

CHAPTER ~~4~~ 14.

APPOINTMENT, QUALIFICATION, RESIGNATION, REMOVAL, ETC., OF FIDUCIARIES GENERALLY.

Drafting note: Proposed Chapter 14 combines existing Chapters 4 (Appointment, Qualification, Resignation, Removal, etc., of Fiduciaries) and 5 (Nonresident Trustees) of Title 26 into one chapter dealing with fiduciaries in general. Existing Chapter 4 is relocated to proposed Article 1 and existing Chapter 5 is relocated to proposed Article 2. In addition, most of the provisions dealing with bonds and fiduciaries from existing Chapter 1 (Bonds and Liabilities of Fiduciaries) have been relocated to Proposed Chapter 14.

Article 1.

Appointment, Qualification, Resignation, and Removal of Fiduciaries.

§ ~~26-46.1~~ 64.2-1400. Authority to qualify trustee; necessity for security; notice of qualification; qualification by less than all of trustees named.

A. Subject to the provisions of § ~~26-50~~ 64.2-1406, the clerk of any circuit court ~~having the jurisdiction of the probate of wills,~~ or any duly qualified deputy of such ~~clerks,~~ clerk may qualify any trustee named in a will, deed, or other writing, and require and take from them the necessary bonds in the same manner and with like effect as the court ~~could do if in session.~~

~~Such~~ B. Pursuant to the provisions of § 64.2-1426, the clerk or deputy ~~pursuant to the provisions of § 26-59,~~ may appoint and qualify an individual or a corporation ~~qualified authorized~~ under § 6.2-803 ~~as trustee.~~ Such appointment may be made in the same manner and subject to the provisions of § ~~64.1-116~~ 64.2-500.

~~When~~ C. The clerk shall not require security from a trustee if the will, deed, or other writing directs that a trustee shall not give security, ~~the clerk shall not require it of him,~~ unless, based on the application of any interested person ~~interested~~ or ~~from his~~ on the clerk's own knowledge ~~he thinks, the clerk determines that~~ security ought to be required. This section shall not be construed to require security where ~~necessity therefor~~ security is dispensed with not required pursuant to § 6.2-1003 or § ~~26-46.2~~ 64.2-1401, or to affect the ~~present~~ jurisdiction of the court to qualify trustees; and to require security or not, as ~~it~~ the court sees fit.

~~Any qualification hereunder~~ D. Qualification of a trustee under this section may be ex parte, and no prior notice to the beneficiaries of the qualification shall be required. If less than all the trustees named in ~~such the~~ deed, will, or other writing desire to qualify, ~~qualification then the trustee shall be only be qualified~~ after reasonable notice is given to any other named trustees.

E. If less than all the trustees named in the will, deed, or other writing qualify, then the trust powers conferred by the trust instrument shall be exercisable only by the trustees who have qualified ~~hereunder~~ under this section or in any other manner permitted by law.

Drafting note: Technical changes.

§ ~~26-46.2~~ 64.2-1401. Jurisdiction for qualification of testamentary trustee; qualification and bond; when surety not required.

A. In the case of a testamentary trusts trust, if the will has been admitted to probate in this Commonwealth, the jurisdiction where the will has been probated admitted to probate in the Commonwealth shall be the exclusive jurisdiction for the qualification of the trustee or trustees under such will. If such In the case of a will is the will of a nonresident, and that has not been admitted to probate in the Commonwealth, then the trustee or trustees thereunder under such will shall be permitted to qualify in any jurisdiction in which such will could be probated, and or, if there be is no such jurisdiction, then qualification the trustee shall be as permitted in to qualify pursuant to § 26-46.3 64.2-1402.

Each B. Before proceeding to act as trustee, the trustee named in a will probated after July 1, 1968, before proceeding to act thereunder, shall qualify and give bond before the proper circuit court or clerk thereof with surety, as may be required by the court or clerk unless (i) the will waives surety on the bond, or (ii) the necessity for surety is dispensed with not required under § 6.2-1003, or (iii) the will was executed prior to July 1, 1968, and the trustee or trustees offering to qualify as such were was also named in the will as executor or executors and qualify qualifies as such, and (iv) the will waives surety upon the bond of such executor or executors.

C. The provisions hereof shall not apply to a testamentary devise or bequest to a church or its trustees.

D. If real estate located in the Commonwealth constitutes any of the trust assets, the qualification of the trustee under this section shall not be in lieu of any other recordation required by law.

Drafting note: Language from existing § 26-46.3 that related solely to this section has been relocated to proposed subsection D. There are also technical changes.

§ 26-46.3 64.2-1402. Same; Jurisdiction for qualification of certain testamentary trustees and trustees generally.

A. In the case of a testamentary trusts trust for which there is no jurisdiction for probate as provided in § 26-46.2, 64.2-1401 and in the case of any trust under any deed or other writing, other than a will, the trustee or trustees may qualify in any jurisdiction where the trustees or any of them reside trustee resides, or if one trustee be is a corporate trustee, then in the jurisdiction where such the corporate trustee has its registered office.

B. If real estate located in the Commonwealth constitutes any of the trust assets should be real estate located in Virginia, the qualification of the trustee or trustees under the provisions of this section or the foregoing section, shall not be in lieu of any other recordation required by law.

Drafting note: The language in proposed subsection B that related to proposed § 64.2-1401 has been relocated to proposed subsection D of that section. There are also technical changes.

§ 26-1.1 64.2-1403. Qualification of trustees.

