

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 550  
HOUSE BILL 954

AN ACT TO REWRITE THE LAWS RELATING TO INCOMPETENCE AND  
GUARDIANSHIP.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter 35A to read as follows:

"Chapter 35A.

"Incompetency and Guardianship.

"SUBCHAPTER I. PROCEEDINGS TO DETERMINE INCOMPETENCE.

"Article 1.

"Determination of Incompetence.

"§ 35A-1101. **Definitions.**—When used in this Subchapter:

- (1) 'Autism' means a physical disorder of the brain which causes disturbances in the developmental rate of physical, social, and language skills; abnormal responses to sensations; absence of or delay in speech or language; or abnormal ways of relating to people, objects, and events. Autism occurs sometimes by itself and sometimes in conjunction with other brain-functioning disorders.
- (2) 'Cerebral palsy' means a muscle dysfunction, characterized by impairment of movement, often combined with speech impairment, and caused by abnormality of or damage to the brain.
- (3) 'Clerk' means the clerk of superior court.
- (4) 'Designated agency' means the State or local human resources agency designated by the clerk in his order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional, or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (5) 'Epilepsy' means a group of neurological conditions characterized by abnormal electrical-chemical discharge in the brain. This discharge is manifested in various forms of physical activity called seizures, which range from momentary lapses of consciousness to convulsive movements.
- (6) 'Guardian **ad litem**' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.

- (7) 'Incompetent adult' means an adult or emancipated minor who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.
- (8) 'Incompetent child' means a minor who is at least 17 1/2 years of age and who, other than by reason of his minority, lacks sufficient capacity to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.
- (9) 'Indigent' means that a person is unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.
- (10) 'Inebriety' means the condition of any person who habitually, whether continuously or periodically, indulges in the use of alcoholic beverages, narcotics, or drugs to such an extent as to stupefy his mind and render him incompetent to transact ordinary business with safety to his estate; or who renders himself, by reason of the use of alcoholic beverages, narcotics, or drugs, dangerous to person or property; or who, by the frequent use of alcoholic beverages, narcotics, or drugs, renders himself cruel and intolerable to his family, or fails from such cause to provide his family with reasonable necessities of life.
- (11) 'Interim guardian' means a guardian of the person, appointed prior to adjudication of incompetence and for a temporary period, for a respondent who requires immediate intervention to address conditions that constitute imminent or foreseeable danger to his physical well-being.
- (12) 'Mental illness' means an illness that so lessens the capacity of the person to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. The term 'mental illness' encompasses 'mental disease', 'mental disorder', 'lunacy', 'unsoundness of mind', and 'insanity'.
- (13) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (14) 'Multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is

current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.

- (15) 'Respondent' means a person who is alleged to be incompetent in a proceeding under this Subchapter.
- (16) 'Treatment facility' has the same meaning as 'facility' in G.S. 122C-3(14), and includes group homes, halfway houses, and other community-based residential facilities.
- (17) 'Ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction.

**"§ 35A-1102. Scope of law; exclusive procedure.**—This Article establishes the exclusive procedure for adjudicating a person to be an incompetent adult or an incompetent child.

**"§ 35A-1103. Jurisdiction; venue.**—(a) The clerk in each county shall have original jurisdiction over proceedings under this Subchapter.

(b) Venue for proceedings under this Subchapter shall be in the county in which the respondent resides or is domiciled or is an inpatient in a treatment facility. If the county of residence or domicile cannot be determined, venue shall be in the county where the respondent is present.

(c) If proceedings involving the same respondent are brought under this Subchapter in more than one county in which venue is proper, venue shall be in the county in which proceedings were commenced first.

(d) If the clerk in the county in which a proceeding under this Subchapter is brought has an interest, direct or indirect, in the proceeding, jurisdiction with respect thereto shall be vested in any superior court judge residing or presiding in the district, and the jurisdiction of the superior court judge shall extend to all things which the clerk might have done.

**"§ 35A-1104. Change of venue.**—The clerk, on motion of a party or the clerk's own motion, may order a change of venue upon finding that no hardship or prejudice to the respondent will result from a change of venue.

**"§ 35A-1105. Petition before clerk.**—A verified petition for the adjudication of incompetence may be filed with the clerk by any person, including any State or local human resources agency through its authorized representative.

**"§ 35A-1106. Contents of petition.**—The petition shall set forth, to the extent known:

- (1) The name, age, address, and county of residence of the respondent;
- (2) The name, address, and county of residence of the petitioner, and his interest in the proceeding;
- (3) A general statement of the respondent's assets and liabilities with an estimate of the value of any property, including any compensation, insurance, pension, or allowance to which he is entitled;

- (4) A statement of the facts tending to show that the respondent is incompetent and the reason or reasons why the adjudication of incompetence is sought;
- (5) The name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;
- (6) Facts regarding the adjudication of respondent's incompetence by a court of another state, if an adjudication is sought on that basis pursuant to G.S. 35A-1113(1).

**"§ 35A-1107. Right to counsel or guardian ad litem.**—The respondent is entitled to be represented by counsel of his own choice or by court-appointed guardian ad litem. Upon filing of the petition, the clerk shall appoint as guardian ad litem an attorney who shall represent the respondent unless the respondent retains his own counsel, in which event the clerk may discharge the guardian ad litem.

**"§ 35A-1108. Issuance of notice.**—(a) Within five days after filing of the petition, the clerk shall issue a written notice of the date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor more than 30 days after service of the notice and petition on the respondent, unless the clerk extends the time for good cause or for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111.

(b) If a multidisciplinary evaluation is ordered after a notice of hearing has been issued, the clerk may extend the time for hearing and issue a notice to the parties that the hearing has been continued, the reason therefor, and the date, time, and place of the new hearing, which shall not be less than 10 days nor more than 30 days after service of such notice on the respondent.

(c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5, Rules of Civil Procedure, unless the clerk orders otherwise.

**"§ 35A-1109. Service of notice and petition.**—Copies of the petition and initial notice of hearing shall be personally served on the respondent. Respondent's counsel or guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and petition shall do so without demanding his fees in advance. The petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class mail, copies of the notice and petition to the respondent's next of kin alleged in the petition and any other persons the clerk may designate. Proof of such mailing shall be by affidavit filed with the clerk. The clerk shall mail, by first-class mail, copies of subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk deems appropriate.

**"§ 35A-1110. Right to jury.**—The respondent has a right, upon request by him, his counsel, or his guardian ad litem, to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. The jury shall be composed of 12 persons chosen from the county's jury list in accordance with the provisions of Chapter 9 of the General Statutes.

**"§ 35A-1111. Multidisciplinary evaluation.**—(a) To assist in determining the nature and extent of a respondent's disability, or to assist in developing an appropriate

guardianship plan and program, the clerk, on his own motion or the motion of any party, may order that a multidisciplinary evaluation of the respondent be performed. A request for a multidisciplinary evaluation shall be made in writing and filed with the clerk within 10 days after service of the petition on the respondent.

(b) If a multidisciplinary evaluation is ordered, the clerk shall name a designated agency and order it to prepare, cause to be prepared, or assemble a current multidisciplinary evaluation of the respondent. The agency shall file the evaluation with the clerk not later than 30 days after the agency receives the clerk's order. The multidisciplinary evaluation shall be filed in the proceeding for adjudication of incompetence, in the proceeding for appointment of a guardian under Subchapter II of this Chapter, or both. Unless otherwise ordered by the clerk, the agency shall send copies of the evaluation to the petitioner and the counsel or guardian **ad litem** for the respondent not later than 30 days after the agency receives the clerk's order. The evaluation shall be kept under such conditions as directed by the clerk and its contents revealed only as directed by the clerk. The evaluation shall not be a public record and shall not be released except by order of the clerk.

(c) If a multidisciplinary evaluation does not contain medical, psychological, or social work evaluations ordered by the clerk, the designated agency nevertheless shall file the evaluation with the clerk and send copies as required by subsection (b). In a transmittal letter, the agency shall explain why the evaluation does not contain such medical, psychological, or social work evaluations.

(d) The clerk may order that the respondent attend a multidisciplinary evaluation for the purpose of being evaluated.

(e) The multidisciplinary evaluation may be considered at the hearing for adjudication of incompetence, the hearing for appointment of a guardian under Subchapter II of this Chapter, or both.

**"§ 35A-1112. Hearing on petition; adjudication order.**—(a) The hearing on the petition shall be at the date, time, and place set forth in the final notice of hearing and shall be open to the public unless the respondent or his counsel or guardian ad litem requests otherwise, in which event the clerk shall exclude all persons other than those directly involved in or testifying at the hearing.

(b) The petitioner and the respondent are entitled to present testimony and documentary evidence, to subpoena witnesses and the production of documents, and to examine and cross-examine witnesses.

(c) The clerk shall dismiss the proceeding if the finder of fact, whether the clerk or a jury, does not find the respondent to be incompetent.

(d) If the finder of fact, whether the clerk or the jury, finds by clear, cogent, and convincing evidence that the respondent is incompetent, the clerk shall enter an order adjudicating the respondent incompetent. The clerk may include in the order findings on the nature and extent of the ward's incompetence.

(e) Following an adjudication of incompetence, the clerk shall either appoint a guardian pursuant to Subchapter II of this Chapter or, for good cause shown, transfer the proceeding for the appointment of a guardian to any county identified in G.S. 35A-1103. The transferring clerk shall enter a written order authorizing the transfer. The

clerk in the transferring county shall transfer all original papers and documents, including the multidisciplinary evaluation, if any, to the transferee county and close his file with a copy of the adjudication order and transfer order.

