorney and advance medical directives. Va. Code § 37.1-137.1.**

- A. A guardian's authority does not extend to decisions in an advance directive or durable power of attorney, but the guardian may petition to revoke, suspend or otherwise modify a durable power of attorney under Va. Code § 11-9.1.<sup>26</sup>

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<sup>26</sup> See I.6, *supra*.

- B. In addition, the guardian may petition to modify an agency under a medical advance directive.<sup>27</sup>

**VI. Relationship between guardian and incapacitated person. *Va. Code* § 37.1-137.1.**

- A. The Act specifies that a guardian may be held personally liable for breach of any fiduciary duty to the incapacitated person.
- B. The guardian cannot be held 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.
- C. The guardian must maintain sufficient contact to know of the incapacitated person's capabilities, limitations, needs, and opportunities, and must visit the incapacitated person "as often as necessary."
- D. In representing the potential guardian, who is often the petitioner, the potential for tort liability in negligence must be considered. Since every guardianship is now limited to the express terms of the order, counsel for the proposed guardian (if different from the petitioner) should craft the order as narrowly as possible to limit the duties of the guardian for which liability as to breach may be imposed, especially in light of the broad criminal statute, *Va. Code* § 18.2-369.<sup>28</sup>

**VII. Guardian's authority respecting custody and domicile. *Va. Code* § 37.1-137.1.**

- A. The guardian must 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.

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<sup>27</sup>It is difficult to imagine how a coercive removal of the incapacitated person's health care agent, in whom the incapacitated has vested personal discretion concerning medical treatments or procedures, could do anything other than directly and seriously "affect the incapacitated person's directives."

<sup>28</sup> Compare Commercial Distributors v. Blankenship, 240 Va. 382, 397 S.E.2d 840 (1990) (holding that while an adult care residence "had a duty to exercise ordinary care for the safety of its residents, [but] that duty was limited to its own premises[.]" and Defendant was therefore not liable for the suicide of its resident when away from the home; adult care residences "exist pursuant to statutes intended to provide a residence for persons under disabilities, offering those persons the greatest degree of freedom and participation in normal life consistent with their conditions") with Wackwitz v. Roy, 244 Va. 60, 418 S.E.2d 861 (1992) (holding that the personal representative of the estate of an allegedly deranged suicide victim should have been permitted to proceed against the psychiatrist and hospital to which he had been committed, but allegedly prematurely released). See also Holles v. Sunrise Terrace, Inc., 257 Va. 131, 509 S.E.2d 494 (1999), holding that a *contract* duty does not rise to negligence liability in the absence of a "special relationship," and holding that services provider to a seniors apartment complex did not have a "special relationship" with the tenant who was injured by a third party criminal action.

- B. When a petition is filed to appoint a non-resident guardian (as permitted pursuant to *Va. Code* § 26-59), it should contain a request for empowerment to change the incapacitated person's domicile to another state.

**VIII. Reporting requirements for guardians. *Va. Code* § 37.1-137.2**

- A. Within six months from the date of qualification, and annually thereafter, a guardian must file an annual report with the local department of social services for the jurisdiction in which he was appointed. The report must be on a form to be prepared by the Executive Secretary of the Supreme Court.
1. The filing fee is five dollars.
  2. The report must include, for the reporting period:<sup>29</sup>
  3. A description of the current mental, physical, and social condition of the incapacitated person;
  4. A description of the person's living arrangements during the reported period;
  5. 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;
  6. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;
  7. A statement of whether the guardian agrees with the current treatment or habilitation plan;
  8. 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
  9. The compensation<sup>30</sup> requested and the reasonable and necessary expenses incurred by the guardian.

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<sup>29</sup> The reporting period is the same as for settlement of the accounts of a conservator, which is four months for the first reporting period, and then annually thereafter.

<sup>30</sup>In cases involving Medicaid, it is uncertain whether DMAS will recognize the validity of payment of guardian compensation from the income of the recipient. In these cases, it is advisable to include a specific provision in the order to allow such fees as an expense of receiving and allocating the resident's income.

