



Family Support Network™ of WNC

Guardianship “What you Need to Know”

At age 18, individuals are granted the rights and responsibilities of adulthood under state and federal law, with the assumption that these individuals are capable of managing the rights and responsibilities of adulthood.

In instances where a person is unable to assume responsibility for him or herself, even with supports, other arrangements must be made. Guardianship is one option. The process of obtaining guardianship can begin 6 months prior to the persons 18th birthday.

1st Step (Important)

Talk with your child and others involved with providing services for your child ie. IEP team, Case Manager, Doctor. By talking with others you can gather their opinions about whether guardianship will be needed for your child.

2nd Step

Fill out the “Guardianship Capacity Questionnaire” Form number AOC-SP-208

<http://www.nccourts.org/Forms/Documents/846.pdf> this form will help you as a family to decide whether guardianship is necessary and what type of guardianship is needed. If you feel guardianship is needed go on to step 3.

3rd Step

Before going to the Clerk of Superior Court Office in your county fill the following forms out to take along with the Guardianship Capacity Questionnaire you have already completed and get an original copy of your child's last Psychological Assessment.

Adjudication of Incompetence-AOC-SP-200

<http://www.nccourts.org/Forms/Documents/439.pdf>

Notice of Hearing on Incompetence and Motion in the cause and order appointing Guardian Ad Litem-AOC-SP-201

<http://www.nccourts.org/Forms/Documents/669.pdf>

4th Step

Take 1 copy of each of the forms and the Psychological Assessment to your county Clerk of Superior Court office. A fee of approximately \$120.00 will be charged and a \$30.00 for the service fee with the sheriff's Department. Payment is expected when you file the paper work. (If amount of payment is a concern please discuss this issue with the Clerk of Superior Court staff-there is a waiver if someone is indigent.

5th Step

The court will appoint a **guardian ad litem attorney** who will call you to set a time to visit your loved one, as soon as possible. The clerk will then issue a written notice of the date, time and place for the guardianship hearing, you may wish to contact the Guardian Ad Litem to verify they are available for the hearing date selected. Once the notice is issued, the sheriff's office will serve copies of the petition and the initial notice of hearing on your loved one and his or her guardian ad litem attorney. (If there is a concern about how your loved one will react to a uniformed police officer discuss this with the Sheriff's Department, as it is possible to have your son or daughter meet the officer at the Sheriff's Department).



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6th Step

Mail a copy of the petition and notice of hearing to all next of kin and the Guardian Ad Litem.

Adjudication of Incompetence-AOC-SP-200

<http://www.nccourts.org/Forms/Documents/439.pdf>

Notice of Hearing on Incompetence and Motion in the cause and order appointing Guardian Ad Litem-AOC-SP-201

<http://www.nccourts.org/Forms/Documents/669.pdf>

This includes all siblings age 18 and up, plus both the mother and the father of your loved one, even if parents are divorced or an absent parent. There needs to be proof that an attempt has been made to contact them.

7th Step

Before going to the hearing fill the following forms out to take: Take 2 copies of each form, you will keep one copy, give one copy to the Guardian Ad Litem and the court will need the originals.

Certificate of Service – AOC – SP – 207

<http://www.nccourts.org/Forms/Documents/443.pdf>

Order on Application for Appointment of Guardian AOC – E-406

<http://www.nccourts.org/Forms/Documents/403.pdf>

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

<http://www.nccourts.org/Forms/Documents/439.pdf>

The date of the hearing the Clerk of Superior Court will determine what if any rights powers and privileges your loved one can retain under guardianship or limited guardianship unless your family member or his attorney requests a trial by jury.

8th Step

Qualifying as Guardian is the next step. You will need to call the Estates Division to make an appointment (see page 3 for direct numbers). Once again there is an additional \$120.00 fee for this step if you will need to handle finances other than SSI or SSDI for your loved one.

9th Step

Before going to the Estates Division appointment fill the following forms out to take:

- Application for Letters for an incompetent person- Form AOC-E-206

<http://www.nccourts.org/Forms/Documents/384.pdf>

- Oath/Affirmation-Form AOC-E-400

<http://www.nccourts.org/Forms/Documents/397.pdf>

- Order Authorizing Issuance of Letters- Form AOC-E-402

<http://www.nccourts.org/Forms/Documents/875.pdf>

- Letters of Appointment Guardian of the Person- Form AOC-E-408

<http://www.nccourts.org/Forms/Documents/405.pdf>

- Estates Action Cover Sheet- Form AOC-E-650

<http://www.nccourts.org/Forms/Documents/426.pdf>



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If the disabled adult has property or finances other than SSI or SSDI these forms maybe needed.

- Letters of Appointment General Guardian-Form AOC-E-413
<http://www.nccourts.org/Forms/Documents/847.pdf>
- Letters of Appointment Guardian of the Estate-Form AOC-E-407
<http://www.nccourts.org/Forms/Documents/404.pdf>

Congratulation! You're done!

For More Information

North Carolina Guardianship Association

<http://www.nc-guardian.org/>

Telephone number is **919-266-9204**

Fax number is **919-266-9207**

E-Mail address is ncguardian@aol.com

Mailing address is **P. O. Box 17673, Raleigh, NC 27619**

Clerk of Superior Court's Office in your County

Buncombe County: (828) 259-3400

Henderson County: (828) 694-4100

Madison County: (828) 649-2531

Transylvania County: (828) 884-3120

Estates Division Office in your County

Buncombe County: (828) 259-3404

Henderson County: (828) 694-4100

Madison County: (828) 649-2531

Transylvania County: (828) 884-3120

This fact sheet has been developed by the Family Support Network of WNC in collaboration with Cynthia Alleman, Attorney at Law, Asheville, NC

GUARDIANSHIP CAPACITY QUESTIONNAIRE

There is no need to complete this questionnaire if the respondent is in a coma, persistent vegetative state, or is not responsive.

The questionnaire is designed to help all parties in an incompetency proceeding gather information that will assist the Clerk of Court in determining what if any rights, powers and privileges the respondent can retain under guardianship or limited guardianship. The form may also assist the parties in determining whether alternatives to guardianship such as a representative payee for government benefits, a power of attorney, or a special needs trust might solve a problem thereby avoiding the need for incompetency hearing.

This form can be used by the petitioner, the respondent, or any other person who has information that is useful to the court such as family or friends of the respondent or staff of a facility who knows the respondent well. It should be used by the Guardian Ad Litem to both gather the respondent's answers if the respondent cannot fill it out for him/herself and for the GAL's own opinion.

Name Of Respondent		Date Of Birth
Address		Telephone No.
Nature Of Impairment	County Of Residence	
Is there a representative payee for governmental benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Name of Payee	Are there any Powers of Attorney in place? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> General/Durable <input type="checkbox"/> Health Care If Yes, Who has the POA? If Recorded, What County(ies)?	Are there any trusts in place? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Name of Trustee and location of trust
Name And Address Of Person Completing This Form		Telephone No.
		Has Known Respondent (years/months)
		Relationship to the Respondent

A. LANGUAGE AND COMMUNICATION

B. NUTRITION

1. Does the person understand and participate in social conversation in his/her primary language (including such topics as sports, family, activities)?
☐ Yes ☐ No
2. Does the person communicate independently with acquaintances in the community?
☐ Yes ☐ No
3. Can the person understand and respond to verbal communications?
☐ Yes ☐ No
4. Can the person read and write?
☐ Yes ☐ No
5. Can the person understand various signs (e.g. keep out, stop, men, women, poison)?
☐ Yes ☐ No

1. Does the person make reasonable decisions regarding eating (e.g. when, where, and what to eat)?
☐ Yes ☐ No ☐ With assistance
2. Is the person able to eat and drink independently?
☐ Yes ☐ No ☐ With assistance
3. Is the person able to prepare food that requires cooking and mixing?
☐ Yes ☐ No ☐ With assistance
4. Is the person able to prepare food that does not require cooking and mixing?
☐ Yes ☐ No ☐ With assistance
5. Does the person know which foods, if any, he or she is unable to tolerate?
☐ Yes ☐ No ☐ With assistance
6. If the person has a health condition such as diabetes, is he or she able to follow a prescribed diet?
☐ Yes ☐ No ☐ With assistance