A. For the purposes of this section, the phrase “deed or other writing” does not include a will.

~~(a) No~~ B. Any trustee appointed by a deed or other writing ~~in which a qualification is required by such where the~~ deed or other writing; requires that the trustee qualify shall not act ~~thereunder as trustee~~ until he ~~shall have~~ has qualified ~~as such~~ before the circuit court or clerk ~~thereof having jurisdiction~~ by giving bond and taking oath that he will perform the duties of his office. ~~Such The~~ oath may be taken on behalf of a ~~bank or trust company~~ corporate trustee by its president or other officer.

~~(b) B.~~ B. Any trustee appointed by a deed or other writing ~~in which qualification is where the deed or other writing does~~ not ~~required by the terms thereof,~~ require that the trustee qualify may voluntarily ~~so~~ qualify; ~~and. However, regardless of whether the deed or other writing does not require qualification, in every case where requested by upon the request of any interested party in interest,~~ the administration of the trust shall be in the same manner as if qualification had been required by the terms of the ~~instrument~~ deed or other writing creating it.

~~(c) For the purposes of this section, the phrase "deed or other writing" shall be construed as excluding a trustee appointed by a will.~~

Drafting note: Technical changes.

~~§ 26-47~~ 64.2-1404. New fiduciary appointed when authority of former revoked.

~~At or after the date of any~~ If an order revoking and annulling the powers of any fiduciary is entered, the circuit court in which he qualified shall ~~exercise such jurisdiction, either by appointing,~~ at or after the date of the order, appoint an administrator de bonis non, ~~or~~ a new guardian, or ~~otherwise,~~ other fiduciary as ~~it could have exercised if such the~~ fiduciary whose powers have been revoked and annulled had died at that date.

Drafting note: Technical changes.

~~§ 26-48~~ 64.2-1405. Court may appoint trustee in place of one ~~dead, resigned, etc~~ named in will, deed, or other writing; management by corporate trustee outside of the Commonwealth.

~~When~~ A. If a trustee named in a will, deed, or other writing (i) dies, (ii) becomes incapable of executing the trust on account of physical or mental disability or confinement in prison, (iii) ~~when if~~ residency is statutorily required, ~~removes beyond the limits is no longer a~~ resident of the Commonwealth, (iv) declines to accept the trust, (v) ~~having accepted,~~ resigns the ~~same, as he may be allowed to do~~ trust after having accepted the trust, (vi) ~~if such trustee is a corporation in the case of a corporate trustee,~~ is adjudicated ~~a~~ bankrupt, or for any reason loses its charter, (vii) for any other reason ceases to be eligible to continue serving as trustee, or (viii) for any other good cause shown, the circuit court ~~of the county or city~~ in which such will was admitted to probate, or such deed or other writing is or might have been recorded, or if the trustee is a corporation, in which its principal office in the Commonwealth is located, or in which the trustee resides, may on motion of any interested party ~~interested~~, and upon satisfactory evidence of ~~such death, incapacity, confinement, removal, declination, resignation, bankruptcy, loss of charter, or other loss of eligibility or of such other good cause~~ any of the conditions in

clauses (i) through (viii), appoint a trustee ~~or trustees~~ in place of the trustee ~~or trustees~~ named in ~~such the~~ instrument.

~~In addition, the~~ B. The circuit court may appoint a substitute corporate trustee whenever a corporate trustee removes the management function over an existing trust which was previously managed in the Commonwealth to a jurisdiction outside of the Commonwealth if the court finds that the management of ~~such the~~ trust after such removal results in good cause for the substitution of ~~such the~~ trustee. A corporate trustee that maintains a place of business in the Commonwealth where one or more trust officers are available on a regular basis for personal contact with trust customers or beneficiaries shall not be deemed to have removed such management function.

Drafting note: Technical changes.

~~§ 26-49.~~

Drafting note: Repealed by Acts 2005, c. 935, cl. 3.

~~§ 26-50 64.2-1406.~~ Notice required; certain substitutions validated.

~~A. A. Reasonable notice of a motion under made pursuant to § 26-48 64.2-1405 for the appointment of a substitute trustee shall be after reasonable notice provided to all persons interested in the execution of the trust other than the plaintiff in such motion, and, if moving party. If any of the parties on whom such notice is required to be served interested person is under eighteen 18 years of age, the circuit court or clerk shall appoint some a discreet and competent attorney-at-law as guardian ad litem to for such infant defendant, person on whom notice may be served. If any such party interested person is incapacitated or a convict incarcerated, the notice shall be served on his committee, guardian, or conservator, if any, but or if none exists, the court or clerk shall appoint a discreet and competent attorney-at-law as a guardian ad litem shall be appointed for him in the manner hereinbefore provided for the appointment of a guardian ad litem for an infant such person on whom notice may be served. No notice Notice does not need to be given to a trustee or, if one has previously been appointed, to a substituted substitute trustee who has removed from no longer resides the Commonwealth, declined to accept the trust, or has resigned, nor or to the personal representatives representative of one who is dead a deceased trustee, or, if the to a corporate trustee or substituted trustee is a corporation which that has been adjudicated a bankrupt or whose that has lost its charter then stands revoked, no notice need be given to such corporation.~~

B. In the case of the substitution of the trustee ~~or trustees~~ in a deed of trust securing the payment of indebtedness ~~it shall be necessary to give~~, notice of the motion made pursuant to § 64.2-1405 need only be given to the trustee or, if one has previously been appointed, to the substituted trustee (unless notice to him is ~~dispensed with under the foregoing provisions~~) not required pursuant to subsection A; any beneficiaries appearing of record or known to the plaintiff, if any moving party; any debtors mentioned in the deed of trust; any persons who may be shown by the deed records to have assumed payment of the indebtedness in whole or in part;

and the person ~~or persons~~ in whom the equitable title to the property conveyed by the deed of trust is vested at the time of the motion as shown by the deed records. In such case when the written notice of motion has been filed in the clerk's office of the court having jurisdiction as defined in ~~§ 26-48~~ 64.2-1405, service of ~~such the~~ notice as to all parties mentioned in § 8.01-316 may be made in conformity with the provisions of §§ 8.01-316 through 8.01-318, 8.01-320, 8.01-322, and 8.01-323.

