

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 176

An Act to amend and reenact §§ 64.2-2002 and 64.2-2003 of the Code of Virginia, relating to guardianship or conservatorship; primary health care provider of respondent.

[H 1860]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 64.2-2002 and 64.2-2003 of the Code of Virginia are amended and reenacted as follows:
§ 64.2-2002. Who may file petition; contents.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. A statement of the financial resources of the respondent that shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income, other receipts, and debts;

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

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

§ 64.2-2003. Appointment of guardian ad litem.

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

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel; (v) investigating the petition and evidence, requesting

additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C; ~~and~~ (vi) *making a good faith effort to consult directly with the respondent's primary health care provider, if any, unless the evaluation report required by § 64.2-2005 is prepared in whole or in part by such provider;* and (vii) personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and transition plan and include the results of his review in the report required by clause (v).

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

D. A health care provider and local school division shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section.