

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS35084-MQ-62

Short Title: Guardianship Rights.

(Public)

Sponsors: Senators Galey, Daniel, and Overcash (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE THE GUARDIANSHIP ACCOUNTING STATUTE TO ALLOW FOR  
3 CERTAIN TIMING ELECTIONS AND EXTENSIONS, TO AMEND THE GENERAL  
4 STATUTES TO PREVENT THE ABUSE OR MISUSE OF AUTHORITY GRANTED TO  
5 AN AGENT IN A POWER OF ATTORNEY, AND TO PROMOTE THE RIGHTS AND  
6 INDEPENDENCE OF PERSONS SUBJECT TO THE GUARDIANSHIP PROCESS AND  
7 TO IMPROVE JUDICIAL OVERSIGHT AND ACCOUNTABILITY FOR GUARDIANS  
8 OF THE PERSON, AS RECOMMENDED BY THE NORTH CAROLINA BAR  
9 ASSOCIATION.

10 The General Assembly of North Carolina enacts:

11  
12 **PART I. GUARDIANSHIP ANNUAL ACCOUNTING CHANGES**

13 **SECTION 1.1.** G.S. 35A-1264 reads as rewritten:

14 "**§ 35A-1264. Annual accounts.**

15 ~~Every~~ Unless the time for filing the annual account has been extended by the clerk, every  
16 guardian shall, ~~within 30 days after the expiration of one year from the date of his qualification~~  
17 ~~or appointment, and annually, for~~ so long as any of the estate remains in ~~his~~ the guardian's control,  
18 file annually in the office of the clerk an inventory and account, under oath, of the amount of  
19 property the guardian received by him, or invested by him, and invested, including the manner  
20 and nature of such investment, and ~~his all~~ receipts and disbursements for the past year in the form  
21 of debit and credit. All accounts shall be due within 30 days after the close of the fiscal year  
22 selected by the guardian, and annually thereafter. The election of a fiscal year shall be made by  
23 the guardian upon filing of the first annual account. In no event may a guardian select a fiscal  
24 year-end that is fewer than 11 months nor more than 12 months from the date of the guardian's  
25 qualification or appointment. The guardian shall produce vouchers for all payments or verified  
26 proof for all payments in lieu of vouchers. The clerk may examine on oath such the accounting  
27 party, or any other person, concerning the receipts, disbursements or any other matter relating to  
28 the estate; and having estate. The clerk shall carefully revised review and audited such audit the  
29 account, and, if he approve the same, he approved, must endorse his the approval thereon, on the  
30 account and cause the account to be recorded, which shall be deemed prima facie evidence of  
31 correctness."

32 **SECTION 1.2.** This Part is effective when it becomes law and applies to annual  
33 account filings made on or after that date.

34  
35 **PART II. PREVENT ABUSE OF AUTHORITY IN POWERS OF ATTORNEY**

36 **SECTION 2.1.** G.S. 32C-1-116 reads as rewritten:



1 **"§ 32C-1-116. Judicial relief.**

2 (a) The clerks of superior court of this State shall have original jurisdiction of  
3 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk  
4 of superior court's jurisdiction is exclusive. The following proceedings are included:

- 5 (1) To compel an accounting by the agent, including the power to compel the  
6 production of evidence substantiating any expenditure made by the agent from  
7 the principal's assets.
- 8 (2) To terminate a power of attorney or to suspend or terminate the authority of  
9 an agent where a guardian of the estate or a general guardian has been  
10 appointed.
- 11 (3) To determine compensation and expenses for an agent under  
12 G.S. 32C-1-112(b) and G.S. 32C-1-112(c).
- 13 (4) To determine an agent's authority and powers, to construe the terms of a power  
14 of attorney created or governed by this Chapter, and to determine any question  
15 arising in the performance by an agent of the agent's powers and authority  
16 under a power of attorney governed by this Chapter, including, but not limited  
17 to, the following proceedings:
- 18 a. To determine whether and to what extent an agent holds a specific  
19 grant of authority under G.S. 32C-2-201.
- 20 b. To approve an agent's ability to make a gift on behalf of the principal  
21 where the gift is governed by G.S. 32C-2-217 because the power of  
22 attorney grants the agent only general authority with respect to gifts.
- 23 c. To authorize the agent to make a gift of the principal's property under  
24 G.S. 32C-2-218.
- 25 d. To authorize the agent to do an act described in G.S. 32C-2-201(a),  
26 other than the act to make a gift, under G.S. 32C-2-219.
- 27 e. To determine whether and to what extent acceptance of a power of  
28 attorney shall be mandated under G.S. 32C-1-120(f).