C. PERSONAL HYGIENE		E. PERSONAL SAFETY Cont.	
1. Does the person bathe and maintain personal hygiene? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		4. Can the person be left alone for periods up to 24 hours without being at risk? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Does the person brush teeth daily and maintain adequate dental care? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		5. Can the person use a telephone to contact help in an emergency? <input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does the person control toilet functions during the day? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		6. In what areas, if any, might the person be especially vulnerable and need protection?	
4. When toileting, does the person use proper hygiene? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance			
5. Is the person able to fully and properly dress and undress himself or herself? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance			
6. Does the person wear clothing appropriate to the weather and/or occasion? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance			
D. HEALTH CARE		F. RESIDENTIAL	
1. Can the person make and communicate choices in regard to medical treatment? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		1. Can the person make and communicate choices in regard to residence and roommates? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Can the person make and communicate choices in regard to caregivers and assistants? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		2. Is the person able to maintain shelter that is safe/adequately heated and ventilated? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance	
3. Does the person know whom to notify of symptoms of illness? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		3. Can the person evacuate the premises in the case of fire or other danger? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance	
4. Is the person able to take care of minor health problems such as colds, cuts, etc.? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance			
5. Is the person able to follow proper instructions in taking prescribed medicine? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		G. EMPLOYMENT	
6. Can the person communicate medication problems or needs? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		1. Can the person make and communicate choices in regard to employment? <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Does the person understand the consequences of not accepting medical treatment? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		2. Does the person express knowledge of or demonstrate skills required at job sites (neatness, punctuality, getting along with others)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
8. Can the person reach emergency health care (e.g. calling an ambulance)? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance		3. Is the person able to use several approaches to finding a job (e.g. going to an employment agency, responding to ads, and using contacts)? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance	
E. PERSONAL SAFETY		4. Does the person have a job? <input type="checkbox"/> Yes <input type="checkbox"/> No	
1. Can the person identify physical or sexual abuse and protect him or herself from personal harm by others? <input type="checkbox"/> Yes <input type="checkbox"/> No		5. Does the person interact appropriately with co-workers and authority figures? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Can the person identify neglect and know what to do if neglected? <input type="checkbox"/> Yes <input type="checkbox"/> No		H. INDEPENDENT LIVING	
3. Does the person avoid common environmental dangers, such as oncoming traffic, sharp objects, a hot stove, and poisonous products? <input type="checkbox"/> Yes <input type="checkbox"/> No		1. Can the person initiate and follow a daily schedule of activities (e.g. when to get up, what to do, and when to go to bed)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		2. Does the person acquire and retain new skills and readily apply them? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		3. Can the person utilize familiar community resources (e.g. post office, stores, bus, bank)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		4. Can the person avoid common dangers when traveling in the community? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		5. Can the person identify his or her address and return home or seek assistance if lost or stranded? <input type="checkbox"/> Yes <input type="checkbox"/> No	

H. INDEPENDENT LIVING cont.		ADDITIONAL COMMENTS
<p>6. Does the person establish and maintain personal relationships with friends, relatives, co-workers? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Can the person determine his or her degree of participation in religious activities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Does the person make and communicate choices in regard to leisure activities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>9. Can the person drive a car? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>10. Does the person exercise reasonably good judgment most of the time? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
I. CIVIL		
<p>1. Does the person know whom to contact if he or she is being exploited or treated unfairly (e.g. police, DSS, Arc, lawyer, etc). <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Does the person understand how to obtain legal counsel or advocacy services? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Is the person able to to communicate wishes regarding legal documents or services? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Does the person understand the consequences of being charged and convicted of a crime? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Does the person demonstrate a willingness to vote? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
J. FINANCIAL		
<p>1. Can the person make and communicate decisions to manage a budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance</p> <p>2. Does the person know the source and amounts of monetary benefits he or she receives on a weekly, monthly or annual basis? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance</p> <p>3. Does the person identify and make change for \$1, \$5, and \$20? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Can the person adequately maintain a bank account? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance</p> <p>5. Can the person protect and spend small amounts of money? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance</p> <p>6. Does the person understand the concept of a debt? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> With assistance</p> <p>7. Can the person identify and resist financial exploitation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF:

Name And Address Of Respondent

PETITION FOR ADJUDICATION OF INCOMPETENCE AND APPLICATION FOR APPOINTMENT OF GUARDIAN OR LIMITED GUARDIAN ☐ AND INTERIM GUARDIAN

G.S. 35A-1105, -1112, -1113, -1114, -1210

County Of Residence Of Respondent

Date Of Birth

☐ Respondent Indigent

Respondent's Drivers License No.

State

Name And Address Of Attorney For Petitioner

Name And Address Of Petitioner

Telephone No. Of Petitioner's Attorney

State Bar No.

County Of Residence Of Petitioner

Telephone No. Of Petitioner

Name And Address Of Treatment Facility If Respondent Is An Inpatient

Petitioner's Relationship To Respondent Or Interest In Proceeding

The undersigned, being duly sworn, requests that the Court, after notice and hearing, adjudicate the respondent above to be incompetent, and also applies for the appointment of the person(s) named below to serve, in the capacity indicated, as guardian(s) of the respondent.

In support of this Petition, the undersigned states:

1. The respondent is

- ☐ a resident of this county.
- ☐ domiciled in this county.
- ☐ an inpatient in the facility named above.
- ☐ present in this county, it being impossible to determine his/her county of residence or domicile.

2. The respondent is incompetent in that:

- ☐ he/she lacks sufficient capacity to manage his/her own affairs or to make or communicate important decisions concerning his/her person, family or property, as shown by the following facts: *(Set forth the facts which tend to show that the respondent is incompetent. Include cause of incompetence, which may be mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or other cause and give facts demonstrating lack of capacity. Be specific.)*

- ☐ he/she was adjudicated incompetent in another state in the proceeding identified below. *(Attach certified copy of the order from the other state.)*

Date Of Adjudication

State And Country

File Or Other ID No.

(Over)

3. The respondent's next of kin, if any, and other persons known to have an interest in this proceeding are:

Name And Address	Name And Address
Telephone No.	Telephone No.
Relationship To Respondent Or Interest In Proceeding	Relationship To Respondent Or Interest In Proceeding
Name And Address	Name And Address
Telephone No.	Telephone No.
Relationship To Respondent Or Interest In Proceeding	Relationship To Respondent Or Interest In Proceeding

4. General statement of respondent's assets and liabilities, including any income and receivables to which he/she is entitled:

<u>Assets</u>		<u>Liabilities</u>		<u>Income and Receivables</u>	
Real Property	\$ _____	Mortgage Loans	\$ _____	Wages & Salaries	\$ _____
Tangible Personal Property	\$ _____	Other Secured Loans	\$ _____	Rents	\$ _____
Other Personal Property	\$ _____	Unsecured Loans	\$ _____	Pensions	\$ _____
				Allowances	\$ _____
There is a representative payee for government benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No			Insurance & Compensation	\$ _____
There is a Durable Power of Attorney in place.	<input type="checkbox"/> Yes <input type="checkbox"/> No			Other (including SSI/SSD)	\$ _____
There is a Healthcare Power of Attorney in place.	<input type="checkbox"/> Yes <input type="checkbox"/> No				
There is a special needs or other trust in place.	<input type="checkbox"/> Yes <input type="checkbox"/> No				

5. CAPACITY INFORMATION

☐ Check here if in a coma, persistent vegetative state, or non-responsive and move on to Item 6.

A. **Language and Communication** (understands/participates in conversations, can read and write, understands signs such as "keep out," "men," "women")

☐ has capacity. ☐ lacks capacity. Comment: _____

B. **Nutrition** (makes independent decisions re: eating, prepares food, purchases food)

☐ has capacity. ☐ lacks capacity. Comment: _____

C. **Personal Hygiene** (bathes, brushes teeth, uses proper hygiene when using the restroom)

☐ has capacity. ☐ lacks capacity. Comment: _____

D. **Health Care** (makes and communicates choices re: medical treatment/caregivers, notifies others of illness, follows medication instructions, reaches emergency health care)

☐ has capacity. ☐ lacks capacity. Comment: _____

E. **Personal Safety** (recognizes danger and seeks assistance as needed, protects self from exploitation/personal harm)

☐ has capacity. ☐ lacks capacity. Comment: _____

F. **Residential** (makes and communicates decisions re: residence/roommates, maintains safe shelter)

☐ has capacity. ☐ lacks capacity. Comment: _____

G. **Employment** (makes and communicates decisions re: employment, demonstrates vocational skills such as neatness and punctuality, writes or dictates application form)

☐ has capacity. ☐ lacks capacity. Comment: _____

IN THE MATTER OF:

File No.

Name Of Respondent

H. **Independent Living** (follows a daily schedule, conducts housekeeping chores, uses community resources such as bank, store, post office)

☐ has capacity. ☐ lacks capacity. Comment: _____

I. **Civil** (knows to contact advocate if being exploited, understands consequences of committing a crime, registers to vote)

☐ has capacity. ☐ lacks capacity. Comment: _____

J. **Financial**

1. Makes and communicates decisions about paying bills and spending discretionary money, and makes change for \$1, \$5, and \$20

☐ has capacity. ☐ lacks capacity. Comment: _____

2. Makes and communicates decisions regarding management of a personal bank account, savings, investments, real estate, and other substantial assets

☐ has capacity. ☐ lacks capacity. Comment: _____

3. Can resist attempts at financial exploitation by others

☐ has capacity. ☐ lacks capacity. Comment: _____

6. RECOMMENDED GUARDIAN(S)

Name And Address Of Recommended Guardian

Name And Address Of Recommended Guardian

☐ Of The Estate☐ Of The Person☐ General Guardian☐ Of The Estate☐ Of The Person☐ General Guardian

7. MOTION FOR APPOINTMENT OF INTERIM GUARDIAN

NOTE: Do not complete unless an emergency requires immediate intervention.