(f) If the adjudication occurs in any county other than the county of the respondent's residence, a certified copy of the adjudication order shall be sent to the clerk in the county of the ward's legal residence, to be filed and indexed as in a special proceeding of that county.

(g) Except as provided in G.S. 35A-1114(f), a proceeding filed under this Article may be voluntarily dismissed as provided in G.S. 1A-1, Rule 41, Rules of Civil Procedure.

**"§ 35A-1113. Hearing when incompetence determined in another state.**—When the petition alleges that the respondent is incompetent on the basis of an adjudication that occurred in another state, the clerk in his discretion may:

- (1) adjudicate incompetence on the basis of the prior adjudication, if the clerk first finds by clear, cogent, and convincing evidence that:
  - a. the respondent is represented by an attorney or guardian **ad litem**; and
  - b. a certified copy of an order adjudicating the respondent incompetent has been filed in the proceeding; and
  - c. the prior adjudication was made by a court of competent jurisdiction on grounds comparable to a ground for adjudication of incompetence under this Article; and
  - d. the respondent, subsequent to the adjudication of incompetence in another state, assumed residence in North Carolina and needs a guardian in this State; or
- (2) decline to adjudicate incompetence on the basis of the other state's adjudication, and proceed with an adjudicatory hearing as in any other case pursuant to this Article.

**"§ 35A-1114. Appointment of interim guardian.**—(a) At the time of or subsequent to the filing of a petition under this Article, the petitioner may also file a verified motion with the clerk seeking the appointment of an interim guardian.

(b) The motion shall set forth facts tending to show that:

- (1) there is reasonable cause to believe that the respondent is incompetent, and
- (2) the respondent is in a condition that constitutes or reasonably appears to constitute an imminent danger to his physical well-being and that requires immediate intervention, and
- (3) the respondent needs an interim guardian to be appointed immediately to intervene on his behalf prior to the adjudication hearing.

(c) Upon filing of the motion for appointment of an interim guardian, the clerk shall immediately set a date, time, and place for a hearing on the motion. The motion and a notice setting the date, time, and place for the hearing shall be served promptly on the respondent and on his counsel or guardian **ad litem**. The hearing shall be held as

soon as possible but no later than 15 days after the motion has been served on the respondent.

(d) If at the hearing the clerk finds that there is reasonable cause to believe that the respondent is incompetent, that the respondent is in a condition that constitutes or reasonably appears to constitute an imminent danger to his physical well-being, and that there is immediate need for a guardian to provide consent or take other steps to protect the respondent, the clerk shall immediately enter an order appointing an interim guardian.

(e) The clerk's order appointing an interim guardian shall include specific findings of fact to support the clerk's conclusions, and shall set forth the interim guardian's powers and duties. Such powers and duties shall extend only so far and so long as necessary to meet the respondent's condition, but shall in no event continue for more than 45 days or until a general guardian or guardian of the person is appointed, whichever occurs first; provided, the clerk may for good cause shown extend the period of interim guardianship for an additional 45 days. The interim guardian shall be a guardian of the person and not of the estate of the ward. The interim guardian shall not be required to post a bond.

(f) When a motion for appointment of an interim guardian has been made, the petitioner may voluntarily dismiss the petition for adjudication of incompetence only prior to the hearing on the motion for appointment of an interim guardian.

**"§ 35A-1115. Appeal from clerk's order.**—Appeal from an order adjudicating incompetence shall be to the superior court for hearing de novo and thence to the Court of Appeals. An appeal does not stay the appointment of a guardian unless so ordered by the superior court or the Court of Appeals. The Court of Appeals may request the Attorney General to represent the petitioner on any appeal by the respondent to the Appellate Division of the General Court of Justice, but the Department of Justice shall not be required to pay any of the costs of the appeal.

**"§ 35A-1116. Costs and fees.**—(a) Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs may be taxed against either party in the discretion of the court unless:

- (1) the clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner, or
- (2) the respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner as provided above or otherwise paid as provided in subsection (b) or (c).

(b) The cost of a multidisciplinary evaluation ordered pursuant to G.S. 35A-1111 shall be assessed as follows:

- (1) if the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;
- (2) if the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Human Resources;

- (3) if the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Human Resources, in the discretion of the court.

(c) Witness fees and the fees of court-appointed counsel or guardian **ad litem** shall be paid by:

- (1) the respondent, if the respondent is adjudicated incompetent and is not indigent;
- (2) the petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;
- (3) the Administrative Office of the Courts in all other cases.

"Article 2.

"Appointment of Guardian.

"§ 35A-1120. **Appointment of guardian.**—If the respondent is adjudicated incompetent, a guardian or guardians shall be appointed in the manner provided for in Subchapter II of this Chapter.

"Article 3.

"Restoration to Competency.

"§ 35A-1130. **Proceedings before clerk.**—(a) The guardian, ward, or any other interested person may petition for restoration of the ward to competency by filing a motion in the cause of the incompetency proceeding with the clerk who is exercising jurisdiction therein. The motion shall be verified and shall set forth facts tending to show that the ward is competent.

(b) Upon receipt of the motion, the clerk shall set a date, time, and place for a hearing, which shall be not less than 10 days or more than 30 days from service of the motion and notice of hearing on the ward and the guardian, or on the one of them who is not the petitioner, unless the clerk for good cause directs otherwise. The petitioner shall cause notice and a copy of the motion to be served on the guardian and ward (but not on one who is the petitioner) and any other parties to the incompetency proceeding. Service shall be in accordance with provisions of G.S 1A-1, Rule 4, Rules of Civil Procedure.

(c) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian **ad litem**, and the clerk shall appoint a guardian **ad litem** if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian **ad litem** to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. Provided, if there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes.

(d) If the clerk or jury finds by a preponderance of the evidence that the ward is competent, the clerk shall enter an order adjudicating that the ward is restored to competency. Upon such adjudication, the ward is authorized to manage his affairs,



make contracts, control and sell his property, both real and personal, and exercise all rights as if he had never been adjudicated incompetent.

(e) The filing and approval of final accounts from the guardian and the discharge of the guardian shall be as provided in Subchapter II of this Chapter.

(f) If the clerk or jury fails to find that the ward should be restored to competency, the clerk shall enter an order denying the petition. The ward may appeal from the clerk's order to the superior court for trial **de novo**.

## "SUBCHAPTER II. GUARDIAN AND WARD.

### "Article 4.

#### "Purpose and Scope; Jurisdiction; Venue.

"§ 35A-1201. **Purpose.**—(a) The General Assembly of North Carolina recognizes that:

- (1) Some minors and incompetent persons, regardless of where they are living, require the assistance of a guardian in order to help them exercise their rights, including the management of their property and personal affairs.
  - (2) Incompetent persons who are not able to act effectively on their own behalf have a right to a qualified, responsible guardian.
  - (3) The essential purpose of guardianship for an incompetent person is to replace the individual's authority to make decisions with the authority of a guardian when the individual does not have adequate capacity to make such decisions.
  - (4) Limiting the rights of an incompetent person by appointing a guardian for him should not be undertaken unless it is clear that a guardian will give the individual a fuller capacity for exercising his rights.
  - (5) Guardianship should seek to preserve for the incompetent person the opportunity to exercise those rights that are within his comprehension and judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not incompetent. To the maximum extent of his capabilities, an incompetent person should be permitted to participate as fully as possible in all decisions that will affect him.
  - (6) Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults to handle property or benefits to which they are entitled. Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.
- (b) The purposes of this Subchapter are:
- (1) to establish standards and procedures for the appointment of guardians of the person, guardians of the estate, and general guardians for incompetent persons and for minors who need guardians;
  - (2) to specify the powers and duties of such guardians;
  - (3) to provide for the protection of the person and conservation of the estate of the ward through periodic accountings and reports; and

- (4) to provide for the termination of guardianships.

**"§ 35A-1202. Definitions.**—When used in this Subchapter, unless a contrary intent is indicated or the context requires otherwise:

- (1) The term 'accounting' refers to the financial or status reports filed with the clerk, designated agency, respondent, or other person or party with whom such reports are required to be filed.
- (2) The term 'clerk' means the clerk of superior court.
- (3) The term 'designated agency' means the State or local human resources agency designated by the clerk in his order to prepare, cause to be prepared, or assemble a multidisciplinary evaluation and to perform other functions as the clerk may order. A designated agency includes, without limitation, State, local, regional or area mental health, mental retardation, vocational rehabilitation, public health, social service, and developmental disabilities agencies, and diagnostic evaluation centers.
- (4) The term 'disinterested public agent' means:
  - a. the director or assistant directors of a local human resources agency, or
  - b. an adult officer, agent, or employee of a State human resources agency.

The fact that a disinterested public agent is employed by a State or local human resources agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.

- (5) The term 'estate' means any interest in real property, choses in action, intangible personal property, and tangible personal property, and includes any interest in joint accounts or jointly held property.
- (6) The term 'financial report' means the report filed by the guardian concerning all financial transactions, including receipts and expenditures of the ward's money, sale of the ward's property, or other transactions involving the ward's property.
- (7) The term 'general guardian' means a guardian of both the estate and the person.
- (8) The term 'guardian ad litem' means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure.
- (9) The term 'guardian of the estate' means a guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.
- (10) The term 'guardian of the person' means a guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward.
- (11) The term 'incompetent person' means a person who has been adjudicated to be an 'incompetent adult' or 'incompetent child' as defined in G.S. 35A-1101(7) or (8).
- (12) The term 'minor' means a person who is under the age of 18, is not married, and has not been legally emancipated.

