

Chapter 34.

Veterans' Guardianship Act.

§ 34-1. Title.

This Chapter shall be known as "The Veterans' Guardianship Act." (1929, c. 33, s. 1.)

§ 34-2. Definitions.

In this Chapter:

The term "benefits" shall mean all moneys payable by the United States through the Bureau.

The term "Bureau" means the United States Veterans' Bureau or its successor.

The term "Director" means the Director of the United States Veterans' Bureau or his successor.

"Estate" means income on hand and assets acquired partially or wholly with "income."

The term "guardian" as used herein shall mean any person acting as a fiduciary for a ward.

"Income" means moneys received from the Veterans Administration and revenue or profit from any property wholly or partially acquired therewith.

The term "person" includes a partnership, corporation or an association.

The term "ward" means a beneficiary of the Bureau. (1929, c. 33, s. 2; 1945, c. 723, s. 2; 1961, c. 396, s. 1.)

§ 34-2.1. Guardian's powers as to property; validation of prior acts.

Any guardian appointed under the provisions of this Chapter may be guardian of all property, real or personal, belonging to the ward to the same extent as a guardian appointed under the provisions of Chapter 35A of the General Statutes, and the provisions of such Chapter concerning the custody, management and disposal of property shall apply in any case not provided for by this Chapter. All acts heretofore performed by guardians appointed under the provisions of this Chapter with respect to the custody, management and disposal of property of wards are hereby validated where no provision for such acts was provided for by this Chapter, if such acts were performed under and in conformity with the provisions of Chapter 35A of the General Statutes. (1955, c. 1272, s. 1; 1987, c. 550, s. 18.)

§ 34-3. Appointment of guardian for wards entitled to benefits from United States Veterans' Bureau.

Whenever, pursuant to any law of the United States or regulation of the Bureau, the Director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided. (1929, c. 33, s. 3.)

§ 34-4. Guardian may not be named for more than five wards; exceptions; banks and trust companies, public guardians, or where wards are members of same family.

It shall be unlawful for any person, other than a public guardian qualified under Article 11, Chapter 35A, General Statutes of North Carolina, to accept appointment as guardian of any United States Veterans Administration ward, if such person shall at the time of such appointment be acting as guardian for five wards. For the purpose of this section, all minors of same family unit shall constitute one ward. In all appointments of a public guardian for United States Veterans Administration wards, the guardian shall furnish a separate bond for each appointment as required

by G.S. 34-9. If, in any case, an attorney for the United States Veterans Administration presents a petition under this section alleging that an individual guardian other than a public guardian is acting in a fiduciary capacity for more than five wards and requesting discharge of the guardian for that reason, then the court, upon satisfactory evidence that the individual guardian is acting in a fiduciary capacity for more than five wards, must require a final accounting forthwith from such guardian and shall discharge the guardian in such case. Upon the termination of a public guardian's term of office, he may be permitted to retain any appointments made during his term of office.

This section shall not apply to banks and trust companies licensed to do trust business in North Carolina. (1929, c. 33, s. 4; 1967, c. 564, s. 1; 1987, c. 550, s. 19.)

§ 34-5. Petition for appointment of guardian.

A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a petition within thirty days after mailing of notice by the Bureau to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.

The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the Bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the Bureau in accordance with the laws and regulations governing the Bureau. (1929, c. 33, s. 5.)

§ 34-6. Certificate of Director prima facie evidence of necessity for appointment of guardian of minor.

Where a petition is filed for the appointment of a guardian of a minor ward a certificate of the Director, or his representative, setting forth the age of such minor as shown by the records of the Bureau and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Bureau, shall be prima facie evidence of the necessity of such appointment. (1929, c. 33, s. 6.)

§ 34-7. Certificate as evidence in regard to guardianship of mentally incompetent wards.

Where a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the Director, or his representative, setting forth the fact that such person has been rated incompetent by the Bureau on examination in accordance with the laws and regulations governing such Bureau; and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the Bureau, shall be prima facie evidence of the necessity for such appointment. (1929, c. 33, s. 7.)