**IX. Reporting and recording duties of conservators. *Va. Code* §§ 26-12, -17.4, and 37.1-134.15.**

- A. The conservator files the inventory of the estate on prescribed forms within four months of qualification. *Va. Code* § 26-12.
- B. The conservator's first accounting is due within six months from the date of the qualification, and covers the four month period from the date of qualification. After the first account is filed and settled, subsequent accounts for each succeeding twelve-month period will be due within four months from the last day of the twelve-month period commencing on the last date of the preceding account. The commissioner of accounts may extend the period for filing. *Va. Code* § 26-17.4.
- C. Special rules for Social Security and Medicaid recipients.
  - 1. For conservators for Social Security, SSI, veteran's or other federal benefits recipients, no accounting to the commissioner shall be required of benefits paid to a designated representative on behalf of the recipient if the representative is otherwise required to account for such benefits. However, any such fiduciary otherwise required to make an accounting to the commissioner shall disclose thereon the total amount of such benefits received during the accounting period. No incremental fee shall be charged by the commissioner for such benefits. *Va. Code* § 26-27.10(C).
  - 2. For fiduciaries acting on behalf of Medicaid recipients, the fees charged by the commissioners of accounts for accounting shall not exceed twenty-five dollars. *Va. Code* § 37.1-134.20 (C).
- D. When a conservator dies in office, the personal representative of the estate has the duty to complete the duties of the conservator. *Va. Code* § 26-17.10 (B).
- E. The conservator must record his order in the office of the clerk of any jurisdiction in which the respondent owns real property, unless the appointment order excludes power to sell real estate. *Va. Code* § 37.1-134.15.<sup>31</sup>

**X. Relationship between conservator and incapacitated person. *Va. Code* § 37.1-137.3 (A-C).**

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<sup>31</sup> The consequence of filing the order in sister jurisdictions will likely be of little effect in jurisdictions requiring court approval to sell real property. On the other hand, failing to record in any jurisdiction, including Virginia, in which the incapacitated owns property may lead to liability, either from the estate of the incapacitated or the purchaser. The incapacitated may claim that the conservator injured him because he was not protected from his own improvidence. The purchaser from the incapacitated, who loses the value of his bargain, or the real estate, he purchased from an adjudicated ward may be injured because he relied upon the absence of a recorded guardianship order.

- A. The conservator must consider the expressed desires and personal values of the incapacitated person to the extent known.
- B. Except as limited in the conservatorship order, the conservator may apply the income and corpus of the estate to the maintenance of the incapacitated and the legal dependents of the incapacitated.<sup>32</sup>
- C. As feasible, the conservator is required to encourage the incapacitated to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and financial affairs of the incapacitated.
- D. The conservator must consider the size of the estate; the probable duration of the conservatorship; the incapacitated person's accustomed manner of living; other known resources of the incapacitated; and recommendations from the guardian.

**XI. Relationship of conservator to incapacitated person's agent, spouse, dependents, personal representative of deceased spouse, and trustee.**

- A. The conservator cannot revoke or limit his ward's durable power of attorney, but may initiate a proceeding to revoke the same under the provisions of § 11-9.1. *Va. Code* § 37.1-137.4.
- B. The conservator may support the spouse and legal dependents of the ward without court order, and may to the extent that such support does not deprive the ward. See *Va. Code* § 37.1-137.3 B, and discussion below.
- C. The conservator must obtain prior court approval to revoke a power of attorney under *Va. Code* § 11-9.1 *et seq.*, or make an augmented estate election under § 64.1-13. *Va. Code* § 37.1-137.4 (A)(6). The conservator may no longer initiate a proceeding for divorce. That power is reserved to the guardian, and then only with court approval.<sup>33</sup>
- D. Until 2003, there had been no specific statutory authority vested in the conservator to exercise the ward's authority to exercise the incapacitated person's authority to revoke trusts.
  - 1. On the rationale that the conservator " 'stands in the shoes' " of the incapacitated person, Judge Sheridan held that a conservator may exercise such authority without

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<sup>32</sup> When counsel is aware that the incapacitated person is in, or likely soon to be in, a nursing home, or likely to require Medicaid, authority to plan and execute transfers necessary to support the community spouse (through the transfer of assets in the name of the incapacitated person to the community spouse, etc.) should be requested pursuant to *Va. Code* § 37.1-137.5.

