



Single Protective Arrangements or Transactions in G.S. Chapter 35A Proceedings

Meredith Smith

UNC School of Government

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STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF THE ESTATE OF

Name Of Ward

LETTERS OF APPOINTMENT
GUARDIAN OF THE PERSON

Incompetent Person Minor

G.S. 35A-1203, 35A-1206, 35A-1241

The Court in the exercise of its jurisdiction for the appointment of guardians of incompetent persons and minors, and upon proper application, has appointed the person(s) named below as Guardian(s) of the Person of the ward named above and has ordered that these Letters Of Appointment be issued.

The guardian of the person is fully authorized and entitled under the laws of North Carolina to have the custody, care and control of the ward, **but has no authority to receive, manage or administer the property, estate or business affairs of the ward.**

These Letters are issued to attest to that authority and to certify that it is now in full force and effect.





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John has or will receive property....

1. Motion in the cause to modify the guardianship and hearing
2. Appointment and qualification of GOE
 - Post a bond
 - Take oath
 - Obtain letters
3. Motion to approve the transaction and hearing (depending on action of GOE)
4. File an account
5. Motion to modify back to GOP only and hearing

New G.S. 35A-1121

Allows the clerk to order a “single protective arrangement or transaction” for the benefit of an incompetent person or minor without appointing a guardian (in the clerk’s discretion – the clerk “MAY” authorize)

Created by Session Law 2021-53 (Senate Bill 50)

Effective October 1, 2021

Availability

1. **Respondent** to a 35A proceeding is adjudicated incompetent – petition for adjudication (SP-200) and adjudication must occur (SP-202)
 - Adjudication required to trigger availability of these provisions a respondent
2. Application made for appointment of guardian for **minor**

G.S. 35A-1120

Transactions for service, care, or safety

Allows the clerk, without appointing a guardian, to:

1. Authorize, direct, or ratify any transaction necessary or desirable to achieve any service, care, or safety arrangement that meets the foreseeable needs of the incompetent person or minor
2. Authorize a **special fiduciary** to execute a transaction on behalf of the incompetent person or minor.

G.S. 35A-1121(a)(1)

Transactions for property and business affairs

Allows the clerk, without appointing a guardian, to:

1. Authorize, direct or ratify any contract, trust, or other transaction relating to a minor or incompetent person's property and business affairs
2. Authorize a **special fiduciary** to execute such contract, trust, or other transaction on behalf of the incompetent person or minor if the clerk determines it is in the best interests of the minor or incompetent person.

G.S. 35A-1121(a)(2)

Clerk Authorization Required

Considerations for the clerk

- Best interests of the incompetent person or minor
- Interests of creditors
- Interests of dependents
- Whether, in light of the disability, the minor or incompetent person needs the continuing protection of a guardian

G.S. 35A-1121(b)

John receives property after G.S. 35A-1121....

1. Motion to approve single transaction or arrangement filed with the court and hearing
2. Order of the clerk authorizing the transaction and a special fiduciary to execute the transaction

Temporary Guardian

The clerk may appoint a temporary guardian to assist in the accomplishment of any authorized protective arrangement or transaction.

Temporary guardian has authority conferred by the order of the court until discharged by the clerk.

G.S. 35A-1121(b)

Sale, Mortgage, Exchange, Lease, or Gift

Subject to same procedural rules and reporting requirements in G.S. Chapter 35A. G.S. 35A-1121(c). For example:

G.S. 35A-1301 – special proceeding required for sell, exchange, mortgage, or lease of real property

G.S. 35A-1335 and 35A-1340– gifts of income and principal (require superior court approval)