☐ The petitioner also moves that the Court appoint an interim guardian because there is reasonable cause, as shown by the following facts, to believe that the respondent is incompetent and needs an interim guardian to intervene on his/her behalf prior to the adjudication hearing in that:

(Check all that apply)

☐ he/she is in a condition that constitutes or reasonably appears to constitute an imminent or foreseeable risk of harm to his/her physical well-being and requires immediate intervention.

☐ there is or reasonably appears to be an imminent or foreseeable risk of harm to his/her estate that requires immediate intervention in order to protect the respondent's interest.

(Set forth facts, in addition to those above, which demonstrate need for immediate intervention. Be specific.)

VERIFICATION

I, the undersigned petitioner, have read this Petition and state that its contents are true to my own knowledge except those matters stated on information and belief, which I believe are true.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Petitioner

☐ Deputy CSC☐ Assistant CSC☐ Clerk Of Superior Court☐ Notary

Date My Commission Expires

SEAL

County Where Notarized

STATE OF NORTH CAROLINA

File No.

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

County

IN THE MATTER OF:

Name And Address Where Respondent Is Located

County

Name And Address Of Attorney Guardian ad Litem

NOTICE OF HEARING ON
☐ **INCOMPETENCE**
☐ **MOTION IN THE CAUSE**
AND
ORDER APPOINTING GUARDIAN AD LITEM

G.S. 35A-1107, -1108, -1109, -1112, -1207

State Bar No.

NOTICE

You are notified to appear before the Clerk of Superior Court on the date and at the time and place specified below for a hearing on the attached Petition/Motion. You may file a written response in the office of the Clerk on or before the time set for the hearing.

☐ **A petition has been filed alleging that the respondent is incompetent and requesting that a guardian be appointed.**

If, at the hearing, the Court finds by clear, cogent and convincing evidence that the respondent is incompetent, an adjudication of incompetence will be entered and a guardian of the person or a guardian of the estate or a general guardian or a limited guardian may be appointed.

☐ **A motion has been filed requesting that the existing guardianship in this matter be modified.**

If, at the hearing, the Court finds that the guardianship should be modified an order of modification will be entered.

Date Of Hearing

Time

☐ AM
☐ PM

Place To Appear

☐ **A motion for the appointment of an interim guardian has also been made** (applies only for incompetence hearings).

You are further notified to appear before the Clerk on the earlier date and at the time and place specified below for a hearing on the motion for the appointment of an interim guardian contained in the attached petition. (Disregard if box above is not checked.)

Date Of Hearing On Interim Guardian

Time

☐ AM
☐ PM

Place To Appear

ORDER APPOINTING GUARDIAN AD LITEM

It is ORDERED that the attorney named above be and hereby is appointed as guardian ad litem to represent the respondent at all stages of this proceeding. The respondent has the right to retain his/her own attorney, at his/her own expense, and if he/she does so, the Court may discharge the guardian ad litem.

Date

Time

☐ AM
☐ PM

Signature

☐ Assistant CSC☐ Clerk Of Superior Court**INSTRUCTIONS TO PETITIONER:**

This Notice and a copy of the petition must be personally served on the respondent and must be served on the guardian ad litem by any method that complies with Rule 4 of the Rules of Civil Procedure. In addition, within five (5) days after filing the petition, you must mail this Notice and a copy of the petition, by first class mail, to the respondent's next of kin named on the petition and any other person(s) the clerk may designate (except those person(s) who have accepted notice) and file with the Clerk an affidavit of that mailing or a certificate of acceptance of notice.

INSTRUCTIONS TO MOVANT:

This Notice and a copy of the motion must be served on the respondent and must be served on the guardian ad litem by first class mail or any other method that complies with Rule 5 of the Rules of Civil Procedure or first-class mail. In addition, you must mail this Notice and a copy of the motion, by first class mail, to any person(s) the Clerk may designate, except those person(s) who have accepted notice, and file with the Clerk an affidavit of that mailing or a certificate of acceptance of notice.

RETURN OF SERVICE

I certify that this Notice and a copy of the Petition were received and served as follows:

RESPONDENT

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Respondent</i>
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- ☐ By delivering to the respondent named above a copy of the Notice and Petition.

Address Where Respondent Served

- ☐ Respondent was not served for the following reason:

GUARDIAN AD LITEM

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Guardian Ad Litem</i>
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- ☐ Service accepted by guardian ad litem.

Date Accepted

Signature of Guardian Ad Litem

- ☐ By delivering to the guardian ad litem named above personally a copy of the Notice and Petition.
- ☐ By leaving a copy of the Notice and Petition at the guardian ad litem's dwelling house or usual place of abode with a person of suitable age and discretion residing therein.

Name Of Person With Whom Copies Left

Address Where Copies Delivered Or Left

- ☐ Other manner of service (*specify*)

- ☐ Guardian ad litem WAS NOT served for the following reason:

<i>Date Received</i>	<i>Signature Of Deputy Sheriff Making Return</i>
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<i>Date Of Return</i>	<i>Name Of Deputy Sheriff (Type Or Print)</i>
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County Of Sheriff

STATE OF NORTH CAROLINA

File No.

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

IN THE MATTER OF:

Name Of Respondent

CERTIFICATE OF SERVICE (INCOMPETENT PROCEEDING)

G.S. 35A-1109

I, the undersigned, certify that I mailed by first class mail a copy of the Notice Of Hearing On Incompetence And Order Appointing Guardian Ad Litem (AOC-SP-201) and a copy of the Petition For Adjudication Of Incompetence And Application For Appointment Of Guardian (AOC-SP-200) to the respondent's next of kin named in the Petition and to other persons designated by the Clerk, at the addresses listed below. This Notice was mailed within five (5) days after the Petition was filed as required by law. The address given below is the last known address of the person listed.

Name And Address Of Person 1

Name And Address Of Person 2

Name And Address Of Person 3

Name And Address Of Person 4

Name And Address Of Person 5

Name And Address Of Person 6

Name And Address Of Person 7

Name And Address Of Person 8

SWORN AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Petitioner Or Attorney

Signature

Name Of Petitioner Or Attorney (Type Or Print)

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

SEAL ☐ Notary

Date My Commission Expires

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF THE ESTATE OF:

Name Of Respondent

**ORDER ON APPLICATION
FOR APPOINTMENT OF
GUARDIAN**

G.S. 35A-1213, -1214, -1215, -1226

- ☐ Incompetent
☐ Minor

Date Of Application

Special Proceedings File No.

Name And Address Of Guardian

Name And Address Of Guardian

☐ Of The Estate ☐ Of The Person ☐ General Guardian

☐ Of The Estate ☐ Of The Person ☐ General Guardian

FINDINGS

This matter is before the Court on an application for the appointment of a guardian for the respondent named above. This Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the respondent, and this county is a proper venue.

Upon due notice and hearing, or upon waiver of notice and hearing by all parties entitled thereto and upon their consent, the Court determines that a guardian must or should be appointed, and the Court further finds that each person appointed by this Order is entitled, and is not in anyway disqualified to serve as guardian, and that it is in the best interest of the respondent that the above named person(s) serve as guardian(s).

ADDITIONAL FINDINGS RE: LIMITED GUARDIANSHIP

NOTE TO CLERK: Complete Findings Re: Limited Guardianship only if ordering limited guardianship, otherwise proceed to the Conclusion.

Based on the evidence presented, the Court makes the following specific findings of fact as to the nature of the ward's capacity:

A. Language and Communication

- ☐ understands conversation and communicates personal needs.
☐ has capacity to communicate important decisions.
☐ other: _____

- ☐ Needs assistance
☐ Needs assistance

B. Nutrition

- ☐ makes decisions about when and what to eat.
☐ knows which foods he/she is unable to tolerate.
☐ can maintain proper diet.
☐ can follow a prescribed diet if needed.
☐ other: _____

- ☐ Needs assistance
☐ Needs assistance
☐ Needs assistance
☐ Needs assistance

C. Personal Hygiene

- ☐ understands the need to bathe and maintain personal hygiene.
☐ understands the need to maintain dental care.
☐ is able to maintain personal hygiene and dental care.
☐ uses proper hygiene when toileting.
☐ other: _____

- ☐ Needs assistance
☐ Needs assistance
☐ Needs assistance
☐ Needs assistance

FINDINGS RE: LIMITED GUARDIANSHIP (Continued)**D. Health Care**

- | | |
|--|---|
| <input type="checkbox"/> can make and communicate decisions regarding health treatment. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can take care of minor health problems. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can follow prescribed routines and take prescribed medicines. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can alert others and seek medical help for serious health problems. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to keep a sanitary living environment. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

E. Personal Safety

- | | |
|--|---|
| <input type="checkbox"/> has capacity to identify and avoid life-threatening behaviors. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> is able to recognize and avoid hazards in home. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can handle or seek help in emergencies. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can recognize when others present a danger and avoid that danger. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

F. Residential

- | | |
|---|---|
| <input type="checkbox"/> has capacity to live alone. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to maintain private residence. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can recognize and communicate need for maintenance of private residence. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can make and communicate decisions about residential options. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

G. Employment

- | | |
|---|---|
| <input type="checkbox"/> can make and communicate choice in regard to employment. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> demonstrates skills required to work. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can look for and find a job. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

H. Independent Living

- | | |
|---|---|
| <input type="checkbox"/> has capacity to appropriately relate to friends and family members. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to make decisions without undue influences from others. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to make decisions concerning social activities. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to determine degree of participation in religious activities. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can utilize familiar community resources. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can identify his or her address and return home or seek assistance. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

I. Civil

- | | |
|--|---|
| <input type="checkbox"/> Can communicate wishes regarding legal documents or services. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> Can contact lawyer, police, advocates, etc. if being exploited or treated unfairly. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> Demonstrates willingness to vote and can acquire information accordingly. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> Has capacity to drive a car. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> Other: _____ | |

IN THE MATTER OF:

File No.

