

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 64.2-309, 64.2-310, 64.2-311, 64.2-508, 64.2-528, 64.2-600, 64.2-601, 64.2-602, 64.2-609, 64.2-732, 64.2-1104, 64.2-1302, 64.2-1313, 64.2-1411, 64.2-1502, 64.2-1802, 64.2-1905, 64.2-1906, 64.2-2017, 64.2-2020, 64.2-2023, and 64.2-2026 of the Code of Virginia, relating to wills, trusts, and fiduciaries; Consumer Price Index adjustments.

[H 1912]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-309, 64.2-310, 64.2-311, 64.2-508, 64.2-528, 64.2-600, 64.2-601, 64.2-602, 64.2-609, 64.2-732, 64.2-1104, 64.2-1302, 64.2-1313, 64.2-1411, 64.2-1502, 64.2-1802, 64.2-1905, 64.2-1906, 64.2-2017, 64.2-2020, 64.2-2023, and 64.2-2026 of the Code of Virginia are amended and reenacted as follows:

§ 64.2-309. Family allowance.

A. In addition to any other right or allowance under this article, upon the death of a decedent who was domiciled in the Commonwealth, the surviving spouse and minor children whom the decedent was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance shall not continue for longer than one year if the estate is inadequate to discharge all allowed claims. The family allowance may be paid as a lump sum not to exceed ~~\$24,000~~ \$30,000, or in periodic installments not to exceed ~~\$2,000~~ \$2,500 per month for one year. It is payable to the surviving spouse for the use of the surviving spouse and minor children or, if there is no surviving spouse, to the person having the care and custody of the minor children. If any minor child is not living with the surviving spouse, the family allowance may be made partially to the spouse and partially to the person having the care and custody of the child, as their needs may appear. If there are no minor children, the allowance is payable to the surviving spouse.

B. The family allowance has priority over all claims against the estate.

C. The family allowance is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

D. The death of any person entitled to a family allowance terminates the person's right to any allowance not yet paid.

§ 64.2-310. Exempt property.

A. In addition to any other right or allowance under this article, the surviving spouse of a decedent who was domiciled in the Commonwealth is entitled from the estate to value not exceeding ~~\$20,000~~ \$25,000 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the minor children of the decedent are entitled in equal shares to such property of the same value. If the value of the exempt property selected in excess of any security interests therein is less than ~~\$20,000~~ \$25,000, or if there is not ~~\$20,000~~ \$25,000 worth of exempt property in the estate, the spouse or minor children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~\$20,000~~ \$25,000 value.

B. The right to exempt property and other assets of the estate needed to make up a deficiency of exempt property has priority over all claims against the estate, except the family allowance.

C. The right to exempt property is in addition to any benefit or share passing to the surviving spouse or minor children by the will of the decedent, by intestate succession, or by way of elective share.

§ 64.2-311. Homestead allowance.

A. In addition to any other right or allowance under this article, a surviving spouse of a decedent who was domiciled in the Commonwealth is entitled to a homestead allowance of ~~\$20,000~~ \$25,000. If there is no surviving spouse, each minor child of the decedent is entitled to a homestead allowance amounting to ~~\$20,000~~ \$25,000, divided by the number of minor children.

B. The homestead allowance has priority over all claims against the estate, except the family allowance and the right to exempt property.

C. The homestead allowance is in lieu of any share passing to the surviving spouse or minor children by the decedent's will or by intestate succession; provided, however, if the amount passing to the surviving spouse and minor children by the decedent's will or by intestate succession is less than ~~\$20,000~~ \$25,000, then the surviving spouse or minor children are entitled to a homestead allowance in an amount that when added to the property passing to the surviving spouse and minor children by the decedent's will or by intestate succession, equals the sum of ~~\$20,000~~ \$25,000.

D. If the surviving spouse claims and receives an elective share of the decedent's estate under §§ 64.2-302

through 64.2-307, the surviving spouse shall not have the benefit of any homestead allowance. If the surviving spouse claims and receives an elective share of the decedent's estate under Article 1.1 (§ 64.2-308.1 et seq.), the homestead allowance shall be in addition to any benefit or share passing to the surviving spouse by way of elective share.

§ 64.2-508. Written notice of probate, qualification, and entitlement to copies of inventories, accounts, and reports to be provided to certain parties.