<sup>33</sup> See H.B. 1103 (2004 General Assembly, enacted as Ch. 756, 2004 Acts of Assembly). The guardian's power to initiate divorce is found in *Virginia Code* § 37.1-137.1.

prior court approval. *In re Rudwick*, 2002 WL 31730757 (Va. Cir. Ct., Dec 05, 2002) (NO. 01-633)(Arlington County).

2. *Rudwick* was overruled in the 2003 General Assembly by amendment of *Va. Code* § 37.1-137.5, adding subsection *D.*, which now provides that 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.”

**XII. Relationship between conservator and other third parties; standing to sue; conservator's personal contract liability; protection of third parties in dealing with conservator. *Va. Code* § 37.1-137.3 (D).**

- A. There is a presumption of personal liability of the conservator on contracts made for the incapacitated unless the conservator's official capacity is expressed in the contract. *Va. Code* § 37.1-137.3 (D).
  - B. To avoid liability, the conservator must reveal the representative capacity of conservator and identify the conservatorship estate in the contract.
  - C. Claims based upon contracts entered into by a conservator, obligations arising from ownership or control of the estate, and 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 for the claim.
  - D. The incapacitated person cannot prosecute any legal proceeding following adjudication of incapacity. Such power is reserved “to the fiduciary.” *Va. Code* § 37.1-141, see *Cook v. Radford Community Hospital*, 260 Va. 443, 536 S.E.2d 906 (2000) (wherein the Court held that a guardian could not be substituted as Plaintiff for a suit commenced following adjudication, even when the statute of limitations would otherwise bar an action).
1. *Which* fiduciary – the conservator or guardian – is authorized (and required) to file suit for the incapacitated person, when both a guardian and conservator have been appointed?
    - a. *Va. Code* § 37.1- 139, a carryover from prior law, continues to state that “[s]ubject to any conditions or limitations set forth in the order appointing him, *the fiduciary* shall take possession of his ward's estate, and may sue and be sued in respect to all claims or demands of every nature in favor of or against his ward, and any other of his ward's estate, and he shall have the same right of retaining for his own debt as an administrator would have.”

- b. While specific requirements for *prior approval* of authority by the conservator is required in *Va. Code* § 37.1- 137.4 (A)(6) as to divorce, elective share, and revocation of a durable power of attorney, the same section confers upon a conservator the “legal list” of authorities provided in *Va. Code* § 64.1-57, which at (1)(g) includes the powers “[t]o compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust or estate as the fiduciary shall deem best, and his decision shall be conclusive.”
- i. Would a purely personal tort upon the incapacitated person (e.g., assault) be a claim in favor of the estate, or only for the person? If only as to the person, would a guardian be the correct Plaintiff? If the Order does not specify the authority to bring suit in such a case, would the guardian be incapable of bringing such suit?
- ii. While the quoted portion of 64.1-57 provides that the “decision shall be conclusive,” it is unlikely that this is the case. *Cf. Gunn v. Richmond Community Hospital*, 235 Va. 282, 286, 367 S.E.2d 480, \_\_\_ (1988) (“Explicitly, the statute gives the court power to approve a compromise. Implicitly, the court has the power under the statute to disapprove a compromise. However, neither the statute nor any "inherent" power the court may possess permits the court to create a settlement and then to impose such a settlement upon a guardian. That was done in this case, albeit with a demonstrated concern by the trial court about the best interests of the ward. If the court was satisfied that the guardian was not acting in the best interests of the ward by recklessly rejecting reasonable settlement offers in order to gamble on the outcome of litigation, the court, in the exercise of its power over guardians, could have removed the guardian and appointed another in his place.”)
- E. *Bona fide* business transactions with fiduciaries who present a "currently effective certificate of qualification" are protected subject only to the limitations, if any, upon the fiduciary's powers set forth in the Court's order of appointment.<sup>34</sup>
- F. A successor conservator is not personally liable for the contracts or actions of a predecessor.

