

## Article 9.

### Powers and Duties of Guardian of the Estate.

#### **§ 35A-1250. Applicability of Article.**

(a) This Article applies only to guardians of the estate, including general guardians exercising authority as guardian of the estate. A guardian of the estate or general guardian shall have all the powers and duties under this Article unless those are inconsistent with the clerk's order appointing a guardian, in which case the clerk's order shall prevail.

(b) Nothing contained in this Article shall be construed as authorizing any departure from the express terms or limitations set forth in any court order creating or limiting the guardian's powers and duties. (1987, c. 550, s. 1.)

#### **§ 35A-1251. Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the 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, including but not limited to the following specific powers:

- (1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).
- (2) To receive assets due the ward from any source.
- (2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.
- (3) To maintain any appropriate action or proceeding to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.
- (4) To complete performance of contracts entered into by the ward that continue as obligations of the ward or his estate, or to refuse to complete the contracts, as the guardian determines to be in the ward's best interests, taking into account any cause of action that might be maintained against the ward for failure to complete the contract.
- (5) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in a condition that it is of no benefit or value to the ward or his estate.
- (5a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law.
- (6) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.
- (7) To insure the ward's assets against damage or loss, at the expense of the ward's estate.
- (8) To pay the ward's debts and obligations that were incurred prior to the date of adjudication of incompetence or appointment of a guardian when the debt or

obligation was incurred for necessary living expenses or taxes; or when the debt or obligation involves a specific lien on real or personal property, if the ward has an equity in the property on which there is a specific lien; or when the guardian is convinced that payment of the debt or obligation is in the best interest of the ward or his estate.

- (9) To renew the ward's obligations for the payment of money. The guardian's execution of any obligation for the payment of money pursuant to this subsection shall not be held or construed to be binding on the guardian personally.
- (10) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.
- (11) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (12) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal.
- (13) To pay from the ward's estate necessary expenses of administering the ward's estate.
- (14) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.
- (15) To continue any business or venture or farming operation in which the ward was engaged, where that continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in the business.
- (16) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.
- (17)
  - a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order shall not exceed five thousand dollars (\$5,000) per accounting period. When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed five thousand dollars (\$5,000) in the current accounting period, a guardian may sell the item only as provided in subdivision (17)b.
  - b. A guardian who is required by subdivision (17)a to do so shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion

and of the date, time and place of a hearing thereon shall be served, as provided in G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record and upon any other persons the clerk may direct, and the court may issue the order after conducting a hearing and upon any conditions that the court may require; provided that:

1. A sale, lease, or exchange under this subdivision may not be subject to Article 29A of Chapter 1 of the General Statutes unless the order so requires; and
  2. The power granted in this subdivision shall not affect the power of the guardian to petition the court for prior approval of expenditures from estate principal under subdivision (12) of this section.
- (18) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed or trust, or other lien securing the bond, note or other obligation, and to bid in the property at a foreclosure sale, or to acquire the property deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.
- (19) To borrow money for any periods of time and upon the terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber that portion of the ward's estate as may be required to secure the loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.
- (20) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.
- (21) To expend estate income for the support, maintenance, and education of the ward's minor children, spouse, and dependents, and to petition the court for prior approval of expenditures from estate principal for these purposes; provided, the clerk, in the original order appointing the guardian or a subsequent order, may require that the expenditures from estate income also be approved in advance. In determining whether and in what amount to make or approve these expenditures, the guardian or clerk shall take into account the ward's legal obligations to his minor children, spouse, and dependents; the sufficiency of the ward's estate to meet the ward's needs; the needs and resources of the ward's minor children, spouse, and dependents; and the ward's conduct or expressed wishes, prior to becoming incompetent, in regard to the support of these persons.
- (22) To transfer to the spouse of the ward those amounts authorized for transfer to the spouse pursuant to 42 United States Code § 1396r-5.
- (23) To create a trust for the benefit of the ward pursuant to 42 United States Code § 1396p(d)(4), provided that all amounts remaining in the trust upon the death of the ward, other than those amounts which must be paid to a state government and those amounts retained by a nonprofit association as set forth in 42 United States Code § 1396p(d)(4)(C), are to be paid to the estate of the ward.

- (24) To petition the court for approval of the exercise of any of the following powers with respect to a revocable trust that the ward, if competent, could exercise as settlor of the revocable trust:
- a. Revocation of the trust.
  - b. Amendment of the trust.
  - c. Additions to the trust.
  - d. Direction to dispose of property of the trust.
  - e. The creation of the trust, notwithstanding the provisions of G.S. 36C-4-402(a)(1) and (2).