29 Any party may file a notice of transfer of a proceeding pursuant to this  
30 subdivision to the superior court division of the General Court of Justice as  
31 provided in G.S. 28A-2-6(h). In the absence of a removal to superior court,  
32 Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding  
33 commenced under this Chapter to the extent consistent with this subsection.

34 ...

35 (f) Upon motion by the ~~principal~~, principal individually and not through an agent, the  
36 clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless  
37 the clerk of superior court determines the principal is incapacitated within the meaning of  
38 G.S. 32C-1-102(6).

39 (g) Any party adversely affected by an order of the clerk of superior court in a proceeding  
40 commenced under subsection (a) of this section may appeal the clerk's order as provided in  
41 G.S. 1-301.3."

42 **SECTION 2.2.** This Part is effective when it becomes law and applies to proceedings  
43 filed on or after that date.

44  
45 **PART III. CHANGES TO GUARDIANSHIP STATUTES**

46 **SECTION 3.1.** G.S. 35A-1101 reads as rewritten:

47 **"§ 35A-1101. Definitions.**

48 The following definitions apply in this Subchapter:

49 ...

- 50 (7) Incompetent adult. – An adult or emancipated minor who lacks sufficient  
51 capacity to manage the adult's own affairs or to make or communicate

1 important decisions concerning the adult's person, family, or property whether  
 2 the lack of capacity is due to mental illness, intellectual disability, epilepsy,  
 3 cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or  
 4 condition. An adult or emancipated minor does not lack capacity if, by means  
 5 of a less restrictive alternative, he or she is able to sufficiently (i) manage his  
 6 or her affairs and (ii) communicate important decisions concerning his or her  
 7 person, family, and property.

8 (8) Incompetent child. – A minor who is at least 17 1/2 years of age and who,  
 9 other than by reason of minority, lacks sufficient capacity to make or  
 10 communicate important decisions concerning the child's person, family, or  
 11 property whether the lack of capacity is due to mental illness, intellectual  
 12 disability, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or  
 13 similar cause or condition. An incompetent child does not lack capacity if, by  
 14 means of a less restrictive alternative, he or she is able to sufficiently (i)  
 15 manage his or her affairs and (ii) communicate important decisions  
 16 concerning his or her person, family, and property.

17 (9) Indigent. – Unable to pay for legal representation and other necessary  
 18 expenses of a proceeding brought under this Subchapter.

19 (10) Inebriety. – The habitual use of alcohol or drugs rendering a person  
 20 incompetent to transact ordinary business concerning the person's estate,  
 21 dangerous to person or property, cruel and intolerable to family, or unable to  
 22 provide for family.

23 (10a) Intellectual disability. – Significantly subaverage general intellectual  
 24 functioning existing concurrently with deficits in adaptive behavior and  
 25 manifested before age 22.

26 (11) Interim guardian. – A guardian, appointed prior to adjudication of  
 27 incompetence and for a temporary period, for a person who requires  
 28 immediate intervention to address conditions that constitute imminent or  
 29 foreseeable risk of harm to the person's physical well-being or to the person's  
 30 estate.