Name Of Ward

FINDINGS RE: LIMITED GUARDIANSHIP (Continued)

J. **Financial**

- | | |
|---|---|
| <input type="checkbox"/> can spend small amounts of money. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> can manage a weekly or monthly budget. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> is able to seek out and apply for government benefits. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> has capacity to pay routine bills. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> is able to maintain checking account and/or ATM card. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> is able to make and carry out major financial decisions. | <input type="checkbox"/> Needs assistance |
| <input type="checkbox"/> other: _____ | |

CONCLUSION

Based on the above findings the Court concludes that it ☐ is ☐ is not in the best interest of the respondent that he/she retain certain rights and privileges as set forth below.

ORDER

It is ORDERED that:

- ☐ each person named above is appointed as guardian of the respondent or minor to serve in the capacity designated, and letters of appointment shall be issued to each such person when he/she properly qualifies to serve.
- ☐ It is further ordered that the ward shall retain the following legal rights and privileges. *(check all that apply)*
- ☐ Determine his/her degree of participation in interpersonal relationships and social, religious, and community activities.
Additional Specifications: _____
 - ☐ Make ☐ Assist in decisions regarding living arrangements.
Additional Specifications: _____
 - ☐ Make ☐ Assist in decisions regarding employment.
Additional Specifications: _____
 - ☐ Make ☐ Assist in decisions regarding health treatment.
Additional Specifications: _____
 - ☐ Take care of minor health problems.
Additional Specifications: _____
 - ☐ Contact service providers as needed.
Additional Specifications: _____
 - ☐ Handle amounts of money up to \$ _____.
Additional Specifications: _____
 - ☐ Maintain personal property other than funds, stocks, bonds, sureties, etc.
Additional Specifications: _____
 - ☐ Enter into contracts regarding social, religious, and community activities.
Additional Specifications: _____
 - ☐ Enter into contracts regarding residential arrangements.
Additional Specifications: _____
 - ☐ Enter into contracts regarding health care, legal and other services.
Additional Specifications: _____
 - ☐ Consult with guardian regarding financial decisions.
Additional Specifications: _____
 - ☐ Other. _____

Date

Signature

- ☐ Assistant CSC
☐ Clerk Of Superior Court

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF:

Name And Address Of Respondent

**ORDER ON
PETITION FOR ADJUDICATION
OF INCOMPETENCE**

Date Of Birth

Drivers License No. Of Respondent

State

G.S. 35A-1112, -1113, -1116, -1120, -1205

This matter is before the Court on a Petition for an adjudication of incompetence of the respondent. This Court has jurisdiction of the subject matter of this proceeding and of the person of the respondent; a copy of the Petition and a notice of this hearing were properly served on all persons entitled thereto; and this county is a proper venue.

☐ A hearing was held before the Clerk of Superior Court and a jury. After hearing the evidence and the instructions of the Court, and upon deliberation, the jury ☐ did ☐ did not find by clear, cogent, and convincing evidence that the respondent ☐ is incompetent. ☐ is incompetent to a limited extent and may retain some rights and privileges.

☐ A hearing was held before the Clerk of Superior Court and, after hearing the evidence, the Court ☐ does ☐ does not find by clear, cogent, and convincing evidence that the respondent ☐ is incompetent ☐ is incompetent to a limited extent and may retain some rights and privileges.

ORDER

It is adjudged that the Respondent is

☐ incompetent☐ incompetent to a limited extent and it is ORDERED that:☐ The Court recommends that the respondent be allowed to retain his or her driving privileges.☐ a guardian be appointed by this Court.☐ for good cause shown, the proceeding for the appointment and qualification of a guardian is transferred to

(NOTE TO CLERK: All original documents from the incompetency and estate files in this matter are to be sent to the county where this case is transferred.)

County To Which Guardianship Proceeding Transferred

☐ is not incompetent and the proceeding is dismissed.Pursuant to G.S. 35A-1116, costs are: ☐ taxed to: ☐ Petitioner. ☐ Respondent.☐ waived.

Date

Signature

☐ Assistant CSC☐ Clerk of Superior Court

NOTE TO CLERK: If the respondent is adjudicated incompetent, then in all cases send a certified copy of this Order or a "Notice of Involuntary Commitment or Adjudication of Incompetency"(DL-24) to the Division of Motor Vehicles. G.S. 20-17.1(b). If the respondent resides in another county, also send a certified copy of this Order to the Clerk of the county of the respondent's legal residence to be filed and indexed as a special proceeding in that county. G.S. 35A-1112(f). If a guardian is appointed, a new estate should be opened and copies of the original petition and of this Order should be placed in the separate "E" file for the new estate.

CERTIFICATION

I certify that this Order on Petition For Adjudication Of Incompetence is a true and complete copy of the original on file in this case.

Date

Signature

☐ Deputy CSC☐ Assistant CSC☐ CSC

(TYPE OR PRINT IN BLACK INK)

STATE OF NORTH CAROLINA

File No.

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

County

IN THE MATTER OF THE ESTATE OF:

Name And Address Of Incompetent Person

Social Security No. (Last Four Digits)

Date Of Birth

County Of Residence

Date Of Adjudication Of Incompetence

County Of Adjudication

Name And Street Address, PO Box, City, State And Zip Of Applicant 1

County Of Residence Of Applicant 1

Telephone No.

Applicant(s) Relationship Or Interest In Proceeding

APPLICATION FOR LETTERS OF

- ☐ GUARDIANSHIP OF THE ESTATE
☐ LIMITED GUARDIANSHIP OF THE ESTATE
☐ GUARDIANSHIP OF THE PERSON
☐ LIMITED GUARDIANSHIP OF THE PERSON
☐ GENERAL GUARDIANSHIP
☐ LIMITED GENERAL GUARDIANSHIP

FOR AN INCOMPETENT PERSON

G.S. 35A-1210, -1212, 35A-1251

File Or Other ID No. Of Incompetence Proceeding

Name And Street Address, PO Box, City, State And Zip Of Applicant 2

County Of Residence Of Applicant 2

Telephone No.

Name And Address Of Attorney For Applicant(s)

Attorney Bar No.

Telephone No.

The Undersigned, being duly sworn, applies to be appointed guardian(s) for the incompetent person named above, to serve in the capacity indicated, and to be issued letters of appointment in this estate.

1. The incompetent person was so adjudicated on the date and in the proceeding identified above.
2. A statement of the assets and liabilities of the incompetent person, including any income and receivables to which the incompetent is entitled, is set forth on the reverse side of this Application. (Not necessary if applying for guardianship of the person only.)
3. I hereby acknowledge receipt of AOC-SP-850, "Responsibilities Of Guardians In North Carolina" or I acknowledge that said pamphlet is available online at www.nccourts.org/forms and I further acknowledge that I am required to comply with said responsibilities and to manage the guardianship estate in accordance with North Carolina law.
4. Other: (Give any other information requested by Clerk.)

VERIFICATION

I, the undersigned applicant, have read this Application and state that its contents are true to my own knowledge except those matters stated on information and belief, which I believe to be true.

