

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 711
Committee Substitute Favorable 4/20/89

Short Title: Amend Incompetency/Guardianship.

(Public)

Sponsors:

Referred to:

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE LAW REGARDING
INCOMPETENCY AND GUARDIANSHIP AND RELATED MATTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 35A-1224 reads as rewritten:

"§ 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~~ whether or not that individual is a resident of the State of North Carolina.

(c) The clerk may appoint as guardian of the estate an adult individual ~~who~~ whether or not that individual 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.

1 (e) Notwithstanding any other provision of this section, an employee of a
2 treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a
3 ward who is an inpatient in or resident of the facility in which the employee works;
4 provided, this subsection shall not apply to or affect the validity of any appointment of a
5 guardian that occurred before October 1, 1987."

6 Sec. 2. G.S. 35A-1230 reads as rewritten:

7 **"§ 35A-1230. Bond required before receiving property.**

8 Except as otherwise provided by G.S. 35A-1225(a), no general guardian or guardian
9 of the estate shall be permitted to receive the ward's property until he has given
10 sufficient surety, approved by the clerk, to account for and apply the same under the
11 direction of the court, provided that if the guardian is a nonresident of this State and
12 the value of the property received exceeds one thousand dollars (\$1,000) the surety shall
13 be a bond under G.S. 35A-1231(a) executed by a duly authorized surety company, or
14 secured by cash in an amount equal to the amount of the bond or by a mortgage
15 executed under Chapter 109 of the General Statutes on real estate located in the county,
16 the value of which, excluding all prior liens and encumbrances, shall be at least one and
17 one-fourth times the amount of the bond; and further provided that the nonresident shall
18 appoint a resident agent to accept service of process in all actions and proceedings with
19 respect to the guardianship. The clerk shall not require a guardian of the person to post a
20 bond, except as provided in G.S. 35A-1213(b) for nonresident guardians who is a resident of
21 North Carolina to post a bond; the clerk may require a nonresident guardian of the
22 person to post a bond or other security for the faithful performance of the guardian's
23 duties."

24 Sec. 3. G.S. 35A-1251 reads as rewritten:

25 **"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

26 In the case of an incompetent ward, a general guardian or guardian of the estate has
27 the power to perform in a reasonable and prudent manner every act that a reasonable
28 and prudent person would perform incident to the collection, preservation, management,
29 and use of the ward's estate to accomplish the desired result of administering the ward's
30 estate legally and in the ward's best interest, including but not limited to the following
31 specific powers:

- 32 (1) To take possession, for the ward's use, of all the ward's estate, as
33 defined in G.S. 35A-1202(5).
- 34 (2) To receive assets due the ward from any source.
- 35 (3) To maintain any appropriate action or proceeding to recover
36 possession of any of the ward's property, to determine the title thereto,
37 or to recover damages for any injury done to any of the ward's
38 property; also, to compromise, adjust, arbitrate, sue on or defend,
39 abandon, or otherwise deal with and settle any other claims in favor of
40 or against the ward.
- 41 (4) To complete performance of contracts entered into by the ward that
42 continue as obligations of the ward or his estate, or to refuse to
43 complete such contracts, as the guardian determines to be in the ward's