31 (11a) Less restrictive alternative. – An arrangement enabling a respondent to  
 32 manage his or her affairs or to make or communicate important decisions  
 33 concerning his or her person, property, and family that restricts fewer rights  
 34 of the respondent than would the adjudication of incompetency and  
 35 appointment of a guardian. The term includes supported decision making,  
 36 appropriate and available technological assistance, appointment of a  
 37 representative payee, and appointment of an agent by the respondent,  
 38 including appointment under a power of attorney for health care or power of  
 39 attorney for finances.

40 ...."

41 **SECTION 3.2.** G.S. 35A-1106 reads as rewritten:

42 **"§ 35A-1106. Contents of petition.**

43 The petition shall set forth, to the extent ~~known~~known, all of the following:

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

- 1 (4) A statement of the facts tending to show that the respondent is incompetent  
2 and the reason or reasons why the adjudication of incompetence is  
3 ~~sought~~sought.
- 4 (4a) A statement identifying what less restrictive alternatives have been considered  
5 prior to seeking adjudication and why those less restrictive alternatives are  
6 insufficient to meet the needs of the respondent.
- 7 (5) The name, address, and county of residence of the respondent's next of kin  
8 and other persons known to have an interest in the ~~proceeding~~proceeding.
- 9 (6) Facts regarding the adjudication of respondent's incompetence by a court of  
10 another state, if an adjudication is sought on that basis pursuant to  
11 G.S. 35A-1113(1)."

12 **SECTION 3.3.** G.S. 35A-1107 reads as rewritten:

13 **"§ 35A-1107. Right to counsel or guardian ad litem.**

14 (a) The respondent is entitled to be represented by counsel of the respondent's own choice  
15 or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be appointed  
16 as guardian ad litem to represent the respondent unless the respondent retains counsel, in which  
17 event the guardian ad litem may be discharged. Appointment and discharge of an appointed  
18 guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense  
19 Services.

20 (b) An attorney appointed as a guardian ad litem under this section shall represent the  
21 respondent until any of the following occurs:

- 22 (1) The petition is dismissed.  
23 (2) A guardian is appointed under Subchapter II of this Chapter.  
24 (3) Other relief is granted under Article 2 of this Subchapter.

25 (c) After being appointed, the guardian ad litem shall personally visit the respondent as  
26 soon as possible and shall make every reasonable effort to determine the respondent's wishes  
27 regarding the incompetency proceeding and any proposed guardianship. During the personal  
28 visit, and at any time upon request by the respondent, the guardian ad litem shall explain the  
29 notice of rights required under G.S. 35A-1117 to the respondent. The guardian ad litem shall  
30 present to the clerk the respondent's express wishes at all relevant stages of the proceedings. The  
31 guardian ad litem also may make recommendations to the clerk concerning the respondent's best  
32 interests if those interests differ from the respondent's express wishes. In appropriate cases, the  
33 guardian ad litem shall consider the possibility of a limited guardianship and shall make  
34 recommendations to the clerk concerning the rights, powers, and privileges that the respondent  
35 should retain under a limited guardianship."

36 **SECTION 3.4.** G.S. 35A-1108 reads as rewritten:

37 **"§ 35A-1108. Issuance of notice.**

38 (a) Within five days after filing of the petition, the clerk shall issue a written notice of the  
39 date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor  
40 more than 30 days after service of the notice of rights required under G.S. 35A-1117 and the  
41 petition and initial notice of hearing on the respondent, unless the clerk extends the time for good  
42 cause, for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111, or for the  
43 completion of a mediation.

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

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

51 **SECTION 3.5.** G.S. 35A-1109 reads as rewritten:

1 **"§ 35A-1109. Service of notice and petition.**

2 (a) Copies of the notice of rights required under G.S. 35A-1117 and the petition and  
3 initial notice of hearing shall be personally served on the respondent. Respondent's counsel or  
4 guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A  
5 sheriff who serves the notice and petition shall do so without demanding his fees in advance. The  
6 petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class  
7 mail, copies of the notice of rights and the petition and initial notice of hearing to the respondent's  
8 next of kin alleged in the petition and any other persons the clerk may designate, unless such  
9 person has accepted notice. Proof of such mailing or acceptance shall be by affidavit or certificate  
10 of acceptance of notice filed with the clerk. The clerk shall mail, by first-class mail, copies of  
11 subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk  
12 deems appropriate.

