

# Recommendations: Improving Virginia’s Adult Guardian and Conservator System

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## RECOMMENDATION 1

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem explain in their report their reasoning for i) a decision not to recommend counsel for an adult under consideration for guardianship and ii) a determination that an alternative arrangement to guardianship or conservatorship is not appropriate, including an existing arrangement such as a power of attorney. (Chapter 2)

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## RECOMMENDATION 2

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardian ad litem reports to the court include i) the size of the prospective guardian’s current guardianship caseload, ii) whether the prospective guardian employs representatives to manage day-to-day tasks of guardianship, (iii) the travel time between the prospective guardian’s residence or place of business and the expected residence of the adult under consideration for guardianship, iv) whether the prospective guardian works as a professional guardian on a full-time basis, and v) whether the guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaint. (Chapter 2)

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## RECOMMENDATION 3

The Department for Aging and Rehabilitative Services (DARS) should develop a process and an efficient mechanism for guardians ad litem to request and obtain information from DARS about whether a guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaints, including the circumstances of those complaints and how the complaints were resolved. (Chapter 2)

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## RECOMMENDATION 4

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem include in their reports an assessment of suitability and propriety of all individuals interested in serving as a guardian for the adult who is the subject of the petition. (Chapter 2)

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## RECOMMENDATION 5

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105 and § 13.1-501 of the Code of Virginia, to provide financial records of adults under consideration for guardianship when requested by a guardian ad litem. (Chapter 2)

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**RECOMMENDATION 6**

The Office of the Executive Secretary of the Supreme Court of Virginia should maintain, and update as needed, training for judges on adult guardian and conservator cases on its online learning center for judges. (Chapter 2)

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**RECOMMENDATION 7**

The Virginia Judicial Education Committee of the Judicial Conference of Virginia should periodically offer training for judges on adult guardian and conservator cases at future judicial conferences. (Chapter 2)

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**RECOMMENDATION 8**

The Virginia Benchbook Committee should, in consultation with Virginia's Working Interdisciplinary Network of Guardianship Stakeholders (WINGS), create additional reference materials for circuit court judges about adult guardian and conservator cases and work with the publisher to include these materials in the *Virginia Civil Benchbook for Judges and Lawyers*. (Chapter 2)

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**RECOMMENDATION 9**

The Virginia Judicial Council should amend the Standards to Govern the Appointment of Guardians Ad Litem for Incapacitated Persons to require that new guardians ad litem shadow experienced guardians ad litem on two cases that involve appointment of a guardian or conservator for an incapacitated adult, as defined in § 64.2-2000 in the Code of Virginia. (Chapter 2)

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**RECOMMENDATION 10**

The Office of the Executive Secretary of the Supreme Court of Virginia should identify one or more private legal organizations or higher education institutions that could develop and offer a continuing legal education course for guardians ad litem that focuses on litigation in contested guardianship cases and convey to them the existing need for such a course in Virginia. (Chapter 2)

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**RECOMMENDATION 11**

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should formally communicate to all circuit court judges the availability, accuracy, and timeliness of the list of qualified guardians ad litem maintained by OES. (Chapter 2)

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**RECOMMENDATION 12**

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should include each attorney's years of experience and areas of expertise as a guardian ad litem (GAL) on its published list of GALs. (Chapter 2)

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**RECOMMENDATION 13**

The General Assembly may wish to consider amending § 64.2-2004 of the Code of Virginia to require that a notice be provided by the petitioner to an adult being considered for guardianship and their family, which clearly states that anyone may file a petition or a motion to intervene to become a party to the case if they wish to propose a different individual to serve as guardian than the one stated in the petition. (Chapter 2)

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**RECOMMENDATION 14**

The General Assembly may wish to consider amending §64.2-2021 of the Code of Virginia to require circuit courts to hold a periodic review hearing for guardianship and conservatorship cases no later than one year after appointment of the guardian and at least once every three years thereafter, unless the court determines at the time of the initial guardian appointment order, or upon completion of a review hearing, that further review hearings are unnecessary or impracticable. (Chapter 3)