Date

Signature Of Applicant 1

Date

Signature Of Applicant 2

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature Of Person Authorized To Administer Oaths

Date

Signature Of Person Authorized To Administer Oaths

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

☐ Notary

Date My Commission Expires

Date My Commission Expires

☐ Notary

SEAL

County Where Notarized

County Where Notarized

SEAL

PART I. PRELIMINARY INVENTORY OF THE INCOMPETENT'S ESTATE

Description		Estimated Value
1. Cash And Undeposited Checks On Hand		\$
2. Accounts <i>(list bank, etc.; each account number; balance & Interest)</i>	Account No.	
3. Stocks And Bonds		
4. Notes, Judgments And Other Debts Due		
5. Household Furnishings		
6. Motor Vehicles		
7. Interest In Partnership Or Sole Proprietor Businesses		
8. Farm Products, Livestock And Equipment		
9. Miscellaneous Personal Property		
10. Estimated Annual Income		
Wages, Salaries, Etc.....	\$	
Rental Income.....	\$	
Other Investment Income.....	\$	
Annuity, Pension Or Retirement Benefits, Social Security, Disability Or Other Compensation, Insurance Proceeds, Injury Settlement Or Other Periodic	\$	
Subtotal of Line 10		\$
11. Other		
TOTAL PART I. <i>(Base bond on this amount)</i>		\$

PART II. OTHER PROPERTY

Description		
1. Interests In Real Estate		\$
2. Right Of Action For Injury, etc. (NOTE: <i>Increase bond before receipt.</i>)		
3. Trust Income NOT Administered Or Received By Guardian		
4. Other Resources Available For Support Of Incompetent, NOT Administered Or Received By Guardian <i>(Attach itemized list.)</i>		
TOTAL PART II.		\$

Major medical or similar insurance is in effect through
(Name Of Insurer) _____ *(Policy No.)* _____

Soc. Sec. Payee, VA Guardian, Attorney-in-fact, etc. *(Name)* _____

Living Will, Health Care P.O.A., etc. *(Health Care Agent)* _____

PART III. LIABILITIES

Description		
1. Mortgage Loans		\$
2. Other Secured Loans Or Obligations		
3. Unsecured Obligations		
TOTAL PART III.		\$

STATE OF NORTH CAROLINA

File No.

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

County

IN THE MATTER OF THE ESTATE OF:

Name Of Decedent/Minor/Incompetent/Trust

OATH/AFFIRMATION

N.C. Constitution, Art. VI., Sec. 7; G.S.11-7, 11-11; 28A-7-1

I, the undersigned, do solemnly ☐ swear ☐ affirm that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as indicated below;
☐ so help me, God. ☐ and this is my solemn affirmation.

(check office below)

☐ **OATH OF ADMINISTRATOR**

I ☐ swear ☐ affirm that I believe that the above named decedent died without leaving any Last Will and Testament; that I will well and truly administer all and singular the goods and chattels, rights and credits of the deceased and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in me, I will well and truly perform, according to law and with my best skill and ability;
☐ so help me, God. ☐ and this is my solemn affirmation.

☐ **OATH OF EXECUTOR**

I ☐ swear ☐ affirm that I believe this paper writing to be and contain the Last Will and Testament of the above named decedent; and that I will well and truly execute the same by first paying the decedent's debts and then the decedent's legacies; as far as the said estate shall extend or the law shall charge me; and that I will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in me, and according to law; ☐ so help me, God. ☐ and this is my solemn affirmation.

☐ **OATH OF ADMINISTRATOR CTA**

I ☐ swear ☐ affirm that I believe this paper writing to be and contain the Last Will and Testament of the above named decedent; and that I will well and truly execute the same by first paying the decedent's debts and then the decedent's legacies, as far as the said estate shall extend or the law shall charge me; and that I will well and faithfully execute the office of an administrator cta to the best of my skill and ability and according to the law;
☐ so help me, God. ☐ and this is my solemn affirmation.

☐ **OATH OF FIDUCIARY**

I ☐ swear ☐ affirm that I will faithfully and honestly discharge the duties reposed in me according to the best of my skill and ability, and according to law; ☐ so help me, God. ☐ and this is my solemn affirmation.

Name Of Fiduciary 1

Name Of Fiduciary 2

Signature Of Fiduciary

Signature Of Fiduciary

☐ **SWORN** ☐ **AFFIRMED** AND SUBSCRIBED TO BEFORE ME☐ **SWORN** ☐ **AFFIRMED** AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature Of Person Authorized To Administer Oaths

Signature Of Person Authorized To Administer Oaths

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court☐ Notary

Date My Commission Expires

Date My Commission Expires

☐ Notary**SEAL**

County Where Notarized

County Where Notarized

SEAL

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 Decedent/Minor/Incompetent/Trust

ORDER AUTHORIZING ISSUANCE OF LETTERS

G.S. 28A-6-1; 35A-1215, -1226; 36A-107

The Court finds from the Application for Letters in the matter named above that the Fiduciary is entitled and is not disqualified to administer the estate, trust or guardianship.

Based on these findings the Court orders that Letters be issued to the Fiduciary in this matter.

Name And Address Of Fiduciary 1

Date Of Qualification

Clerk Of Superior Court

Title Of Fiduciary 1

EX OFFICIO JUDGE OF PROBATE

Name And Address Of Fiduciary 2

Date

Signature

Title Of Fiduciary 2

☐ Assistant CSC

☐ Clerk Of Superior Court

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF THE ESTATE OF:

Name Of Ward

LETTERS OF APPOINTMENT GUARDIAN OF THE ESTATE

☐ Incompetent Person

☐ Minor

G.S. 35A-1203, -1206, -1251; 34-2.1

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 Estate of the ward named above and has ordered that these Letters Of Appointment be issued.

The guardian of the estate is fully authorized and entitled under the laws of North Carolina to receive, manage and administer the property, estate and 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.

Witness my hand and the Seal of the Superior Court.

Name And Address Of Guardian 1 Of The Estate

Date Of Qualification

Clerk Of Superior Court

EX OFFICIO JUDGE OF PROBATE

Name And Address Of Guardian 2 Of The Estate

Date Of Issuance

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

SEAL

NOTE: This letter is not valid without the official seal of the Clerk of Superior Court.

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 Decedent/Minor/Incompetent

Date Of Birth, If Minor

Date Of Death

Name Of Fiduciary 1

Name Of Fiduciary 2

ESTATES ACTION**COVER SHEET**

Rule 5(b), Rules of Practice For Superior and District Courts

All persons listed below may be entitled to share in the decedent's estate *(Continue on back if necessary.)*

1.

4.

2.

5.

3.

6.

Name, Mailing Address, PO Box, City, State And Zip Of Attorney (complete for initial appearance or change of address)

Name Of Firm

☐ Initial Appearance in Case☐ Change of Address

Attorney Bar No.

Telephone No.

Fax No.

APPLICATION*(check appropriate box)*

- ☐ Affidavit For Collection Of Personal Property - Intestate (AFCP)
- ☐ Affidavit For Collection Of Personal Property - Testate (AFCT)
- ☐ Amend (AMND) *(see NOTE)*
- ☐ Ancillary Administration (ANCL)
- ☐ Appointment Of Receiver (APRC)
- ☐ Assignment Of Title (ASOT)
- ☐ Attorney Fee (ATFE)
- ☐ Caveat (CAVT)
- ☐ Collector (COLL)
- ☐ Court Costs (COST)
- ☐ Continue (CNTN)
- ☐ Dismiss (Involuntary) (DISM)
- ☐ Emergency Removal Of Guardian (Without Hearing)
- ☐ Exemplified Administration (EXAD)
- ☐ Extension Of Time (EXTM) *(see NOTE)*
- ☐ General Guardianship - Incompetent (GUIN)
- ☐ General Guardianship - Minor (GUMI)
- ☐ Guardianship Of The Estate - Incompetent (GUEI)
- ☐ Guardianship Of The Estate - Minor (GUEM)
- ☐ Guardianship Of The Person (GUPE)
- ☐ Interim Guardianship (INGU)
- ☐ Letters Of Administration (LOAD)
- ☐ Limited Personal Representative (LTPR)
- ☐ Modify Guardianship (GUMO)
- ☐ Payments To Clerks 28A-25.6 (PYCL)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Proceeding Exam To Discover Assets (PEDA)

- ☐ Power Of Attorney (POAT)
- ☐ Probate, Letters Testamentary - Administration CTA (PROB)
- ☐ Renunciation Of Interest - Estate (RNIE)
- ☐ Renunciation Of Interest - No Estate (RNUN)
- ☐ Renunciation Of Testamentary Trustee (RNTT)
- ☐ Resignation Of Trustee (RSNT)
- ☐ Removal/Substitution Of Administrator (RRFD)
- ☐ Removal/Substitution Of Guardian (RRFD)
- ☐ Removal/Substitution Of Trustee (RSOT)
- ☐ Standby General Guardianship - Minor (SGUG)
- ☐ Standby Guardianship Of Person - Minor (SGUP)
- ☐ Summary Administration (SUMA)
- ☐ Summary Removal Of Personal Representative
(Without Hearing)
- ☐ Trust - Cemetery (TCEM)
- ☐ Trust (TRST)
- ☐ Trust Under Will - Qualification Required, No Accountings
(TRNQ)
- ☐ Trust Under Will - Qualification And Accounting Required
(TRUW)
- ☐ Voluntary Dismissal - With Or Without Prejudice (VOLD)
- ☐ Will For Probate - No Qualification (WLPR)
- ☐ Year's Allowance (YEAL)
- ☐ Other: *(specify and list each separately)*

Date

Signature Of Attorney/Applicant

NOTE: All filings in estates shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings the filing party must either include an Estates (AOC-E-650), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

ADDITIONAL PERSON(S) WHO MAY BE ENTITLED TO SHARE IN DECEDENT'S ESTATE

7.	32.
8.	33.
9.	34.
10.	35.
11.	36.
12.	37.
13.	38.
14.	39.
15.	40.
16.	41.
17.	42.
18.	43.
19.	44.
20.	45.
21.	46.
22.	47.
23.	48.
24.	49.
25.	50.
26.	51.
27.	52.
28.	53.
29.	54.
30.	55.
31.	56.