**XIII. Power over all property of the ward, including real estate; ex parte support of legal dependents without court order. *Va. Code* § 37.1-134.6; 37.1-137.4.**

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<sup>34</sup> Because the Act provides for the presumption of plenary power in a conservator (see *Va. Code* § 37.1-137.4), but limits the powers of a guardian to those expressly enumerated in the order (*Va. Code* § 37.1-134.15 states that “[t]he powers granted to a guardian include only those powers enumerated in the court order”) (emphasis supplied), it is critical that third parties, especially physicians and residential service providers, scrutinize the guardianship order for the guardian's express authority to speak for or bind the incapacitated person.

- A. "Estate" is defined to include both real and personal property. *Va. Code* § 37.1-134.6.
- B. The exhaustive powers set forth in *Va. Code* § 64.1-57 are incorporated in every conservator's order, unless specifically excluded. *Va. Code* § 37.1-137.4.
- C. *Va. Code* § 64.1-57 confers authority to sell and encumber real estate of the incapacitated, at least in Virginia. The court may omit the power of sale, or impose conditions upon its exercise, including several conditions 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 and (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian."<sup>35</sup>
- D. Power to support dependents of the incapacitated without court order is conferred under *Va. Code* § 37.1-137.4(A)(2). The conservator may, without further court order, "pay any sum distributable for the benefit of a legal dependent [of the incapacitated]...." In cases where the spouse or an adult disabled child becomes the conservator for the incapacitated, support orders or the court's aid and guidance will not be required before making transfers to the conservator.<sup>36</sup>
- E. Power to borrow money for the support of the incapacitated. *Id.*, (A)(7).<sup>37</sup>
- F. The conservator may, without further court order, borrow money for periods and upon such rates, maturities, and security as deemed advisable. When the conservator is a bank, the conservator may borrow from itself.

**XIV. Estate planning for incapacitated persons: *Va. Code* § 37.1-137.5.**

- A. The petitioner may join a prayer to authorize gifts, or disclaim property, in the initial petition to establish the conservatorship. Prior practice (under *Va. Code* § 37.1-142) required that the Petitioner be a fiduciary, and thus required a second proceeding to confer authority following appointment of a fiduciary.

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<sup>35</sup> It may be prudent to omit the power to sell real estate when an incapacitated person is in a nursing home and the real estate is not excluded as a home property by Virginia Medicaid Manual policy. If the property cannot be immediately exempted through some other mechanism, then the present (January 9, 2000) policy provides that it is immediately excluded from consideration upon the filing of a petition for its sale through a guardianship proceeding. Virginia Medicaid Manual § M 1130.140 B. 1. d.

<sup>36</sup> In nursing facility cases it is important to read this authority in conjunction with 42 USC 1396(p) and Virginia Medicaid ABD Manual Section M1450.502.

<sup>37</sup> Compare Carter v. Cavalier Central Bank, 223 Va. 571, 292 S.E.2d 305 (1982) (holding that it was reasonable to borrow funds for the support of the incapacitated person, and that the guardian could bind the estate of his ward as obligor on notes evidencing loans to obtain necessities for the ward).