C. Any ~~such~~ decree or order of substitution heretofore made by a court of competent jurisdiction is hereby validated.

D. Nothing ~~herein contained in this section~~ shall be construed as preventing a court ~~of equity~~ from substituting a trustee in a suit instituted for that purpose.

Drafting note: Technical changes.

~~§ 26-57. Validation of substitutions of trustees made without sufficient notice to persons interested and validation of acts done by such substituted trustees.~~

~~When trustees have been substituted by proceedings in the courts of this Commonwealth in place of original trustees under deeds recorded in this Commonwealth, without sufficient notice or without any notice to some one or more of the persons interested in the execution of the trusts of such deeds, all such substitutions, and all acts made and done by such substituted trustees prior to June 27, 1942, on the credit of their substitution, shall be held, and the same are hereby declared valid and effective in all respects if otherwise valid according to the law then in force.~~

Drafting note: Section will be replaced with an enactment clause that reads as follows: "That the provisions of former § 26-57, which provide that the actions of substitute trustees who have been appointed without sufficient notice or any notice to any interested party done prior to July 27, 1942, are validated and effectual as if notice was given shall continue to apply, and shall apply only, to the actions of such substitute trustees."

~~§ 26-51~~ 64.2-1407. Who to execute the trust until new trustee appointed.

A. The personal representative of a deceased ~~sole~~ trustee, or the remaining trustee or trustees, if there were more than one trustee, and one or more but less than all of them have died, resigned, ~~or~~ become incapable of executing the trust on account of physical or mental disability or confinement in prison ~~or other institution~~, ~~or have~~ become ineligible to continue to serve as trustee because of ~~removal from~~ no longer being a resident of the Commonwealth ~~of themselves~~ where residency is statutorily required, or ~~have~~ otherwise become ineligible to continue serving as trustee, shall execute the trust, or so much ~~thereof~~ of the trust as remained unexecuted at the ~~death or resignation or at the~~ time such lack of capacity to execute the trust or such ineligibility came into being ~~(whether the trust subject is real or personal property)~~ until an appointment is made pursuant to ~~§ 26-48~~ this part, unless the instrument creating the trust directs otherwise, or some other trustee is appointed for the purpose by a circuit court having jurisdiction of the case. In the case of removal of the trust management function by a corporate trustee, the corporate

trustee shall continue to execute the trust until such time as an appointment is made pursuant to ~~§ 26-48~~ this part.

B. The provisions of this section shall not apply to any trust governed by the Uniform Trust Code (~~§ 55-541.01~~ 64.2-700 et seq.).

Drafting note: Technical changes.

~~§ 26-52~~ 64.2-1408. ~~Courts of equity~~ Circuit court may exercise same powers in suit to enforce or administer trust.

A circuit court of equity, in a suit pending to enforce or administer the trust, may exercise all the powers conferred by §§ ~~26-48~~ 64.2-1405 through ~~26-51~~ and ~~§ 26-1~~ on the courts therein mentioned 64.2-1407 and § 64.2-1412 in a suit pending to enforce or administer the trust.

Drafting note: Updated to reflect elimination of distinction between law and equity. There are also technical changes.

~~§§ 26-53 through 26-55.~~

Drafting note: Repealed by Acts 2005, c. 935, cl. 3.

~~§ 26-1.2~~ 64.2-1409. Information to be provided to clerk by fiduciary.

A. On and after July 1, 1998, every person seeking to qualify in any fiduciary capacity before the circuit court or clerk shall provide to the court or clerk the information required to make the qualification on forms provided to the proposed fiduciary by the clerk. The forms, with appropriate instructions concerning their use, shall be provided to each clerk by the Office of the Executive Secretary of the Supreme Court. In lieu of any form, a computer-generated facsimile of the form may be used by any person seeking to qualify.

B. Every qualified fiduciary who moves from ~~Virginia~~ the Commonwealth and becomes resident in another state shall inform the clerk and the ~~commissioners~~ commissioner of accounts of the court in which he was qualified of his new address within 30 days of the date of the change in residency. Any ~~person~~ fiduciary who fails to so inform the clerk and ~~commissioners~~ commissioner of accounts shall be subject to a civil penalty of \$50. For purposes of this section, a person becomes resident in another state when he can no longer satisfy the residency requirements specified in § 38.2-1800.1. This section shall not apply to any fiduciary whose cofiduciary is a ~~Virginia~~ resident of the Commonwealth.

Drafting note: Technical changes.

~~§ 26-3~~ 64.2-1410. When court may require new bond; or revoke authority; giving new bond upon motion of fiduciary, surety, or other party in interest.

A. ~~The~~ Regardless of whether a fiduciary has given bond with or without sureties, at any time the circuit court under whose order or under the order of whose clerk any such fiduciary derives his authority shall, on the application of any surety or his personal representative, ~~shall~~, or may, (i) upon motion of the fiduciary; or (ii) when it appears proper on report of the clerk or a commissioner of accounts or on evidence adduced before it by any interested party ~~interested~~, may, at any time, whether such fiduciary shall have given bond with or without sureties, order

~~him~~ the fiduciary to give before the court, or clerk, a new bond or additional bond in a reasonable time ~~to be as~~ prescribed by ~~it~~ the court and in such penalty and with or without sureties as ~~may appear to it to be~~ the court deems proper. The new bond or additional bond shall have the effect provided by § 49-14. In all cases where the fiduciary qualified pursuant to an order issued by a clerk, the clerk shall have the same power as the court regarding bond and surety under this section. If the order of the court or clerk is not complied with, or whenever from any cause it appears proper, the court may revoke and annul the powers of any such fiduciary. However, no such order shall be made unless reasonable notice appears to have been given to the fiduciary by ~~(i)~~ (a) the commissioner of accounts who made the report, ~~(ii)~~ (b) the surety or his representative making the application, or ~~(iii)~~ (c) the service of a rule or otherwise. No order or revocation shall invalidate any previous act of such fiduciary.