A. Except as otherwise provided in this section, a personal representative of a decedent's estate, including an administrator appointed pursuant to § 64.2-454, or a proponent of a decedent's will when there is no qualification shall provide written notice of qualification or probate, and notice of entitlement to copies of wills, inventories, accounts, and reports, to the following persons:

1. The surviving spouse of the decedent, if any;
2. All heirs at law of the decedent, whether or not there is a will;
3. All living and ascertained beneficiaries under the will of the decedent, including those who may take under § 64.2-418, and beneficiaries of any trust created by the will; and
4. All living and ascertained beneficiaries under any will of the decedent previously probated in the same court.

B. Notice under subsection A need not be provided to the following persons:

1. A personal representative or proponent of the will;
2. Any person who has signed a waiver of right to receive notice;
3. Any person to whom a summons has been issued pursuant to § 64.2-446;
4. Any person who is the subject of a conservatorship, guardianship, or committeehip, if notice is provided to his conservator, guardian, or committee;
5. Any beneficiary of a trust, other than a trust created by the decedent's will, if notice is provided to the trustee of the trust;

6. Any heir or beneficiary who survived the decedent but is deceased at the time of qualification or probate, and such person's successors in interest, if notice is provided to such person's personal representative;

7. Any minor for whom no guardian has been appointed, if notice is provided to his parent or person in loco parentis;

8. Any beneficiary of a pecuniary bequest or of a bequest of tangible personal property, provided in either case the beneficiary is not an heir at law and the value of the bequest is not in excess of ~~\$5,000~~ \$10,000; and

9. Any unborn or unascertained persons.

C. The notice shall include the following information:

1. The name and date of death of the decedent;
2. The name, address, and telephone number of a personal representative or a proponent of a will;
3. The mailing address of the clerk of the court in which the personal representative qualified or the will was probated;

4. A statement as follows: "This notice does not mean that you will receive any money or property";

5. A statement as follows: "If personal representatives qualified on this estate, unless otherwise specifically exempted under Virginia law, they are required by law to file an inventory with the commissioner of accounts within four months after they qualify in the clerk's office, to file an account within 16 months of their qualification, and to file additional accounts within 16 months from the date of their last account period until the estate is settled. If you make written request therefor to the personal representatives, they must mail copies of these documents (not including any supporting vouchers, but including a copy of the decedent's will) to you at the same time the inventory or account is filed with the commissioner of accounts unless (i) you would take only as an heir at law in a case where all of the decedent's probate estate is disposed of by will or (ii) your gift has been satisfied in full before the time of such filing. Your written request may be made at any time; it may relate to one specific filing or to all filings to be made by the personal representative, but it will not be effective for filings made prior to its receipt by a personal representative. A copy of your request may be sent to the commissioner of accounts with whom the filings will be made. After the commissioner of accounts has completed work on an account filed by a personal representative, the commissioner files it and a report thereon in the clerk's office of the court wherein the personal representative qualified. If you make written request therefor to the commissioner before this filing, the commissioner must mail a copy of this report and any attachments (excluding the account) to you on or before the date that they are filed in the clerk's office"; and

6. The mailing address of the commissioner of accounts with whom the inventory and accounts must be filed by the personal representatives, if they are required.

D. Within 30 days after the date of qualification or admission of the will to probate, a personal representative or proponent of the will shall forward notice by delivery or by first-class mail, postage prepaid, to the persons entitled to notice at their last known address.

E. Failure to give the notice required by this section shall not (i) affect the validity of the probate of a

decedent's will or (ii) render any person required to give notice, who has acted in good faith, liable to any person entitled to receive notice. In determining the limitation period for any rights that may commence upon or accrue by reason of such probate or qualification in favor of any entitled person, the time that elapses from the date that notice should have been given to the date that notice is given shall not be counted, unless the person required to give notice could not determine the name and address of the entitled person after the exercise of reasonable diligence.

F. The personal representative or proponent of the will shall record within four months in the clerk's office where the will is recorded an affidavit stating (i) the names and addresses of the persons to whom he has mailed or delivered notice and when the notice was mailed or delivered to each or (ii) that no notice was required to be given to any person. The commissioner of accounts shall not approve any settlement filed by a personal representative until the affidavit described in this subsection has been recorded. If the personal representative of an estate or the proponent of a will is unable to determine the name and address of any person to whom notice is required after the exercise of reasonable diligence, a statement to that effect in the required affidavit shall be sufficient for purposes of this subsection. Notwithstanding the foregoing provisions, any person having an interest in an estate may give the notice required by this section and record the affidavit described in this subsection. If this subsection has not been complied with within four months after qualification, the commissioner of accounts shall issue, through the sheriff or other proper officer, a summons to such fiduciary requiring him to comply, and if the fiduciary does not comply, the commissioner shall enforce the filing of the affidavit in the manner set forth in § 64.2-1215.

