


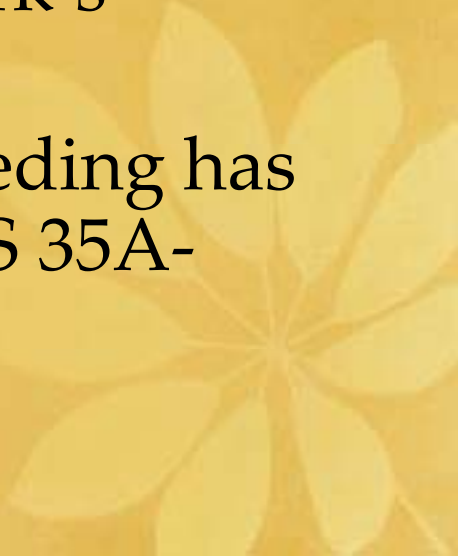


Appointment of Guardians

North Carolina General Statutes
Chapter 35A



Jurisdiction

- Clerk of Superior Court has original and exclusive jurisdiction. GS 35A-1102 and 1103 and 1203
 - Appointment of guardian may not be determined by a jury.
 - Appointment of guardian may be determined in Clerk ordered mediation subject to clerk's approval.
 - Any person made a party to the proceeding has a right of appeal to Superior Court. GS 35A-1115 and GS 1-301.2
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Types of Guardians

General Guardian

Guardian of the Person

Guardian of the Estate





Other Guardians

Interim Guardians

Ancillary Guardians

Limited Guardians

Standby Guardians for Minors


Co-Guardians





Appointment

The respondent is adjudicated incompetent and then the clerk appoints the most suitable individual and/or corporation as guardian in light of the “best interests” of the ward.






Recommendations and Assistance

- Guardian ad Litem
- Family and friends of respondent
- Multidisciplinary Evaluation
- Records/letters from physicians and therapists




Qualifications of a Guardian


According to GS 35A-1213, the clerk may appoint any qualified

- adult individual,
 - corporation,
 - disinterested public agent, or
 - a public guardian.
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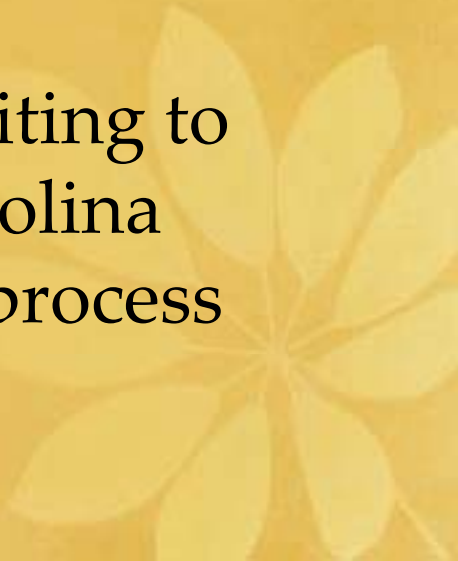


Disqualifications for Appointment

- The person is unwilling to serve as guardian. (exceptions apply to disinterested public agencies and public guardians)
 - Employee of a treatment facility when the ward is a patient or resident of the facility at the same facility where the employee works. GS 35A-1213(e)
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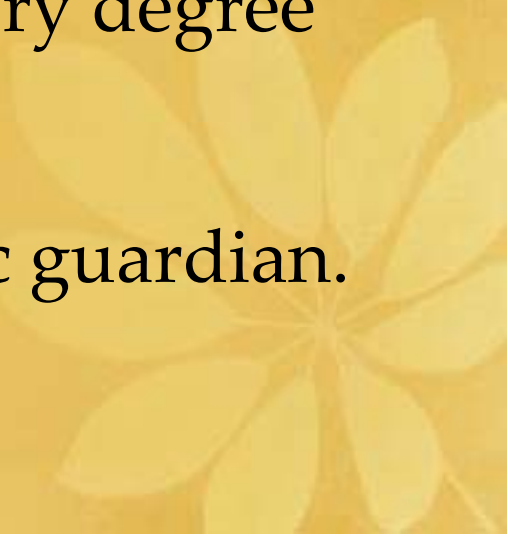