- 1 best interests, taking into account any cause of action that might be
2 maintained against the ward for failure to complete such contract.
- 3 (5) To abandon or relinquish all rights in any property when, in the
4 guardian's opinion, acting reasonably and in good faith, it is valueless,
5 or is so encumbered or is otherwise in such condition that it is of no
6 benefit or value to the ward or his estate.
- 7 (6) To vote shares of stock or other securities in person or by general or
8 limited proxy, and to pay sums chargeable or accruing against or on
9 account of securities owned by the ward.
- 10 (7) To insure the ward's assets against damage or loss, at the expense of
11 the ward's estate.
- 12 (8) To pay the ward's debts and obligations that were incurred prior to the
13 date of adjudication of incompetence or appointment of a guardian
14 when the debt or obligation was incurred for necessary living expenses
15 or taxes; or when the debt or obligation involves a specific lien on real
16 or personal property, if the ward has an equity in the property on
17 which there is a specific lien; or when the guardian is convinced that
18 payment of the debt or obligation is in the best interest of the ward or
19 his estate.
- 20 (9) To renew the ward's obligations for the payment of money. The
21 guardian's execution of any obligation for the payment of money
22 pursuant to this subsection shall not be held or construed to be binding
23 on the guardian personally.
- 24 (10) To pay taxes, assessments, and other expenses incident to the
25 collection, care, administration, and protection of the ward's estate.
- 26 (11) To sell or exercise stock subscription or conversion rights; consent,
27 directly or through a committee or other agent, to the reorganization,
28 consolidation, merger, dissolution, or liquidation of a corporation or
29 other business enterprise.
- 30 (12) To expend estate income on the ward's behalf and to petition the court
31 for prior approval of expenditures from estate principal.
- 32 (13) To pay from the ward's estate necessary expenses of administering the
33 ward's estate.
- 34 (14) To employ persons, including attorneys, auditors, investment advisors,
35 appraisers, or agents to advise or assist him in the performance of his
36 duties as guardian.
- 37 (15) To continue any business or venture or farming operation in which the
38 ward was engaged, where such continuation is reasonably necessary or
39 desirable to preserve the value, including goodwill, of the ward's
40 interest in such business.
- 41 (16) To acquire and retain every kind of property and every kind of
42 investment, including specifically, but without in any way limiting the
43 generality of the foregoing, bonds, debentures, and other corporate or
44 governmental obligations; stocks, preferred or common; real estate

1 mortgages; shares in building and loan associations or savings and
2 loan associations; annual premium or single premium life, endowment,
3 or annuity contracts; and securities of any management type
4 investment company or investment trust registered under the Federal
5 Investment Company Act of 1940, as from time to time amended.

6 (17) ~~To lease the ward's lands for a term of not more than three years.~~ Without a
7 court order, to lease the ward's real estate for a term of not more than
8 three years or to sell, lease, or exchange the ward's personal property.
9 A guardian who so desires may, by motion in the cause, request the
10 court to issue to him an order to lease the ward's real estate for a term
11 of not more than three years or to sell, lease, or exchange the ward's
12 personal property; and the court may issue the order after such notice
13 and hearing and upon such conditions as the court may require;
14 provided that:

15 a. A sale, lease, or exchange under this subdivision may not be
16 subject to Article 29A of Chapter 1 of the General Statutes
17 unless the order so requires; and

18 b. The power granted in this subdivision shall not affect the power
19 of the guardian to petition the court for prior approval of
20 expenditures from estate principal under subdivision (12) of this
21 section.

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

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

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

39 Sec. 4. G.S. 35A-1252 reads as rewritten:

40 "**§ 35A-1252. Guardian's powers in administering minor ward's estate.**

41 In the case of a minor ward, a general guardian or guardian of the estate has the
42 power to perform in a reasonable and prudent manner every act that a reasonable and
43 prudent person would perform incident to the collection, preservation, management, and
44 use of the ward's estate to accomplish the desired result of administering the ward's

1 estate legally and in the ward's best interest, including but not limited to the following
2 specific powers:

- 3 (1) To take possession, for the ward's use, of all the ward's estate, as
4 defined in G.S. 35A-1202(5).
- 5 (2) To receive assets due the ward from any source.
- 6 (3) To maintain any appropriate action or proceeding to obtain support to
7 which the ward is legally entitled, to recover possession of any of the
8 ward's property, to determine the title thereto, or to recover damages
9 for any injury done to any of the ward's property; also, to compromise,
10 adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and
11 settle any other claims in favor of or against the ward.
- 12 (4) To abandon or relinquish all rights in any property when, in the
13 guardian's opinion, acting reasonably and in good faith, it is valueless,
14 or is so encumbered or is otherwise in such condition that it is of no
15 benefit or value to the ward or his estate.
- 16 (5) To vote shares of stock or other securities in person or by general or
17 limited proxy, and to pay sums chargeable or accruing against or on
18 account of securities owned by the ward.
- 19 (6) To insure the ward's assets against damage or loss, at the expense of
20 the ward's estate.
- 21 (7) To pay taxes, assessments, and other expenses incident to the
22 collection, care, administration, and protection of the ward's estate.
- 23 (8) To sell or exercise stock subscription or conversion rights; consent,
24 directly or through a committee or other agent, to the reorganization,
25 consolidation, merger, dissolution, or liquidation of a corporation or
26 other business enterprise.
- 27 (9) To expend estate income on the ward's behalf and to petition the court
28 for prior approval of expenditures from estate principal; provided,
29 neither the existence of the estate nor the guardian's authority to make
30 expenditures therefrom shall be construed as affecting the legal duty
31 that a parent or other person may have to support and provide for the
32 ward.
- 33 (10) To pay from the ward's estate necessary expenses of administering the
34 ward's estate.
- 35 (11) To employ persons, including attorneys, auditors, investment advisors,
36 appraisers, or agents to advise or assist him in the performance of his
37 duties as guardian.
- 38 (12) To continue any business or venture or farming operation in which the
39 ward was engaged, where such continuation is reasonably necessary or
40 desirable to preserve the value, including goodwill, of the ward's
41 interest in such business.
- 42 (13) To acquire and retain every kind of property and every kind of
43 investment, including specifically, but without in any way limiting the
44 generality of the foregoing bonds, debentures, and other corporate or