13 (b) Expired August 1, 2020, pursuant to Session Laws 2020-3, s. 4.11(b)."

14 **SECTION 3.6.** G.S. 35A-1116 reads as rewritten:

15 **"§ 35A-1116. Costs and fees.**

16 (a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special  
17 proceedings. Costs, including any reasonable fees and expenses of ~~counsel for the petitioner~~  
18 ~~which the clerk, in his discretion, may allow, may be taxed against either party counsel, shall be~~  
19 ~~taxed against any party or apportioned among the parties, in the discretion of the court~~  
20 ~~unless court. In exercising such discretion, the court shall tax costs incurred by any party against~~  
21 ~~the respondent if those costs were incurred for the benefit of the respondent, unless doing so~~  
22 ~~would be inequitable. In the event that~~

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

25 (2) ~~The the respondent is indigent, in which case the costs shall be waived by the~~  
26 ~~clerk if not taxed against the petitioner a party other than the respondent as~~  
27 ~~provided above in this subsection or otherwise paid as provided in subsection~~  
28 ~~(b) or (e)-(c) of this section.~~

29 (b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order  
30 pursuant to G.S. 35A-1111 shall be assessed as follows:

31 (1) If the respondent is adjudicated incompetent and is not indigent, the cost shall  
32 be assessed against the respondent;

33 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be  
34 borne by the Department of Health and Human Services;

35 (3) If the respondent is not adjudicated incompetent, the cost may be taxed against  
36 either party, apportioned among the parties, or borne by the Department of  
37 Health and Human Services, in the discretion of the court.

38 (c) Witness. – Witness fees shall be paid by:

39 (1) The respondent, if the respondent is adjudicated incompetent and is not  
40 indigent;

41 (2) The petitioner, if the respondent is not adjudicated incompetent and the clerk  
42 finds that there were not reasonable grounds to bring the proceeding;

43 (2a) The petitioner for any of the petitioner's witnesses, and the respondent for any  
44 of the respondent's witnesses, when the clerk finds all of the following:

45 a. There were reasonable grounds to bring the proceeding.

46 b. The respondent was not adjudicated incompetent.

47 c. The respondent is not indigent.

48 (3) The Administrative Office of the Courts for witness fees for the respondent,  
49 if the respondent is indigent.

50 (c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed  
51 in accordance with G.S. 7A-38.3B.

1 (c2) Guardian Ad Litem. – The fees of an appointed guardian ad litem shall be paid by:

2 (1) The respondent, if:

- 3 a. The respondent is adjudicated incompetent; and  
4 b. The respondent is not indigent.

5 (2) The respondent, if:

- 6 a. The respondent is not adjudicated incompetent;  
7 b. The clerk finds that there were reasonable grounds to bring the  
8 proceeding; and  
9 c. The respondent is not indigent.

10 (3) The petitioner, if:

- 11 a. The respondent is not adjudicated incompetent; and  
12 b. The clerk finds that there were not reasonable grounds to bring the  
13 proceedings.

14 (4) The Office of Indigent Defense Services in all other cases.

15 (d) The provisions of this section shall also apply to all parties to any proceedings under  
16 this Chapter, including a guardian who has been removed from office and the sureties on the  
17 guardian's bond."