G. The form of the notice to be given pursuant to this section, which shall contain appropriate instructions regarding its use, shall be provided to each clerk of the circuit court by the Office of the Executive Secretary of the Supreme Court and each clerk shall provide copies of such form to the proponents of a will or those qualifying on an estate.

§ 64.2-528. Order in which debts and demands of decedents to be paid.

When the assets of the decedent in his personal representative's possession are not sufficient to satisfy all debts and demands against him, they shall be applied to the payment of such debts and demands in the following order:

1. Costs and expenses of administration;
2. The allowances provided in Article 2 (§ 64.2-309 et seq.) of Chapter 3;
3. Funeral expenses not to exceed ~~\$4,000~~ \$5,000;
4. Debts and taxes with preference under federal law;
5. Medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him not to exceed ~~\$2,150~~ \$4,000 for each hospital and nursing home and ~~\$425~~ \$550 for each person furnishing services or goods;
6. Debts and taxes due the Commonwealth;
7. Debts due as trustee for persons under disabilities; as receiver or commissioner under decree of court of the Commonwealth; as personal representative, guardian, conservator, or committee when the qualification was in the Commonwealth; and for moneys collected by anyone to the credit of another and not paid over, regardless of whether or not a bond has been executed for the faithful performance of the duties of the party so collecting such funds;
8. Debts for child support arrearages;
9. Debts and taxes due localities and municipal corporations of the Commonwealth; and
10. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over a claim not due.

§ 64.2-600. Definitions.

For the purposes of this article, the following definitions apply:

"Designated successor" means one or more successors who are designated pursuant to subdivision A 7 of § 64.2-601.

"Person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Small asset" means any indebtedness owed to or any asset belonging or presently distributable to the decedent, other than real property, having a value, on the date of the decedent's death, of no more than ~~\$50,000~~ \$75,000. A small asset includes any bank account, savings institution account, credit union account, brokerage account, security, deposit, tax refund, overpayment, item of tangible personal property, or an instrument evidencing a debt, obligation, stock, or chose in action.

"Successor" means any person, other than a creditor, who is entitled under the decedent's will or the laws of intestacy to part or all of a small asset.

§ 64.2-601. Payment or delivery of small asset by affidavit.

A. Any person having possession of a small asset shall pay or deliver the small asset to the designated

successor of the decedent upon being presented an affidavit made by all of the known successors stating:

1. That the value of the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, does not exceed ~~\$50,000~~ \$75,000;

2. That at least 60 days have elapsed since the decedent's death;

3. That no application for the appointment of a personal representative is pending or has been granted in any jurisdiction;

4. That the decedent's will, if any, was duly probated;

5. That the claiming successor is entitled to payment or delivery of the small asset, and the basis upon which such entitlement is claimed;

6. The names and addresses of all successors, to the extent known;

7. The name of each successor designated to receive payment or delivery of the small asset on behalf of all successors; and

8. That the designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth.

B. The designated successor may discharge his fiduciary duty to promptly pay or deliver the small asset to a successor who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the asset directly to the incapacitated or disabled successor or applying it for such successor's benefit, or by:

1. Paying it to such successor's conservator or, if no conservator exists, guardian;

2. Paying it to such successor's custodian under the Virginia Uniform Transfers to Minors Act (§ 64.2-1900 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), and, for that purpose, creating a custodianship or custodial trust;

3. If the designated successor does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of such successor to be expended on such successor's behalf; or

4. Managing it as a separate fund on such successor's behalf, subject to such successor's continuing right to withdraw the asset.

C. Any successor may be represented and bound under virtual representation provisions of §§ 64.2-714, 64.2-716, and 64.2-717 with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.

D. A transfer agent of any security, upon the surrender of the certificates, if any, evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the designated successor upon the presentation of an affidavit as provided in subsection A.

E. Upon the presentation of an affidavit as provided in subsection A, the designated successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate. Notwithstanding the provisions of §§ 8.3A-403, 8.3A-417, and 8.3A-420, a financial institution accepting such check, draft, or other negotiable instrument presented for deposit in such manner is discharged from all claims for the amount accepted.