B. When the court or clerk orders a new bond, additional bond, or a reduction in bond, the court or clerk shall, in lieu of requiring a personal appearance by the fiduciary for the execution thereof, allow the fiduciary's execution to be made by the fiduciary's agent under a power of attorney expressly authorizing the same.

Drafting note: Technical changes.

§ ~~26-4~~ 64.2-1411. When fiduciary may qualify without security.

~~The several courts in this Commonwealth and the clerks thereof~~ Any circuit court or circuit court clerk, having jurisdiction to appoint personal representatives, guardians, conservators, and committees, may, in ~~their~~ his discretion, when the amount coming into the ~~hands or~~ possession of the personal representative, guardian of a minor, conservator, or committee does not exceed \$15,000, allow ~~any such~~ the personal representative, guardian, conservator, or committee to qualify by giving bond without surety. Any personal representative or trustee serving jointly with a bank or trust company that is exempted from giving surety on its bond ~~as such~~ under § 6.2-1003 shall, unless the court ~~shall~~ directs otherwise ~~direct, also~~ be likewise exempt from giving surety.

Drafting note: Technical changes.

§ ~~26-1~~ 64.2-1412. How trustee required to give bond; when to be removed and another appointed.

After reasonable notice to a trustee, whether appointed by will, deed, or other writing, the circuit court ~~of the county, or any court which would have~~ that has jurisdiction ~~in equity~~ to administer the trust, ~~or a judge thereof in vacation~~, may, on motion of any interested person ~~interested, if it deem the same proper for the security of the trust estate~~, order ~~such~~ the trustee to give bond with surety before ~~such~~ the court, or before the clerk ~~thereof of the court~~, within a reasonable time and in a penalty to be prescribed by ~~such~~ the court ~~or judge~~, for the faithful execution of the trust, ~~and may, if such~~ if the court deems the bond is proper for the security of the trust estate. If the order ~~be is~~ not complied with, or whenever for any cause it appears proper, the court may remove ~~such~~ the trustee and appoint another in his place.

Drafting note: Technical changes.

§ ~~26-45.2~~ 64.2-1413. Placing certain trust assets in designated financial institutions; waiver or reduction of bond of fiduciary ~~officer~~.

~~(1) Whenever it shall be the judgment of any~~ A. If the circuit court having jurisdiction of any estate in the process of administration by any guardian, conservator, curator, executor, administrator, trustee, receiver, or other ~~officer~~ fiduciary, ~~because determines that~~ the size of the bond required of ~~such officer shall seem~~ the fiduciary would be burdensome or for other cause, the court may order ~~such~~ a portion or all of the personal assets of the estate, as ~~it shall deem~~ the court deems proper, to be placed with a designated bank, trust company, or savings institution, insured by the Federal Deposit Insurance Corporation or other federal insurance agency and doing business in ~~this the~~ the Commonwealth, with consideration being given to any bank, trust company, or savings institution, proposed by the ~~officer~~ fiduciary. When the original assets are accordingly placed with a designated financial institution, ~~such the~~ the financial institution shall issue in the name of the estate and file with the court a receipt ~~or receipts therefor for such assets~~ and shall give the ~~officer~~ fiduciary a ~~duplicate~~ copy ~~thereof of the receipt~~. ~~Such The~~ receipt ~~or receipts~~ shall acknowledge that:

~~(a)~~ 1. The original assets received by the financial institution, or the duly collected proceeds ~~therefrom~~ from such assets, and all interest, dividends, principal, and other indebtedness subsequently collected by the financial institution on account thereof, are to be held by the financial institution in safekeeping, subject to such instructions of the ~~officer as are~~ fiduciary to the financial institution that have been authorized by orders of the court ~~directed to the financial institution~~; and

~~(b)~~ 2. Accountings therefor shall be made to the ~~officer~~ fiduciary at reasonably frequent intervals agreeable to the ~~officer~~ fiduciary. After the receipt ~~or receipts~~ of the financial institution for the original assets placed with ~~such the~~ the financial institution ~~have has~~ been filed with the court, the court ~~thereupon~~ shall, by enter an order, ~~waive~~ waiving the bond to be given or previously given by ~~such officer the fiduciary~~ or reduce it so that ~~it shall apply the bond applies~~ only to the estate remaining in the hands possession of ~~such officer the fiduciary~~, whichever the court ~~shall deem~~ deems best for the estate.

~~(2) B.~~ Whenever the court has ordered any assets of an estate ~~to~~ be placed with a financial institution ~~designated as provided herein pursuant to subsection A~~, any person or corporation having possession or control of any of ~~such the~~ the assets, or owing interest, dividends, principal, or other indebtedness on account thereof, shall, on the due dates thereof, upon the demand of the financial institution whether the ~~officer~~ fiduciary has duly qualified or not, pay and deliver ~~such the~~ the assets, interest, dividends, principal, and other indebtedness to the financial institution. The receipt and acceptance thereof by the financial institution shall relieve the person or corporation from all further responsibility.