- B. A guardian ad litem must be appointed to represent the interest of the incapacitated; reasonable notice must be given to the incapacitated, all presumptive heirs and distributees of the incapacitated (as of the date the petition is filed), and the beneficiaries under any known will of the incapacitated. The Court may proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer.<sup>38</sup>
- C. The Court may authorize gifts, or disclaimers of interests, after consideration of (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 estate plan of the incapacitated; (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;<sup>39</sup> and (viii) other relevant factors.
1. In many of the writer's cases an incapacitated person is institutionalized and (a), married to a "community spouse," or (b), the parent of a disabled child, each of whom might seek to qualify the incapacitated person for Medicaid benefits under the special exemptions applicable to transfers for their benefits provided in 42 U.S.C. § 1396p, 12 VAC 30-40-300 (E), and Virginia Medicaid Manual § M 1450.502 (C).
  2. Assuming the community spouse or disabled child is a legal dependent,<sup>40</sup> may the conservator under *Va. Code* § 37.1-137.3 B transfer all of the assets to the community spouse in order to provide for her support by qualifying the institutionalized, incapacitated spouse for Medicaid?
  3. The writer has concluded that such a transfer of assets could be construed as excessive and has obtained prior court approval, often in the initial appointment process, for such transfers.

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<sup>38</sup> While notice to a beneficiary may be waived by the court, no similar latitude is extended as to an heir or distributee of the incapacitated.

<sup>39</sup> See, e.g., 42 USC 1396p (Medicaid rules for transfers of assets); 42 USC § 1320a-7b (criminal penalty for certain Medicaid transfers); *Va. Code* §32.1-325.02 (disclaimer and Virginia Medicaid); 12 VAC 30-110-720 (Virginia spousal impoverishment transfer rules); and 12 VAC 30-40-300 (Virginia rules relating to transfer of assets and treatment of certain assets [notably, trusts]).

<sup>40</sup> The community spouse may not be, especially in cases where there is a demonstrable abandonment or long standing separation *prior* to the adjudication.

- D. A conservator may make gifts on behalf of the incapacitated in a calendar year of not more than \$100 to any donee, with a \$500 per calendar year cap, without court approval.
- E. The conservator may transfer an incapacitated person's assets into an irrevocable burial trust for the incapacitated or the spouse of the incapacitated in accordance with the Medicaid rules, which are briefly described in *Va. Code* § 32.1-325. He may also contractually bind the incapacitated by executing a pre-need funeral contract for the incapacitated (not spouse), if it meets the requirements of *Va. Code* § 54.1-2800 et seq.

**XV. Death of incapacitated person. *Va. Code* § 37.1-134.16, -144.**

- A. Death terminates the powers of the guardian and conservator. *Va. Code* § 37.1-134.16 (E).
- B. Upon death of an incapacitated person who has not been restored to capacity, the conservator must surrender the real estate to the ward's heirs or devisees,<sup>41</sup> and the personal estate to the incapacitated person's executor or administrator. *Va. Code* § 37.1-144.
- C. In small estates (where the personal estate in the custody of the conservator is \$5,000 or less), a personal representative has not qualified within sixty days of the incapacitated person's death, and the conservator does not anticipate that anyone will qualify, the conservator may:
  - 1. pay the balance of the ward's estate to the ward's surviving spouse;
  - 2. if there is no surviving spouse, to the distributees of the ward or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided.
  - 3. Note that the conservator acts at his peril, at least to the extent of a non-funeral claimant, and to a funeral claimant for charges of more than \$2,000.
    - a. As to a funeral claimant, the section permits the conservator to pay up to \$5,000 to a funeral service provider.
    - b. Estate law limits the sum payable to a funeral home to \$2,000 in an insolvent estate. *Va. Code* § 64.1-157.
    - c. Medicaid, often a payor in these cases, has a claim for estate recovery for *all* charges paid following the 55<sup>th</sup> birthday of the recipient. Its claim is priority

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<sup>41</sup> If there is a purported will, the conservator should insist that it be probated before providing access to the incapacitated person's real estate to any person claiming to be a beneficiary (unless the person is also an heir at law).

claim ahead of all claims other than the spouse and related family members, administrative expenses, funeral expenses up to \$2,000.