18 **SECTION 3.7.** Article 1 of Subchapter 1 of Chapter 35A of the General Statutes is  
19 amended by adding a new section to read:

20 "**§ 35A-1117. Notice of rights of respondent.**

21 (a) Notice of Rights. – Every respondent in a proceeding under this Chapter shall be given  
22 a notice of his or her rights which shall be set forth in a conspicuous manner and substantially  
23 similar to the following language:

24  
25 **"THE LAWS GOVERNING INCOMPETENCY AND GUARDIANSHIP ARE**  
26 **COMPLEX. THIS IS A SUMMARY OF RIGHTS FOR INFORMATIONAL PURPOSES**  
27 **ONLY. IT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OF ALL RIGHTS.**  
28 **THE RIGHTS LISTED MAY NOT APPLY IN ALL CASES AND SHOULD NOT BE**  
29 **CITED AS LAW IN A COURT PROCEEDING. YOU SHOULD CONSULT WITH AN**  
30 **ATTORNEY OF YOUR CHOOSING IF YOU HAVE ANY QUESTIONS ABOUT YOUR**  
31 **RIGHTS.**

32  
33 a. Rights of Respondents Before Adjudication of Incompetence:

34  
35 1. **Right to Notice** – You have a right to receive a copy of the petition, the initial notice  
36 of hearing, and this notice of rights before the hearing. You also have the right at any time to  
37 request a copy of this notice of rights from your court-appointed guardian ad litem or the court.

38 2. **Right to an Attorney** – You have the right to hire an attorney of your choice to  
39 represent you in the proceeding. If you do not hire your own attorney, you will be represented by  
40 an attorney called a guardian ad litem. The guardian ad litem will present your express wishes to  
41 the court and consider the possibility of a limited guardianship, making recommendations to the  
42 court regarding the rights that you should keep if the guardianship is limited. The guardian ad  
43 litem may also make recommendations to the court that the guardian ad litem feels are in your  
44 best interest, even if those recommendations differ from your express wishes.

45 3. **Right to Gather Evidence** – You have a right to require witnesses to appear and to  
46 gather documents concerning your ability to make decisions. You have a right to request an  
47 evaluation (called a multidisciplinary evaluation) to assist the court in determining the extent of  
48 your ability to make decisions and to assist in making an appropriate guardianship plan. You or  
49 your attorney must request a multidisciplinary evaluation in writing no later than 10 days after  
50 you are served with the petition.

1       4.     **Right to a Hearing** – A hearing must be held before you can be adjudicated to be  
2 incompetent. The hearing will be held between 10 and 30 days after you receive a copy of the  
3 petition, notice of hearing, and this notice of rights unless the court delays the hearing for a good  
4 reason. You have the right to request the date of the hearing be changed for a good reason. You  
5 have a right to attend the hearing if you choose to do so. You can give up your right to attend the  
6 hearing. You have a right to have your express wishes communicated to the court by the  
7 court-appointed guardian ad litem at all relevant stages of the proceedings.

8       5.     **Right to a Jury** – You have the right to request that a jury hear your case. You lose  
9 that right to a jury if you wait too long to ask.

10      6.     **Right to a Closed Hearing** – The hearing is open to the public unless you or your  
11 attorney ask for it to be private. You or your attorney have the right to ask the court to close the  
12 hearing and exclude anyone who is not directly involved or testifying at the hearing.

13      7.     **Right to Present Evidence and Testimony** – You have a right to present evidence  
14 at the hearing. You have a right to testify at the hearing.

15      8.     **Right to Call Witnesses and Right to Question Witnesses** – You have the right to  
16 call and question witnesses at the hearing, including family members and medical providers. You  
17 have the right to question witnesses anyone else calls at the hearing.

18      9.     **Right to Express Wishes Regarding Your Rights** – If you are adjudicated to be  
19 incompetent, you will lose the right to direct your healthcare, employment, interpersonal  
20 relationships, and religious, social, and community activities unless the court specifically agrees  
21 to allow you to keep those rights. You have the right to tell the court what rights you would like  
22 to keep. The court will consider your wishes, but the court is not required to follow your wishes.

23      10.    **Right to Express Wishes as to Who Serves as Your Guardian** – If the court decides  
24 that you need a guardian, you have the right to tell the court who you want to be your guardian.  
25 The court will consider your wishes, but the court is not required to follow your wishes.