- (13) The term 'multidisciplinary evaluation' means an evaluation that contains current medical, psychological, and social work evaluations as directed by the clerk and that may contain current evaluations by professionals in other disciplines, including without limitation education, vocational rehabilitation, occupational therapy, vocational therapy, psychiatry, speech-and-hearing, and communications disorders. The evaluation is current if made not more than one year from the date on which it is presented to or considered by the court. The evaluation shall set forth the nature and extent of the disability and recommend a guardianship plan and program.
- (14) The term 'status report' means the report required by G.S. 35A-1242 to be filed by the general guardian or guardian of the person. A status report shall include a report of a recent medical and dental examination of the ward by one or more physicians or dentists, a report on the guardian's performance of his duties as set forth in this Chapter and in the clerk's order appointing the guardian, and a report on the ward's condition, needs, and development. The clerk may direct that the report contain other or different information. The report may also contain, without limitation, reports of mental health or mental retardation professionals, psychologists, social workers, persons **in loco parentis**, a member of a multidisciplinary evaluation team, a designated agency, a disinterested public agent or agency, a guardian **ad litem**, a guardian of the estate, an interim guardian, a successor guardian, an officer, official, employee or agent of the Department of Human Resources, or any other interested persons including, if applicable to the ward's situation, group home parents or supervisors, employers, members of the staff of a treatment facility, or foster parents.
- (15) The term 'ward' means a person who has been adjudicated incompetent or an adult or minor for whom a guardian has been appointed by a court of competent jurisdiction.

**"§ 35A-1203. Jurisdiction; authority of clerk.**—(a) Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the person, guardians of the estate, or general guardians for incompetent persons and of related proceedings brought or filed under this Subchapter. Clerks of superior court in their respective counties have original jurisdiction for the appointment of guardians of the estate for minors, for the appointment of guardians of the person or general guardians for minors who have no natural guardian, and of related proceedings brought or filed under this Subchapter.

(b) The clerk shall retain jurisdiction following appointment of a guardian in order to assure compliance with the clerk's orders and those of the superior court. The clerk shall have authority to remove a guardian for cause and shall appoint a successor guardian, following the criteria set forth in G.S. 35A-1213 or G.S. 35A-1224, after removal, death, or resignation of a guardian.

(c) The clerk shall have authority to determine disputes between guardians and to adjust the amount of the guardian's bond.

(d) Any party or any other interested person may petition the clerk to exercise the authority conferred on the clerk by this section.

(e) Where a guardian or trustee has been appointed for a ward under Chapter 33 or Chapter 35 of the General Statutes, the clerk, upon his own motion or the motion of that guardian or trustee or any other interested person, may designate that guardian or trustee or appoint another qualified person as guardian of the person, guardian of the estate, or general guardian of the ward under this Chapter; provided, the authority of a guardian or trustee properly appointed under Chapter 33 or Chapter 35 of the General Statutes to continue serving in that capacity is not dependent on such motion and designation.

**"§ 35A-1204. Venue.**—(a) Venue for the appointment of a guardian for an incompetent person is in the county in which the person was adjudicated to be incompetent unless the clerk in that county has transferred the matter to a different county, in which case venue is in the county to which the matter has been transferred.

(b) Venue for the appointment of a guardian for a minor is in the county in which the minor resides or is domiciled.

(c) Venue for the appointment of an ancillary guardian for a nonresident of the State of North Carolina who is a minor or who has been adjudicated incompetent in another state, and who has a guardian of the estate or general guardian in the state of his residence, is in any county in which is located real estate in which the nonresident ward has an ownership or other interest, or if the nonresident ward has no such interest in real estate, any county in which the nonresident owns or has an interest in personal property.

**"§ 35A-1205. Transfer to different county.**—At any time before or after appointing a guardian for a minor or incompetent person the clerk may, on a motion filed in the cause or on the court's own motion, for good cause order that the matter be transferred to a different county. The transferring clerk shall enter a written order directing the transfer under such conditions as the clerk specifies. The clerk in the transferring county shall transfer all original papers, documents, and orders from the guardianship and the incompetency proceeding, if any, to the clerk of the transferee county, along with the order directing the transfer. The clerk in the transferee county shall docket and file the papers in the estates division as a basis for jurisdiction in all subsequent proceedings. The clerk in the transferring county shall close his file with a copy of the transfer order and any order adjudicating incompetence or appointing a guardian.

**"§ 35A-1206. Letters of appointment.**—Whenever a guardian has been duly appointed and qualified under this Subchapter, the clerk shall issue to the guardian letters of appointment signed by the clerk and sealed with the clerk's seal of office. In all cases, the clerk shall specify in the order and letters of appointment whether the guardian is a guardian of the estate, a guardian of the person, or a general guardian.

**"§ 35A-1207. Motions in the cause.**—(a) Any interested person may file a motion in the cause with the clerk in the county where a guardianship is docketed to request modification of the order appointing a guardian or guardians or consideration of any matter pertaining to the guardianship.

(b) The clerk shall treat all such requests, however labeled, as motions in the cause.

(c) A movant under this section shall obtain from the clerk a time, date, and place for a hearing on the motion, and shall serve the motion and notice of hearing on all other parties and such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil Procedure, unless the clerk orders otherwise.

(d) If the clerk finds reasonable cause to believe that an emergency exists that threatens the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate, the clerk may enter an appropriate **ex parte** order to address the emergency pending disposition of the matter at the hearing.

"Article 5.

"Appointment of Guardian for Incompetent Person.

"§ 35A-1210. **Application before clerk.**—Any individual, corporation, or disinterested public agent may file an application for the appointment of a guardian for an incompetent person by filing the same with the clerk. The application may be joined with or filed subsequent to a petition for the adjudication of incompetence under Subchapter I of this Chapter. The application shall set forth, to the extent known and to the extent such information is not already a matter of record in the case:

- (1) The name, age, address, and county of residence of the ward or respondent;
- (2) The name, address, and county of residence of the applicant, his relationship if any to the respondent or ward, and his interest in the proceeding;
- (3) The name, address, and county of residence of the respondent's next of kin and other persons known to have an interest in the proceeding;
- (4) A general statement of the ward's or respondent's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled; and
- (5) Whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian, and whom the applicant recommends or seeks to have appointed as such guardian or guardians.

"§ 35A-1211. **Service of application, motions, and notices.**—(a) Application for appointment of a guardian and related motions and notices shall be served on the parties and on such other persons as the clerk shall direct.

(b) When the application for appointment of a guardian is joined with a petition for adjudication of incompetence, the application shall be served with and in the same manner as the petition for adjudication of incompetence. In all other cases, the applicant shall serve the application as provided by G.S. 1A-1, Rule 4 of the Rules of Civil Procedure unless the clerk directs otherwise. The sheriff shall make such service without demanding his fees in advance.

"§ 35A-1212. **Hearing before clerk on appointment of guardian.**—(a) The clerk shall make such inquiry and receive such evidence as the clerk deems necessary to determine:

- (1) the nature and extent of the needed guardianship;

- (2) the assets, liabilities, and needs of the ward; and
- (3) who, in the clerk's discretion, can most suitably serve as the guardian or guardians.

(b) If a current multidisciplinary evaluation is not available and the clerk determines that one is necessary, the clerk, on his own motion or the motion of any party, may order that such an evaluation be performed pursuant to G.S. 35A-1111. The provisions of that section shall apply to such an order for a multidisciplinary evaluation following an adjudication of incompetence.

(c) The clerk may require a report prepared by a designated agency to evaluate the suitability of a prospective guardian, to include a recommendation as to an appropriate party or parties to serve as guardian, or both, based on the nature and extent of the needed guardianship and the ward's assets, liabilities, and needs.

(d) If a designated agency has not been named pursuant to G.S. 35A-1111, the clerk may, at any time he finds that the best interest of the ward would be served thereby, name a designated agency.

**"§ 35A-1213. Qualifications of guardians.**—(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

(b) An individual appointed as general guardian or guardian of the estate must be a resident of the State of North Carolina. A nonresident of the State of North Carolina, to be appointed as guardian of the person of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk may require a nonresident guardian to post a bond or other security for the faithful performance of the guardian's duties.

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before the effective date of this Chapter.

**"§ 35A-1214. Priorities for appointment.**—The clerk shall consider appointing a guardian according to the following order of priority: an individual; a corporation; or a disinterested public agent. No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian, but in every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward.

**"§ 35A-1215. Clerk's order; issuance of letters of appointment.**—(a) When appointing a guardian, the clerk shall enter an order setting forth:

- (1) The nature of the guardianship or guardianships to be created and the name of the person or entity appointed to fill each guardianship; and
- (2) The powers and duties of the guardian or guardians, which shall include, unless the clerk orders otherwise, (i) with respect to a guardian of the person and general guardian, the powers and duties provided under G.S. 35A, Article 8, and (ii) with respect to a guardian of the estate and general guardian, the powers and duties provided under G.S. 35A, Article 9 and Subchapter III; and
- (3) The identity of the designated agency if there is one.

(b) The clerk may order that the ward retain certain legal rights and privileges to which he was entitled before he was adjudged incompetent; provided, any such order shall include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians.

(c) The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206.

**"§ 35A-1216. Rule-making power of Secretary of Human Resources.**—The Secretary of the Department of Human Resources shall issue rules and regulations for the implementation of the guardianship responsibilities of disinterested public agents. The rules and regulations shall provide, among other things, that disinterested public agents shall undertake or have received training concerning the powers and responsibilities of guardians.

"Article 6.

"Appointment of Guardian for a Minor.

