

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 711
Committee Substitute Favorable 4/20/89
Judiciary III Senate Committee Substitute Adopted 6/19/89

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.~~

7 a. Without a court order to lease any of the ward's real estate for a
8 term of not more than three years, or to sell, lease or exchange
9 any of the ward's personal property including securities,
10 provided that the aggregate value of all items of the ward's
11 tangible personal property sold without court order over the
12 duration of the estate shall not exceed one thousand five
13 hundred dollars (\$1,500). When any item of the ward's tangible
14 personal property has a value which when increased by the
15 value of all other tangible personal property previously sold in
16 the estate without a court order would exceed one thousand five
17 hundred dollars (\$1,500), a guardian may sell the item only as
18 provided in subdivision (17)b.

19 b. A guardian who is required by subdivision (17)a. to do so shall,
20 and any other guardian who so desires may, by motion in the
21 cause, request the court to issue him an order to lease any of the
22 ward's real estate or to sell any item or items of the ward's
23 personal property. Notice of the motion and of the date, time
24 and place of a hearing thereon shall be served, as provided in
25 G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of
26 record and upon such other persons as the clerk may direct, and
27 the court may issue the order after hearing and upon such
28 conditions as the court may require; provided that:

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

32 2. The power granted in this subdivision shall not affect the
33 power of the guardian to petition the court for prior
34 approval of expenditures from estate principal under
35 subdivision (12) of this section.

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

42 (19) To borrow money for such periods of time and upon such terms and
43 conditions as to rates, maturities, renewals, and security as the
44 guardian shall deem advisable, including the power of a corporate

1 guardian to borrow from its own banking department, for the purpose
2 of paying debts, taxes, and other claims against the ward, and to
3 mortgage, pledge, or otherwise encumber such portion of the ward's
4 estate as may be required to secure such loan or loans; provided, in
5 respect to the borrowing of money on the security of the ward's real
6 property, Subchapter III of this Chapter is controlling.

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

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

10 **"§ 35A-1252. Guardian's powers in administering minor ward's estate.**

11 In the case of a minor ward, a general guardian or guardian of the estate has the
12 power to perform in a reasonable and prudent manner every act that a reasonable and
13 prudent person would perform incident to the collection, preservation, management, and
14 use of the ward's estate to accomplish the desired result of administering the ward's
15 estate legally and in the ward's best interest, including but not limited to the following
16 specific powers:

- 17 (1) To take possession, for the ward's use, of all the ward's estate, as
18 defined in G.S. 35A-1202(5).
19 (2) To receive assets due the ward from any source.
20 (3) To maintain any appropriate action or proceeding to obtain support to
21 which the ward is legally entitled, to recover possession of any of the
22 ward's property, to determine the title thereto, or to recover damages
23 for any injury done to any of the ward's property; also, to compromise,
24 adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and
25 settle any other claims in favor of or against the ward.
26 (4) To abandon or relinquish all rights in any property when, in the
27 guardian's opinion, acting reasonably and in good faith, it is valueless,
28 or is so encumbered or is otherwise in such condition that it is of no
29 benefit or value to the ward or his estate.
30 (5) To vote shares of stock or other securities in person or by general or
31 limited proxy, and to pay sums chargeable or accruing against or on
32 account of securities owned by the ward.
33 (6) To insure the ward's assets against damage or loss, at the expense of
34 the ward's estate.
35 (7) To pay taxes, assessments, and other expenses incident to the
36 collection, care, administration, and protection of the ward's estate.
37 (8) To sell or exercise stock subscription or conversion rights; consent,
38 directly or through a committee or other agent, to the reorganization,
39 consolidation, merger, dissolution, or liquidation of a corporation or
40 other business enterprise.
41 (9) To expend estate income on the ward's behalf and to petition the court
42 for prior approval of expenditures from estate principal; provided,
43 neither the existence of the estate nor the guardian's authority to make
44 expenditures therefrom shall be construed as affecting the legal duty