~~(3) C.~~ Any bank, trust company, or savings institution ~~as above described which may be designated by the court under this section, shall be at liberty to~~ pursuant to subsection A may accept or reject ~~such the~~ designation in any particular instance. The financial institution shall evidence its acceptance or rejection by filing the same with the court or the clerk of the court making ~~such the~~ designation within ~~fifteen~~ 15 days after actual knowledge of ~~such the~~ designation shall have come to the attention of ~~that the~~ financial institution. In the event of acceptance, ~~such bank, trust company or savings institution~~ the financial institution shall be allowed as a proper charge against the assets placed with ~~such financial institution, it~~ such reasonable amount for its services and expenses as the court making ~~such the~~ designation may ~~by its order allow and provide.~~

Drafting note: Technical changes.

~~§ 26-7.5~~ 64.2-1414. Effect of orders of qualification of bank as committee or guardian.

~~In the case of qualification before or after July 1, 1984, if~~ If a bank qualifies as committee or guardian and the order of qualification ~~of a bank as committee or guardian~~ fails to specify that the bank is to be guardian or committee of the person, it shall be deemed a qualification solely as committee, conservator, or guardian of the estate.

Drafting note: Date reference is deleted as obsolete. There are also technical changes.

~~§ 26-5~~ 64.2-1415. Liability for losses by negligence or failure to make defense.

A. If any ~~fiduciary mentioned before in this chapter~~ personal representative, guardian, conservator, curator, or committee, or any agent or attorney-at-law, ~~shall~~, by his negligence or improper conduct, ~~lose~~ loses any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal.

B. If any personal representative, guardian, conservator, curator, or committee ~~shall pay~~ pays any debt the recovery of which could be prevented by reason of illegality of consideration, lapse of time, or otherwise, knowing the facts by which the ~~same~~ recovery could ~~be so~~ have been prevented, no credit shall be allowed to him ~~therefor~~ for such payment.

Drafting note: Technical changes.

~~§ 26-5.1.~~

Drafting note: Repealed by Acts 2005, c. 935, cl. 3.

~~§ 26-5.2~~ 64.2-1416. Liability of fiduciary for actions of cofiduciary.

A. As used in this section, "fiduciary" has the same meaning as provided in § 8.01-2, except that it shall not include trustees subject to the requirements and provisions of the Uniform Trust Code (§ 64.2-700 et seq.).

B. Any power vested in three or more fiduciaries may be exercised by a majority of the fiduciaries, but a fiduciary who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise. A dissenting fiduciary is not liable for the consequences of an act in which he joins at the direction of the majority of the fiduciaries

if he expressed his dissent in writing to any of his cofiduciaries, if the act is not of itself a patent breach of trust.

BC. A fiduciary shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any cofiduciary, ~~nor or~~ for those of any banker, broker, or other person with whom the trust money or securities may be lawfully deposited, ~~nor or~~ for any loss ~~unless the same occurs through that does not result from~~ his own default or negligence.

CD. Whenever the instrument under which a fiduciary or fiduciaries are acting reserves ~~unto~~ the authority to direct the making or retention of any investment for the trustor, testator, or creator or vests such authority in an advisory or investment committee or any other person ~~or persons~~, including a cofiduciary, to the exclusion of the fiduciary or the exclusion of one or more of several fiduciaries, ~~authority to direct the making or retention of investments, or any investment~~, the excluded fiduciary or cofiduciary shall be liable, if at all, only as a ministerial agent and shall not be liable as fiduciary or cofiduciary for any loss resulting from the making or retention of any investment pursuant to such authorized direction.

DE. This section does not excuse a cofiduciary from liability for ~~failure~~ failing to (i) participate in the administration of trust, ~~or to~~ (ii) attempt to prevent a breach of trust, or ~~to~~ (iii) seek advice and guidance from the circuit court in an apparently recurring situation unless otherwise expressly provided by the instrument under which the cofiduciary is acting.

~~E. As used in this section, "fiduciary" shall be defined as in § 8.01 2, except that it shall not include trustees subject to the requirements and provisions of Chapter 31 (§ 55-541.01 et seq.) of Title 55.~~

Drafting note: Technical changes.

~~§ 26-6 64.2-1417.~~ How judgment may be entered against personal representative, conservator, or committee.

A judgment or decree against ~~any person, as~~ the personal representative of a decedent ~~or,~~ committee of a convict, or conservator of an incapacitated person as defined in ~~§ 37.2-1000 64.2-2000,~~ ~~or pursuant to any provision of law now or hereafter enacted under which a conservator or committee may be appointed,~~ for a debt due from ~~such the~~ decedent, convict, or incapacitated person may, without taking an account of the transactions of ~~such the~~ representative, conservator, or committee, be entered to be paid out of the estate of ~~such the~~ decedent, convict, or incapacitated person in, or ~~which that~~ shall come ~~to into~~, the hands possession of the representative, conservator, or committee to be administered. ~~When If~~ the circuit court ~~enters of record holds~~ that the proceeding for the debt would not have been brought if the fiduciary had prudently discharged his duty, ~~the proceeding would not have been brought,~~ the amount of the judgment or decree, ~~so far as it is~~ for costs, shall ~~be entered to~~ be paid out of ~~his own the~~ estate of the representative, conservator, or committee.

Drafting note: Technical changes.

~~§ 26-7 64.2-1418.~~ Court order for payments due from fiduciaries; effect.

When a report of the accounts of any guardian, curator, conservator, committee, or trustee ~~aforsaid, shall be~~ is confirmed, either in whole or in a qualified manner, the circuit court, ~~in for~~ the clerk's office ~~of which such~~ where the report is filed, may order payment of what ~~shall appear~~ appears due on such accounts to such persons as would be entitled to recover the same by suit ~~in equity; and any.~~ Any guardian, curator, conservator, committee, or trustee who has, in good faith, and in compliance with the order of such court, paid and delivered the money and other estate in his hands possession to whomsoever the court has adjudged is entitled thereto, shall be fully protected against the demands of creditors and all other persons.