1 governmental obligations; stocks, preferred or common; real estate
2 mortgages; shares in building and loan associations or savings and
3 loan associations; annual premium or single premium life, endowment,
4 or annuity contracts; and securities of any management type
5 investment company or investment trust registered under the Federal
6 Investment Company Act of 1940, as from time to time amended.

7 (14) ~~To lease the ward's lands for a term of not more than three years.~~ Without a
8 court order, to lease the ward's real estate for a term of not more than
9 three years or to sell, lease, or exchange the ward's personal property.
10 A guardian who so desires may, by motion in the cause, request the
11 court to issue to him an order to lease the ward's real estate for a term
12 of not more than three years or to sell, lease, or exchange the ward's
13 personal property; and the court may issue the order after such notice
14 and hearing and upon such conditions as the court may require;
15 provided that:

16 a. A sale, lease, or exchange under this subdivision may not be
17 subject to Article 29A of Chapter 1 of the General Statutes
18 unless the order so requires; and

19 b. The power granted in this subdivision shall not affect the power
20 of the guardian to petition the court for prior approval of
21 expenditures from estate principal under subdivision (9) of this
22 section.

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

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

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

40 Sec. 5. The title of Article 14 of Chapter 35A of the General Statutes reads as
41 rewritten:

42 **"ARTICLE 14.**
43 **"SALE, MORTGAGE, EXCHANGE OR ~~RENTAL~~ LEASE OF WARD'S**
44 **ESTATE."**

1 Sec. 6. G.S. 35A-1301 reads as rewritten:

2 "**§ 35A-1301. Special proceedings to sell, exchange, mortgage, or rental lease.**

3 (a) Whenever used herein, the word 'guardian' shall be construed to include
4 general guardian, guardian of the estate, ancillary guardian, next friend, guardian **ad**
5 **litem**, or commissioner of the court acting pursuant to this Article, but not a guardian
6 who is guardian of the person only; and the word 'mortgage' shall be construed to
7 include deeds of trust.

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

- 16 (1) The ward's interest would be materially promoted by such sale,
17 mortgage, exchange, or ~~rental lease~~, or
- 18 (2) The ward's personal estate has been exhausted or is insufficient for his
19 support and the ward is likely to become chargeable on the county, or
- 20 (3) A sale, mortgage, exchange, or ~~rental lease~~ of any part of the ward's
21 real ~~or personal~~—estate is necessary for his maintenance or for the
22 discharge of debts unavoidably incurred for his maintenance, or
- 23 (4) Any part of the ward's real estate is required for public purposes, or
- 24 (5) There is a valid debt or demand against the estate of the ward;
25 provided, when an order is entered under this subdivision, (i) it shall
26 authorize the sale of only so much of the ~~personal or~~—real estate as may
27 be sufficient to discharge such debt or demand, and (ii) the proceeds of
28 sale shall be considered as assets in the hands of the guardian for the
29 benefit of creditors, in like manner as assets in the hands of a personal
30 representative, and the same proceedings may be had against the
31 guardian with respect to such assets as might be taken against an
32 executor, administrator or collector in similar cases.

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

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

43 (d) All petitions filed under this section wherein an order is sought for the sale,
44 mortgage, exchange, or ~~rental lease~~ of the ward's real estate ~~or both real and personal~~

1 ~~property~~ shall be filed in the county in which all or any part of the real estate is situated.
2 ~~If the order sought is for the sale, mortgage, exchange, or rental of the ward's personal estate,~~
3 ~~the petition shall be filed in the county in which any or all of such personal estate is situated.~~

4 (e) The procedure for a sale pursuant to this section shall be as provided by Article
5 29A of Chapter 1 of the General Statutes.