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**RECOMMENDATION 15**

The Department for Aging and Rehabilitative Services should require each public guardianship provider's visitation policy to require guardians to conduct at least one unannounced visit for each adult under guardianship each year. (Chapter 4)

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**RECOMMENDATION 16**

The Department for Aging and Rehabilitative Services should conduct an evaluation of the 1:20 ratio for public guardian providers to ensure that guardians can effectively carry out their work, and then every 10 years (or sooner if changes to state law or other circumstances indicate a reevaluation is needed), and adjust the ratio as warranted. (Chapter 4)

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**RECOMMENDATION 17**

The Department for Aging and Rehabilitative Services (DARS) should require the public guardianship provider organizations to report at least annually to DARS the details of each complaint the organizations have received against public guardians and how each complaint was resolved. (Chapter 4)

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**RECOMMENDATION 18**

The Department for Aging and Rehabilitative Services should develop and provide initial and ongoing training for private guardians, including training on the responsibilities and duties of guardians, how to complete annual guardianship reports, and how to involve adults in decisions made by guardians. (Chapter 4)

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### **RECOMMENDATION 19**

The General Assembly may wish to consider amending Title 64.2 of the Code of Virginia to require any individual who is named as a private guardian, and staff who perform duties on their behalf, to undergo guardianship training developed by the Department for Aging and Rehabilitative Services within four months of appointment and give local departments of social services responsibility for verifying compliance with the training requirement. (Chapter 4)

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### **RECOMMENDATION 20**

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require private guardians to visit each adult under guardianship in person at least once every three months and that during visits, guardians observe and assess (i) the safety and adequacy of the adult's living environment; (ii) the adult's overall condition and well-being, especially as compared to previous visits; (iii) whether and how the adult's physical and behavioral health-care needs are being met, including whether the adult has been hospitalized and why; (iv) progress made by the adult toward goals; (v) participation in social activities and educational or vocational programs, and (vi) contact and involvement with family and friends. (Chapter 4)

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### **RECOMMENDATION 21**

The General Assembly may wish to consider amending §64.2-2020 of the Code of Virginia to require that the annual guardianship report direct guardians to report, at a minimum, on the following items regarding adults under their guardianship: (i) names of medical and therapeutic providers and dates seen, and dates, location of, and reasons for any hospitalizations; (ii) any new or changed diagnoses; (iii) any change in the adult's physical and/or behavioral health, including whether and to what degree the adult's health is expected to improve; (iv) dates of the guardian's visits to the adult; (v) an assessment by the guardian, based on the most recent visits, of the adequacy of the adult's living arrangements and the adult's safety and well-being; (vi) the guardian's activities, if any, performed on behalf of the adult during the year to improve the adult's quality of life; (vii) a description of social activities, recreational or educational programs, or job training, if any, the adult participated in and the name and location of such programs or activities; (viii) progress made by the adult toward goals, if applicable; (ix) any Adult Protective Services report or investigation in which the adult was the alleged victim and whether there has been any other indication of exploitation, abuse, or neglect; (x) any visitation restrictions imposed by the guardian and the reasons for them; (xi) a self-assessment by the guardian of their ability to continue to carry out their duties; (xii) whether the guardian has taken guardianship training; and (xiii) any other information deemed necessary to report by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) or the Department for Aging and Rehabilitative Services to understand the condition, treatment, and well-being of adults under guardianship. This section of the Code should also be amended to make clear that OES may collect additional information in the annual guardianship report than that listed in Code without statutory amendment. (Chapter 4)

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### **RECOMMENDATION 22**

The Department for Aging and Rehabilitative Services, in coordination with the Virginia Department of Social Services, should develop and provide training to local department of social services staff on how to review annual guardianship reports and provide guidance to help staff identify concerns that should prompt a more in-depth review or investigation. (Chapter 4)

