

Virginia Conservatorship And Guardianship: 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 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 Virginia Code sections 37.1-128.01 through 37.1-134.5, 37.1-135, 37.1-138, 37.-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.

II. Definitions.

- A. Since the term "committee" was not defined in the Act, the office will be abolished as of 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"¹ or a "temporary conservator." *Va. Code* § 37.1-134.6.

¹ 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.

- 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.² *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.
1. Virginia 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."**³

III. Process for appointment of conservator and guardian.⁴

- A. The petitioner files a petition⁵ in the circuit court in which the incapacitated person is a resident or is located, or in which the incapacitated person was resident immediately

²In 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.

³ 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.

⁴ 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.

⁵ 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

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, which are jurisdictional.⁶ A useful data collection form is appended to this outline 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 unavailable⁷ 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.⁸
 2. The Act provides that "failure to properly notify the respondent shall be jurisdictional."

Law Foundation, P.O. Box 4468, Charlottesville, Virginia 22905. <http://www.vacle.org/> Phone: (800) 979-8253, Fax: (804) 979-3147.

⁶ 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.

⁷ 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.

⁸ 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.

3. Advance notice to family members: seven days unless waived for good cause shown.⁹ *Va. Code* § 37.1-134.10 (C).
4. The circuit court then appoints a guardian *ad litem* from a list of certified attorneys maintained by the Supreme Court.¹⁰ *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.*
5. 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.¹¹
 - 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* § 37.1-134.11.¹²
6. The incapacitated person is entitled to independent counsel in the proceeding, *Va. Code* § 37.1-134.12, and if necessary, upon request of the guardian *ad litem*, the

⁹ 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 _____.]

¹⁰ The Court publishes the list, with contact information, at its web site, <http://www.courts.state.va.us/>.

¹¹ 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>.

¹² 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 reporter.

circuit court will appoint counsel for the incapacitated person.

7. 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;¹³
 - (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, and the bond and surety, if any, of the conservator.¹⁴
8. 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.

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

¹³ See Clerk's reporting duties, below.

¹⁴ 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.

- 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. In addition, the guardian may petition to modify an agency under a medical advance directive.¹⁵

V. 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. 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. 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."
1. 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* § 18.2-369.¹⁶

VI. Guardian's authority respecting divorce, 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.

¹⁵It 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."

¹⁶ 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.

VII. 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:¹⁷
 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 compensation¹⁸ requested and the reasonable and necessary expenses incurred by the guardian.

¹⁷ 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.

¹⁸In 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.

VIII. 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. 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).
- D. 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, to record the order. 37.1-134.15.¹⁹

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

- 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.²⁰

¹⁹ 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.

²⁰ 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.

- 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.

X. Relationship between conservator and third parties; 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 his representative capacity and identify the 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. 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.²¹
- E. A successor conservator is not personally liable for the contracts or actions of a predecessor.

XI. Estate planning for incapacitated persons: expanded and simplified. *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.

²¹ 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.

- 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.²²
- 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;²³ and (viii) other relevant factors.
- 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.

XII. Expanded 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.

- 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.

²² 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.

²³ 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]).

- 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."²⁴
- 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.²⁵
- E. Power to borrow money for the support of the incapacitated. *Id.*, (A)(7).²⁶
- 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.

XIII. Sunset of sheriff as fiduciary of last resort: perhaps not. *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.-142, and 37.1-145.

²⁴ 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.

²⁵ 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.

²⁶ 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).

- 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).

GUARDIANSHIP DATA INTAKE FORM²⁷

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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: _____

RESIDENCE ADDRESS: _____

COUNTY/CITY: _____ TELEPHONE NUMBER: _____

DOB: _____ AGE: _____ SSN: _____ MARITAL STATUS: _____

PRESENT LOCATION OF PATIENT/ROOM #: _____

²⁷ An amplified version of this form is available online at <http://mh106.infi.net/~lawyers/99GCF.html>, the R. Shawn Majette 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
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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:

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

LOCATION / CUSTODIAN OF DOCUMENTS:

Attach copies of documents, if available.

For Attorney Use Only:

Date received: _____

Attorney: _____

Paralegal: _____

Agreement to client: _____

Agreement from client: _____

**In Re Appointment of Guardian, Conservator,
Or Both for [NamePatient] , An Adult
Alleged To Be Incapacitated, Respondent**

Report of Incapacity Evaluation

The undersigned evaluator hereby certifies the following as a report of the evaluation of [NamePatient] in support of the judicial appointment of a guardian, conservator, or both for [NamePatient], and understands that this report may be submitted in a proceeding to appoint a conservator, guardian, or both for [NamePatient]:

1. The undersigned understands that an "incapacitated person" is an adult who is incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his or her support or for the support of his legal dependents without the assistance or protection of a conservator, and that an individual who displays poor judgment is not for that reason alone considered incapacitated within the meaning of this definition.

2. The undersigned understands that *Va. Code* § 37.1-134.11 (C) provides that in the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

3. To the best information and belief of the undersigned:

- a. [NamePatient] is incapacitated.
- b. A description of the nature, type and extent of the incapacity, including its attending, specific functional impairments, is set forth here:

(Example: Cannot name place, date, situation, cannot recall over few minutes or day to day. Attention span seconds unaware of his medical condition and or financial affairs.)

- c. The diagnosis of the mental and physical condition of [NamePatient] , to the extent not set forth in the preceding paragraph, is set forth here:

(Example: Psychosis with behavioral disturbances; congestive heart failure, anemia, swallowing dysphasia requiring tube feedings.)

4. [NamePatient] is / is not on medication that may affect his / her actions or demeanor.
(Example: Navane (10 mg at bedtime) to control behavior).

5. The undersigned is of the opinion that the ability of [NamePatient] to learn self-care skills, adaptive behavior and social skills is:

- a. nonexistent,
- b. low, or
- c. high.

6. The prognosis for improvement by [NamePatient] is:

- a. excellent,
- b. good,
- c. fair, or
- d. . poor.

7. The date or dates of the examinations, evaluations and assessments of the undersigned upon which this report is based was, or were:

(Example: Thursday, February 03, 2000, to present, in Tucker Pavilion at Chippenham Medical Center, in Richmond, Virginia).

8. The undersigned is licensed as a:

- a. physician,
- b. psychologist,
- c. licensed clinical social worker, or
- d. _____

by the Commonwealth of Virginia, and is skilled in the assessment and treatment of the physical and mental condition of [NamePatient] for purposes of determining whether [NamePatient] is an incapacitated person as defined in *Va. Code* § 37.1-134.6.

[Name of Doctor], M.D.

Date report signed by [Name of Doctor], M.D.: _____

I certify that a true copy of the foregoing report was mailed or hand delivered to the guardian *ad litem* herein on _____.

Counsel
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