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

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

14 Sec. 7. G.S. 35A-1304 is repealed.

15 Sec. 8. G.S. 35A-1307 reads as rewritten:

16 "**§ 35A-1307. Spouse of incompetent husband or wife entitled to special proceeding**
17 **for sale of real property.**

18 Every married person whose husband or wife is adjudged incompetent and is
19 confined in a mental hospital or other institution in this State, and who was living with
20 the incompetent spouse at the time of commitment shall, if he or she be in needy
21 circumstances, have the right to bring a special proceeding before the clerk to sell the
22 real property of the incompetent spouse, or so much thereof as is deemed expedient, and
23 have the proceeds applied for support: Provided, that said proceeding shall be approved
24 by the judge of the superior court holding the courts of the superior court district or set
25 of districts as defined in G.S. 7A-41.1 where the said property is situated. When the
26 deed of the commissioner appointed by the court, conveying the lands belonging to the
27 incompetent spouse is executed, probated, and registered, it conveys a good and
28 indefeasible title to the purchaser."

29 Sec. 9. G.S. 35A-1231 reads as rewritten:

30 "**§ 35A-1231. Terms and conditions of bond; increase on sale of realty or personal**
31 **property.**

32 (a) Before issuing letters of appointment to a general guardian or guardian of the
33 estate the clerk shall require the guardian to give a bond payable to the State. The clerk
34 shall determine the value of all the ward's personal property and the rents and profits of
35 the ward's real estate by examining, under oath, the applicant for guardianship or any
36 other person or persons. The penalty in the bond shall be set as follows:

37 (1) Where the bond is executed by personal sureties, the penalty must be
38 at least double the value so determined by the clerk;

39 (2) Where the bond is executed by a duly authorized surety company, the
40 penalty may be fixed at not less than one and one-fourth times the
41 value so determined by the clerk;

42 (3) Provided, however, the clerk may accept bond in estates where the
43 value determined by the clerk exceeds the sum of one hundred

1 thousand dollars (\$100,000), in a sum equal to one hundred and ten
2 percent (110%) of the determined value.

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

10 (b) ~~If, on application of the guardian, the clerk or judge orders a sale of the~~
11 ~~ward's property for any of the causes prescribed by law, before the sale is confirmed, the~~
12 ~~guardian shall be required to file a bond as now required in double the amount of the~~
13 ~~real property sold, except where the bond is executed by a duly authorized surety~~
14 ~~company, in which case the penalty of the bond need not exceed one and one-fourth~~
15 ~~times the amount of the real property sold. If the court orders a sale of the ward's real~~
16 ~~property, or if the guardian expects or offers to sell personal property that he knows or~~
17 ~~has reason to know has a value greater than the value used in determining the amount of~~
18 ~~the bond posted, the guardian shall, before receiving the proceeds of the sale, furnish~~
19 ~~bond or increase his existing bond to cover the proceeds if real estate is sold, or to cover~~
20 ~~the increased value if personal property is sold. The bond, or the increase in the existing~~
21 ~~bond, shall be twice the amount of the proceeds of any real property sold, or of the~~
22 ~~increased value of any personal property sold, except where the bond is executed by a~~
23 ~~duly authorized surety company, in which case the penalty of the bond need not exceed~~
24 ~~one and one-fourth times the amount of the real property sold or the increased value of~~
25 ~~the personal property sold.~~"

26 Sec. 10. G.S. 1-339.1 reads as rewritten:

27 "**§ 1-339.1. Definitions.**

28 (a) A judicial sale is a sale of property made pursuant to an order of a judge or
29 clerk in an action or proceeding in the superior or district court, including a sale
30 pursuant to an order made in an action in court to foreclose a mortgage or deed of trust,
31 but is not

- 32 (1) A sale made pursuant to a power of sale
33 a. Contained in a mortgage, deed of trust, or conditional sale
34 contract, or
35 b. Granted by statute with respect to a mortgage, deed of trust, or
36 conditional sale contract, or
37 (2) A resale ordered with respect to any sale described in subsection
38 (a)(1), where such original sale was not held under a court order, or
39 (3) An execution sale, or
40 (4) A sale ordered in a criminal action, or
41 (5) A tax foreclosure sale, or
42 (6) A sale made pursuant to Article 4 of Chapter 35 of the General
43 Statutes, relating to sales of estates held by the entireties when one or
44 both spouses are mentally incompetent, or

- 1 (7) A sale made in the course of liquidation of a bank pursuant to G.S. 53-
2 20, or
3 (8) A sale made in the course of liquidation of an insurance company
4 pursuant to Article 17A of Chapter 58 of the General Statutes, or
5 (8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or
6 G.S. 35A-1252(14), unless any order thereunder requires, or
7 (9) Any other sale the procedure for which is specially provided by any
8 statute other than this Article."