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF THE ESTATE OF:

Name Of Ward

LETTERS OF APPOINTMENT GENERAL GUARDIAN

☐ Incompetent Person

☐ Minor

G.S. 35A-1203, -1206, -1251; 34-2.1

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 General Guardian(s) of the ward named above and has ordered that these Letters Of Appointment be issued.

The General Guardian is fully authorized and entitled under the laws of North Carolina to receive, manage and administer the property, estate and business affairs of the ward and to have the custody, care and control of the ward.

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

Witness my hand and the Seal of the Superior Court.

Name And Address Of General Guardian 1

Date Of Qualification

Clerk Of Superior Court

EX OFFICIO JUDGE OF PROBATE

Name And Address Of General Guardian 2

Date Of Issuance

Signature

☐ Deputy CSC

☐ Assistant CSC

☐ Clerk Of Superior Court

SEAL

NOTE: This letter is not valid without the official seal of the Clerk of Superior Court.

STATE OF NORTH CAROLINA

File No.

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

_____ County

IN THE MATTER OF THE ESTATE OF:

Name Of Ward

LETTERS OF APPOINTMENT GUARDIAN OF THE ESTATE

☐ Incompetent Person

☐ Minor

G.S. 35A-1203, -1206, -1251; 34-2.1

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 Estate of the ward named above and has ordered that these Letters Of Appointment be issued.

The guardian of the estate is fully authorized and entitled under the laws of North Carolina to receive, manage and administer the property, estate and 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.

Witness my hand and the Seal of the Superior Court.

Name And Address Of Guardian 1 Of The Estate

Date Of Qualification

Clerk Of Superior Court

EX OFFICIO JUDGE OF PROBATE

Name And Address Of Guardian 2 Of The Estate

Date Of Issuance

Signature

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

SEAL

NOTE: This letter is not valid without the official seal of the Clerk of Superior Court.



Family Support Network™ of WNC

Guardianship Glossary

Petitioner – person who files the petition

Guardian is the person (or corporation) who has the fiduciary duty and responsibility for caring for the ward's person and/or estate. Also, state agencies may be appointed as a disinterested public agent guardian.

Guardian *ad litem* is a person appointed by the Clerk of Superior Court to represent the ward if the ward or the wards "best interest" does not have an attorney. The Guardian *ad litem* must be an attorney.

Fiduciary is a person who has a duty to act primarily for another person's benefit.

Fiduciary duty is like a trust (promise), in which the fiduciary is to protect the interest of ward, by managing the ward's estate, preserving the ward's assets in secure investments, or providing for the ward's shelter, food and health care. A fiduciary may not do anything which could appear to be for the fiduciary's own interest.

Law regarding guardians is found in Chapter 35A of the North Carolina General Statutes. The North Carolina General Statutes can be found at most public libraries, law schools and on-line at www.ncleg.net.

Respondent – the person who responds in a legal case; in a guardianship proceeding, a person who is alleged (believed) to be incompetent

Ward is the person who has been declared incompetent (or a minor). [G.S. §35A-1202(15)] The ward is called the respondent at the incompetency proceeding stage.

Clerk means the clerk of superior court, who is the Probate Judge. The Probate Judge or an Assistant Clerk may hear these matters.

Source: North Carolina Administrative Office of the Courts
North Carolina Council on Developmental Disabilities



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Responsibilities of Guardians in North Carolina



GUARDIANSHIP LAW IN NORTH CAROLINA
for
General Guardians - Guardians of the Person-Guardians of the Estate

IMPORTANT

- The Clerk of Superior Court in all 100 counties in North Carolina serves as the judge of probate and cannot practice law or give legal advice. Therefore, you should not ask the clerk or the clerk's staff to prepare your petitions, orders or accounts or to advise you on the completion of forms or any legal issue.
- You must keep accurate records of the ward's accounts and investments.
- You must file timely and accurate accountings.
- You must use the ward's money for his or her own needs and not for yourself or anyone else.
- Court costs and fees must be paid to the Clerk of Superior Court. You will be informed about the amounts by the clerk's office.

DEFINITIONS

1. **Guardian** is the person (or corporation) who has the fiduciary duty and responsibility for caring for the ward's person and/or estate. Also, state agencies may be appointed as a disinterested public agent guardian.
2. **Guardian *ad litem*** is a person appointed by the Clerk of Superior Court to represent the ward if the ward does not have an attorney. The Guardian *ad litem* must be an attorney.
3. **Fiduciary** is a person who has a duty to act primarily for another person's benefit.
4. **Fiduciary duty** is like a trust (promise), in which in the fiduciary is to protect the interest of ward, by managing the ward's estate, preserving the ward's assets in secure investments, or providing for the ward's shelter, food and health care. A fiduciary may not do anything which could appear to be for the fiduciary's own interest.
5. **Law** regarding guardians is found in Chapter 35A of the North Carolina General Statutes. The North Carolina General Statutes can be found at most public libraries, law schools and on-line at www.ncleg.net.
6. **Ward** is the person who has been declared incompetent (or a minor). [G.S. §35A-1202(15)] The ward is called the respondent at the incompetency proceeding stage.
7. **Clerk** means the clerk of superior court.

This pamphlet is provided as a public service to assist persons who have been or are about to be appointed guardians in understanding their duties, responsibilities and role. **It is not meant as substitute for legal advice. You should contact an attorney should you have any legal questions about the role of a guardian.**

PRINCIPLES FOR THE GUARDIAN

The Guardian must:

1. Ensure that the loyalty and duty of the guardian are to the “actual” needs of the ward.
2. Make decisions that ensure the health and well being of the ward.
3. Involve the person in all decision-making to the extent possible, consistent with the ward’s ability.
4. Ensure that the need for guardianship is periodically reviewed and alternatives, including restoration to competency or limited guardianship, are considered.

PRINCIPLES FOR THE WARD

1. The Ward should be involved in all decision making to the extent possible, consistent with the ward’s ability.
2. The Ward has the right to petition the court for periodic review of the guardianship, including restoration to competency,
3. The Ward is entitled to a guardian *ad litem* who represents the expressed interest of the Ward in the guardianships proceedings, and may make recommendations to the clerk concerning the best interests of the Ward, if those interests differ from the expressed interests. [G.S. 35A-1107]

TYPES OF GUARDIANS

1. **Guardian of the Estate:** A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward. [G.S. 35A-1202(9)]

2. **Guardian of the Person:** A guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward. The guardian of the person does not handle any of the ward's money or property. [G.S. 35A-1202(10)]
3. **General Guardian:** A guardian of both the estate and the person. [G.S. 35A-1202(7)]
4. **NOTE:** The powers and duties of the guardian may be limited by the order of appointment. See 'Powers and Duties of the Guardian'.

SPECIAL CONSIDERATIONS – GUARDIANS FOR MINORS

1. Children under the age of 18 are presumed to be incompetent by law, so there is no need for an incompetency proceeding before appointing a guardian. However, a hearing is required. A parent or other person may be appointed guardian of the estate of the minor.
2. A guardian of the person may be appointed only if the minor has no living parents, or the rights of the parents have been terminated. [G.S. 35A-1224(a)]
3. A minor's funds **SHOULD NOT** be used by the minor's parents (acting as appointed guardians) for maintenance (food, shelter, clothing) and education of the minor, since the parents are legally obligated to pay for their children's maintenance and education until the children reach age 18. Should a parent/guardian be unable to provide for the minor's basic maintenance needs the guardian may petition the Clerk for permission to use some of the minor's funds for those needs. The Clerk, however, has total discretion in determining whether the request should be granted. See "Prohibited Acts Of All Guardians".
4. A minor's real property may not be sold unless the guardian of the estate or the general guardian petitions the court in advance, and a court order is entered approving the sale. A guardian of the estate or general guardian, without court order, may sell up to \$5,000 of the ward's personal property in any one accounting period and report the sale and the use of the proceeds on the next annual accounting. A guardian of the estate or general guardian may not sell more than \$5,000 of the ward's personal property in any one accounting period without petitioning the court in advance and obtaining a court order approving the sale. See 'Property, Investments and Verifications.'
5. There are special duties and limitations on the types of property or investments that a guardian may make on behalf of a minor. See "Property, Investment and Verification".

6. There are special requirements regarding the duty of a guardian to file an inventory of the minor's property with the court, and to file annual accountings regarding all income, disbursements, distributions, investments and/or balances or property held or invested on behalf of the minor. See "Accountings".
7. When a minor ward reaches 18 years of age (or is sooner emancipated by marriage or court order) the guardianship shall terminate. [G.S. 35A-1295, 1202(12)] The guardian shall file a final accounting with the Clerk of Superior Court within 60 days of the termination. Any remaining assets of the estate must be paid to the former minor and a receipt should be obtained from the former minor and filed with the final accounting in the guardianship. See "Termination of Guardianship".