**"§ 35A-1220. Absence of natural guardian.**—When a minor either has no natural guardian or has been abandoned, and the minor requires services from the county department of social services, the social services director in the county in which the minor resides or is domiciled shall be the guardian of the person of the minor until the appointment of a general guardian or guardian of the person for the minor under this Subchapter or the entry of an order by a court of competent jurisdiction awarding custody of the minor or appointing a general guardian or guardian of the person for the minor.

**"§ 35A-1221. Petition before clerk.**—Any person or corporation, including any State or local human resources agency through its authorized representative, may make application for the appointment of a guardian of the estate for any minor or for the appointment of a guardian of the person or general guardian for any minor who has no natural guardian by filing an application with the clerk. The application shall set forth, to the extent known:

- (1) The minor's name, date of birth, address, and county of residence;
- (2) The names and addresses of the minor's parents, if living, and of other persons known to have an interest in the application for appointment of a guardian; the name and date of death of the minor's deceased parent or parents;
- (3) The applicant's name, address, county of residence, relationship if any to the minor, and interest in the proceeding;
- (4) If a guardian has been appointed for the minor or custody of the minor has been awarded, a statement of the facts relating thereto and a copy of any guardianship or custody order, if available;
- (5) A general statement of the minor's assets and liabilities with an estimate of the value of any property, including any income and receivables to which he is entitled;
- (6) A statement of the reason or reasons that the appointment of a guardian is sought; whether the applicant seeks the appointment of a guardian of the person, a guardian of the estate, or a general guardian; and whom the applicant recommends or seeks to have appointed as such guardian or guardians; and
- (7) Any other information that will assist the clerk in determining the need for a guardian or in appointing a guardian.

**"§ 35A-1222. Service of application and notices.**—A copy of the application and written notice of the time, date, and place set for a hearing shall be served on any parent, guardian, or legal custodian of the minor who is not an applicant, and on any other person the clerk may direct, including the minor. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the application upon determining that all necessary parties are before the court and agree to have the application considered.

**"§ 35A-1223. Hearing before clerk on appointment of guardian.**—The clerk shall receive evidence necessary to determine whether a guardian of the person, a guardian of the estate, or a general guardian is required. If the court determines that a guardian or guardians are required, the court shall receive evidence necessary to determine the minor's assets, liabilities, and needs, and who the guardian or guardians shall be. The hearing may be informal and the clerk may consider whatever testimony, written reports, affidavits, documents, or other evidence the clerk finds necessary to determine the minor's best interest.



**"§ 35A-1224. Criteria for appointment of guardians.**—(a) The clerk may appoint a guardian of the estate for any minor. The clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian.

(b) The clerk may appoint as guardian of the person or general guardian only an adult individual who is a resident of the State of North Carolina.

(c) The clerk may appoint as guardian of the estate an adult individual who is a resident of the State of North Carolina or a corporation that is authorized by its charter to serve as a guardian or in similar fiduciary capacities.

(d) If the minor's parent or parents have made a testamentary recommendation pursuant to G.S. 35A-1225 for the appointment of a guardian, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk shall in every instance base the appointment of a guardian or guardians on the minor's best interest.

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before the effective date of this Chapter.

**"§ 35A-1225. Testamentary recommendation; guardian for incompetent minor.**—

(a) Parents are presumed to know the best interest of their children. Any parent may by last will and testament recommend a guardian for any of his or her minor children, whether born at the parent's death or en ventre sa mere, for such time as the child remains under 18 years of age, unmarried, and unemancipated, or for any less time. Such will may be made without regard to whether the testator is an adult or a minor. If both parents make such recommendations, the will with the latest date shall, in the absence of other relevant factors, prevail. In the absence of a surviving parent, such recommendation shall be a strong guide for the clerk in appointing a guardian, but the clerk is not bound by the recommendation if the clerk finds that a different appointment is in the minor's best interest. If the will specifically so directs, a guardian appointed pursuant to such recommendation may be permitted to qualify and serve without giving bond, unless the clerk finds as a fact that the interest of the minor would be best served by requiring the guardian to give bond.

(b) Any person authorized by law to recommend a guardian for a minor by his last will and testament or other writing may direct that the guardian appointed for his incompetent child shall petition the clerk during the six months before the child reaches majority for an adjudication of incompetence and appointment of a guardian under the provisions of this Chapter. If so directed, the guardian shall timely file such a petition unless the minor is no longer incompetent. Notwithstanding the absence of such provision in a will or other writing, the guardian of an incompetent child, or any other person, may file such petition during the six months before the minor reaches majority or thereafter.

**"§ 35A-1226. Clerk's order; issuance of letters of appointment.**—After considering the evidence, the clerk shall enter an appropriate order. If the clerk determines that a guardian or guardians should be appointed, the order may set forth:

- (1) Findings as to the minor's circumstances, assets, and liabilities as they relate to his need for a guardian or guardians; and
- (2) Whether there shall be one or more guardians, his or their identity, and if more than one, who shall be guardian of the person and who shall be guardian of the estate. The clerk shall issue the guardian or guardians letters of appointment as provided in G.S. 35A-1206.

**"§ 35A-1227. Funds owed to minors.**—(a) Certain insurance proceeds or other funds to which a minor is entitled may be paid to and administered by the public guardian or the clerk as provided in G.S. 7A-111.

(b) A devise or legacy of personal property to a minor may be distributed to the minor's parent or guardian with the approval of the clerk as provided in G.S. 28A-22-7.

(c) A personal representative or collector who holds property due a minor without a guardian may deliver the property to the clerk as provided in G.S. 28A-23-2.

(d) **Inter vivos** or testamentary gifts to minors may be made and administered according to the North Carolina Uniform Gifts to Minors Act, Chapter 33 of the General Statutes.

**"§ 35A-1228. Guardians of children of servicemen; allotments and allowances.**—In all cases where a person serving in the armed forces of the United States has made an allotment or allowance to a resident of this State who is his child or other minor dependent as provided by the Wartime Allowances to Service Men's Dependents Act or any other act of Congress, the clerk in the county of the minor's residence may act as temporary guardian, or appoint some suitable person to act as temporary guardian, of the person's minor dependent for purposes of receiving and disbursing allotments and allowance funds for the benefit of the minor dependent, when:

(1) The other parent of the child or other minor dependent, or other person designated in the allowance or allotment to receive and disburse such moneys for the benefit of the minor dependent, dies or becomes mentally incompetent; and

(2) The person serving in the armed forces of the United States is reported as missing in action or as a prisoner of war and is unable to designate another person to receive and disburse the allotment or allowance to the minor dependent.

"Article 7.

"Guardian's Bond.

**"§ 35A-1230. Bond required before receiving property.**—Except as otherwise provided by G.S. 35A-1225(a), no general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court. The clerk shall not require a guardian of the person to post a bond, except as provided in G.S. 35A-1213(b) for nonresident guardians.

**"§ 35A-1231. Terms and conditions of bond; increase on sale of realty.**—(a) Before issuing letters of appointment to a general guardian or guardian of the estate the clerk shall require the guardian to give a bond payable to the State. The clerk shall determine

the value of all the ward's personal property and the rents and profits of the ward's real estate by examining, under oath, the applicant for guardianship or any other person or persons. The penalty in the bond shall be set as follows:

- (1) Where the bond is executed by personal sureties, the penalty must be at least double the value so determined by the clerk;
- (2) Where the bond is executed by a duly authorized surety company, the penalty may be fixed at not less than one and one-fourth times the value so determined by the clerk;
- (3) Provided, however, the clerk may accept bond in estates where the value determined by the clerk exceeds the sum of one hundred thousand dollars (\$100,000), in a sum equal to one hundred and ten percent (110%) of the determined value.

The bond must be secured with two or more sufficient sureties, jointly and severally bound, and must be acknowledged before and approved by the clerk. The bond must be conditioned on the guardian's faithfully executing the trust reposed in him as such and obeying all lawful orders of the clerk or judge relating to the guardianship of the estate committed to him. The bond must be recorded in the office of the clerk appointing the guardian, except, if the guardianship is transferred to a different county, it must be recorded in the office of the clerk in the county where the guardianship is docketed.

(b) If, on application of the guardian, the clerk or judge orders a sale of the ward's property for any of the causes prescribed by law, before the sale is confirmed, the guardian shall be required to file a bond as now required in double the amount of the real property sold, except where the bond is executed by a duly authorized surety company, in which case the penalty of the bond need not exceed one and one-fourth times the amount of the real property sold.

**"§ 35A-1232. Exclusion of deposited money in computing amount of bond.**—(a) When it appears that the ward's estate includes money that has been or will be deposited in a bank in this State or invested in an account in an insured savings and loan association upon condition that the money or securities will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

(b) The applicant for letters of guardianship may deliver to any such bank or association any such money in his possession or may allow such bank or association to retain any such money already deposited or invested with it; in either event, the applicant shall secure and file with the court a written receipt including the agreement of the bank or association, duly acknowledged by an authorized officer of the bank or association, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters of guardianship had been issued.

(c) The term 'account in an insured savings and loan association' as used in this section means any account in a savings and loan association that is insured by the

Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.

(d) The term 'money' as used in this section means the principal of the ward's estate and does not include the income earned by the principal which may be withdrawn without any authorization of the court.

**"§ 35A-1233. Clerk's authority to reduce penalty of bond.**—When a guardian has disbursed either income or income and principal of the estate according to law, for the purchase of real estate or the support and maintenance of the ward or the ward and his dependents or any lawful cause, and when the personal assets and income of the estate from all sources in the hands of the guardian have been diminished, the penalty of the guardian's bond may be reduced in the discretion of the clerk to an amount not less than the amount that would be required if the guardian were first qualifying to administer the personal assets and income.