Drafting note: Technical changes.

§ ~~26-7.1~~ 64.2-1419. Execution of fiduciary bond or appointment of agent designates clerk as attorney for service of process.

A. Every person who qualifies in a circuit court or clerk's office ~~of this Commonwealth~~ as a personal representative of a decedent, guardian, conservator, committee, trustee, or receiver, and the surety upon any such fiduciary's bond, shall, by executing the bond required of ~~him~~ the fiduciary, be deemed to have designated the clerk of the court in which the qualification is had, and his successor in office, as the true and lawful attorney of ~~such person~~ the fiduciary upon whom service of any notice, process, or rule issuing from a court of ~~this~~ the Commonwealth or a commissioner of such court, ~~of the nature hereinafter set forth,~~ may be executed, whenever the ~~person~~ fiduciary cannot be found and served within the Commonwealth ~~of Virginia~~ after the exercise of due diligence, ~~provided that the object of.~~ This section only applies if the proceeding relates to the proper administration or distribution of the fiduciary estate, including a proceeding to assert a claim against the estate or to remove the fiduciary or to obtain a personal judgment against him and his surety, either or both, for nonfeasance, misfeasance, or malfeasance in the performance of the fiduciary's duties. The ~~foregoing~~ designation shall terminate and ~~be~~ no longer be in effect when the fiduciary's final account shall "stand confirmed," as provided in § ~~26-33,~~ 64.2-1212 or by order of court.

B. Every nonresident trustee who, pursuant to § ~~64.1-73~~ 64.2-427 or § ~~64.1-73.1~~ 64.2-428, files a consent in writing with a clerk of circuit court that any service of process or notice may be by service upon a resident of ~~this~~ the Commonwealth at such address as the trustee may appoint in the written instrument filed with the clerk shall, by filing such consent, be deemed to have designated the clerk of the court in which the consent is filed, and his successor in office, as the true and lawful attorney of ~~such~~ the nonresident trustee upon whom service of any ~~such~~ notice, process, or rule issuing from a court of ~~this~~ the Commonwealth may be executed, whenever the resident appointed to receive service cannot be found and served within the Commonwealth after the exercise of due diligence.

Drafting note: Technical changes.

§ ~~26-7.2~~ 64.2-1420. Clerk to mail notice, process, or rule to person served.

Whenever any ~~such~~ notice, process, or rule ~~shall be~~ is served on the clerk of a circuit court ~~it shall be his duty to pursuant to § 64.2-1419, the clerk shall~~ mail the ~~same notice, process, or rule~~ forthwith by certified or registered mail, postage prepaid, to the person thus served, to his last known address as shown by the court papers, the cost thereof to be paid in advance by the person desiring the service. In lieu of using certified or registered mail, the clerk of court may also use overnight delivery, with the cost thereof to be paid in advance by the person desiring service.

Drafting note: Technical changes.

§ ~~26-7.3~~ 64.2-1421. What judgment or decree based upon service upon clerk shall specifically adjudicate.

Any judgment or decree based upon service of notice, process, or rule upon the clerk of the circuit court shall specifically adjudicate that due diligence has been used and that the person thus served cannot be found and served within the Commonwealth ~~of Virginia~~, that the requirements of § ~~26-7.2~~ 64.2-1420 have been complied with, and that the fiduciary's final account does not "stand confirmed" as provided in § ~~26-33~~ 64.2-1212 or by order of court.

Drafting note: Technical changes.

§ ~~26-7.4~~ 64.2-1422. Environmental liability of fiduciaries.

A. As used in this section:

"Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health.

"Fiduciary" includes guardians, committees, conservators, trustees, executors, administrators and administrators with the will annexed, curators of decedent's wills, and attorneys-in-fact or agents acting for principals under written powers of attorney; ~~and the singular term includes~~ any combination of individuals, corporations, and other entities serving in those capacities.

"Individual capacity" means the nonfiduciary capacity of any individual, corporation, or other entity serving as a fiduciary.

~~"Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or human health.~~

B. As to any property held in trust or in an estate, a fiduciary shall not be considered in its individual capacity to be (i) the "owner" or "operator" of that property as defined under any applicable environmental law or (ii) a party otherwise liable under any environmental law unless the fiduciary's acts or omissions outside the scope of its fiduciary duties constitute conduct that independently would give rise to individual liability.

C. A fiduciary shall not be liable in its individual capacity to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's investigation or evaluation of potential contamination of property held in the trust or estate or the

fiduciary's compliance with any environmental law, specifically including any reporting or disclosure requirement under such law.

D. Neither a fiduciary's acceptance of property nor its failure to inspect property shall be deemed to create any implication as to whether or not there is or may be any liability under any environmental law with respect to such property.

E. Nothing in this section shall affect or modify any defense to individual liability under any environmental law available to any fiduciary under any other provision of state or federal law, including the common law.

Drafting note: Technical changes.

§ ~~26-58~~ 64.2-1423. Trustee ~~who is corporate~~ not disqualified due to status as stockholder ~~or~~ employee, ~~or counsel to~~ officer of corporate noteholder ~~not disqualified~~; sale of property by trustee not voidable.

A. The ~~mere~~ fact that a trustee in a deed of trust to secure a debt due to a corporation is a stockholder, member, employee, officer or director of, or counsel to, the corporation, does not disqualify ~~him~~ the trustee from exercising the powers conferred by the deed of trust ~~deed~~ nor does it render voidable a sale by ~~such~~ the trustee in the exercise of the powers conferred on him by the deed of trust ~~deed~~ so long as ~~he~~ the trustee did not participate in the corporation's decision as to the amount to be bid at the sale of the trust property. ~~Moreover~~

B. In addition to the provisions of subsection A, if the lender secured by the deed of trust bids the amount secured, including interest through the date of sale and costs of foreclosure, the trustee's participation in fixing the bid price by the ~~party secured~~ lender shall not be deemed improper and ~~such~~ the sale shall not be rendered voidable solely by reason of ~~his~~ the trustee's participation.