9 Sec. 11. G.S. 35A-1101(11) reads as rewritten:

10 "(11) 'Interim guardian' means a ~~guardian of the person,~~ guardian,
11 appointed prior to adjudication of incompetence and for a
12 temporary period, for a respondent who requires immediate
13 intervention to address conditions that constitute imminent or
14 foreseeable ~~danger-risk of harm~~ to his physical well-being, well-
15 being or to his estate."

16 Sec. 12. G.S. 35A-1114 reads as rewritten: ♦

17 **"§ 35A-1114. Appointment of interim guardian.**

18 (a) At the time of or subsequent to the filing of a petition under this Article, the
19 petitioner may also file a verified motion with the clerk seeking the appointment of an
20 interim guardian.

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

22 (1) ~~There-That there~~ is reasonable cause to believe that the respondent is
23 incompetent, and

24 (2) ~~The-~~ One or both of the following:

25 a. That the respondent is in a condition that constitutes or
26 reasonably appears to constitute an imminent ~~danger-~~or
27 foreseeable risk of harm to his physical well-being and that
28 requires immediate ~~intervention,~~ and ~~intervention;~~

29 b. That there is or reasonably appears to be an imminent or
30 foreseeable risk of harm to the respondent's estate that requires
31 immediate intervention in order to protect the respondent's
32 interest, and

33 (3) ~~The-That the~~ respondent needs an interim guardian to be appointed
34 immediately to intervene on his behalf prior to the adjudication
35 hearing.

36 (c) Upon filing of the motion for appointment of an interim guardian, the clerk
37 shall immediately set a date, time, and place for a hearing on the motion. The motion
38 and a notice setting the date, time, and place for the hearing shall be served promptly on
39 the respondent and on his counsel or guardian ~~ad litem-~~ litem and other persons the
40 clerk may designate. The hearing shall be held as soon as possible but no later than 15
41 days after the motion has been served on the respondent.

42 (d) If at the hearing the clerk finds that there is reasonable cause to believe that
43 the respondent is incompetent, and:

1 (1) ~~That that~~ the respondent is in a condition that constitutes or reasonably
2 appears to constitute an imminent ~~danger~~ or foreseeable risk of harm to
3 his physical well-being, and that there is immediate need for a
4 guardian to provide consent or take other steps to protect the
5 respondent, or

6 (2) That there is or reasonably appears to be an imminent or foreseeable
7 risk of harm to the respondent's estate, and that immediate intervention
8 is required in order to protect the respondent's interest,

9 the clerk shall immediately enter an order appointing an interim guardian.

10 (e) The clerk's order appointing an interim guardian shall include specific
11 findings of fact to support the clerk's conclusions, and shall set forth the interim
12 guardian's powers and duties. Such powers and duties shall be limited and shall extend
13 only so far and so long as necessary to meet the respondent's condition, but shall in no
14 event continue for more than 45 days or until a general guardian or guardian of the person is
15 appointed, whichever occurs first; provided, the clerk may for good cause shown extend the
16 period of interim guardianship for an additional 45 days. The interim guardian shall be a
17 guardian of the person and not of the estate of the ward. conditions necessitating the
18 appointment of an interim guardian. In any event, the interim guardianship shall
19 terminate on the earliest of the following: the date specified in the clerk's order; 45 days
20 after entry of the clerk's order unless the clerk, for good cause shown, extends that
21 period for up to 45 additional days; when any guardians are appointed following an
22 adjudication of incompetence; or when the petition is dismissed by the court. The An
23 interim guardian whose authority relates only to the person of the respondent shall not
24 be required to post a bond. If the interim guardian has authority related to the
25 respondent's estate, the interim guardian shall post a bond in an amount determined by
26 the clerk, with any conditions the clerk may impose, and shall render an account as
27 directed by the clerk.