Limitations for Appointment

- In order for a corporation to qualify for appointment as guardian, its charter must authorize it to serve as guardian or in a similar fiduciary capacity. GS 35A-1213(c)
 - » The ARC
 - » The Corporation of Guardianship, Inc.
 - A non-resident adult must agree in writing to submit to the jurisdiction of North Carolina courts, and must designate a resident process agent for service of process.
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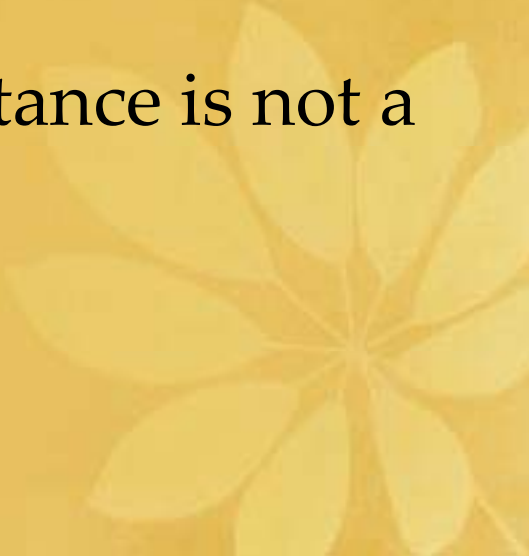


Priority for Appointment

1. Nominee in a durable power of attorney GS 32A-10(b) or in a health care power of attorney GS 32A-22(b).
 2. Nominee in the last will and testament of the parent of an unmarried adult child.
 3. Close relative or friend, or any other individual willing and able to serve as guardian. GS 35A-1214 (no statutory degree of relation priority)
 4. Corporation-GS 35A-1214.
 5. Disinterested public agent or public guardian. GS 35A-1214 and GS 35A-1270
- 




Disinterested Public Agent

- Defined in GS 35A-1202(4).
 - May be appointed as general guardian, guardian of the person, or guardian of the estate.
 - Appoint by nature of title and agency to ensure successors in title may continue as guardian without further court proceedings.
 - Simply providing services and assistance is not a conflict of interest.
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Public Guardian

- Clerk may appoint a public guardian for a term of eight years. GS 35A-1270
 - Bond is required.
 - Powers, duties and compensation are regulated in the same manner as with other guardians. GS 35A-1272
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Appoint as Guardian?

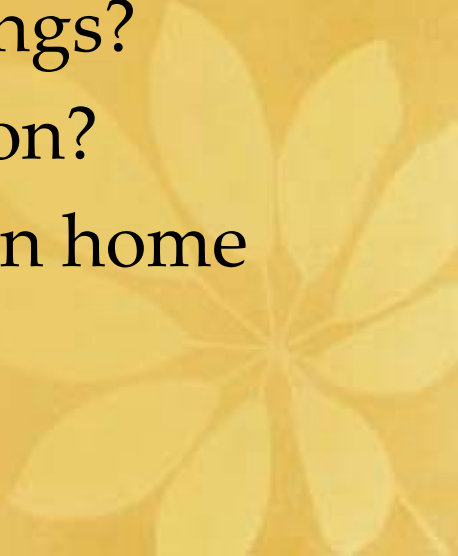
Would you appoint a guardian who has a...

- felony conviction?
 - conviction for writing bad checks?
 - criminal record for assault?
 - misdemeanor breaking and entering?
 - conviction for numerous traffic offenses and violations such as reckless driving, eluding, etc?
 - pending trial for any of the above offenses?
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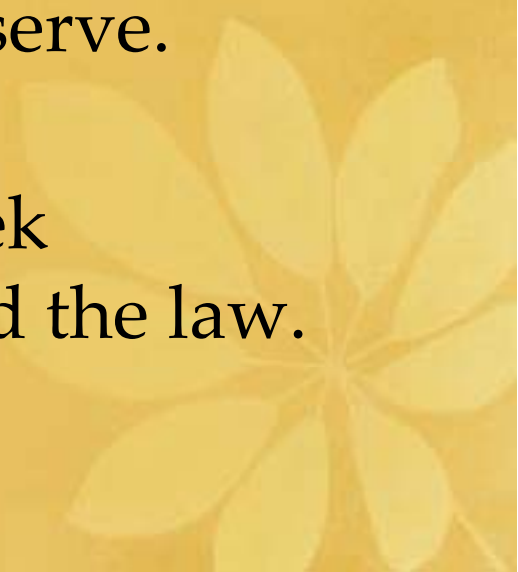
Appoint as Guardian?

Would you appoint a guardian who....