**"§ 35A-1234. Action on bond.**—Any person injured by a breach of the condition of the guardian's bond may prosecute a suit thereon, as in other actions.

**"§ 35A-1235. One bond sufficient when several wards have estate in common.**—When the same person is appointed guardian for two or more minors or incompetent persons possessed of one estate in common, the clerk may take one bond only in such case, upon which each of the wards or their heirs or personal representatives may have a separate action.

**"§ 35A-1236. Renewal of bond.**—Every guardian who is required to post a bond and who does so other than through a duly authorized surety company shall renew his bond before the clerk every three years during the continuance of the guardianship. The clerk shall issue a citation against every such guardian failing to renew his bond, requiring the guardian to renew the bond within 20 days after service of the citation. On return of the citation duly served and failure of the guardian to comply, the clerk shall remove the guardian and appoint a successor. This section shall not apply to a guardian whose bond is executed by a duly authorized surety company.

**"§ 35A-1237. Relief of endangered sureties.**—Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file a complaint before the clerk where the guardianship is docketed, setting forth the circumstances of his case and demanding relief. The guardian shall be required to answer the complaint within 20 days after service of the summons. If, upon the hearing, the clerk deems the surety entitled to relief, the clerk may order the guardian to give a new bond or to indemnify the surety against apprehended loss, or may remove the guardian from his trust. If the guardian fails to give a new bond or security to indemnify within a reasonable time when required to do so, the clerk must enter a peremptory order for his removal, and his authority as guardian shall cease.

**"§ 35A-1238. Clerk's liability.**—(a) If any clerk commits the estate of a ward to the guardianship of any person without taking good and sufficient bond for the same as required by law, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained for want of sufficient bond being taken; but if the sureties were good at the time of their being accepted, the clerk shall not be liable.

(b) If any clerk willfully or negligently does, or omits to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained from such act or omission.

**"§ 35A-1239. Human Resources bond.**—The Secretary of the Department of Human Resources shall require, or purchase, in such amounts as he deems adequate and proper, individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all such agents, such bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State.

"Article 8.

"Powers and Duties of Guardian of the Person.

**"§ 35A-1240. Applicability of Article.**—This Article applies only to guardians of the person, including general guardians exercising authority as guardian of the person.

**"§ 35A-1241. Powers and duties of guardian of the person.**—(a) To the extent that it is not inconsistent with the terms of any order of the clerk or any other court of competent jurisdiction, a guardian of the person has the following powers and duties:

- (1) The guardian of the person is entitled to custody of the person of his ward and shall make provision for his ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for his training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
- (2) The guardian of the person may establish the ward's place of abode within or without this State. In arranging for a place of abode, the guardian of the person shall give preference to places within this State over places not in this State if in-State and out-of-State places are substantially equivalent. He also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, he shall give preference to community-based treatment facilities, such as group homes or nursing homes, over treatment facilities that are not community-based.
- (3) The guardian of the person may give any consent or approval that may be necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service. He may not, however, consent to the sterilization of a mentally ill or mentally retarded ward. Such sterilization may be performed only after compliance with Chapter 35, Article 7. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. He may petition the clerk for the clerk's concurrence in the consent or approval.

(b) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.

(c) A guardian of the person, if he has acted within the limits imposed on him by this Article or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

- (1) authorizing or giving any consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
- (2) authorizing medical treatment or surgery for his ward, if the guardian acted in good faith and was not negligent.

**"§ 35A-1242. Status reports for incompetent wards.**—(a) Any corporation or disinterested public agent that is guardian of the person for an incompetent person, within six months after being appointed, shall file an initial status report with the designated agency, if there is one, or with the clerk. Such guardian shall file a second status report with the designated agency or the clerk one year after being appointed, and subsequent reports annually thereafter. The clerk may order any other guardian of the person to file status reports. If a guardian required by this section to file a status report is employed by the designated agency, the guardian shall file any required status report with both the designated agency and the clerk.

(b) Each status report shall be filed under the guardian's oath or affirmation that the report is complete and accurate so far as he is informed and can determine.

(c) A clerk or designated agency that receives a status report shall not make the status report available to anyone other than the guardian, the ward, the court, or State or local human resource agencies providing services to the ward.

**"§ 35A-1243. Duties of designated agency.**—(a) Within 30 days after it receives a status report, the designated agency shall certify to the clerk that it has reviewed the report and shall mail a copy of its certification to the guardian.

(b) At the same time, the designated agency may:

- (1) Send its written comments on the report to the clerk, the guardian, or any other person who may have an interest in the ward's welfare;
- (2) Notify the guardian that it is able to help the guardian in the performance of his duties;
- (3) Petition the clerk for an order requiring the guardian to perform the duties imposed on him by the clerk or this Article if it appears that the guardian is not performing those duties;
- (4) Petition the clerk for an order modifying the terms of the guardianship or the guardianship program or plan if it appears that such should be modified;
- (5) Petition the clerk for an order removing the guardian from his duties and appointing a successor guardian if it appears that the guardian should be removed for cause;
- (6) Petition the clerk for an adjudication of restoration to competency; or

(7) Petition the clerk for any other appropriate orders.

(c) If the designated agency files such a petition, it shall cause the petition to be signed and acknowledged by the officer, official, employee, or agent who has personal knowledge of the facts set forth in the petition, and it shall set forth all facts known to it that tend to support the relief sought by the petition.

(d) The clerk shall take appropriate action upon the petition in accordance with other provisions or requirements of this Chapter.

**"§ 35A-1244. Procedure to compel status reports.**—If a guardian of the person fails to file a status report as required, or renders an unsatisfactory report, the clerk shall, on his own motion or the request of an interested party, promptly order the guardian to render a full and satisfactory report within 20 days after service of the order. If, after due service of the order, the guardian does not file such report, or obtain further time in which to file it, on or before the return day of the order, the clerk may remove him from office or may issue an order or notice to show cause for civil or criminal contempt as provided in Chapter 5A of the General Statutes. In such proceedings, the defaulting guardian may be held personally liable for the costs of the proceeding, including the costs of service of all notices or motions incidental thereto, or the amount of the costs of the proceeding may be deducted from any commissions due to the guardian of the person. Where a corporation or disinterested public agent is guardian of the person, the president or director or person or persons having charge of the guardianship for the corporation or agency, or the person to whom the duty of making status reports has been assigned by the corporation or agency, may be proceeded against as herein provided as if he or they were the guardian personally, provided, the corporation or agency itself may also be fined and/or removed as guardian for such failure or omission.

"Article 9.

"Powers and Duties of Guardian of the Estate.

**"§ 35A-1250. Applicability of Article.**—(a) This Article applies only to guardians of the estate, including general guardians exercising authority as guardian of the estate. A guardian of the estate or general guardian shall have all the powers and duties under this Article unless those are inconsistent with the clerk's order appointing a guardian, in which case the clerk's order shall prevail.

(b) Nothing contained in this Article shall be construed as authorizing any departure from the express terms or limitations set forth in any court order creating or limiting the guardian's powers and duties.

**"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**—In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete such contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete such contract.

(5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate.

(6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

(9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.

(10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.

(13) To pay from the ward's estate necessary expenses of administering the ward's estate.

(14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(15) To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in such business.

(16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and



loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(17) To lease the ward's lands for a term of not more than three years.

(18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(19) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber such portion of the ward's estate as may be required to secure such loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

**"§ 35A-1252. Guardian's powers in administering minor ward's estate.**—In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

(1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).

(2) To receive assets due the ward from any source.

(3) To maintain any appropriate action or proceeding to obtain support to which the ward is legally entitled, to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.

(4) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate.

(5) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

(6) To insure the ward's assets against damage or loss, at the expense of the ward's estate.

(7) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.

(8) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(9) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal; provided, neither the existence of the estate nor the guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the ward.

(10) To pay from the ward's estate necessary expenses of administering the ward's estate.

(11) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.

(12) To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in such business.

(13) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.

(14) To lease the ward's lands for a term of not more than three years.

(15) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(16) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber such portion of the ward's estate as may be required to secure such loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.

(17) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

**"§ 35A-1253. Specific duties of guardian of estate.**—In addition to any other duties imposed by law or by order of the clerk, a general guardian or guardian of the estate shall have the following specific duties:

- (1) To take possession, for the ward's use, of all his estate.
- (2) To diligently endeavor to collect, by all lawful means, all bonds, notes, obligations, or moneys due his ward.
- (3) To pay income taxes, property taxes, or other taxes or assessments owed by the ward, out of the ward's estate, as required by law. If any guardian allows his ward's lands to be sold for nonpayment of taxes or assessments, he shall be liable to his ward for the full value thereof.
- (4) To observe the standard of judgment and care under the circumstances then prevailing that an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary in acquiring, investing, reinvesting, exchanging, retaining, selling, and managing the ward's property. If the guardian has special skills or is named as guardian on the basis of representations of special skills or expertise, to use those skills.
- (5) To obey all lawful orders of the court pertaining to the guardianship and to comply with the accounting requirements of this Subchapter.

Nothing in this section shall be construed as broadening the powers granted in G.S. 35A-1251 or G.S. 35A-1252.

"Article 10.

"Returns and Accounting.

"§ 35A-1260. **Applicability.**—This Article applies only to general guardians and guardians of the estate.

"§ 35A-1261. **Return within three months.**—Every guardian, within three months after his appointment, shall exhibit to the clerk an account, upon oath, of the estate of his ward; but the clerk may extend such time not exceeding six months, for good cause shown.