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

31 Sec. 13. G.S. 35A-1251, as rewritten by Section 3 of this act, is amended by
32 adding a subdivision to read:

33 "(21) To expend estate income for the support, maintenance, and education
34 of the ward's minor children, spouse, and dependents, and to petition
35 the court for prior approval of expenditures from estate principal for
36 these purposes; provided, the clerk, in the original order appointing the
37 guardian or a subsequent order, may require that the expenditures from
38 estate income also be approved in advance. In determining whether
39 and in what amount to make or approve these expenditures, the
40 guardian or clerk shall take into account the ward's legal obligations to
41 his minor children, spouse, and dependents; the sufficiency of the
42 ward's estate to meet the ward's needs; the needs and resources of the
43 ward's minor children, spouse, and dependents; and the ward's conduct

1 or expressed wishes, prior to becoming incompetent, in regard to the
2 support of these persons."

3 Sec. 14. G.S. 35A-1320 is repealed.

4 Sec. 15. G.S. 35A-1116(a) reads as rewritten:

5 "(a) Except as otherwise provided herein, costs shall be assessed as in
6 special proceedings. ~~Costs~~Costs, including any reasonable fees and expenses of counsel
7 for the petitioner which the clerk, in his discretion, may allow, may be taxed against
8 either party in the discretion of the court unless:

9 (1) The clerk finds that the petitioner did not have reasonable grounds to
10 bring the proceeding, in which case costs shall be taxed to the
11 petitioner; or

12 (2) The respondent is indigent, in which case the costs shall be waived by
13 the clerk if not taxed against the petitioner as provided above or
14 otherwise paid as provided in subsection (b) or (c)."

15 Sec. 16. G.S. 35A-1265(a) reads as rewritten:

16 "(a) If any guardian omits to account, as directed in G.S. 35A-1264, or renders an
17 insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to
18 render a full and satisfactory account, as required by law, within 20 days after service of
19 the order. Upon return of the order, duly served, if the guardian fails to appear or
20 refuses to exhibit such account, the clerk may issue an attachment against him for
21 contempt and commit him until he exhibits such account, and may likewise remove him
22 from office. In all proceedings hereunder the defaulting guardian will be liable
23 personally for the costs of the said proceedings, including the costs of service of all
24 notices or writs incidental to, or thereby acquiring, ~~or the~~and also including reasonable
25 attorney fees and expenses incurred by a successor guardian or other person in bringing
26 any such proceeding, or other proceedings deemed reasonable and necessary to discover
27 or obtain possession of assets of the ward in the possession of the defaulting guardian or
28 which the defaulting guardian should have discovered or which the defaulting guardian
29 should have turned over to the successor guardian. The amount of the costs and
30 attorney fees and expenses of such proceeding may be deducted from any commissions
31 which may be found due said guardian on settlement of the estate."

32 Sec. 17. G.S. 115C-366.2 reads as rewritten:

33 "**§ 115C-366.2. Applicability to certain persons.**

34 For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident
35 of a place which is not the person's place of domicile, ~~either~~ because: (i) of the
36 residence of a ~~parent or guardian~~parent, guardian, or legal custodian who is a student,
37 employee or faculty member, of a college or university, or a visiting scholar at the
38 National Humanities Center; or (ii) the child is placed in or assigned to a group home,
39 foster home, or other similar facility or institution, other than a child covered by ~~G.S.~~
40 ~~115C-140.1 (a)~~G.S. 115C-140.1(a); or (iii) the child resides with a legal custodian who
41 is not the child's parent or guardian, those sections shall be applied by substituting the
42 word 'residing' for the word 'domiciled,' by substituting the word 'residence' for the
43 word 'domicile,' and by substituting the word 'residents' for the word 'domiciliaries.'

1 For purposes of this section, 'legal custodian' means the person or agency that has been
2 awarded legal custody of the child by a court.

3 This section shall not be construed to affect the ability of any person to acquire a
4 new domicile."

5 Sec. 18. G.S. 35A-1109 reads as rewritten:

6 **"§ 35A-1109. Service of notice and petition.**

7 Copies of the petition and initial notice of hearing shall be personally served on the
8 respondent. Respondent's counsel or guardian **ad litem** shall be served pursuant to G.S.
9 1A-1, Rule 4, Rules of Civil Procedure. A sheriff who serves the notice and petition
10 shall do so without demanding his fees in advance. The petitioner, within five days
11 after filing the petition, shall mail or cause to be mailed, by first-class mail, copies of
12 the notice and petition to the respondent's next of kin alleged in the petition and any
13 other persons the clerk may ~~designate~~ designate, unless such person has accepted notice.
14 Proof of such mailing or acceptance shall be by affidavit or certificate of acceptance of
15 notice filed with the clerk. The clerk shall mail, by first-class mail, copies of
16 subsequent notices to the next of kin alleged in the petition and to such other persons as
17 the clerk deems appropriate."