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### **RECOMMENDATION 23**

The Department for Aging and Rehabilitative Services, in consultation with the Virginia Department of Social Services and local departments of social services, should develop a proposal for conducting independent care visits for a subset of private guardianship cases on an ongoing basis. The proposal should describe criteria for determining which adults under guardianship should receive visits, who should conduct the visits, the purpose of the visits, what the visitor should monitor during the visit, when to request and review additional documents, and potential actions to take when problems are identified. The proposal should also include an estimate of one-time and ongoing total costs of independent care visits and be submitted to the House Appropriations Committee and Senate Finance and Appropriations Committee no later than December 31, 2022. (Chapter 4)

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### **RECOMMENDATION 24**

The General Assembly may wish to consider amending Title 51.1, Chapter 14, Article 6 of the Code of Virginia to grant new responsibilities to the Department for Aging and Rehabilitative Services to strengthen the accountability and quality of the private guardian system. These new responsibilities should include: providing information about Adult Protective Services complaints against prospective guardians to guardians ad litem as part of the guardianship court hearing process; providing and/or coordinating training to private guardians and local department of social services staff; facilitating additional monitoring of private guardians through independent care visits; improving guardianship data tracking and quality control; and creating and administering a private guardian complaint process. (Chapter 4)

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### **RECOMMENDATION 25**

The Department for Aging and Rehabilitative Services (DARS) should update its PeerPlace data system to ensure the agency can systematically identify and quantify cases where an adult under guardianship may be a victim of, or a guardian may be a perpetrator of, abuse, neglect, or exploitation. DARS should quantify and summarize the number and types of Adult Protective Services cases involving an adult under guardianship or a guardian of an incapacitated adult and report that information in its Annual Report on Adult Protective Services. (Chapter 5)

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#### **RECOMMENDATION 26**

The Department for Aging and Rehabilitative Services (DARS) should develop and administer a process for receiving complaints against private guardians and referring complainants to the appropriate court, state agency, or local agency. DARS should develop criteria for determining which state or local entities should receive a complaint, follow-up with respective entities as necessary to ensure complaints are being addressed, collect data about complaints, and use the data to analyze trends in complaints against guardians. (Chapter 5)

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#### **RECOMMENDATION 27**

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require guardians who restrict an individual from visiting or contacting an adult under their guardianship to provide the individual, on a form provided by the Office of the Executive Secretary, with written notification that clearly outlines (i) terms of the restriction, (ii) reasons for the restriction, and (iii) how the restricted individual can challenge the restriction through the circuit court that has jurisdiction over the case. (Chapter 5)

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#### **RECOMMENDATION 28**

The Office of the Executive Secretary of the Supreme Court should develop a form to be used by guardians for providing notice to individuals subject to a visitation or contact restriction and a form to be used by restricted individuals to petition the court if they wish to challenge the restriction. (Chapter 5)

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#### **RECOMMENDATION 29**

The General Assembly may wish to consider amending § 64.2-2019 to require guardians to provide a copy of any notification or court order pertaining to a visitation restriction to the local department of social services that oversees the case. (Chapter 5)

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#### **RECOMMENDATION 30**

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to permit guardians to restrict contact with the adults they serve only in cases where such a restriction is necessary to prevent physical, emotional, or mental harm or protect their finances. (Chapter 5)

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#### **RECOMMENDATION 31**

The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require the guardian to notify designated contacts, as specified by the court, of certain changes in the condition or circumstances of an adult under guardianship, including a change to the adult's primary residence, a temporary change in living location, admission to a hospital or hospice care, and death, as well as provide them with a copy of the annual guardianship report each year at the time it is submitted to the local department of social services. (Chapter 5)

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### **RECOMMENDATION 32**

The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to (i) define self-dealing, at a minimum, to include using the estate of an adult under guardianship or conservatorship to complete a sale or transaction with the guardian or conservator, their spouse, agent, attorney, or business with which they have a financial interest; (ii) prohibit self-dealing by a guardian or conservator unless court approval is first obtained or the sale or transaction was entered into before the guardian or conservator was appointed; and (iii) make voidable by the court any sale or transaction that constitutes self-dealing. (Chapter 5)