- 1 that a parent or other person may have to support and provide for the
2 ward.
- 3 (10) To pay from the ward's estate necessary expenses of administering the
4 ward's estate.
- 5 (11) To employ persons, including attorneys, auditors, investment advisors,
6 appraisers, or agents to advise or assist him in the performance of his
7 duties as guardian.
- 8 (12) To continue any business or venture or farming operation in which the
9 ward was engaged, where such continuation is reasonably necessary or
10 desirable to preserve the value, including goodwill, of the ward's
11 interest in such business.
- 12 (13) To acquire and retain every kind of property and every kind of
13 investment, including specifically, but without in any way limiting the
14 generality of the foregoing bonds, debentures, and other corporate or
15 governmental obligations; stocks, preferred or common; real estate
16 mortgages; shares in building and loan associations or savings and
17 loan associations; annual premium or single premium life, endowment,
18 or annuity contracts; and securities of any management type
19 investment company or investment trust registered under the Federal
20 Investment Company Act of 1940, as from time to time amended.
- 21 (14) ~~To lease the ward's lands for a term of not more than three years.~~
- 22 a. Without a court order to lease any of the ward's real estate for a
23 term of not more than three years, or to sell, lease or exchange
24 any of the ward's personal property including securities,
25 provided that the aggregate value of all items of the ward's
26 tangible personal property sold without court order over the
27 duration of the estate shall not exceed one thousand five
28 hundred dollars (\$1,500). When any item of the ward's tangible
29 personal property has a value which when increased by the
30 value of all other tangible personal property previously sold in
31 the estate without a court order would exceed one thousand five
32 hundred dollars (\$1,500), a guardian may sell the item only as
33 provided in subdivision (14)b.
- 34 b. A guardian who is required by subdivision (14)a. to do so shall,
35 and any other guardian who so desires may, by motion in the
36 cause, request the court to issue him an order to lease any of the
37 ward's real estate or to sell any item or items of the ward's
38 personal property. Notice of the motion and of the date, time
39 and place of a hearing thereon shall be served, as provided in
40 G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of
41 record and upon such other persons as the clerk may direct, and
42 the court may issue the order after hearing and upon such
43 conditions as the court may require; provided that:

- 1 1. A sale, lease, or exchange under this subdivision may not
2 be subject to Article 29A of Chapter 1 of the General
3 Statutes unless the order so requires; and
4 2. The power granted in this subdivision shall not affect the
5 power of the guardian to petition the court for prior
6 approval of expenditures from estate principal under
7 subdivision (9) of this section.
- 8 (15) To foreclose, as an incident to the collection of any bond, note or other
9 obligation, any mortgage, deed of trust, or other lien securing such
10 bond, note or other obligation, and to bid in the property at such
11 foreclosure sale, or to acquire the property by deed from the mortgagor
12 or obligor without foreclosure; and to retain the property so bid in or
13 taken over without foreclosure.
- 14 (16) To borrow money for such periods of time and upon such terms and
15 conditions as to rates, maturities, renewals, and security as the
16 guardian shall deem advisable, including the power of a corporate
17 guardian to borrow from its own banking department, for the purpose
18 of paying debts, taxes, and other claims against the ward, and to
19 mortgage, pledge, or otherwise encumber such portion of the ward's
20 estate as may be required to secure such loan or loans; provided, in
21 respect to the borrowing of money on the security of the ward's real
22 property, Subchapter III of this Chapter is controlling.
- 23 (17) To execute and deliver all instruments that will accomplish or facilitate
24 the exercise of the powers vested in the guardian."

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

27 "ARTICLE 14.
28 **"SALE, MORTGAGE, EXCHANGE OR RENTAL-LEASE OF WARD'S**
29 **ESTATE."**

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

31 "**§ 35A-1301. Special proceedings to sell, exchange, mortgage, or rental**

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

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

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

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

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

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

33 (e) The procedure for a sale pursuant to this section shall be as provided by Article
34 29A of Chapter 1 of the General Statutes.

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

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

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

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

1 **"§ 35A-1307. Spouse of incompetent husband or wife entitled to special proceeding**
2 **for sale of real property.**

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

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

15 **"§ 35A-1231. Terms and conditions of bond; increase on sale of realty or personal**
16 **property.**

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

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

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

38 (b) ~~If, on application of the guardian, the clerk or judge orders a sale of the~~
39 ~~ward's property for any of the causes prescribed by law, before the sale is confirmed, the~~
40 ~~guardian shall be required to file a bond as now required in double the amount of the~~
41 ~~real property sold, except where the bond is executed by a duly authorized surety~~
42 ~~company, in which case the penalty of the bond need not exceed one and one-fourth~~
43 ~~times the amount of the real property sold. If the court orders a sale of the ward's real~~
44 ~~property, or if the guardian expects or offers to sell personal property that he knows or~~

1 has reason to know has a value greater than the value used in determining the amount of
2 the bond posted, the guardian shall, before receiving the proceeds of the sale, furnish
3 bond or increase his existing bond to cover the proceeds if real estate is sold, or to cover
4 the increased value if personal property is sold. The bond, or the increase in the existing
5 bond, shall be twice the amount of the proceeds of any real property sold, or of the
6 increased value of any personal property sold, except where the bond is executed by a
7 duly authorized surety company, in which case the penalty of the bond need not exceed
8 one and one-fourth times the amount of the real property sold or the increased value of
9 the personal property sold."