APPOINTMENT AND DUTIES OF GUARDIANS

All guardians are bound by the law and must abide by their fiduciary duties to protect the interests of the ward. Specific duties of a guardian depend on what type of guardianship (i.e., estate, person or general) was created.

1. Qualification As Guardian

(a) Application to Qualify

A person who seeks to serve as a guardian for an incompetent or a minor must apply to the Clerk of Superior Court of the county of residence of the minor or incompetent, or where the incompetent is an inpatient, on a form provided by the clerk's office. The form calls for a preliminary inventory of all assets and liabilities of the ward. Therefore, the applicant will need to have a general knowledge of the ward's real estate, bank accounts, stocks, bonds, motor vehicles, and other personal property, an estimated value of these assets, and estimated amount of the ward's debts (mortgages, taxes, credit cards, etc.) to complete the application. The instructions for that form should assist you in completing the form. [G.S. 35A-1210, 1251 (incompetents); 35A-1221, 1225 (minors)]. [*Forms -Application for Letters of Guardianship of the Estate, Guardianship of the Person, General Guardianship for an Incompetent Person, AOC-E-206 or Application for Appointment of Guardianship of the Estate, Guardianship of the Person, General Guardianship for a Minor, AOC-E-208.*]

(b) *Qualified Persons (to serve as guardian for an incompetent)*

The Clerk of Superior Court will grant letters of guardianship to a person(s) or corporation who applies and is qualified to serve, in the following order:

(1) An adult individual

If the individual is not a North Carolina resident, he or she must agree to submit to the jurisdiction of North Carolina courts and appoint a resident process agent.

(2) A corporation if its corporate charter authorizes the corporation to serve as a guardian or in other similar fiduciary capacities;

(3) A disinterested public agent (Director of the local Social Services, Health or Mental Health Departments, etc.).
[G.S. 35A-1213,1214]

(c) *Qualified Persons (to serve as guardian for a minor)*

(1) An adult individual

a. must appoint a resident process agent if serving as General Guardian or Guardian of the Estate and is not a resident of North Carolina. [G.S. 35A-1230]

(2) A corporation if its corporate charter authorizes the corporation to serve as a guardian or in other similar fiduciary capacities.
[G.S. 35A-1224]

(d) *Disqualified persons*

No person may serve as a guardian who in the opinion of the clerk would not look out for the best interest of the ward. [G.S. 35A-1214]

(e) *Oath (Affirmation)*

All guardians must take an oath (or affirmation) in which the guardian swears (or affirms) to faithfully and honestly discharge the duties of the guardian to the best of the guardian's ability and according to law. [Forms-Oath, AOC-E-400]

(f) *Bond*

When serving as a General Guardian or Guardian of the Estate, the guardian must post a bond, approved by the clerk, to secure the faithful performance of the guardian's duties. There are some limited circumstances in which a bond may be reduced based on a dispositive agreement approved by the clerk. The Clerk of Superior Court also has the discretion to require a bond for non-resident guardian of the person. [G.S. 35A-1230]. [Forms-Bond, AOC-E-401]

(g) *Orders*

The clerk may, with or without a hearing, authorize letters of guardianship to be issued to the named fiduciary (guardian). [G.S. 35A-1213, 1214, 1215, 1226]. [*Forms-Order on Application for Appointment of Guardian, AOC-E-406; Order Authorizing Issuance of Letters, AOC-E-402*]

(h) *Letters*

The clerk will issue letters to the person who is appointed guardian. The letters are the guardian's proof of authority to act on behalf of the ward. (See above for definitions of different types of guardianships). [*Forms-Letters of Appointment, Guardian of the Estate, AOC-E-407; Guardian of the Person, AOC-E-408; General Guardian, AOC-E-413*]

2. **Powers and Duties of Guardian**

(a) *Guardian of the Estate*

Unless limited by court order, the Guardian of the Estate has the general power to "perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest...." The complete listing of powers can be found in G.S. 35A-1251 and 1253 (Incompetent) and G.S. 35A-1252 and 1253 (Minor).

In addition to duties imposed by law or by order of the clerk, the guardian of the Estate also has the duty to take possession, for the ward's use, of the ward's estate, to collect monies due the ward, to pay debts of the ward including taxes, to obey all lawful orders of the court and to observe the standard of judgment and care that an ordinary prudent person serving as a fiduciary would take in acquiring and maintaining the ward's property.

(b) *Guardian of the Person*

Unless limited by court order, a guardian of the person has custody of the ward and is responsible for making provisions for the ward's care, including medical and psychological treatment; comfort, including shelter; and maintenance, including education, training, and employment. [G.S. 35A-1241] If the ward has written advance instructions for the ward's medical or mental health care, the guardian should honor those instructions.

(c) *General Guardian*

Unless otherwise limited by court order, a General Guardian has all the powers and duties of a guardian of the estate and guardian of the person. [G.S.35A-1202(7)]

NOTE: The powers and duties of the guardians referenced in subparagraphs (a), (b), and (c) may be limited by court order allowing the ward to retain certain designated rights and responsibilities.

3. **Property, Investments and Verifications**

(a) *Property*

The ward's property, real and personal, must be maintained in such a manner to ensure the ward has a place to live or money with which to pay for his or her living expenses. The guardian must maintain an accurate accounting of the ward's property, income, expenses and disbursements.

To the extent possible, only the ward's income (rather than any portion of the principal) should be used to pay for his or her care. The guardian of the estate or general guardian must petition the clerk in advance should real property need to be sold to pay for the ward's needs, or if more than \$5,000 of the ward's personal property needs to be sold in any one accounting period to pay for the ward's needs.

(b) *Investments*

The ward's funds shall be invested in interest bearing accounts or other approved investment accounts [G.S. 35A-1251; 1252] in the name of the ward, and showing the name of the guardian who is acting on behalf of the ward. The guardian must properly manage the funds to ensure money is available to pay for the ward's needs, such as shelter, food, clothing and medical care.

NOTE: Failure to properly manage and secure the ward's funds may result in personal liability for the guardian's breach of fiduciary duty. Investment of the ward's funds in securities or other investment devices that subject those funds to loss of principal, may, under the reasonable prudent man rule, subject the guardian to personal liability for breach of fiduciary duty.

(c) *Verifications*

The guardian must maintain cancelled checks and receipts of all expenditures, and provide them to the clerk with each accounting, together with bank statements, titles, or other documentary evidence of balances still held or invested.

4. **Miscellaneous Responsibilities**

- (a) Promptly notify the clerk if you change your name or address.
- (b) Promptly notify the clerk if you change the residence of the ward.

5. **Prohibited Acts of all Guardians**

- The real and personal property of the ward may not be used for anything or anyone other than the ward.
- The money belonging to the ward must be kept separate from the personal funds of the guardian. The guardian should appear on any guardianship account as acting on behalf of the ward. The guardian should not be listed on any such account as a joint account holder with or without right of survivorship, or as a payee on death.
- The guardian may not borrow money from the ward or loan the ward's money to anyone unless ordered by the court.
- The guardian shall not write any checks for "cash" unless regular cash distributions to the ward are authorized by the court.
- The ward's real property may not be sold unless the sale is ordered in advance by the court. A guardian of the estate or general guardian, without court approval, may not sell more than \$5,000 of the ward's personal property in any one accounting period.
- The ward's real property may not be sold unless the general guardian or the guardian of the estate files a special proceeding seeking authority and approval of the court in advance.
- If the general guardian or guardian of the estate wishes to sell personal property of the ward, during any one accounting period, which has a value of over \$5,000.00, the guardian must file a motion in the estate proceeding seeking authority and approval by the court, prior to the sale. Sales of less than \$5,000.00 in value during any one accounting period do not need prior court approval, and need only be reported on the next annual accounting.
- Minor's funds **should not** be used by the minors parents for maintenance (food, shelter, clothing) and education of the minor, since the parents are legally obligated to pay for their children's maintenance and education until the children reach age 18. Should a parent or guardian be unable to provide for the minor's basic maintenance needs the guardian may petition the Clerk for permission to use some of the minor's funds for those needs. The clerk, however, has total discretion in determining whether the request should be granted.
- The minor's property must be delivered to the minor once the minor has reached 18 and the clerk has approved the final accounting.
- Guardian may not consent to have the ward sterilized. A ward may only be sterilized when medically necessary treatment for an illness may result in sterilization and that treatment is approved by the clerk.

EXPENSES, REIMBURSEMENTS AND COMMISSIONS

1. Allowable Expenses and Reimbursements

The Clerk may approve certain expenses of the guardian to be reimbursed from the ward's estate, such as bond premiums and court costs.

[G.S. 35A-1267]

If the ward is living with the guardian or some other person, the Clerk may also approve payment to the guardian or other person to pay the ward's share of the household expenses, food and other necessary items.