§ 34-8. Notice of filing of petition.

Upon the filing of a petition for the appointment of a guardian, under the provisions of this Chapter, the court shall cause such notice to be given as provided by law. (1929, c. 33, s. 8.)

§ 34-9. Qualifications of guardian; surety bond.

Before making an appointment under the provisions of this Chapter the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a surety bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this State. The court shall have power from time to time to require the guardian to file an additional bond.

No bond shall be required of the banks and trust companies licensed to do trust business in North Carolina. (1929, c. 33, s. 9.)

§ 34-10. Guardian's accounts to be filed; hearing on accounts.

Every guardian, who shall receive on account of his ward any moneys from the Bureau, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the Bureau having jurisdiction over the area in which such court is located.

At the time such account is filed the clerk of the superior court shall require the guardian to exhibit to the court all investments and bank statements showing cash balance and the clerk of the superior court shall certify on the original account and the certified copy which the guardian sends the Bureau that an examination was made of all investments and cash balance and that same are correctly stated in the account; provided that banks, organized under the laws of North Carolina or the Acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian, or in other fiduciary capacity, shall be exempt from the requirement of exhibiting such investments and bank statements, and the clerk of the superior court shall not be required to so certify as to the accounts of such banks, except that in addition to the officer verifying the accounts, there shall be added a certificate of another officer of the bank certifying that all assets referred to in the account are held by the guardian or by a clearing corporation for the guardian. If objections are raised to such an accounting, the court shall fix a time and place for the hearing thereon not less than 15 days nor more than 30 days from the date of filing such objections, and notice shall be given by the court to the aforesaid Bureau office and the Department of Military and Veterans Affairs by mail not less than 15 days prior to the date fixed for the hearing. Notice of such hearing shall also be given to the guardian. (1929, c. 33, s. 10; 1933, c. 262, s. 1; 1945, c. 723, s. 2; 1961, c. 396, s. 2; 1967, c. 564, s. 5; 1973, c. 497, s. 6; c. 620, s. 9.)

§ 34-11. Failure to file account cause for removal.

If any guardian shall fail to file any account of the moneys received by him from the Bureau on account of his ward within 30 days after such account is required by either the court or the Bureau, or shall fail to furnish the Bureau a copy of his accounts as required by this Chapter, such failure shall be grounds for removal. (1929, c. 33, s. 11.)

§ 34-12. Compensation at five percent; additional compensation; premiums on bonds.

Compensation payable to guardians shall not exceed five percent (5%) of the income of the ward during any year, except that the court may approve compensation in the accounting in an amount not to exceed twenty-five dollars (\$25.00) from an estate where the income for any one year is less than five hundred dollars (\$500.00). In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor, payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the Bureau and the Department of Military and Veterans Affairs in the manner provided in G.S. 34-10. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond. (1929, c. 33, s. 12; 1945, c. 723, s. 2; 1967, c. 564, ss. 2, 5; 1973, c. 620, s. 9.)

§ 34-13. Investment of funds.

Every guardian shall invest the funds of the estate in any of the following securities:

- (1) United States government bonds.
- (2) State of North Carolina bonds issued since the year 1872.
- (3) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty percent (50%) of the actual appraised or assessed value, whichever may be lower, and said loans when made to be evidenced by a note, or notes, or bond, or bonds, under the seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages shall secure a certificate of title from some reputable attorney certifying that the same is first lien on real estate and also setting forth the tax valuation thereof for the current year: Provided, said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of superior court, said order to be approved by the resident or presiding judge of the superior court, and provided further that copy of said petition shall be forwarded to said Bureau before consideration thereof by said court. Any guardian may encumber the home or farm so purchased for the entire purchase price or balance thereof to enable the ward to obtain benefits provided in Title 38, U.S. Code, Chapter 37, upon petition to and order of the clerk of superior court of the county of appointment of said guardian and approved by the resident or presiding judge of the superior court. Notice of hearing on such petition, together with copy of the petition, shall be given to the United States Veterans Administration and the Department of Military and Veterans Affairs by mail not less than 15 days prior to the date fixed for the hearing.