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

11 **"§ 1-339.1. Definitions.**

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

- 16 (1) A sale made pursuant to a power of sale
17 a. Contained in a mortgage, deed of trust, or conditional sale
18 contract, or
19 b. Granted by statute with respect to a mortgage, deed of trust, or
20 conditional sale contract, or
21 (2) A resale ordered with respect to any sale described in subsection
22 (a)(1), where such original sale was not held under a court order, or
23 (3) An execution sale, or
24 (4) A sale ordered in a criminal action, or
25 (5) A tax foreclosure sale, or
26 (6) A sale made pursuant to Article 4 of Chapter 35 of the General
27 Statutes, relating to sales of estates held by the entireties when one or
28 both spouses are mentally incompetent, or
29 (7) A sale made in the course of liquidation of a bank pursuant to G.S. 53-
30 20, or
31 (8) A sale made in the course of liquidation of an insurance company
32 pursuant to Article 17A of Chapter 58 of the General Statutes, or
33 (8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or
34 G.S. 35A-1252(14), unless any order thereunder requires, or
35 (9) Any other sale the procedure for which is specially provided by any
36 statute other than this Article."

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

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

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

1 **"§ 35A-1114. Appointment of interim guardian.**

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

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

6 (1) ~~There~~ That there is reasonable cause to believe that the respondent is
7 incompetent, and

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

9 a. That the respondent is in a condition that constitutes or
10 reasonably appears to constitute an imminent ~~danger~~ or
11 foreseeable risk of harm to his physical well-being and that
12 requires immediate ~~intervention~~, and intervention:

13 b. That there is or reasonably appears to be an imminent or
14 foreseeable risk of harm to the respondent's estate that requires
15 immediate intervention in order to protect the respondent's
16 interest, and

17 (3) ~~The~~ That the respondent needs an interim guardian to be appointed
18 immediately to intervene on his behalf prior to the adjudication
19 hearing.

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

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

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

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

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

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

1 appointment of an interim guardian. In any event, the interim guardianship shall
2 terminate on the earliest of the following: the date specified in the clerk's order; 45 days
3 after entry of the clerk's order unless the clerk, for good cause shown, extends that
4 period for up to 45 additional days; when any guardians are appointed following an
5 adjudication of incompetence; or when the petition is dismissed by the court. ~~The~~ An
6 interim guardian whose authority relates only to the person of the respondent shall not
7 be required to post a bond. If the interim guardian has authority related to the
8 respondent's estate, the interim guardian shall post a bond in an amount determined by
9 the clerk, with any conditions the clerk may impose, and shall render an account as
10 directed by the clerk.

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

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

16 "(21) To expend estate income for the support, maintenance, and
17 education of the ward's minor children, spouse, and dependents,
18 and to petition the court for prior approval of expenditures from
19 estate principal for these purposes; provided, the clerk, in the
20 original order appointing the guardian or a subsequent order, may
21 require that the expenditures from estate income also be approved
22 in advance. In determining whether and in what amount to make or
23 approve these expenditures, the guardian or clerk shall take into
24 account the ward's legal obligations to his minor children, spouse,
25 and dependents; the sufficiency of the ward's estate to meet the
26 ward's needs; the needs and resources of the ward's minor children,
27 spouse, and dependents; and the ward's conduct or expressed
28 wishes, prior to becoming incompetent, in regard to the support of
29 these persons."