2. Commissions (Applies only to Guardians of the Estate and General Guardians)

The guardian may receive a commission for the guardian's time and trouble in handling of the ward's estate. The amount or method of compensation is set by the Clerk of Superior Court, in the clerk's discretion, up to, but not to exceed five percent (5%) of the qualified estate receipts and disbursements. [NOTE: Any commissions with respect to principal are allocated (divided) over the time remaining in the estate (i.e., the number of years until the minor reaches age 18, or the remaining life expectancy of the incompetent calculated under G.S. 8-46).] The clerk will consider the time, responsibility, trouble, and skill involved in the management of the estate. Commissions to guardians are accounted for as costs and expenses of administration. The commission is to cover any ordinary expenses, such as telephone, mailing, and travel, incurred by the guardian in performing the duties of the guardian, as well as paying the guardian for his or her services in managing the estate. In limited circumstances, the clerk may approve additional reimbursement for out of pocket expenses. The guardian must petition the Clerk for approval of a commission or additional reimbursement for out of pocket expenses before making distribution of that commission. [G.S. 35A-1269]

3. Attorney's Fees (Applies only to Guardians of the Estate and General Guardians)

The guardian may choose to hire an attorney to represent the estate. However, the funds of the estate may not be used to pay the attorney's fee unless the clerk finds that the fee is reasonable. Unless the attorney's services are beyond the normal scope of estate administration, the attorney's fees allowed may reduce the amount of the guardian's commission. Not all attorney's fees may be approved by the clerk and if not allowed, the guardian will be personally responsible for the attorney's fees.

ACCOUNTINGS

(Applies only to Guardians of the Estate and General Guardians)

1. Types of Accountings

(a) *Inventory [Inventory For Guardianship Estate, AOC-E-510]*

Within three (3) months from the date of qualification, the guardian must file with the Clerk of Superior Court's office an accurate inventory of the ward's estate, giving descriptions and values of all real and personal property owned by the ward as of the date of qualifying. The guardian should obtain copies of signature cards and deposit contracts associated with any joint accounts from the depository financial institution and submit them with the inventory. [G.S. 35A-1261] Property discovered later must be reported on a supplemental inventory. [G.S. 35A-1263.1] Income of the ward's estate (e.g., pension payments, interest, social security, etc.), property later acquired by the estate, or asset conversions (e.g., sale of real estate or stock, foreclosure of deed of trust, etc.) must be reported on the next annual accounting.

(b) *Annual Accounting [Account, AOC-E-506]*

The guardian **must** file an annual accounting no later than thirty (30) days after the expiration of one year from the date on which he or she qualified to serve. The accounting **may** be filed earlier. The guardian must then file annual accounts every year thereafter until the final accounting is filed. [G.S. 35A-1264]

(c) *Final Accounting [Account, AOC-E-506]*

The guardian **must** file a final accounting within sixty (60) days after the termination of the guardianship. [G.S. 35A-1266]

2. Proofs

All accountings must be accompanied by cancelled checks or other proof satisfactory to the clerk for all disbursements and distributions, and for all balances held or invested (e.g., bank or brokerage statement showing balance held, vehicle title, recorded deed to real estate, etc.). [G.S. 35A-1268]

3. Contents Of Accountings

All accountings filed with the Clerk of Superior Court must be signed under oath and contain:

- (a) The period which the account covers and whether it is an annual accounting or final accounting;
- (b) The amount and value of the property of the estate according to the inventory and appraisal, or according to the previous accounting; the manner and nature of any investments; the amount of income and additional property received during the accounting period; and all gains or losses from the sale of any property or otherwise;
- (c) All payments, charges, losses, and distributions;
- (d) The property on hand constituting the balance of the estate, if any;
- (e) Any other facts and information determined by the clerk to be necessary to an understanding of the account. [G.S. 35A-1264, 1266]

4. Failure to File Accountings

If the guardian fails to account as required, or if he or she renders an unsatisfactory account, the Clerk of Superior Court may, after notice, issue an order for the guardian to appear and show cause as to why she or he failed to file an inventory or account. If, within 20 days after service of such an order, she or he does not make the required filing, the clerk may have the sheriff serve the guardian with an order of contempt and commitment, and the sheriff will place the guardian in the county jail until she or he complies with the order. The guardian shall be personally liable for all costs associated with such proceedings. The clerk may also remove the guardian from office and appoint someone else to complete the administration of the estate. [G.S. 35A-1265]

TERMINATION OF GUARDIANSHIP

1. Resignation or Death of Guardian

(a) *Resignation*

A guardian who wishes to resign, must petition the Clerk of Superior Court for an order authorizing the resignation. [G.S. 35A-1292] The clerk may approve the resignation upon approval of a final account.

(b) Death

Upon the death of a guardian, the clerk will appoint a successor guardian following the same procedure for the initial appointment.
[G.S. 35A-1293]

2. Removal

(a) Mandatory

The clerk must remove a guardian or take other action when the guardian has been adjudged incompetent, has been convicted of a felony, was initially unqualified, fails to renew a bond, fails to file accountings, fails to obey any citation, notice or process served on the guardian or the guardian's process agent, or the clerk finds the guardian to be unsuitable to continue serving. The complete listing of bases for mandatory removal is found at G.S. 35A-1290(c).

(b) Discretionary

The clerk may remove a guardian or take other action when the clerk determines that the guardian has mismanaged or wasted the ward's money or estate, neglected to provide care for the ward, violated a fiduciary duty or has become insolvent. The complete listing of bases for discretionary removal is found at G.S. 35A-1290(a) and (b).

(c) Emergency

The clerk may remove a guardian without a hearing upon finding reasonable cause to believe an emergency exists that threatens the well being of the ward or the ward's estate.

(d) Interim Orders

When a guardian is removed the clerk may make such interim orders as the clerk finds necessary for the protection of the ward or ward's estate.

3. Restoration to Competency

When a ward's competency is restored (See, Restoration below) the guardianship shall terminate and a final accounting must be filed within sixty (60) days.
[G.S. 35A-1295]

4. Death of the Ward

Upon the death of the ward, guardianship shall terminate and a final accounting must be filed within sixty (60) days. [G.S. 35A-1295] Any remaining assets of the estate must be paid to the personal representative of the estate of the deceased ward and a receipt should be obtained from the personal representative and filed with the final accounting in the guardianship.

5. Minor Reaches Majority

When a minor ward reaches 18 years of age (or is sooner emancipated by marriage or court order) the guardianship shall terminate. [G.S. 35A-1295, 1202(12)] The guardian shall file a final accounting with the Clerk of Superior Court within 60 days of the termination. Any remaining assets of the estate must be paid to the former minor and a receipt should be obtained from the former minor and filed with the final accounting in the guardianship.

RESTORATION TO COMPETENCY

1. **Petition**

A guardian, ward, or other interested person may file a petition (as a motion in the cause) with the Clerk of Superior Court for partial or full restoration of the ward's competency. The petition must be served on the ward and guardian. There is no AOC form for this proceeding. No petition or proceeding is required for a minor reaching the age of 18.

2. **Hearing**

The clerk will schedule and hold a hearing to consider evidence of the ward's competency.

3 **Guardian ad *litem* or attorney**

The ward is entitled to be represented at the hearing by an attorney or the clerk will appoint a guardian ad litem attorney.

4. **Order**

(a) *Full restoration.*

If the clerk finds by a preponderance of the evidence that the ward is competent, the clerk will enter an order restoring the ward to competency. The ward may then handle his or her own affairs and enter into contracts as if he or she had never been adjudicated incompetent.

(b) *Alternative to full restoration*

If the clerk finds that the ward is able to make some of his own decisions, the clerk may enter an order changing the guardianship to a limited guardianship. A limited guardianship permits the ward to have input into or to make certain decisions, such as housing and medical care, as designated by the clerk.

(c) *Against restoration.*

If the clerk finds there is insufficient evidence to restore the ward's competency, the clerk will enter an order to that effect. The guardian of the ward will continue to serve. [G.S. 35A-1130]

IMPORTANT INFORMATION, DATES AND CHECKLIST

<i>Name Of Ward</i>		<i>Social Security Number</i>	
<i>File No.</i>		<i>County Of Appt.</i>	
<i>Name Of Guardian</i>		<i>Date Qualified</i>	
<i>Name Of Attorney</i>		<i>Telephone No.</i>	
<i>Bond</i> \$	<i>Name Of Surety (Bonding Company, etc.)</i>		
<i>Date Inventory Due</i>	<i>Date Inventory Filed</i>	<i>Date Of Annual Account(s)</i>	
<i>Date Final Account Due Upon Termination of Guardianship</i>		<i>Date Final Account Filed</i>	
FOR GENERAL GUARDIANS AND GUARDIANS OF THE ESTATE ONLY <input type="checkbox"/> Determine all assets and debts <input type="checkbox"/> Lock box searched <input type="checkbox"/> Guardianship bank account opened in name of ward Bank _____ No. _____ _____		<input type="checkbox"/> Court approval obtained to sell property <input type="checkbox"/> Income tax returns filed <input type="checkbox"/> Other: _____ _____ _____ _____ _____ _____ _____ _____	

Notes

[illegible]



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