- is legally adjudicated incompetent?
 - is the attorney-in-fact?
 - has made it clear to the clerk that the respondent's money is his or her inheritance?
 - constantly is bickering with other siblings?
 - is a dishonest and untrustworthy person?
 - has maxed out all credit cards, equity in home and is strongly considering filing for bankruptcy?
- 




Qualities of an Ideal Guardian

- Someone who understands their role as guardian as a substitute decision maker.
 - Someone who will act in the ward's best interest.
 - Someone who has served or regularly serves in a fiduciary capacity. (A CPA or Attorney)
 - Someone who is willing and able to serve.
 - Someone who understands the legal responsibilities and duties or will seek competent legal advice to understand the law.
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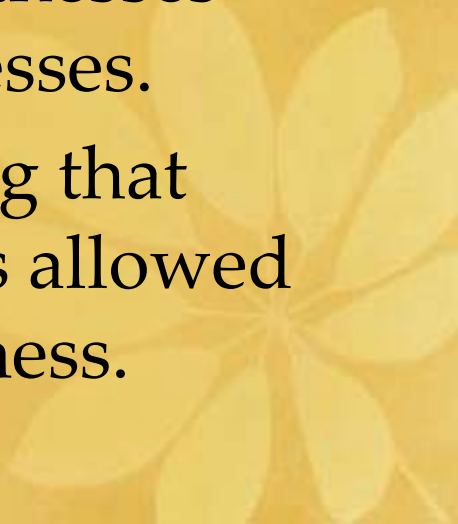


Hearing Procedures

- Determine of assets and special needs of the ward.
 - Determine the “nature and extent of the needed guardianship.” GS 35A-1212
 - North Carolina Rules of Evidence apply.
 - Recording is required since the appeal is “on the record.” GS 1-301.3(f)
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Hearing Procedures cont....

- Clerk sets the tone.
 - Petitioner or petitioner's counsel begins.
 - Respondent, respondent's GAL and/or Respondent's attorney give opening and closing statements last.
 - Petitioner and respondent may call witnesses and cross examine one another's witnesses.
 - Open ended questions when examining that party's own witness, leading questions allowed when examining the other party's witness.
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Resources Available

- Utilize the forms to assist throughout the hearing and as a guide in selecting the appropriate type of guardianship.
 - Guardianship Capacity Questionnaire
AOC-SP-208
 - Clerk's Manual Vol. II, Chapter 85
- 



Order of Forms

Form Name/Number

Who Completes

Petition for Adjudication of Incompetence and
Application for Appointment of a Guardian
(also contains motion for appt. of Interim)
(AOC-SP-200)

Petitioner or Petitioner's Counsel

Notice of Hearing On Incompetence and Order
Appointing Guardian Ad Litem
(AOC-SP-201)

Clerk, Party, Attorney

Order on Petition for Appointment of Interim
Guardian
(AOC-SP-900M)

Clerk, Party, Attorney

Order on Petition for Adjudication of Incompetence
(AOC-SP-202)

Clerk, Party Attorney





Order of Forms cont...

Form Name/Number

Order on Application of Appointment of Guardian (AOC-E-406) (This form closely corresponds with Capacity Questionnaire and includes appointment criteria for limited guardianships)

Application for Letters of Guardianship
(This application encompasses application for letters of all types of appointed guardianships of adults)
(AOC-E-206)

Who Completes

Hearing Clerk (not estates clerk where he or she did not conduct hearing)

Prospective Guardian named in
AOC-E-406 Order





Order of Forms cont...

Form Name/Number

Who Completes

Bond Corporate Surety (AOC-E-401)

Applicant, Corporate Surety

Faithful Performance Bond Non-Resident
Guardian of the Person (AOC-E-903M)

Applicant, Corporate Surety

Oath (AOC-E-400)


Applicant

Order Authorizing Issuance of Letters (AOC-E-402)

Clerk, Asst. Clerk


Letters

Clerk, Asst. Clerk, Deputy Clerk

- Guardian of the Estate (AOC-E-407)
 - Guardian of the Person (APC-E-408)
 - General Guardian (AOC-E-413)
 - Limited Guardian of the Estate (AOC-E-417)
 - Limited Guardian of the Person (AOC-E-418)
 - Limited General Guardian (AOC-E-419)
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Related Issues

- Transfer of guardianships
 - Payment of guardians
 - Modification (AOC-E-415 and AOC-E-416)
 - Removal, resignation and death of guardians
 - Filing requirements
 - Mediation
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Transfer of Guardianships

- Prior to Appointment of Guardian on form number AOC-SP-202.
 - Transfer of guardianship estate file to another county.
 - Transfer of guardianship estate file to another state.
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Payment of Guardians

- GS 35A-1269 authorizes guardians of the estate and general guardians to receive commissions in the same manner as personal representatives of decedents estates pursuant to GS 28A-23-3 and GS 28A-23-4.
 - Guardians of the person are not allowed to receive commissions.
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Responsibilities of Guardians

Don't forget to provide to each guardian a copy of the "Responsibilities of Guardians in North Carolina" brochure available on our court website at www.nccourts.org.
Form number (01 Grdnship)