§ 64.2-602. Payment or delivery of small asset valued at \$35,000 or less without affidavit.

A. Notwithstanding the provisions of § 64.2-601, any person having possession of a small asset valued at ~~\$25,000~~ \$35,000 or less may pay or deliver the small asset to any successor provided that:

1. At least 60 days have elapsed since the decedent's death; and

2. No application for the appointment of a personal representative is pending or has been granted in any jurisdiction.

B. The designated successor shall have a fiduciary duty to safeguard and promptly pay or deliver the small asset as required by the laws of the Commonwealth to the other successors, if any.

§ 64.2-609. Money and personal property belonging to nonresident decedents.

A. When any person, at the time of his death domiciled outside of the Commonwealth, owned stocks, bonds, securities, money, or tangible personal property located in the Commonwealth or was entitled to any debts, choses in action, or tangible personal property in the Commonwealth, the person, firm, or corporation holding such stocks, bonds, securities, money, debts, tangible personal property, and choses in action shall retain such assets for 90 days from the death of such decedent. After the 90-day period, the person, firm, or corporation shall pay over or deliver on demand such portion of the assets for which the person, firm, or corporation has received no legal notice of any lien or encumbrance to an executor, administrator, or other personal representative, qualified according to the laws of the decedent's domicile if the value of such assets in the Commonwealth is, to the knowledge of the person holding or owing such assets, less than ~~\$25,000~~ \$35,000. When the value of such stocks, bonds, securities, money, debts, tangible personal property, and choses in action is ~~\$25,000~~ \$35,000 or more, the holder may pay or deliver such assets to an executor, administrator, or other personal representative, qualified in accordance with the law of the decedent's domicile, 30 days after the holder gives public notice of his intention to make such a transfer by publication thereof once a week for four successive weeks in a newspaper of general circulation in the city, town, or

county wherein the holder resides or has his principal place of business, provided that at the time of such payment or delivery, the holder has no actual notice of the appointment of a personal representative for such decedent in the Commonwealth and has received no legal notice of any lien or encumbrance upon such assets.

B. This section shall be construed as providing, as to the payment of money and the delivery of personal property belonging to nonresident decedents or their estates, optional methods of procedure in addition to those otherwise permitted or provided by law, including a comparable law of the state in which the nonresident decedents were domiciled, and shall not as to such matters add any limitations or restrictions to existing law.

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

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than ~~\$100,000~~ \$250,000 may terminate the trust without court approval if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. Notice required by this section shall be sent in accordance with § 64.2-707.

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

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

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

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

§ 64.2-1104. Release or modification of restrictions on management, investment, or purpose.

A. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

B. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

C. If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.

D. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, without application to the court but with the consent of the Attorney General, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument if the fund subject to the restriction has a total value of less than ~~\$250,000~~ \$375,000.

E. If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

1. The institutional fund subject to the restriction has a total value of less than ~~\$50,000~~ \$75,000;
2. More than 20 years have elapsed since the fund was established; and
3. The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

§ 64.2-1302. Waiver of inventory and settlement for certain estates.

When a decedent's personal estate passing by testate or intestate succession does not exceed ~~\$25,000~~ \$35,000 in value and an heir, beneficiary, or creditor whose claim exceeds the value of the estate seeks qualification, the clerk of the circuit court shall waive the inventory under § 64.2-1300 and the settlement under § 64.2-1206. This section shall not apply if the decedent died owning any real estate over which the person seeking qualification would have the power of sale.

§ 64.2-1313. Exhibition of accounts when sum does not exceed certain amount.

If the principal sum held by any fiduciary mentioned in § 64.2-1206 does not exceed ~~\$25,000~~ \$35,000, the fiduciary shall exhibit his accounts before the commissioner of accounts within the appropriate time period

provided in §§ 64.2-1305, 64.2-1306, and 64.2-1307. Thereafter, the commissioner of accounts may permit the fiduciary to exhibit his accounts every three years, which permission may be revoked by the commissioner of accounts on his own motion or upon request of any interested person. The provisions of this section shall apply to any case in which the corpus of the estate in the hands of the fiduciary has been reduced to ~~\$25,000~~ \$35,000 or less although it formerly exceeded that amount. Any fiduciary exhibiting his accounts in accordance with the provisions of this section shall be entitled to compensation for his services.

§ 64.2-1411. When fiduciary may qualify without security; requirements for issuance of certificates of qualification; payments.