"§ 35A-1262. **Procedure to compel return.**—In cases of default to exhibit the return required by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file such return forthwith, or to show cause why an attachment should not issue against him. If after due service of the order, the guardian does not, on the return day of the order, file such return, or obtain further time to file the same, the clerk shall issue an attachment against him, and commit him to the common jail of the county until he files such return.

"§ 35A-1263. **Additional assets to be returned.**—Whenever further property of any kind, not included in any previous return, comes to the hands or knowledge of any guardian, he must cause the same to be returned within three months after the possession or discovery thereof; and the making of such return of new assets, from time to time, may be enforced in the same manner as prescribed in G.S. 35A-1262.

"§ 35A-1264. **Annual accounts.**—Every guardian shall, within 30 days after the expiration of one year from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file in the office of the clerk an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers.

The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness.

**"§ 35A-1265. Procedure to compel accounting.**—(a) If any guardian omits to account, as directed in G.S. 35A-1264, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to render a full and satisfactory account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if the guardian fails to appear or refuses to exhibit such account, the clerk may issue an attachment against him for contempt and commit him until he exhibits such account, and may likewise remove him from office. In all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceedings, including the costs of service of all notices or writs incidental to, or thereby acquiring, or the amount of the costs of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate.

(b) Where a corporation is guardian, the president, cashier, trust officer or the person or persons having charge of the particular estate for the corporation, or the person to whom the duty of making reports of said estate has been assigned by the officers or directors of the corporation, may be proceeded against and committed to jail as herein provided as if he or they were the guardian or guardians personally: Provided, it is found as a fact that the failure or omission to file such account or to obey the order of the court in reference thereto is willful on the part of the officer charged therewith: Provided further, the corporation itself may be fined and/or removed as such guardian for such failure or omission.

**"§ 35A-1266. Final account.**—A guardian may be required to file a final account at any time after 60 days from the ward's coming of full age or the cessation of the guardianship; but such account may be filed voluntarily at any time, and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk.

**"§ 35A-1267. Expenses and disbursements credited to guardian.**—Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward.

**"§ 35A-1268. Guardian to exhibit investments and bank statements.**—At the time the accounts required by this Article and other provisions of law are filed, the clerk shall require the guardian to exhibit to the court all investments and bank statements showing cash balance, and the clerk shall certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account: Provided, such examination may be made by the clerk in the county in which such guardian resides or the county in which such securities are located and, when the guardian is a duly authorized bank or trust company, such examination may be made by the clerk in the county in which such bank or trust company has its principal office or in which such securities are located; the certificate of the clerk of such county

shall be accepted by the clerk of any county in which such guardian is required to file an account; provided that banks organized under the laws of North Carolina or the acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian or in other fiduciary capacity, shall be exempt from the requirements of this section, when a certificate executed by a trust examiner employed by a governmental unit, by a bank's internal auditors who are responsible only to the bank's board of directors or by an independent certified public accountant who is responsible only to the bank's board of directors is exhibited to the clerk and when said certificate shows that the securities have been examined within one year and that the securities were held at the time of the examination by the fiduciary or by a clearing corporation for the fiduciary and that the person making such certification has no reason to believe said securities are not still so held. Nothing herein contained shall be construed to abridge the inherent right of the clerk to require the production of securities, should he desire to do so.

"§ 35A-1269. **Commissions.**—The superior court shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors under the provisions of G.S. 28A-23-3.

"Article 11.

"Public Guardians.

"§ 35A-1270. **Appointment; term; oath.**—There may be in every county a public guardian, to be appointed by the clerk for a term of eight years. The public guardian shall take and subscribe an oath or affirmation faithfully and honestly to discharge the duties imposed upon him; the oath or affirmation so taken and subscribed shall be filed in the office of the clerk.

"§ 35A-1271. **Bond of public guardian; increasing bond.**—The public guardian shall enter into bond with three or more sureties, approved by the clerk in the penal sum of six thousand dollars (\$6,000), payable to the State of North Carolina, conditioned faithfully to perform the duties of his office and obey all lawful orders of the superior or other courts touching said guardianship of all wards, money or estate that may come into his hands. Whenever the aggregate value of the real and personal estate belonging to his several wards exceeds one-half the bond herein required the clerk shall require him to enlarge his bond in amount so as to cover at least double the aggregate amount under his control as guardian.

"§ 35A-1272. **Powers, duties, liabilities, compensation.**—The powers and duties of said public guardian shall be the same as other guardians, and he shall be subject to the same liabilities as other guardians under the existing laws, and shall receive the same compensation as other guardians.

"§ 35A-1273. **When letters issue to public guardian.**—The public guardian shall apply for and obtain letters of guardianship in the following cases:

(1) When a period of six months has elapsed from the discovery of any property belonging to any minor or incompetent person without guardian.

(2) When any person entitled to letters of guardianship shall request in writing the clerk to issue letters to the public guardian; but it is lawful and the duty of the clerk

to revoke said letters of guardianship at any time after issuing the same upon application in writing by any person entitled to qualify as guardian, setting forth a sufficient cause for such revocation.

"Article 12.

"Nonresident Ward Having Property in State.

**"§ 35A-1280. Appointment of ancillary guardian.**—(a) A clerk may appoint an ancillary guardian whenever it appears by petition or application and due proof to the satisfaction of the clerk that:

- (1) There is in the county of the clerk's jurisdiction real or personal property in which a nonresident of the State of North Carolina has an ownership or other interest; and
- (2) The nonresident is incompetent or is a minor and a guardian of the estate or general guardian, or a comparable fiduciary, has been appointed and is still serving for the nonresident in the state of his or her residence; and
- (3) That the nonresident ward has no guardian in the State of North Carolina.

(b) Except as otherwise ordered by the clerk or provided herein, an ancillary guardian shall have all the powers, duties, and responsibilities with respect to the nonresident ward's estate in the State of North Carolina as guardians otherwise appointed have. An ancillary guardian shall annually make an accounting to the court in this State and remit to the guardian in the state of the ward's residence any net rents of the real estate or any proceeds of sale.

(c) A certified or exemplified copy of letters of appointment or other official record of a court of record appointing a guardian for a nonresident in the state of his residence shall be conclusive proof of the fact of the ward's minority or incompetence and of the appointment of the guardian in the state of the ward's residence; provided, that the letters of appointment or other record shall show that the guardianship is still in effect in the state of the ward's residence and that the ward's incompetence or minority still exists.

(d) Upon the appointment of an ancillary guardian under this Article, the clerk shall notify the appropriate court in the county of the ward's residence and the guardian in the state of the ward's residence.

**"§ 35A-1281. Removal of ward's personalty from State.**—(a) For purposes of this section, the term 'personal estate' means:

- (1) personal property;
- (2) personal property substituted for realty by decree of court;
- (3) any money arising from the sale of real estate, whether the same be in the hands of any guardian residing in this State; or in the hands of any executor, administrator, or other person holding for the ward; or, if not being adversely held and claimed, not in the lawful possession or control of any person.

(b) Where any ward residing in another state or territory, or in the District of Columbia, or Canada, or other foreign country, is entitled to any personal estate in this

State, the ward's guardian or trustee duly appointed at the place where such ward resides, or, in the event no guardian or trustee has been appointed, the court or officer of the court authorized by the laws of such place to receive moneys belonging to any ward when no guardian or trustee has been appointed, may apply to have such estate removed to the residence of the ward by petition filed before the clerk in the county in which the property or some portion thereof is situated. Such petition shall be proceeded with as in other cases of special proceedings.

(c) The petitioner must show to the court a copy of his appointment as a guardian or trustee and bond duly authenticated, and must prove to the court that the bond is sufficient, in the ability of the sureties as well as in amount, to secure all the estate of the ward wherever situated: Provided, that in all cases where a banking institution, resident and doing business in a foreign state, is a guardian or trustee of any person and is not required to execute a bond to qualify as guardian or trustee under the laws of the state in which such guardian or trustee qualified and was appointed, and no sureties are or were required by the state in which said banking institution qualified as guardian or trustee, and this fact affirmatively appears to the court, then the personal estate of the ward may be removed from this State without the finding of a court with reference to any sureties, and the court in which the petition for the removal of the property of the ward is filed may order the transfer and removal of the property of the ward and the payment and delivery of the same to the nonresident guardian or trustee without regard to whether a nonresident guardian or trustee has filed a bond with sureties; and the finding of the court that the said guardian or trustee is a banking institution and has duly qualified and been appointed guardian or trustee under the laws of the state where the ward is resident shall be sufficient. Any person may be made a party defendant to the proceeding who may be made a party defendant in civil actions under the provisions of Chapter 1A of the General Statutes.

"Article 13.

"Termination of Guardianship; Estates Without Guardians.

"§ 35A-1290. **Removal by clerk.**—(a) The clerk has the power and authority on information or complaint made to remove any guardian appointed under the provisions of this Subchapter, to appoint successor guardians, and to make rules or enter orders for the better management of estates and the better care and maintenance of wards and their dependents.

(b) It is the clerk's duty to remove a guardian or to take other action sufficient to protect the ward's interests in the following cases:

- (1) The guardian wastes the ward's money or estate or converts it to his own use.
- (2) The guardian in any manner mismanages the ward's estate.
- (3) The guardian neglects to care for or maintain the ward or his dependents in a suitable manner.
- (4) The guardian or his sureties are likely to become insolvent or to become nonresidents of the State.
- (5) The original appointment was made on the basis of a false representation or a mistake.