The exercise of the powers described in this subdivision (i) shall not alter the designation of beneficiaries to receive property on the ward's death under that ward's existing estate plan but may incorporate tax planning or public benefits planning into the ward's existing estate plan, which may include leaving beneficial interests in trust rather than outright, and (ii) shall be subject to the provisions of Articles 17, 18, and 19 of this Chapter concerning gifts. (1987, c. 550, s. 1; 1989, c. 473, ss. 3, 13; 1995, c. 235, ss. 6, 8; 1999-270, s. 9; 2004-199, s. 15; 2007-106, s. 52; 2008-87, s. 1; 2013-91, s. 3(e); 2016-53, s. 7.)

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

In the case of a minor ward, a general guardian or guardian of the estate has the 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, including but not limited to the following specific powers:

- (1) To take possession, for the ward's use, of all the ward's estate, as defined in G.S. 35A-1202(5).
- (2) To receive assets due the ward from any source.
- (2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.
- (3) To maintain any appropriate action or proceeding to obtain support to which the ward is legally entitled, to recover possession of any of the ward's property, to determine the title thereto, or to recover damages for any injury done to any of the ward's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor of or against the ward.
- (4) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the ward or his estate.
- (4a) To renounce any interest in property as provided in Chapter 31B of the General Statutes, or as otherwise allowed by law.
- (5) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the ward.

- (6) To insure the ward's assets against damage or loss, at the expense of the ward's estate.
- (7) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.
- (8) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (9) To expend estate income on the ward's behalf and to petition the court for prior approval of expenditures from estate principal; provided, neither the existence of the estate nor the guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the ward.
- (10) To pay from the ward's estate necessary expenses of administering the ward's estate.
- (11) To employ persons, including attorneys, auditors, investment advisors, appraisers, or agents to advise or assist him in the performance of his duties as guardian.
- (12) To continue any business or venture or farming operation in which the ward was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the ward's interest in such business.
- (13) To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.
- (14)
  - a. Without a court order to lease any of the ward's real estate for a term of not more than three years, or to sell, lease or exchange any of the ward's personal property including securities, provided that the aggregate value of all items of the ward's tangible personal property sold without court order shall not exceed five thousand dollars (\$5,000) per accounting period. When any item of the ward's tangible personal property has a value which when increased by the value of all other tangible personal property previously sold in the estate without a court order would exceed five thousand dollars (\$5,000) in the current accounting period, a guardian may sell the item only as provided in subdivision (14)b.
  - b. A guardian who is required by subdivision (14)a to do so shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him an order to lease any of the ward's real estate or to sell any item or items of the ward's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served, as provided in G.S. 1A-1, Rule 5, Rules of Civil Procedure, upon all parties of record and upon such other persons as the clerk may direct, and the

court may issue the order after hearing and upon such conditions as the court may require; provided that:

1. A sale, lease, or exchange under this subdivision may not be subject to Article 29A of Chapter 1 of the General Statutes unless the order so requires; and
  2. The power granted in this subdivision shall not affect the power of the guardian to petition the court for prior approval of expenditures from estate principal under subdivision (9) of this section.
- (15) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.
- (16) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or otherwise encumber such portion of the ward's estate as may be required to secure such loan or loans; provided, in respect to the borrowing of money on the security of the ward's real property, Subchapter III of this Chapter is controlling.
- (17) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian. (1987, c. 550, s. 1; 1989, c. 473, s. 4; 1995, c. 235, s. 7; 2008-87, s. 2; 2016-53, s. 8.)

**§ 35A-1253. Specific duties of guardian of estate.**

In addition to any other duties imposed by law or by order of the clerk, a general guardian or guardian of the estate shall have the following specific duties:

- (1) To take possession, for the ward's use, of all his estate.
- (2) To diligently endeavor to collect, by all lawful means, all bonds, notes, obligations, or moneys due his ward.
- (3) To pay income taxes, property taxes, or other taxes or assessments owed by the ward, out of the ward's estate, as required by law. If any guardian allows his ward's lands to be sold for nonpayment of taxes or assessments, he shall be liable to his ward for the full value thereof.
- (4) To observe the standard of judgment and care under the circumstances then prevailing that an ordinarily prudent person of discretion and intelligence, who is a fiduciary of the property of others, would observe as such fiduciary in acquiring, investing, reinvesting, exchanging, retaining, selling, and managing the ward's property. If the guardian has special skills or is named as guardian on the basis of representations of special skills or expertise, to use those skills.
- (5) To obey all lawful orders of the court pertaining to the guardianship and to comply with the accounting requirements of this Subchapter.

Nothing in this section shall be construed as broadening the powers granted in G.S. 35A-1251 or G.S. 35A-1252. (1987, c. 550, s. 1.)

**§§ 35A-1254 through 35A-1259: Reserved for future codification purposes.**