A. Any circuit court or circuit court clerk, having jurisdiction to appoint personal representatives, guardians, conservators, and committees, may, in his discretion, *allow such fiduciary to qualify by giving bond without surety (i) in the case of a guardian of a minor or conservator, when there are no assets or the asset or amount coming into the possession of the personal representative, guardian of a minor, or conservator, or committee does not exceed \$25,000; allow the personal representative, guardian, conservator, or committee to qualify by giving bond without surety or (ii) in the case of any other such fiduciary, when there are no assets or the asset or amount coming into such fiduciary's possession does not exceed \$35,000.*

B. Any personal representative or trustee serving jointly with a bank or trust company that is exempted from giving surety on its bond under § 6.2-1003 shall, unless the court directs otherwise, also be exempt from giving surety.

C. If a fiduciary qualifies pursuant to subsection A, the court or clerk shall issue one or more certificates of qualification pursuant to this section for administration of an estate, guardianship, conservatorship, or committeehip that does not exceed a cumulative total of ~~\$25,000~~ *the applicable amount prescribed by subsection A*. Each such certificate shall specify that the maximum amount of estate, guardianship, conservatorship, or committeehip assets that may be collected pursuant to that certificate shall not exceed ~~\$25,000~~ *the applicable amount prescribed by subsection A*. Each such certificate shall:

1. Be titled "Qualification Certificate for Small Asset Estate";

2. State in a prominent position on the front of such certificate that any person may pay or deliver to the fiduciary named in the certificate any asset belonging, owed, or distributable to the specified deceased person, incapacitated ward, or minor having a value, on the date of payment or delivery, of no more than ~~\$25,000~~ *the applicable amount prescribed by subsection A*. Assets held in a safe deposit box shall not be counted toward such ~~\$25,000 limit~~ *applicable amount*, and the lessor of a safe deposit box shall not be deemed to know of, and shall have no obligation to determine, the presence or value of any asset in a safe deposit box;

3. State that the certificate (i) may only be used once, (ii) is not effective if it does not have an impression seal of the court clerk and therefore photocopies of the certificate are not effective, and (iii) must be retained by the payor; and

4. Bear the impression seal of the court clerk.

D. Upon being presented with a certificate of qualification issued pursuant to subsection C, any person may pay or deliver to the fiduciary named in such certificate any asset belonging, owed, or distributable to the specified deceased person, incapacitated ward, or minor having a value, on the date of payment, of no more than ~~\$25,000~~ *the applicable amount prescribed by subsection A*. The payor shall retain possession of such certificate. Assets held in a safe deposit box shall not be counted toward such ~~\$25,000 limit~~ *applicable amount*, and the lessor of a safe deposit box shall not be deemed to know of, and shall have no obligation to determine, the presence or value of any asset in a safe deposit box. Any person that makes such payment or delivery upon presentation of a certificate of qualification issued pursuant to subsection C is discharged and released from any or all claims or liabilities for such payment or delivery. Such payor is not required to see the application of such payment or delivery or to inquire into the assets paid or delivered by other parties to a fiduciary that qualifies pursuant to subsection A. A person presented with a certificate of qualification issued pursuant to subsection C shall not be liable for, or subject to, any claims, damages, fines or penalties for paying or distributing assets the person believed in good faith to have a value of ~~\$25,000~~ *such applicable amount* or less or for the failure to pay or deliver assets the person believed in good faith to have a value of more than ~~\$25,000~~ *such applicable amount*.

E. A court clerk shall not be liable for any misrepresentations of a personal representative, guardian, conservator, or committee with regard to whether the estate qualifies for the small asset estate exemption under this section or for the performance of any of the clerk's duties under this section, except in the case of the clerk's gross negligence or intentional misconduct.

§ 64.2-1502. In what securities fiduciaries may invest; definitions.

A. As used in this section:

"Fiduciary" has the same meaning as provided in § 8.01-2 and also includes an attorney-in-fact or agent acting for a principal under a written power of attorney, a custodian under § 64.2-1911, and a custodial trustee under § 64.2-906.

"National rating service" means Standard & Poor's Corporation, Moody's Investors Service, Inc., Duff and

Phelps, Inc., Fitch Investors Corporation, and any successor to the rating business of any of them.