C. All sales made before July 1, 1990, by ~~such trustees~~ any trustee by virtue of ~~such deeds~~ a deed of trust, and ~~all deeds~~ any deed made by ~~such trustees~~ the trustee in pursuance of such sales, ~~shall be held, and the same~~ are hereby declared to be, valid and effective in all respects, if otherwise valid according to laws then in force, the same as if ~~such trustees~~ the trustee had not been ~~stockholders~~ a stockholder, ~~members~~ member, ~~employees~~ employee, ~~officers~~ officer or ~~directors~~ director of, or counsel to, the ~~corporations~~ corporation thereby secured.

Drafting note: Technical changes.

§ ~~26-46~~ 64.2-1424. Resignation by fiduciary of his trust.

~~Any~~ The circuit court in which or before the clerk of which a fiduciary qualified may allow any personal representative, guardian, conservator, or committee ~~may be allowed by the court in which or before the clerk of which he qualified~~ to resign his trust ~~after~~ conditioned upon his accounts as ~~such~~ the fiduciary ~~have been~~ being stated and settled in the mode prescribed by law; ~~but such~~. Such resignation shall not invalidate any act done or affect any liability incurred by him while holding such trust.

Drafting note: Clarifies that the fiduciary must settle his accounts before resigning since the resigning fiduciary's final account must include distribution of the assets to his successor. There are also technical changes.

§ ~~26-56~~ 64.2-1425. How securities transferred to successor.

When any securities for money loaned or invested shall be standing in the name of any fiduciary who ~~shall have~~ has died, resigned, or whose power ~~shall have~~ has been revoked, and ~~such the~~ fiduciary or his personal representative ~~shall has~~ not ~~have~~ transferred ~~such the~~ securities to his successor, the circuit court in which ~~such the~~ fiduciary ~~shall have~~ qualified, upon the petition of ~~such the~~ successor, or of any other interested person ~~interested~~, may direct ~~such that~~ the securities ~~to~~ be transferred to ~~such the~~ successor, ~~or~~ a receiver of ~~such the~~ court, or otherwise, and may direct that the dividends, interest, or proceeds of ~~such the~~ securities ~~to~~ be received or paid in such manner as ~~such the~~ court ~~shall think~~ deems proper.

Drafting note: Technical changes.

CHAPTER 5 Article 2.

NONRESIDENT TRUSTEES, ETC Nonresident Trustees.

§ ~~26-59~~ 64.2-1426. Nonresident fiduciaries.

A. A natural person, who is not a resident of ~~this the~~ Commonwealth, may be appointed or allowed to qualify or act as the personal representative, or trustee under a will, of any decedent, or appointed as the guardian of an infant's estate, or the guardian or conservator of the property of an incapacitated person under Chapter ~~10 20~~ (§ ~~37.2-1000~~ 64.2-2000 et seq.) or Chapter ~~10.1 21~~ (§ ~~37.2-1031~~ 64.2-2100 et seq.) ~~of Title 37.2.~~

Qualification of such person as a personal representative, or trustee under a will, of any decedent shall be subject to the provisions of Article 1 (§ ~~64.1-116~~ 64.2-500 et seq.) of Chapter ~~6~~ of Title 64.1 5.

At the time of qualification or appointment, each such ~~person~~ nonresident shall file with the clerk of the circuit court of the jurisdiction wherein ~~such the~~ qualification is had or appointment is made, his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, conservator, or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in ~~this the~~ Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of ~~this the~~ Commonwealth and at such address as ~~he the~~ nonresident may appoint in the written instrument. In the event of the death, removal, resignation, or absence from ~~this the~~ Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of ~~such the~~ circuit court. Notwithstanding §§ ~~37.2-1011~~ 64.2-505 and ~~64.1-121~~ 64.2-2011, where any nonresident qualifies, other than as a guardian of an incapacitated person, pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same

time or the court or clerk making the appointment waives surety under the provisions of § ~~26-4~~ 64.2-1411.

B. ~~No~~ A corporation shall not be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under Chapter ~~10-20~~ (§ 37.2-1000 64.2-2000 et seq.) or Chapter ~~10-1~~ 21 (§ 37.2-1031 64.2-2100 et seq.) ~~of Title 37.2~~, or as one of ~~such the~~ guardians or conservators, unless ~~such the~~ corporation is authorized to do business in ~~this the~~ the Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, 1962, nor to affect in any way the other provisions of this chapter or of § ~~64.1-130~~ 64.2-609. The provisions of this section shall not authorize or allow any appointment or ~~qualifications~~ qualification prohibited by § 6.2-803.

C. The fact that an individual nominated or appointed as the guardian of the person of an infant is not a resident of ~~this the~~ the Commonwealth shall not prevent the qualification of the individual to serve as the sole guardian of the person of the infant.

Drafting note: Technical changes.

§ ~~26-60~~ 64.2-1427. How property of nonresident infant, or incapacitated person, ~~or other person under physical or mental disability~~ transferred to foreign guardian, conservator, or committee.