- (6) The guardian has violated a fiduciary duty through default or misconduct.
  - (7) The guardian has a private interest, whether direct or indirect, that might tend to hinder or be adverse to carrying out his duties as guardian.
- (c) It is the clerk's duty to remove a guardian in the following cases:
- (1) The guardian has been adjudged incompetent by a court of competent jurisdiction and has not been restored to competence.
  - (2) The guardian has been convicted of a felony under the laws of the United States or of any state or territory of the United States or of the District of Columbia and his citizenship has not been restored.
  - (3) The guardian was originally unqualified for appointment and continues to be unqualified, or the guardian would no longer qualify for appointment as guardian due to a change in residence, a change in the charter of a corporate guardian, or any other reason.
  - (4) The guardian is the ward's spouse and has lost his rights as provided by Chapter 31A of the General Statutes.
  - (5) The guardian fails to post, renew, or increase a bond as required by law or by order of the court.
  - (6) The guardian refuses or fails without justification to obey any citation, notice, or process served on him in regard to the guardianship.
  - (7) The guardian fails to file required accountings with the clerk.
  - (8) The clerk finds the guardian unsuitable to continue serving as guardian for any reason.

**"§ 35A-1291. Interlocutory orders on revocation.**—In all cases where the letters of a guardian are revoked, the clerk may, pending the resolution of any controversy in respect to such removal, make such interlocutory orders and decrees as the clerk finds necessary for the protection of the ward or the ward's estate or the other party seeking relief by such revocation.

**"§ 35A-1292. Resignation.**—(a) Any guardian who wishes to resign may apply in writing to the clerk, setting forth the circumstances of the case. If a general guardian or guardian of the estate, at the time of making the application, also exhibits his final account for settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may accept the resignation of the guardian and discharge him and appoint a successor guardian, but the guardian so discharged and his sureties are still liable in relation to all matters connected with the guardianship before the discharge.

(b) A general guardian who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation by petition as provided in subsection (a) of this section. If the general guardian also exhibits his final account as guardian of the estate for settlement, and if the clerk is satisfied that the general guardian has fully accounted as guardian of the estate, the clerk may accept the resignation of the general guardian as guardian of the estate, discharge him as guardian of the estate, and issue to him letters of appointment as guardian of the person, but the general guardian so discharged as guardian of the estate and his sureties



are still liable in relation to all matters connected with the guardianship of the estate before the discharge.

"§ 35A-1293. **Appointment of successor guardian.**—Upon the removal, death, or resignation of a guardian, the clerk shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

"§ 35A-1294. **Estates without guardians.**—(a) Whenever a general guardian or guardian of the estate is removed, resigns, or stops serving without making a full and proper accounting, the successor guardian, or the clerk if there is no successor guardian, shall initiate a proceeding to compel an accounting. The surety or sureties on the previous guardian's bond shall be served with notice of the proceeding.

(b) If no successor guardian has been appointed, the clerk may act as receiver or appoint some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due the ward, and to secure, lend, invest, or apply the same for the benefit and advantage of the ward, under the direction of the clerk until a successor guardian is appointed. The accounts of the receiver shall be returned, audited, and settled as the clerk may direct. The receiver shall be allowed such amounts for his time, trouble, and responsibility as seem to the clerk reasonable and proper. Such receivership may continue until a suitable guardian can be appointed.

(c) When another guardian is appointed, he may apply by motion, on notice, to the clerk for an order directing the receiver to pay over all the money, estate, and effects of the ward. If no such guardian is appointed, the ward shall have the same remedy against the receiver on becoming age 18 or otherwise emancipated if the ward is a minor or on being restored to competence if the ward is an incompetent person. In the event of the ward's death, his executor, administrator, or collector, and the heir or personal representative of the ward shall have the same remedy against the receiver.

### "SUBCHAPTER III. MANAGEMENT OF WARD'S ESTATE.

#### "Article 14.

#### "Sale, Mortgage, Exchange or Rental of Ward's Estate.

"§ 35A-1301. **Special proceedings to sell, mortgage, or rent.**—(a) Whenever used herein, the word 'guardian' shall be construed to include general guardian, guardian of the estate, ancillary guardian, next friend, guardian ad litem, or commissioner of the court acting pursuant to this Article, but not a guardian who is guardian of the person only; and the word 'mortgage' shall be construed to include deeds of trust.

(b) A guardian may apply to the clerk, by verified petition setting forth the facts, for the sale, mortgage, exchange, or rental of any part of his ward's estate, real or personal, and such proceeding shall be conducted as in other cases of special proceedings. The clerk, in his discretion, may direct that the next of kin or presumptive heirs of the ward be made parties to such proceeding. The clerk may order a sale, mortgage, exchange, or rental to be made by the guardian in such way and on such terms as may be most advantageous to the interest of the ward, upon finding by satisfactory proof that:

- (1) the ward's interest would be materially promoted by such sale, mortgage, exchange, or rental, or

- (2) the ward's personal estate has been exhausted or is insufficient for his support and the ward is likely to become chargeable on the county, or
- (3) a sale, mortgage, exchange, or rental of any part of the ward's real or personal estate is necessary for his maintenance or for the discharge of debts unavoidably incurred for his maintenance, or
- (4) any part of the ward's real estate is required for public purposes, or
- (5) there is a valid debt or demand against the estate of the ward; provided, when an order is entered under this subdivision, (i) it shall authorize the sale of only so much of the personal or real estate as may be sufficient to discharge such debt or demand, and (ii) the proceeds of sale shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative, and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases.

The order shall specify particularly the property thus to be disposed of, with the terms of renting or sale or exchange or mortgage, and shall be entered at length on the records of the court. The guardian may not mortgage the property of his ward for a term of years in excess of the term fixed by the court in its order.

(c) In the case of a ward who is a minor, no sale, mortgage, exchange, or rental shall be made until approved by the superior court judge, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by the judge, and the proceeds of the sale, mortgage, exchange, or rental shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify.

(d) All petitions filed under this section wherein an order is sought for the sale, mortgage, exchange, or rental of the ward's real estate or both real and personal property shall be filed in the county in which all or any part of the real estate is situated. If the order sought is for the sale, mortgage, exchange, or rental of the ward's personal estate, the petition shall be filed in the county in which any or all of such personal estate is situated.

(e) The procedure for a sale pursuant to this section shall be as provided by Article 29A of Chapter 1 of the General Statutes.

(f) Nothing herein contained shall be construed to divest the court of the power to order private sales as heretofore ordered in proper cases.

(g) On and after June 1, 1973, no sales of property belonging to minors or incompetent persons prior to that date by next friend, guardian **ad litem**, or commissioner of the court regular in all other respects shall be declared invalid nor shall any claim or defense be asserted on the grounds that said sale was not made by a duly appointed guardian as provided herein or on the grounds that said minor or incompetent person was not represented by a duly appointed guardian.

**"§ 35A-1302. Procedure when real estate lies in county in which guardian does not reside.**—In all cases where a guardian is appointed under the authority of Chapter 35A and such guardian applies to the court for an order to sell, mortgage, or exchange all or part of his ward's real estate, and such real estate is situated in a county other than the

county in which the guardian is appointed and qualified, the guardian shall first apply to the clerk of the county in which he was appointed and qualified for an order showing that the sale, mortgage, or exchange of his ward's real estate is necessary or that the ward's interest would be materially promoted thereby. The clerk to whom such application is made shall hear and pass upon the same and enter his findings and order as to whether said sale, mortgage, or exchange is necessary or would materially promote the ward's interest, and said order and findings shall be certified to the clerk of the county in which the ward's land, or some part of it, is located and before whom any petition or application is filed for the sale, mortgage, or exchange of said land. Such findings and orders so certified shall be considered by the court along with all other evidence and circumstances in passing upon the petition in which an order is sought for the sale, mortgage, or exchange of said land. In the case of a ward who is a minor, before such findings and orders shall become effective the same shall be approved by the superior court judge holding the courts of the district or by the resident judge.

**"§ 35A-1303. Fund from sale has character of estate sold and subject to same trusts.**—Whenever, in consequence of any sale under G.S. 35A-1301, the real or personal property of the ward is saved from demands to which in the first instance it may be liable, the final decree shall declare and set apart a portion of the personal or real estate thus saved, of value equal to the real and personal estate sold, as property exchanged for that sold; and in all sales by guardians whereby real is substituted by personal, or personal by real property, the beneficial interest in the property acquired shall be enjoyed, alienated, devised or bequeathed, and shall descend and be distributed, as by law the property sold might and would have been had it not been sold, until it be reconverted from the character thus impressed upon it by some act of the owner and restored to its character proper.

**"§ 35A-1304. Sale of perishable goods on order of clerk.**—Every guardian shall sell, by order of the clerk, all such goods and chattels of his ward as may be liable to perish or be the worse for keeping. The procedure for the sale shall be as provided by Article 29A of Chapter 1 of the General Statutes.

**"§ 35A-1305. When timber may be sold.**—In case the land cannot be rented for enough to pay the taxes and other dues thereof, and there is not money sufficient for that purpose, the guardian, with the consent of the clerk, may annually dispose of or use so much of the lightwood, and box or rent so many pine trees, or sell so much of the timber on the same, as may raise enough to pay the taxes and other duties thereon, and no more. In addition, the guardian, with the consent of the clerk, may annually dispose of, use, or sell so much of the timber as is necessary to maintain good forestry practices.

**"§ 35A-1306. Abandoned incompetent spouse.**—(a) A guardian of a married person found incompetent who has been abandoned, whether the guardian was appointed before or after the abandonment, may initiate a special proceeding before the clerk having jurisdiction over the ward requesting the issuance of an order authorizing the sale of the ward's separate real property without the joinder of the abandoning spouse.