B. Notwithstanding any other provision of law designating as legal investments for fiduciaries the bonds, notes, obligations, or other evidences of indebtedness issued by a governmental entity or political subdivision of the Commonwealth, including but not limited to agencies, authorities, commissions, districts, boards, or local governments, and except as specifically provided in § 2.2-4519, fiduciaries, whether individual or corporate, shall, except as limited in subsection E, be conclusively presumed to have been prudent in investing the funds held by them in a fiduciary capacity in only the following securities:

1. Obligations of the Commonwealth, its agencies and political subdivisions. The following obligations:

a. Bonds, notes, and other evidences of indebtedness of the Commonwealth and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth;

b. Revenue bonds, revenue notes, or other evidences of revenue indebtedness issued by agencies or authorities of the Commonwealth upon which there is no default; and

c. Bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority, or other public body in the Commonwealth upon which there is no default provided that such bonds, notes, and other evidences of indebtedness are (i) direct legal obligations of the public body, for the payment of which the public body has pledged its full faith and credit and unlimited taxing power, or (ii) unconditionally guaranteed as to the payment of principal and interest by the public body.

In every case referred to in this subdivision, such bonds, notes, or other evidences of indebtedness shall be rated in one of the two highest rating categories of at least one national rating service and not rated in a category lower than the two highest rating categories of any national rating service. Determination of an obligation's rating in one of the two highest rating categories shall be made without regard to any refinement or gradation of such rating category by numerical or other modifier. In addition, the remaining maturity of such bonds, notes, or other evidences of indebtedness shall not be greater than five years.

2. Obligations of the United States. Bonds, notes, and other obligations of the United States and securities unconditionally guaranteed as to the payment of principal and interest by the United States with a remaining maturity not greater than five years, except in the case of savings bonds, which may have a longer maturity. The obligations enumerated in this subdivision may be held directly or in the form of repurchase agreements collateralized by such obligations or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such obligations or repurchase agreements collateralized by such obligations, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Savings accounts, time deposits, or certificates of deposit. Savings accounts, time deposits, or certificates of deposit in any bank, savings bank, trust company, savings and loan association, or credit union authorized to do business in the Commonwealth, but only to the extent that such accounts, deposits, or certificates are fully insured by the Federal Deposit Insurance Corporation or any successor federal agency or by the National Credit Union Share Insurance Fund or any successor to it.

C. Notwithstanding the provisions of this section, investments listed in § 2.2-4519 as in effect prior to July 1, 1992, which continue to be held on July 1, 1992, shall be subject to § 64.2-781, and any reference to the Virginia "legal list" or to § 2.2-4519 or any predecessor statute contained in a will, trust, or other instrument that was irrevocable on June 30, 1992, shall be construed to refer to such section as in effect on June 30, 1992, or at such earlier time as may be specified in the controlling document, absent an expression of intent to the contrary contained in such document.

D. The permissible investments specified in subsection B are not exclusive and shall not be construed to limit a fiduciary's investments as permitted pursuant to the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

E. The presumption under subsection B shall apply to (i) a fiduciary only for a calendar year in which the value of the intangible personal property under the fiduciary's control or management does not exceed ~~\$100,000~~ \$135,000 at the beginning of such year or (ii) a fiduciary who, on motion for good cause shown, has obtained express authorization from the court having jurisdiction over the fiduciary for the presumption under subsection B to apply.

§ 64.2-1802. Parental duty of support; limited authority of commissioner of accounts.

A commissioner of accounts for the jurisdiction where a guardian qualifies may authorize the same distributions under the same circumstances as the circuit court may authorize under subsection A of § 64.2-1801, except that (i) the total distributions authorized in any one year shall not exceed ~~\$5,000~~ \$7,000 and (ii) the commissioner of accounts shall, in his report to the court on the guardian's next accounting, explain the necessity for the distributions so authorized. The provisions of subsection B of § 64.2-1801 shall not apply to proceedings under this section, but the commissioner shall give five days' written notice of the scheduled hearing date to any minor who is 14 years of age or older. The commissioner of accounts shall not charge a fee in excess of \$100 for such hearing.

§ 64.2-1905. Other transfer by fiduciary.

A. Subject to subsection C, a personal representative or trustee may make an irrevocable transfer to an

adult or trust company as custodian for the benefit of a minor pursuant to § 64.2-1908 in the absence of a will or under a will or trust that does not contain an authorization to do so.

B. Subject to subsection C, a conservator may make an irrevocable transfer to an adult or trust company as custodian for the benefit of the minor pursuant to § 64.2-1908.