18 Sec. 19. G.S. 35A-1222 reads as rewritten:

19 **"§ 35A-1222. Service of application and notices.**

20 A copy of the application and written notice of the time, date, and place set for a
21 hearing shall be served on ~~any~~ each parent, guardian, ~~or~~ and legal custodian of the minor
22 who is not an applicant, and on any other person the clerk may direct, including the
23 minor. Service shall be provided by G.S. 1A-1, Rule 4, Rules of Civil Procedure, unless
24 the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make
25 such service without demanding his fees in advance. Parties may waive their right to
26 notice of the hearing and the clerk may proceed to consider the application upon
27 determining that all necessary parties are before the court and agree to have the
28 application considered."

29 Sec. 20. G.S. 35A-1237 reads as rewritten:

30 **"§ 35A-1237. Relief of endangered sureties.**

31 Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may
32 file a ~~complaint~~ motion in the cause before the clerk where the guardianship is docketed,
33 setting forth the circumstances of his case and demanding relief. The guardian shall ~~be~~
34 ~~required to answer the complaint within 20 days after service of the summons.~~ have 10 days
35 after service of the motion to answer the motion. If, upon the hearing, the clerk deems
36 the surety entitled to relief, the clerk may order the guardian to give a new bond or to
37 indemnify the surety against apprehended loss, or may remove the guardian from his
38 trust. If the guardian fails to give a new bond or security to indemnify within a
39 reasonable time when required to do so, the clerk must enter a peremptory order for his
40 removal, and his authority as guardian shall cease."

41 Sec. 21. G.S. 35A-1269 reads as rewritten:

42 **"§ 35A-1269. Commissions.**

43 The ~~superior court clerk~~ shall allow commissions to the guardian for his time and
44 trouble in the management of the ward's estate, in the same manner and under the same

1 rules and restrictions as allowances are made to executors, administrators and collectors
2 under the provisions of ~~G.S. 28A-23-3~~ G.S. 28A-23-3 and G.S. 28A-23-4."

3 Sec. 22. G.S. 35A-1105 reads as rewritten:

4 **"§ 35A-1105. Petition before clerk.**

5 A verified petition for the adjudication of incompetence of an adult, or of a minor
6 who is within six months of reaching majority, may be filed with the clerk by any
7 person, including any State or local human resources agency through its authorized
8 representative."

9 Sec. 23. G.S. 35A-1227(d) reads as rewritten:

10 "(d) **Inter vivos** or testamentary ~~gifts-transfers~~ to minors may be made
11 and administered according to the North Carolina Uniform ~~Gifts-Transfers~~ to Minors
12 Act, ~~Chapter 33~~ Chapter 33A of the General Statutes."

13 Sec. 24. G.S. 35A-1221 reads as rewritten:

14 **"§ 35A-1221. ~~Petition~~ Application before clerk.**

15 Any person or corporation, including any State or local human resources agency
16 through its authorized representative, may make application for the appointment of a
17 guardian of the estate for any minor or for the appointment of a guardian of the person
18 or general guardian for any minor who has no natural guardian by filing an application
19 with the clerk. The application shall set forth, to the extent known:

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

40 Sec. 25. G.S. 35A-1211 reads as rewritten:

41 **"§ 35A-1211. Service of application, motions, and notices.**

42 (a) Application for appointment of a guardian and related motions and notices
43 shall be served on the respondent, respondent's counsel or guardian ad litem, other
44 parties of record, and ~~on~~ such other persons as the clerk shall direct.

1 (b) When the application for appointment of a guardian is joined with a petition
2 for adjudication of incompetence, the application shall be served with and in the same
3 manner as the petition for adjudication of incompetence. ~~In all other cases, the applicant~~
4 ~~shall serve the application as provided by G.S. 1A-1, Rule 4 of the Rules of Civil Procedure~~
5 ~~unless the clerk directs otherwise. The sheriff shall make such service without demanding his~~
6 ~~fees in advance.~~ When the application is filed subsequent to the petition for adjudication
7 of incompetence, the applicant shall serve the application as provided by G.S. 1A-1,
8 Rule 5, Rules of Civil Procedure, unless the clerk directs otherwise."