**D. Disposition of Decedent's Final Remains.**

1. While Title 37.1 does not directly address burial authority for an incapacitated person, it does authorize the conservator to bind the estate of the incapacitated person by executing a pre-need agreement for final services. *Va. Code* § 37.1-137.5 (C).
2. In the absence of a plan by the decedent for his interment, or the appointment of an agent to make funeral arrangements pursuant to *Va. Code* § 54.1-2825, the determination of the place of burial rests with personal representative, surviving spouse, or next of kin. See *Grisso v. Nolen*, 262 Va. 688 (2001). In [Mazur v. Woodson](#), 191 F. Supp. 2d 676 (E.D. Va. 2002) the Court held that any "next of kin," as defined in [Va. Code Section 54.1-2800](#), may make funeral decisions. In the interest of an orderly and expeditious burial, the Court expressly rejected a "narrow hierarchy" in which the plaintiff surviving spouse was at the apex.
3. At death, the powers of the conservator end, and thus the protections afforded the conservator for contracts benefiting his ward do not obtain. When the writer serves as guardian for a decedent without any family member, burial plan, or other burial resource in the hands of the writer, the body is an unclaimed body for purposes of the applicable Virginia statutes.
4. *Va. Code* § 32.1-288, *Disposition of dead body; how expenses paid*, addresses the subjects of body removal and disposition. It states:

A. After ... investigation ... the sheriff or other person or institution having initial custody of the dead body shall make good faith efforts ... to identify the next of kin of the decedent, and the dead body may be claimed by the relatives or friends of the deceased person for disposition. The claimant shall bear the expenses of such disposition except as provided herein. If no person claims the body, the Commissioner may accept the body for scientific study as provided in Article 3 (§ [32.1-298](#) et seq.) of this chapter. **If the Commissioner refuses to accept the body for scientific study, the dead body shall be accepted by the sheriff of the county or city where death occurred for proper disposition.**

B. Except as provided in subsection C [relating to prisoner dying prior to release], the reasonable expenses of disposition of the body incurred by such sheriff or by the claimant to the extent such claimant is financially unable to pay them shall be borne by the county or city where death occurred, or, if the deceased person was a resident of Virginia at the time of death, by the county or city of residence. **No such expenses shall be paid by such county or city until allowed by an appropriate**

**court in such county or city.** If the deceased person has an estate out of which burial expenses can be paid, either in whole or in part, such estate shall be taken for such purpose.

....

5. In practice, the guardian should advise the nursing home or local provider of services when there is no provision for burial expenses to avoid surprises when death occurs.
6. The writer's protocol for disposition and storage of an unclaimed incapacitated person has been posted on the writer's web site, and contains the name, address and facsimile numbers for the Virginia Department of Health (which typically will refuse to claim the body), and the local (Richmond) telephone and facsimile numbers for local sheriff's departments.

**XVI. Sheriff as fiduciary of last resort. *Va. Code § 37.1-134.19 vs. § 37.1-137.***

- A. As of January 1, 2000, if no guardian or conservator is appointed within a month of adjudication of incapacity, the court may no longer commit the person and/or the estate of the incapacitated person to the sheriff of the county or city in which the incapacitated resides under the cited Code section.
- B. The Assembly obviously intended to relieve the sheriff from the obligation to accept the duties of guardianship and conservatorship by enactment of 134.19. However, the Act repeals sections 37.1-128.01 through 134.5, 37.1-135, 37.1-138, 37.1-142, and 37.1-145.
- C. *Va. Code § 37.1-137* was not repealed and remains intact.
- D. *Va. Code § 37.1-137* states that when a fiduciary "under this title" fails to give bond within a month of appointment, the court may appoint another person, or **shall** commit the estate of the person to the sheriff of the county or city of which he is an inhabitant, who shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.
- E. Query whether the sheriff is responsible as a guardian and conservator, or only as a conservator (since there is no "trust" of the person).

**XVII. Non-Profit Entities May Now Serve as Conservator and Guardian for incapacitated persons.**

- A. Due to a shortage of persons to serve as guardians and conservators, the General Assembly created the "Virginia Public Guardian and Conservator Program," *Va. Code § 2.2-711*, for persons whose financial situation could not compensate a conservator and

guardian for them.