C. A transfer under either subsection A or B may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds ~~\$25,000~~ \$35,000 in value or is made by a conservator.

§ 64.2-1906. Transfer by obligor.

A. Subject to subsections B and C, a person not subject to § 64.2-1904 or who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 64.2-1908.

B. If a person having the right to do so under § 64.2-1902 has nominated a custodian under that section to receive the custodial property, the transfer shall be made to that person.

C. If no custodian has been nominated under § 64.2-1902, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ~~\$25,000~~ \$35,000 in value, in which event the transfer may be made if authorized by the court.

§ 64.2-2017. 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 possession 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 ~~\$2,000~~ \$3,000 or more.

§ 64.2-2020. Annual reports by guardians.

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

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

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

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

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

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

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

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

7. The name of any persons whose access to communicate, visit, or interact with the incapacitated person

has been restricted and the reasons for such restriction;

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

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

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

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

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

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

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

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

The guardian shall certify by signing under oath that the information contained in the annual report is true and correct to the best of his knowledge. If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than ~~\$500~~ \$600. Such penalty shall be collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall be deposited into the general fund.

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

§ 64.2-2023. Estate planning.

A. In the order appointing a conservator entered pursuant to § 64.2-2009 or in a separate proceeding brought on petition, the court may for good cause shown authorize a conservator to (i) make gifts from income and principal of the incapacitated person's estate 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, (ii) disclaim property as provided in Chapter 26 (§ 64.2-2600 et seq.), or (iii) create a revocable or irrevocable trust on behalf of an incapacitated person with terms approved by the court or transfer assets of an incapacitated person or an incapacitated person's estate to a trust.

B. In a proceeding under this section, a guardian ad litem shall be appointed to represent the interest of the incapacitated person. Notice of a proceeding under this section shall be given pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia to: (i) the incapacitated person and the incapacitated person's spouse and children, (ii) all beneficiaries named in any known will of the incapacitated person, (iii) the incapacitated person's intestate heirs determined as if the incapacitated person had died intestate on the date of the filing of the petition, and (iv) all other interested persons. The court may authorize the hearing to proceed without notice to any person who would not be substantially affected by the proceedings. For the purposes of this section, the beneficiaries and intestate heirs shall be deemed possessed of inchoate property rights. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may with the approval of the court be represented and bound by another having a substantially identical interest with respect to the will proceeding under this section, but only to the extent that there is no conflict of interest between the representative and the person represented.

C. The court shall determine the amounts, recipients, and proportions of any gifts of the estate, the advisability of any disclaimer, whether good cause exists to create a trust or transfer assets, and whether to approve the trust terms 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, disclaimers, trusts, or transfers 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 and the effect of the gifts, disclaimers, trusts, or transfers on the estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts, disclaimers, trusts, or transfers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; (viii) whether to require, during the lifetime of the incapacitated person, that the trustee of any trust created or funded pursuant to this section post bond, with or without surety, or provide an accounting as set forth in § 64.2-1305; and (ix) other factors that

the court may deem relevant.

D. A commissioner of accounts for the jurisdiction where a conservator qualifies may authorize the same gifts under the same circumstances as the circuit court may authorize under subsection C, except that (i) the total gifts authorized in a calendar year shall not exceed ~~\$25,000~~ \$35,000 and (ii) the commissioner shall report to the court his determination based upon consideration of clauses (i) through (ix) set forth in subsection C. The provisions of subsection B shall not apply to proceedings before the commissioner, but the commissioner shall give reasonable written notice of the scheduled hearing date to any person who would be substantially affected by the proceedings. The commissioner may provide notice to a minor by mail to the duly qualified guardian of the minor or, if none exists, a custodial parent of the minor who is also not the conservator.

E. If the gifts by the conservator under clause (i) of subsection A do not exceed ~~\$150~~ \$200 to each donee in a calendar year and do not exceed a total of ~~\$750~~ \$1,000 in a calendar year, the conservator may make such gifts without a hearing under this section, the appointment of a guardian ad litem, or giving notice to any person. Prior to the making of such a gift, the conservator shall consider clauses (i) through (ix) set forth in subsection C and shall 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.

F. 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.

G. 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.

§ 64.2-2026. Surrender of incapacitated person's estate.

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

B. If the incapacitated person dies prior to being restored to capacity, 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, at the time of the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is ~~\$25,000~~ \$35,000 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.