9 Sec. 26. G.S. 35A-1261 reads as rewritten:

10 **"§ 35A-1261. Return Inventory or account within three months.**

11 Every guardian, within three months after his appointment, shall ~~exhibit to file with~~
12 the clerk an inventory or account, upon oath, of the estate of his ward; but the clerk may
13 extend such time not exceeding six months, for good cause shown."

14 Sec. 27. G.S. 35A-1262 reads as rewritten:

15 **"§ 35A-1262. Procedure to compel return inventory or account.**

16 (a) In cases of default to ~~exhibit the return~~ file the inventory or account required
17 by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file ~~such return~~
18 ~~forthwith, the inventory or account within the time specified in the order, or to show~~
19 ~~cause why an attachment should not issue against him. he should not be removed from~~
20 ~~office or held in civil contempt, or both.~~ If after due service of the order, the guardian
21 does not, on the return day of within the time specified in the order, file such return,
22 inventory or account, or obtain further time to file the same, the clerk shall issue an
23 attachment against him, and commit him to the common jail of the county until he files such
24 return. may remove him from office, hold him in civil contempt as provided in Article 2
25 of Chapter 5A, or both.

26 (b) The guardian shall be personally liable for the costs of any proceeding
27 incident to his failure to file the inventory or account required by G.S. 35A-1261. Such
28 costs shall be taxed against him by the clerk and may be collected by deduction from
29 any commissions that may be found due the guardian upon final settlement of the
30 estate."

31 Sec. 28. G.S. 35A-1263 is repealed.

32 Sec. 29. Article 10 of Chapter 35A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 35A-1263.1. Supplemental inventory.**

35 Whenever any property not included in the original inventory report becomes known
36 to the guardian or whenever the guardian learns that the valuation or description of any
37 property or interest therein indicated in the original inventory is erroneous or
38 misleading, he shall prepare and file with the clerk a supplementary inventory in the
39 same manner as prescribed for the original inventory. The clerk shall record the
40 supplemental inventory with the original inventory. A guardian who fails to file a
41 supplementary inventory as required by this section shall be subject to the enforcement
42 provisions of G.S. 35A-1262."

43 Sec. 30. The title of Article 13 of Chapter 35A of the General Statutes reads
44 as rewritten:

1 "ARTICLE 13.

2 ~~TERMINATION OF GUARDIANSHIP; ESTATES WITHOUT GUARDIANS.~~
3 ~~"REMOVAL OR RESIGNATION OF GUARDIAN; SUCCESSOR GUARDIAN;~~
4 ~~ESTATES WITHOUT GUARDIANS; TERMINATION OF GUARDIANSHIP."~~

5 Sec. 31. Article 13 of Chapter 35A of the General Statutes is amended by
6 adding a new section to read:

7 "§ 35A-1295. Termination of guardianship.

8 (a) Every guardianship shall be terminated and all powers and duties of the
9 guardian provided in Article 9 of this Chapter shall cease when the ward:

10 (1) Ceases to be a minor as defined in G.S. 35A-1202(12).

11 (2) Is adjudicated to be restored to competency pursuant to the provisions
12 of G.S. 35A-1130, or

13 (3) Dies.

14 (b) Notwithstanding subsection (a), a guardian of the estate or a general guardian
15 is responsible for all accountings required by Article 10 of this Chapter until the
16 guardian is discharged by the clerk."

17 Sec. 32. G.S. 35A-1266 reads as rewritten:

18 "§ 35A-1266. Final ~~account.~~ account and discharge of guardian.

19 ~~A guardian may be required to file a final account at any time after 60 days from the~~
20 ~~ward's coming of full age or the cessation of the guardianship; but such account may be~~
21 ~~filed voluntarily at any time, and, whether the accounting be voluntary or compulsory, it~~
22 ~~shall be audited and recorded by the clerk.~~

23 Within 60 days after a guardianship is terminated under G.S. 35A-1295, the guardian
24 shall file a final account for the period from the end of the period of his most recent
25 annual account to the date of that event. If the clerk, after review of the guardian's
26 account, approves the account, the clerk shall enter an order discharging the guardian
27 from further liability."

28 Sec. 33. This act shall become effective October 1, 1989.