1. The program was only partially funded and operated modestly through the Virginia Department of Aging on a regional basis.
2. The Department's web site<sup>42</sup> acknowledges that the maximum of 212 persons who can be served in nine regional programs is "extremely limited" (for example, ten spaces to serve all of Arlington, Fairfax, and Falls Church) and counsels that alternatives be found:

"Local Guardianship Programs are not available in every locality throughout the state, and space in the existing programs is extremely limited. Many localities with L.G. programs are already serving their maximum number of individuals, and have others on a "waiting list". The limited size of L.G. Programs make finding alternatives to public guardianship extremely important."<sup>43</sup>

- B. House Bill 984 in the 2004 General Assembly modified *Va. Code* § 37.1-134.6, effective July 1, 2004, to permit non-profit entities to serve as fiduciaries for incapacitated persons, as follows:

- "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 a local or regional program designated by (i) 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 pursuant to § 501 (c) (3) of the Internal Revenue Code established to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.
- "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, and therapeutic treatment, and, if not inconsistent with an order of commitment, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes a local or regional program designated by (i) 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 pursuant to § 501 (c) (3) of the Internal Revenue Code established to provide guardian services to

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<sup>42</sup> <http://www.aging.state.va.us/vaguardlist.htm>.

<sup>43</sup> <http://www.aging.state.va.us/vapublicguardpgm.htm>.

*incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.*

1. The bill was sponsored in part by the Department of Mental Health, Mental Retardation, and Substance Abuse Services as a means of securing fiduciaries to assist with discharge planning from state hospitals.
2. At least one non-profit corporate entity is being established for the purpose.<sup>44</sup>

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<sup>44</sup> The Writer's law firm has secured an initial board of directors for the effort.

**GUARDIANSHIP DATA INTAKE FORM**<sup>45</sup>

Prepared by:  
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Person completing this form: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
\_\_\_\_\_  
Mailing address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_, Ext. \_\_\_\_\_  
Pager number: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Date completed: \_\_\_\_\_

**DATA FOR GUARDIANSHIP**

NAME OF INCAPACITATED PERSON: \_\_\_\_\_

RESIDENCE ADDRESS: \_\_\_\_\_

COUNTY/CITY: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

DOB: \_\_\_\_\_ AGE: \_\_\_\_\_ SSN: \_\_\_\_\_ MARITAL STATUS: \_\_\_\_\_

PRESENT LOCATION OF PATIENT/ROOM #: \_\_\_\_\_

<sup>45</sup> An amplified version of this form is available online at <http://majette.net>, the writer's web-site.

NAME OF PROPOSED GUARDIAN/ CONSERVATOR: \_\_\_\_\_

RESIDENCE ADDRESS: \_\_\_\_\_

COUNTY/CITY: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

DOB: \_\_\_\_\_ AGE: \_\_\_\_\_ SSN: \_\_\_\_\_ RELATION: \_\_\_\_\_

NAME OF PERSON COMPLETING THIS FORM: \_\_\_\_\_ RELATION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TELEPHONE # \_\_\_\_\_

LIST 5 CLOSEST RELATIVES OF PROPOSED INCAPACITATED, IN FOLLOWING ORDER (spouse, children, siblings, parents, aunt/uncles):

Name/Age	Relation	Full Address & Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

POSSIBLE MEDICAID TRANSFEREES

Is there a disabled child of the incapacitated person? Yes No (Circle one)

Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Does the disabled child receive Social Security benefits? Yes No (Circle one)

Which: SSI SSDI (Circle one) Monthly benefit: \$ \_\_\_\_\_

If the incapacitated person owns (or is buying) his own home, is the incapacitated person institutionalized, or likely to become institutionalized? Yes No (Circle one)

If the foregoing answer is "yes":

A. Did an adult child reside with the incapacitated person for more than two years in the home of the incapacitated person, and during that period provide care to maintain the incapacitated person in the home instead of a nursing home?