(b) The ward's spouse shall be served with notice of the special proceeding in accordance with G.S. 1A-1, Rule 4.

(c) If the clerk finds:

- (1) That the spouse of the ward has willfully and without just cause abandoned the ward for a period of more than one year; and
- (2) That the spouse of the ward has knowledge of the guardianship, or that the guardian has made a reasonable attempt to notify the spouse of the guardianship; and
- (3) That an order authorizing the sale of the separate real property of the ward is in the best interest of the ward;

the clerk may issue such an order thereby barring the abandoning spouse from all right, title and interest in any of the ward's separate real property sold pursuant to such an order.

**"§ 35A-1307. Spouse of incompetent husband or wife entitled to special proceeding for sale of property.**—Every married person whose husband or wife is adjudged incompetent and is confined in a mental hospital or other institution in this State, and who was living with the incompetent spouse at the time of commitment shall, if he or she be in needy circumstances, have the right to bring a special proceeding before the clerk to sell the property of the incompetent spouse, or so much thereof as is deemed expedient, and have the proceeds applied for support: Provided, that said proceeding shall be approved by the judge of the superior court holding the courts of the judicial district where the said property is situated. When the deed of the commissioner appointed by the court, conveying the lands belonging to the incompetent spouse is executed, probated, and registered, it conveys a good and indefeasible title to the purchaser."

Sec. 2. All of Article 4 of Chapter 35 of the General Statutes, "Mortgage or Sale of Estates Held by the Entireties", is recodified as Article 15 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 3. All of Article 5 of Chapter 35 of the General Statutes, "Surplus Income and Advancements", is recodified as Article 16 of new Chapter 35A of the General Statutes and the Revisor of Statutes is authorized to renumber the sections accordingly.

Sec. 3.1. G.S. 35-28 before being recodified and renumbered as provided by Section 3 of this act reads as rewritten:

**"§ 35-28. Advancements only when ~~insanity~~ incompetence permanent.**—No such application shall be allowed under this ~~Chapter~~ Article but in cases of such permanent and continued ~~insanity~~ incompetence as that the ~~nonsane~~ incompetent person shall be judged by the clerk to be incapable, notwithstanding any lucid intervals, to make advancements with prudence and discretion."

Sec. 3.2. G.S. 35-29 before being recodified and renumbered as provided by Section 3 of this act reads as rewritten:

**"§ 35-29. ~~Decrees~~ Orders suspended upon restoration of ~~sanity~~ competence.**—Upon such ~~insane person being restored to sanity~~ incompetent person's being restored to competence, every order made for advancements shall cease to be further executed, and his estate shall be discharged of the same."

Sec. 4. All of Article 5A of Chapter 35 of the General Statutes, "Gifts from Income for Certain Purposes", is recodified as Article 17 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 5. All of Article 5B of Chapter 35 of the General Statutes, "Gifts from Principal for Certain Purposes", is recodified as Article 18 of new Chapter 35A of the General Statutes and the Revisor of Statutes shall renumber the sections accordingly and change the statutory citations in the heading and text of G.S. 35-29.7 and G.S. 35-29.8 to conform to the new numbering of the cited sections.

Sec. 6. All of Article 5C of Chapter 35 of the General Statutes, "Declaring Revocable Trust Irrevocable and Making Gift of Incompetent's Life Interest Therein", is recodified as Article 19 of new Chapter 35A of the General Statutes and the Revisor of Statutes shall renumber the sections accordingly and change the statutory citations in the heading and text of G.S. 35-29.13 and G.S. 35-29.14 to conform to the new numbering of the cited sections.

Sec. 7. All of Articles 1, 1A, 2, and 3 of Chapter 35 of the General Statutes is repealed.

Sec. 8. The title of Chapter 35 of the General Statutes is rewritten to read, "Sterilization Procedures".

Sec. 9. All of Article 4A of Chapter 33 of the General Statutes, "Guardians' Deeds Validated When Seal Omitted", is recodified as Article 20 of new Chapter 35A of the General Statutes and the sections thereof shall be renumbered accordingly.

Sec. 10. All of Articles 1, 2, 3, 4, 5, 6, 7, 8, and 11 of Chapter 33 of the General Statutes is repealed.

Sec. 11. The title of Chapter 33 of the General Statutes is rewritten to read, "Uniform Gifts to Minors Act".

Sec. 12. G.S. 1-339.1(a)(6) is amended by deleting "Article 4 of Chapter 35", and substituting "Article 15 of Chapter 35A".

Sec. 13. G.S. 1A-1, Rule 17(b)(1) reads as rewritten:

"(1) Infants, etc., Sue by Guardian or Guardian **Ad Litem**. In actions or special proceedings when any of the parties plaintiff are infants or incompetent persons, whether residents or nonresidents of this State, they must appear by general or testamentary guardian, if they have any within the State or by guardian **ad litem** appointed as hereinafter provided; but if the action or proceeding is against such guardian, or if there is no such known guardian, then such persons may appear by guardian **ad litem**. ~~The duty of the State solicitors to prosecute in the cases specified in Chapter 33 of the General Statutes, entitled 'Guardian and Ward,' is not affected by this section.~~"

Sec. 14. G.S. 7A-111(d) is amended by deleting "Chapter 35" and substituting "Chapter 35A".

Sec. 15. G.S. 7A-289.25(4) is amended by deleting "Article 1 of Chapter 33" and substituting "Chapter 35A".

Sec. 16. G.S. 7A-451(a)(13) is amended by deleting "Chapter 35, Article 1A", and substituting "Subchapter I of Chapter 35A".

Sec. 17. G.S. 28A-23-2 is amended by deleting "Chapter 33", and substituting "Chapter 35A".

Sec. 18. G.S. 34-2.1 reads as rewritten:

**"§ 34-2.1. Guardian's powers as to property; validation of prior acts.** Any guardian appointed under the provisions of this Chapter may be guardian of all property, real or personal, belonging to the ward to the same extent as a guardian appointed under the provisions of ~~Chapter 33 or Chapter 35 of the General Statutes of North Carolina, as the case may be, and the provisions of such chapters~~ Chapter 35A of the General Statutes, and the provisions of such Chapter concerning the custody, management and disposal of property shall apply in any case not provided for by this Chapter. All acts heretofore performed by guardians appointed under the provisions of this Chapter with respect to the custody, management and disposal of property of wards are hereby validated where no provision for such acts was provided for by this Chapter, if such acts were performed under and in conformity with the provisions of ~~Chapter 33 or Chapter 35 of the General Statutes of North Carolina, Chapter 35A of the General Statutes as the case may be.~~"

Sec. 19. G.S. 34-4 is amended by deleting "Article 6, Chapter 33", and substituting "Article 11, Chapter 35A".

Sec. 20. G.S. 74C-12(a)(19) is amended by deleting "Chapter 35" and substituting "Chapter 35A or former Chapter 35".

Sec. 21. G.S. 74D-10(a)(11) is amended by deleting "Chapter 35" and substituting "Chapter 35A or former Chapter 35".

Sec. 22. G.S. 75D-3(i)(2)a is amended by deleting "Chapter 33", and substituting "Chapter 35A".

Sec. 23. G.S. 108A-15 is amended by deleting "Chapter 35, Articles 1A and 2", and substituting "Chapter 35A".

Sec. 24. G.S. 108A-101(m) is amended by deleting "Chapter 33, Chapter 35", and substituting "Chapter 35A".

Sec. 25. G.S. 108A-105(c) reads as rewritten:

"(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with ~~Chapter 35, Article 1A, or or Article 2, as appropriate; Chapter 35A;~~ Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with ~~Chapter 35, Article 1A, or or Article 2, as appropriate. Chapter 35A.~~ Chapter 35A. No disabled adult may be committed to a mental health facility under this Article."

Sec. 26. G.S. 122C-122 reads as rewritten:

**"§ 122C-122. Public guardians.**—The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority

designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by ~~G.S. 35-1.7(4)~~, G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of ~~Article 1A of Chapter 35~~ Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a ~~guardianship~~ proceeding brought under that ~~Article~~ Subchapter. Bond shall be required or purchased as provided by ~~G.S. 35-1.19~~ G.S. 35A-1239."

Sec. 27.

(a) This act shall become effective October 1, 1987.

(b) Except as provided otherwise herein, Subchapter I of Chapter 35A of the General Statutes, as enacted hereby, shall apply only to proceedings for an adjudication of incompetence commenced on or after the effective date of this Act. Article 3 of Chapter 35A shall apply to proceedings for restoration to competence commenced on or after the effective date of this Act, regardless of whether incompetence was adjudicated under Chapter 35 or Chapter 35A of the General Statutes.

(c) Except as provided otherwise herein, Subchapter 11 of Chapter 35A of the General Statutes, as enacted hereby, shall apply only to proceedings for the appointment of a guardian commenced on or after the effective date of this Act. Articles 8, 9, 10, and 13 of Chapter 35A shall also apply, from and after the effective date of this Act, to all proceedings in which a guardian or trustee has been appointed under Chapter 33 or Chapter 35 of the General Statutes, provided that nothing in this Act shall affect the validity of the appointment of any guardian or trustee properly appointed under Chapter 33 or Chapter 35 of the General Statutes.

(d) Subchapter III of Chapter 35A of the General Statutes, as enacted hereby, shall apply to all proceedings in which a guardian or trustee has been or shall be appointed under Chapter 33, Chapter 35, or Chapter 35A of the General Statutes.

In the General Assembly read three times and ratified this the 6th day of July, 1987.