When any nonresident infant or incapacitated person is entitled to property or money in ~~this the~~ the Commonwealth, ~~resides out of it~~, a petition to remove ~~such the~~ property or money to the domicile of ~~such the~~ infant or incapacitated person may be filed by his guardian, conservator, ~~or~~ committee, or other fiduciary lawfully appointed and qualified in the state or country of his residence, in the circuit court of the county or city in which the property or money, or some part thereof, is located. If entitlement to ~~such the~~ property or money was acquired other than by a will or was acquired by a will that restricts ~~such the~~ transfer out of the Commonwealth, the infant or incapacitated person, and the guardian of ~~such the~~ infant or the conservator or other fiduciary of such the incapacitated person appointed in ~~this the~~ the Commonwealth, if there is one, shall be made ~~parties a party~~ defendant to this petition. The court shall appoint a guardian ad litem for the ~~defendant, infant or incapacitated person~~ who, as well as the conservator or other fiduciary, if there is one, shall answer the petition on oath. Upon a hearing of the case on its merits, or upon the petition without hearing if entitlement to ~~such the~~ property or money was acquired by a will that does not restrict ~~such the~~ transfer out of the Commonwealth, the court may order the fiduciary to pay and deliver to ~~such the~~ foreign guardian, conservator, committee, or fiduciary, or his agent or attorney, all personal property and money in his ~~hands possession~~ possession belonging to the infant or incapacitated person, and authorize the foreign guardian, conservator, committee, or fiduciary to sue for, recover, and receive all money ~~or and~~ and personal property ~~which belongs to~~

~~the infant or incapacitated person~~, including the accruing rents of his real estate, that belongs to the infant or incapacitated person in ~~like the same~~ manner as if he were appointed a guardian, conservator, committee, or fiduciary of ~~such the~~ infant or incapacitated person in the Commonwealth, and to remove the ~~same money and personal property~~ to the state or country in which the foreign fiduciary was appointed and qualified.

Drafting note: Technical changes.

§ ~~26-61~~ 64.2-1428. Transfer of proceeds of sale of real estate of nonresident beneficiary to foreign ~~guardian, etc~~ fiduciary.

When the proceeds of sale of the real estate of an infant, incapacitated person, or cestui que trust, ~~under the laws now in force~~, are invested, or required to be invested under the direction of ~~a~~ the circuit court, and ~~such the~~ infant, incapacitated person, or cestui que trust ~~resides out of this does not reside in the~~ Commonwealth, on the petition of a guardian, committee, conservator, or trustee lawfully appointed or qualified in the state or country of ~~the~~ residence of ~~such the~~ infant, incapacitated person, or cestui que trust, the court under whose direction such proceeds are so invested, or required to be invested, may, with the consent of the persons residing in ~~this the~~ Commonwealth who would be the heirs of ~~such the~~ infant, incapacitated person, or cestui que trust, if he were dead, order such proceeds to be paid and delivered to ~~such the~~ foreign guardian, committee, conservator, or trustee, or his agent or attorney, and removed by him to the state or country in which he was appointed and qualified. ~~But the~~ The court may refuse to ~~grant permit the prayer of the petitioner whenever, in its judgment, payment and delivery if the court determines that~~ the removal of the trust subject will defeat or conflict with the provisions of the deed, will, or other instrument creating the trust.

Drafting note: Technical changes.

§ ~~26-62~~ 64.2-1429. Notice and bond required prior to ~~such~~ transfer.

No ~~such~~ order ~~as is mentioned in §§ 26-60 and 26-61~~ shall be made pursuant to §§ 64.2-1427 and 64.2-1428 until (i) notice of the ~~application petition~~ has been published once a week for four successive weeks in a newspaper published in the county or city in which the petition is filed, or if there is none ~~so published~~, then in a newspaper published in an adjoining county, ~~nor until (ii) it shall be is~~ shown by authentic documentary evidence that the foreign guardian, conservator, or committee has, in the state or country where he qualified, given bond with surety, sufficient to insure his accountability for the whole amount of the ~~ward's or incapacitated person's~~ estate in his ~~hands possession~~ or ~~which will probably that may~~ be received by him ~~as such guardian, conservator or committee, nor until, and (iii) the circuit court is satisfied determines~~ that the removal of such money or property from ~~this the~~ Commonwealth will not impair the rights or be prejudicial to the interests either of the ~~ward infant~~ or incapacitated person or of any other person.

Drafting note: Technical changes.

§ ~~26-63~~ 64.2-1430. When bond may be dispensed with.

In any case in which ~~it shall be made to appear to the satisfaction of~~ the circuit court finds that the laws of the foreign state or country; in which the infant or incapacitated person resides and the foreign guardian, conservator, or committee was appointed and qualified; do not provide for the giving of a bond by the guardian, conservator, or committee, the court, in its discretion, may permit the money and other estate of the infant or incapacitated person to be paid and delivered to such the foreign fiduciary although he has not given the bond required by § ~~26-62~~ 64.2-1429.

Drafting note: Technical changes.

~~§§ 26-64., 26-65.~~

Drafting note: Repealed by Acts 2005, c. 935, cl. 3.

§ ~~26-66~~ 64.2-1431. Sale of property and payment of proceeds to nonresident trustee.

If, in any proceeding under § ~~26-60~~ 64.2-1427 or in case of an interest in property acquired by a will that does not restrict the transfer of property out of ~~this~~ the Commonwealth upon petition under § ~~26-60~~ 64.2-1427, ~~it shall appear to~~ the circuit court ~~to be proper, it~~ may order the property, or any part of it, to be sold, and the proceeds to be paid to the foreign guardian, conservator ~~or,~~ committee, or nonresident trustee.

Drafting note: Technical changes.

§ ~~26-67~~ 64.2-1432. Discharge from liability of resident guardian, committee, conservator, or trustee, from liability.

When any guardian, committee, conservator, trustee, or other person in ~~this~~ the Commonwealth shall pay over, transfer, or deliver any estate in his ~~hands~~ possession or vested in him, under any order or decree made in pursuance of this chapter, he shall be discharged from all responsibility therefor.

Drafting note: Technical changes.