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### **RECOMMENDATION 33**

The General Assembly may wish to consider amending § 63.2-1605 of the Code of Virginia to require financial institutions, financial services providers, and banks, as defined in § 6.2-100, § 8.4-105, and § 13.1-501 of the Code of Virginia, to provide financial records of alleged victims of financial exploitations to Adult Protective Services (APS) as part of APS investigations. (Chapter 5)

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### **RECOMMENDATION 34**

The General Assembly may wish to consider including additional funding in the Appropriation Act to pay for 700 new slots in the public guardianship program, which would allow the Department for Aging and Rehabilitative Services to eliminate the current waitlist. (Chapter 6)

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### **RECOMMENDATION 35**

The General Assembly may wish to consider including one-time funding in the Appropriation Act for the Department for Aging and Rehabilitative Services (DARS) to hire a third party to study the need for expanding the capacity of the state's public guardianship program in total and by region; to assess the actual cost of providing expanded public guardianship services (personnel, overhead, etc.); and to assess the additional cost of providing equal funding to all provider organizations for the same types of public guardianship slots. DARS should submit the findings to the chairs of the House Appropriations and Senate Finance and Appropriations committees by October 1, 2023. (Chapter 6)

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### **RECOMMENDATION 36**

The Department for Aging and Rehabilitative Services (DARS) should issue a request for information for public guardianship services as soon as practicable to assess the availability of organizations to serve as public guardianship providers. DARS should include the results of the request in the report to the chairs of the House Appropriations and Senate Finance and Appropriations committees. (Chapter 6)

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**RECOMMENDATION 37**

The Office of the Executive Secretary of the Supreme Court of Virginia should coordinate with the Conference of Commissioners of Accounts and the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia to develop online training for conservators or contract with a third party to develop training. Training should include the responsibilities and duties of conservators, how to complete inventories and annual accounting reports, and more advanced financial management training on issues such as benefits and managing investments. (Chapter 7)

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**RECOMMENDATION 38**

The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require conservators to complete state-provided training within four months of their court appointment, and consider amending Title 64.2, Chapter 12 of the Code of Virginia, to assign commissioners of accounts responsibility for verifying compliance with training requirements for conservators under their supervision. (Chapter 7)

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**RECOMMENDATION 39**

The General Assembly may wish to consider amending Title 64.2, Chapter 12 of the Code of Virginia to require conservators to (i) notify family members and other interested parties, who are specified in the initial petition for conservatorship, that an initial inventory of assets will be submitted, and (ii) provide copies of the initial inventory to notified parties, if requested, and inform these parties that they may raise any concerns about the accuracy and completeness of the inventory with the commissioner of accounts overseeing the conservator. (Chapter 7)

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**RECOMMENDATION 40**

The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require guardians ad litem to include in their report to the court all assets and income of adults under consideration for guardianship that they identify when determining the amount of surety on a conservator's bond. (Chapter 7)

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**RECOMMENDATION 41**

The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to require the court order appointing a conservator to include a list of the financial resources of the adult being placed under conservatorship to the extent known as identified in the petition for conservatorship and the guardian ad litem report. (Chapter 7)

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**RECOMMENDATION 42**

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) should collaborate with the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia and the Conference of Commissioners of Accounts to contract with a third party to review a subset of conservator annual accounting reports. The review should, at minimum, assess the timeliness of submission and review of the reports, confirm that information provided by conservators is accurate and complete, assess the accuracy and thoroughness of the review performed by commissioners of accounts, and evaluate how commissioners are reviewing conservator compensation. OES should be directed to report the findings of the review to the Conference of Commissioners of Accounts and the chief circuit court judge and commissioner of accounts in each locality included in the review, and to use the findings to inform the development and/or refinement of guidance for commissioners of accounts and new conservator training. (Chapter 7)

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