Yes No (Circle one). If yes, what is the name of the adult child? \_\_\_\_\_

B. Did a sibling reside in the home of the incapacitated person for at least one year before the incapacitated person became institutionalized, or before now? Yes No (Circle one) If yes, what is the name of the sibling? \_\_\_\_\_

Does the sibling have a partial ownership interest in the home? Yes No (Circle one)

INCOME

Social Security \$ \_\_\_\_\_/mo type: \_\_\_\_\_

Retirement \$ \_\_\_\_\_/mo source: \_\_\_\_\_

Interest \$ \_\_\_\_\_/mo source: \_\_\_\_\_

Other \$ \_\_\_\_\_/mo source: \_\_\_\_\_

Other \$ \_\_\_\_\_/mo source: \_\_\_\_\_

ASSETS

Real Estate

Location: \_\_\_\_\_ insured? \_\_\_\_\_

Recent Tax Assessed value \$ \_\_\_\_\_ Taxes due? \_\_\_\_\_

How held? \_\_\_\_\_ (sole, t/e, etc.)

Motor vehicles

Make/Model \_\_\_\_\_ Year \_\_\_\_\_ Value \$ \_\_\_\_\_

Make/Model \_\_\_\_\_ Year \_\_\_\_\_ Value \$ \_\_\_\_\_

Other valuable personal property:

Describe: \_\_\_\_\_ Value \$ \_\_\_\_\_

Bank Accounts:

Location: \_\_\_\_\_ Acct # \_\_\_\_\_ Value \$ \_\_\_\_\_

Location: \_\_\_\_\_ Acct # \_\_\_\_\_ Value \$ \_\_\_\_\_

Location: \_\_\_\_\_ Acct # \_\_\_\_\_ Value \$ \_\_\_\_\_

Location: \_\_\_\_\_ Acct # \_\_\_\_\_ Value \$ \_\_\_\_\_

LIFE INSURANCE

KIND whole/ term	OWNER	BENEFICIARY	LIFE	FACE AMOUNT	CASH VALUE
------------------------	-------	-------------	------	----------------	---------------

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

MEDICAL/HEALTH CARE INFORMATION

Attending Physician: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_

Hospital & Date of Admission: \_\_\_\_\_ Phone: \_\_\_\_\_

Social Worker: \_\_\_\_\_ Phone: \_\_\_\_\_

Nursing/Adult Home: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Contact: \_\_\_\_\_

DIAGNOSIS

\_\_\_\_\_  
\_\_\_\_\_

HEALTH INSURANCE:

Medicare A \_\_\_ B \_\_\_ Claim # \_\_\_\_\_

Medicare Supplement \_\_\_\_\_ Claim # \_\_\_\_\_

Medicaid Claim # \_\_\_\_\_ City/County \_\_\_\_\_

Eligibility Date \_\_\_\_\_ Worker: \_\_\_\_\_

Additional Health Insurance \_\_\_\_\_ Claim # \_\_\_\_\_

FUNERAL INSTRUCTIONS / PLANS: Yes No (Circle one)

Funeral Director: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CEMETERY PLOT, MAUSLOEUM SPACE, ETC., FOR FINAL INTERNMENT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please note: in the absence of plans or resources for burial, the body will be considered “unclaimed” for purposes of Virginia law. The guardian and conservator will have no duty to provide personally for the final arrangements and the sheriff or other state officer (typically the Virginia Department of Health) is charged with the responsibility of providing for final arrangements.<sup>46</sup>**

POWER OF ATTORNEY / ADVANCE DIRECTIVE / WILL / LIFETIME TRUST INFORMATION:

LOCATION / CUSTODIAN OF DOCUMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>46</sup> See *Grisso v. Nolen*, 262 Va. 688 (2001) (proper determination of place of burial rests with personal representative, surviving spouse, or next of kin); *Va. Code* § 32.1-288 and -298.

**Attach copies of documents, if available.**

<b>For Attorney Use Only:</b>	
Date received:	_____
Attorney:	_____
Paralegal:	_____
	Agreement to client: _____
	Agreement from client: _____