26      11.    **Right to Appeal** – If you have a good reason to believe that your case was wrongly  
27 decided, (i) you have the right to appeal the decision adjudicating you to be incompetent by filing  
28 a written notice of appeal with the clerk within 10 days of the clerk entering the order and (ii)  
29 you have the right to appeal the clerk's decision about who is appointed as your guardian by filing  
30 a written notice of appeal with the clerk within 10 days of the order being served on you. You  
31 lose your rights to appeal any decision made by the clerk if you do not file a written notice of  
32 appeal in time.

33  
34      b.     Rights of Wards After Adjudication of Incompetence:

35  
36      1.     **Right to a Qualified, Responsible Guardian** – You have the right to a qualified,  
37 responsible guardian.

38      2.     **Right to Request Transfer to Another County** – If you have a good reason to  
39 believe that your guardianship should be administered in a different county, you have the right  
40 to request that your guardianship be transferred to another county.

41      3.     **Right to Request Restoration of Competency** – If there has been a change in your  
42 circumstances and you believe that you can show to the court that you have regained your  
43 competency, you have the right to request that the court restore your competency and end your  
44 guardianship.

45      4.     **Right to Request a Review or Modification of Your Guardianship** – If there has  
46 been a change in your circumstances and you believe that your guardianship should be modified  
47 or reviewed, you have the right to file a motion to request that the court review or modify your  
48 guardianship.

49      5.     **Right to Vote** – You have a right to register to vote and vote in elections if you are  
50 otherwise qualified.

1        **6. Right to Request a Hearing in a Petition for Procedure to Permit Sterilization –**  
2 If your guardian asks the court for an order to sterilize you, you have the right to know about it,  
3 to participate in the hearing, to have an attorney at the hearing, and to appeal the court's decision  
4 by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order.

5        **7. Ability to Drive –** You may lose your ability to drive a car or other vehicle. The clerk  
6 must notify the Department of Motor Vehicles (DMV) that you have been adjudicated  
7 incompetent, and the clerk will make a recommendation on whether you should keep your  
8 driver's license. The DMV will contact you and you may get a letter from the DMV revoking  
9 your license. You have the right to make a written request to the DMV to review a decision to  
10 revoke your license.

11        **8. Additional Rights – Some rights depend on whether you have the capacity to**  
12 **exercise the right. Different rights have different tests for capacity. Examples of rights where**  
13 **you need to demonstrate you have the required capacity are the right to marry, make a last will**  
14 **and testament, and testify as a witness. You should consult with an attorney of your choosing**  
15 **to discuss whether you have the capacity to exercise these rights.**

16  
17        (b) The court shall provide a copy of the notice of rights required by this section to the  
18 respondent, the respondent's next of kin, and, upon request, any interested party.

19        (c) The Administrative Office of the Courts shall develop a form notice as set forth in  
20 subsection (a) of this section and shall make a Spanish translation of the form available."

21        **SECTION 3.8.** G.S. 35A-1201 reads as rewritten:

22        "**§ 35A-1201. Purpose.**

23        (a) The General Assembly of North Carolina recognizes that:

- 24        (1) Some minors and incompetent persons, regardless of where they are living,  
25        require the assistance of a guardian in order to help them exercise their rights,  
26        including the management of their property and personal affairs.
- 27        (2) Incompetent persons who are not able to act effectively on their own behalf  
28        have a right to a qualified, responsible guardian.
- 29        (3) The essential purpose of guardianship for an incompetent person is to replace  
30        the individual's authority to make decisions with the authority of a guardian  
31        when the individual does not have adequate capacity to make such decisions.
- 32        (4) Limiting the rights of an incompetent person by appointing a guardian for him  
33        should not be undertaken unless it is clear that a guardian will give the  
34        individual a fuller capacity for exercising his rights.
- 35        (5) Guardianship should seek to preserve for the incompetent person the  
36        opportunity to exercise those rights that are within his comprehension and  
37        judgment, allowing for the possibility of error to the same degree as is allowed  
38        to persons who are not incompetent. To the maximum extent of his  
39        capabilities, an incompetent person should be permitted to participate as fully  
40        as possible in all decisions that will affect him.
- 41        (6) Minors, because they are legally incompetent to transact business or give  
42        consent for most purposes, need responsible, accountable adults to handle  
43        property or benefits to which they are entitled. Parents are the natural  
44        guardians of the person of their minor children, but unemancipated minors,  
45        when they do not have natural guardians, need some other responsible,  
46        accountable adult to be responsible for their personal welfare and for personal  
47        decision-making on their behalf.
- 48        (7) For adults, guardianship should always be a last resort and should only be  
49 imposed after less restrictive alternatives have been considered and found to  
50 be insufficient to meet the adult's needs.



1           (8)    The filing of regular status reports by the guardian of the person or general  
2                    guardian concerning the conditions and welfare of an incompetent person is  
3                    encouraged and should be required whenever appropriate.

4            ...."

5            **SECTION 3.9.** G.S. 35A-1207 reads as rewritten:

6    "**§ 35A-1207. Motions in the cause.**

7           (a)    Any interested person or the clerk, on the clerk's own motion, may file a motion in  
8    the cause with the clerk in the county where a guardianship is docketed to request modification  
9    of the order appointing a guardian or guardians or consideration of any matter pertaining to the  
10   guardianship.

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

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

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

20          **SECTION 3.10.** G.S. 35A-1214 reads as rewritten:

21    "**§ 35A-1214. Priorities for appointment.**

22          The clerk shall consider appointing a guardian according to the following order of priority:  
23   (i) an individual or entity nominated under G.S. 32C-1-108(a) or G.S. 32A-22(b), as applicable;  
24   (ii) an individual recommended under G.S. 35A-1212.1; (iii) an individual; (iv) a corporation; or  
25   (v) a disinterested public agent. No public agent shall be appointed guardian until diligent efforts  
26   have been made to find an appropriate individual or corporation to serve as guardian, but in every  
27   instance the clerk shall base the appointment of a guardian or guardians on the best interest of  
28   the ward."

29          **SECTION 3.11.** G.S. 35A-1217 reads as rewritten:

30    "**§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

31          The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this  
32   Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk  
33   determines that the ward's interests are not adequately represented. Appointment and discharge  
34   of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent  
35   Defense Services. The guardian ad litem shall explain the notice of rights under G.S. 35A-1117  
36   as part of the guardian ad litem's representation of the ward in connection with all proceedings  
37   under this Subchapter. Nothing herein shall affect the ward's right to retain counsel of his or her  
38   own choice."

39          **SECTION 3.12.** G.S. 35A-1242 reads as rewritten:

40    "**§ 35A-1242. Status reports for incompetent wards.**

41          (a)    Any corporation or disinterested public agent that is guardian of the person for an  
42   incompetent person, within six months after being appointed, shall file an initial status report  
43   with the clerk and submit a copy of the initial status report to the designated agency, if there is  
44   one. Such guardian shall file a second status report with the clerk one year after being appointed,  
45   and subsequent reports annually thereafter. The clerk may order any other guardian of the person  
46   to file status reports. If a guardian required by this section to file a status report is employed by  
47   the designated agency, the guardian shall file any required status report with the clerk and submit  
48   a copy of the status report to the designated agency.

49          ...

50          (e)    Every guardian of the person, upon knowledge of a ward's change of residence, shall  
51   file a notice of change of ward's address with the court within 30 days. The notice shall include

1 the ward's previous address, the ward's new address, and the date the ward moved to the new  
2 address."

3       **SECTION 3.13.** This Part is effective when it becomes law and applies to petitions  
4 filed 180 days after that date.

5

6 **PART IV. EFFECTIVE DATE**

7       **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes  
8 law.