

CHAPTER ~~3~~ 18.

CUSTODY AND CARE OF WARD AND ESTATE.

§ ~~31-8~~ 64.2-1800. Custody, care, and education of ~~wards~~ ward; ward's estate.

Unless a guardian of the person of a minor is appointed by a parent, the circuit court, or the circuit court clerk, and except as otherwise provided in §§ 64.2-1700 and 64.2-1701, a guardian of a minor's estate who is appointed ~~as aforesaid, and gives bond when it is required,~~ pursuant to Chapter 17 (§ 64.2-1700 et seq.) shall have ~~the~~ custody of his ward, ~~except as otherwise provided in §§ 31-1 and 31-2~~. The guardian of a minor's estate shall have the possession, care, and management of the minor's estate, real and personal, and, after first taking into account the minor's other sources of income, support rights, and other reasonably available resources of which the guardian is aware, shall provide for the minor's health, education, maintenance, and support from the income of ~~such~~ the minor's estate and, if income is not sufficient, from the corpus ~~thereof~~ of the minor's estate.

Drafting note: Technical changes.

§ ~~31-8.1~~ 64.2-1801. Parental duty of support.

A. Notwithstanding the provisions of § ~~31-8~~ 64.2-1800, a guardian of a minor's estate shall not make any distribution of income or corpus of the minor's estate to or for the benefit of a ward who has a living parent, whether or not the guardian is such parent, except to the extent that the distribution is authorized by (i) the deed, will, or other instrument under which the estate is derived, or (ii) the circuit court, upon a finding that (a) the parent is unable to completely fulfill the parental duty of supporting the ~~child~~ minor, (b) the parent cannot for some reason be required to provide such support, or (c) a proposed distribution is beyond the scope of parental duty of support in the circumstances of a specific case. The existence of a parent-child relationship shall be determined in accordance with the provisions of § ~~64.1-5.1~~ 64.2-102. The circuit court's authorization may be contained in the order appointing the guardian or it may be obtained at any time prior to the ~~disbursement~~ distribution in question; however, in extenuating circumstances where the interests of equity so require, the court's authorization may be obtained after the ~~disbursement~~ distribution in question.

B. A guardian who desires to make any distribution specified in subsection A ~~when~~ neither (i) that is not authorized by an existing court order ~~nor (ii) the or a~~ deed, will, or other instrument under which the estate is derived ~~authorizes it~~, shall file a petition in the circuit court wherein his accounts may be settled, ~~naming~~. The petition shall name the ward as a defendant and ~~setting set~~ set forth the reasons why such distribution is appropriate. If the ward is 14 years of age or older, the guardian shall give notice of the petition to the ward at least five days before filing the petition. The court or clerk shall appoint an attorney-at-law as guardian ad litem to represent the ward. Proceedings on the petition shall ~~otherwise~~ conform ~~in all respects~~ to the procedures governing a civil action; and the evidence may be taken orally ~~and the petition may be filed in court upon five days' notice to the ward, unless it is shown that he is under the age of~~

14. No ~~attorneys'~~ attorney fees shall be taxed in the costs, ~~nor shall there be any and no~~ shall be required upon the petition. The court may fix reasonable ~~attorneys'~~ attorney fees for services in connection with the filing of the petition, and the court shall fix the guardian ad litem's fee. Such fees shall be paid out of the estate unless the court directs that they be paid personally by the ~~petitioner~~ guardian. The clerk shall receive a fee as provided in subdivision A 18 of § 17.1-275 for all services rendered thereon, to be paid by the guardian, out of the estate. Any notice required to be served under this section may be served by any person other than the guardian.

C. Notwithstanding ~~the preceding provisions of this~~ subsection B, if the court determines that an emergency exists, an order authorizing a distribution may be entered without the appointment of a guardian ad litem, ~~with provided that~~ the court ~~making makes~~ such further provisions in its order for the protection of the ward's estate as it may deem proper in each case.

Drafting note: Technical changes.

§ ~~31-8.2~~ 64.2-1802. ~~Same Parental duty of support~~; limited authority of commissioner of accounts.

A commissioner of accounts for the jurisdiction ~~wherein~~ where a guardian qualifies may authorize the same distributions under the same circumstances as the circuit court may authorize under subsection A of § 31-8.1-A 64.2-1801, except that (i) the total distributions authorized in any one year shall not exceed \$3,000 and (ii) the commissioner of accounts shall, in his report to the court on the guardian's next accounting, explain the necessity for the distributions so authorized. The provisions of subsection B of § 31-8.1-B 64.2-1801 shall not apply to proceedings under this section, but the commissioner shall give five days' written notice of the scheduled hearing date to any minor who is ~~fourteen~~ 14 years of age or older. The commissioner of accounts shall not charge a fee in excess of \$100 for such hearing.

Drafting note: Technical changes.

§ ~~31-9~~ 64.2-1803. Termination of guardianship.