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

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

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

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

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

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

43 "(a) If any guardian omits to account, as directed in G.S. 35A-1264, or renders an
44 insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to

1 render a full and satisfactory account, as required by law, within 20 days after service of
2 the order. Upon return of the order, duly served, if the guardian fails to appear or
3 refuses to exhibit such account, the clerk may issue an attachment against him for
4 contempt and commit him until he exhibits such account, and may likewise remove him
5 from office. In all proceedings hereunder the defaulting guardian will be liable
6 personally for the costs of the said proceedings, including the costs of service of all
7 notices or writs incidental to, or thereby acquiring, ~~or the~~ and also including reasonable
8 attorney fees and expenses incurred by a successor guardian or other person in bringing
9 any such proceeding, or other proceedings deemed reasonable and necessary to discover
10 or obtain possession of assets of the ward in the possession of the defaulting guardian or
11 which the defaulting guardian should have discovered or which the defaulting guardian
12 should have turned over to the successor guardian. The amount of the costs and
13 attorney fees and expenses of such proceeding may be deducted from any commissions
14 which may be found due said guardian on settlement of the estate."

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

16 "**§ 115C-366.2. Applicability to certain persons.**

17 For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident
18 of a place which is not the person's place of domicile, ~~either~~ because: (i) of the
19 residence of a ~~parent or guardian-parent, guardian, or legal custodian~~ who is a student,
20 employee or faculty member, of a college or university, or a visiting scholar at the
21 National Humanities Center; or (ii) the child is placed in or assigned to a group home,
22 foster home, or other similar facility or institution, other than a child covered by ~~G.S.~~
23 ~~115C-140.1 (a)~~ G.S. 115C-140.1(a); or (iii) the child resides with a legal custodian who
24 is not the child's parent or guardian, those sections shall be applied by substituting the
25 word 'residing' for the word 'domiciled,' by substituting the word 'residence' for the
26 word 'domicile,' and by substituting the word 'residents' for the word 'domiciliaries.'
27 For purposes of this section, 'legal custodian' means the person or agency that has been
28 awarded legal custody of the child by a court.

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

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

32 "**§ 35A-1109. Service of notice and petition.**

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

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

1 **"§ 35A-1222. Service of application and notices.**

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

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

12 **"§ 35A-1237. Relief of endangered sureties.**

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

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

24 **"§ 35A-1269. Commissions.**

25 The ~~superior court clerk~~ shall allow commissions to the guardian for his time and
26 trouble in the management of the ward's estate, in the same manner and under the same
27 rules and restrictions as allowances are made to executors, administrators and collectors
28 under the provisions of ~~G.S. 28A-23-3.~~ G.S. 28A-23-3 and G.S. 28A-23-4."

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

30 **"§ 35A-1105. Petition before clerk.**

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

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

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

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

40 **"§ 35A-1221. ~~Petition~~ Application before clerk.**

41 Any person or corporation, including any State or local human resources agency
42 through its authorized representative, may make application for the appointment of a
43 guardian of the estate for any minor or for the appointment of a guardian of the person

1 or general guardian for any minor who has no natural guardian by filing an application
2 with the clerk. The application shall set forth, to the extent known:

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

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

24 **"§ 35A-1211. Service of application, motions, and notices.**

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

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

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

37 **"§ 35A-1261. ~~Return~~ Inventory or account within three months.**

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

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

42 **"§ 35A-1262. Procedure to compel ~~return~~ inventory or account.**

43 (a) In cases of default to ~~exhibit the return~~ file the inventory or account required
44 by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file ~~such return~~

1 ~~forthwith, the inventory or account within the time specified in the order, or to show~~
2 ~~cause why an attachment should not issue against him. he should not be removed from~~
3 ~~office or held in civil contempt, or both. If after due service of the order, the guardian~~
4 ~~does not, on the return day of within the time specified in the order, file such return,~~
5 ~~inventory or account, or obtain further time to file the same, the clerk shall issue an~~
6 ~~attachment against him, and commit him to the common jail of the county until he files such~~
7 ~~return. may remove him from office, hold him in civil contempt as provided in Article 2~~
8 ~~of Chapter 5A, or both.~~

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

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

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

17 **"§ 35A-1263.1. Supplemental inventory.**

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

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

28 **"ARTICLE 13.**

29 ~~**TERMINATION OF GUARDIANSHIP; ESTATES WITHOUT GUARDIANS.**~~
30 ~~**"REMOVAL OR RESIGNATION OF GUARDIAN; SUCCESSOR GUARDIAN;**~~
31 ~~**ESTATES WITHOUT GUARDIANS; TERMINATION OF GUARDIANSHIP."**~~

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

34 **"§ 35A-1295. Termination of guardianship.**

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

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

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

40 (3) Dies.

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

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

1 **"§ 35A-1266. Final ~~account.~~ account and discharge of guardian.**

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

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

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