Unless the guardian of a minor's estate dies, is removed, or resigns the guardianship, ~~he~~ the guardian shall continue in office until the minor attains the age of majority or, in the case of testamentary guardianship, until the termination of the period ~~limited therefor~~ set forth in the testator's will. At the expiration of the guardianship, ~~he~~ the guardian shall deliver and pay all the estate and money in his ~~hands~~ possession, or with which he is chargeable, to the person entitled to receive ~~the same~~ such estate and money.

Drafting note: Technical changes.

§§ ~~31-10. through 31-13.~~

Drafting note: Repealed by Acts 1999, c. 16.

§ ~~31-14~~ 64.2-1804. Powers of courts over guardians.

The circuit courts may hear and determine all matters between guardians and their wards, require settlements of guardianship accounts, remove any guardian for neglect or breach of trust,

and appoint another ~~in his stead~~ guardian for the ward, and make any order for the custody, health, maintenance, education, and support of ~~an infant~~ a ward and the management, disbursement, preservation, and investment of ~~his~~ the ward's estate.

Drafting note: Technical changes.

§ ~~31-14.1~~ 64.2-1805. Powers of guardian.

A. Whether appointed by a parent, the circuit court, or the circuit court clerk, a guardian of a minor's ward's estate shall have the ~~following powers and the~~ powers set forth in § ~~64.1-57~~ 64.2-105 as of the date the guardian acts ~~which, subject to the provisions of subsection B, may be exercised without any prior authorization.~~ A guardian of a ward's estate shall also have the following powers:

1. To ratify or reject a contract entered into by the ~~minor~~ ward;
2. To pay any sum distributable for the benefit of the ward by paying the sum directly to the ward, to the provider of goods and services that have been furnished to the ward, to any individual or facility that is responsible for or has assumed responsibility for care and custody of the ward, or to a ward's custodian under a Uniform Transfers ~~(or Gifts)~~ to Minors Act, Uniform Gifts to Minors Act, or comparable law of any applicable jurisdiction;
3. To maintain life, health, casualty, and liability insurance for the benefit of the ward;
4. To manage the estate following the termination of the guardianship until its delivery to the ward or successors in interest;
5. To execute and deliver all instruments, and to take all other actions that will serve ~~in~~ the best interests of the ward;
6. To initiate a proceeding to seek a divorce, or to make an augmented estate election under § ~~64.1-13~~ 64.2-302; and
7. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian deems advisable, including the power to borrow from the guardian, if the guardian is a bank, for any purpose; to mortgage or pledge such portion of the ward's personal estate, and real estate subject to subsection B, as may be required to secure such loan or loans; and, as maker or endorser, to renew existing loans.

B. ~~The~~ A guardian may exercise the powers set forth in subsection A without prior authorization, except that the court or the commissioner of accounts, if a guardian is appointed other than by the court, may impose requirements to be satisfied by the guardian prior to the conveyance of any interest in real estate, including ~~but not limited to~~ (i) increasing the amount of the guardian's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court or commissioner deems proper, and (iv) consulting ~~by the guardian~~ with the commissioner of accounts.

1. If the court or commissioner of accounts imposes any ~~such~~ requirements under this subsection, the guardian shall make a report of his compliance with each requirement, ~~to which shall~~ be filed with the commissioner of accounts. ~~Promptly following Upon~~ receipt of the

guardian's report, the commissioner of accounts shall file promptly a report with the court stating whether the requirements imposed have been met and whether the conveyance is otherwise consistent with the guardian's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ ~~26-33~~ 64.2-1212, ~~26-34~~ 64.2-1213 and ~~26-35~~ 64.2-1214.

2. If the commissioner of accounts does not impose any ~~such~~ requirements under this subsection, he shall, upon request of the guardian of the minor, issue a notarized statement providing that "The Commissioner of Accounts has declined to impose any requirements upon the power of (name of guardian), Guardian of (name of minor), to convey the following real estate of the minor: (property identification)." The conveyance shall not be closed until the guardian has furnished such a statement to the proposed grantee.

C. Any guardian may at any time irrevocably disclaim the right to exercise any of the powers conferred by this section by filing a ~~suitable~~ written disclaimer with the clerk of the circuit court wherein his accounts may be settled. Such disclaimer shall relate back to the time when the guardian assumed the guardianship and shall be binding upon any successor guardian.

Drafting note: Technical changes.

~~§§ 31-15. through 31-18.~~

Drafting note: Repealed by Acts 2011, c. 113.

~~§ 31-18.1 64.2-1806. Transition Powers of guardian; transition rule.~~

The provisions of ~~this act~~ Chapter 17 (§ 64.2-1700 et seq.) and this chapter are applicable to all guardianships, whenever created, except that a guardian who qualifies prior to July 1, 1999, shall have the power to make conveyances of his ward's estate only in accordance with the laws in effect on June 30, 1999. ~~The limitation of the preceding sentence shall not be applicable to a~~ unless the guardian in office on June 30, 1999, who requalifies after that date has requalified on or after July 1, 1999.

Drafting note: Technical changes.

~~§§ 31-19. through 31-25.~~

Drafting note: Repealed by Acts 1958, c. 557.

~~§§ 31-26. through 31-36.~~

Drafting note: Repealed by Acts 1988, c. 516.