- (4) Any form of investment allowed by law to the State Treasurer under G.S. 147-69.1.
- (5) Repealed by Session Laws 1979, c. 467, s. 22.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the superior court, either residing in or presiding over the courts of the district, the clerk of the superior court may authorize the guardian to extend from time to time, the time for sale or collection of any such investments; that no extension shall be made to cover a period of more than one year from the time the extension is made.

The clerk of the superior court of any county in the State or any guardian who shall violate any of the provisions of this section shall be guilty of a Class 1 misdemeanor. (1929, c. 33, s. 13; 1933, c. 262, s. 2; 1957, c. 199; 1959, c. 1015, s. 1; 1967, c. 564, ss. 3, 4; 1973, c. 620, s. 9; 1979, c. 467, s. 22; 1993, c. 539, s. 401; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 34-14. Application of ward's estate.

A guardian may apply any income received from the Veterans Administration for the benefit of the ward in the same manner and to the same extent as other income of the estate without the necessity of securing an order of court. A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper officer of the Bureau and the Department of Military and Veterans Affairs in the manner provided in G.S. 34-10. (1929, c. 33, s. 14; 1945, c. 723, s. 2; 1961, c. 396, s. 3; 1967, c. 564, s. 5; 1973, c. 620, s. 9.)

§ 34-14.1. Payment of veterans' benefits to relatives.

(a) It shall be lawful for a guardian or trustee of a mentally disordered or incompetent Veterans Administration beneficiary to pay to or for

- (1) The spouse or children or mother or father of the ward, whether or not said spouse or children or mother or father received any part of their maintenance from the ward prior to the appointment of said guardian or trustee, such an amount for support and maintenance as shall be approved by the clerk of the superior court having jurisdiction over such guardian or trustee;
- (2) A brother, sister, nephew, niece, uncle, aunt, or any other relative of the ward, who, prior to the appointment of said guardian or trustee, received some part of his or her maintenance from said ward, such an amount for support and maintenance as shall be approved by the clerk of the superior court having jurisdiction over said guardian or trustee and by a superior court judge.

(b) Such approval may be granted upon a duly verified petition filed before the clerk of the superior court having jurisdiction of such guardian or trustees setting forth

- (1) The amount of benefits received by the guardian or trustee on behalf of the ward from the Veterans Administration;
- (2) The amount of periodic disbursements, if any, made by such guardian or trustee for the maintenance and support of the ward;
- (3) The person for whose maintenance and support payment is to be made and the relationship of such person to the ward;

- (4) If the person for whose maintenance and support payment is to be made is one described in subsection (a)(2) above, facts showing that prior to the appointment of said guardian or trustee such person received some part of his or her maintenance from said ward;
- (5) The amount to be paid and the period when such payments are to be made.

Notice of hearing upon such petition shall be as provided by G.S. 34-14, and no person or persons, other than the guardian or trustees and petitioner, need to be made parties to any such proceeding. If the guardian or trustee is the petitioner, no other parties shall be necessary. (1945, c. 479, ss. 1, 2; 1953, c. 122, s. 1; 1955, c. 1272, s. 2.)

§ 34-15. Certified copy of record required by Bureau to be furnished without charge.

Whenever a copy of any public record is required by the Bureau or the Department of Military and Veterans Affairs to be used in determining the eligibility of any person to participate in benefits made available by such Bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such Bureau or the Department of Military and Veterans Affairs with a certified copy of such record. (1929, c. 33, s. 15; 1945, c. 723, s. 2; 1967, c. 564, s. 5; 1973, c. 620, s. 9.)

§ 34-16. Repealed by Session Laws 1985, c. 589, s. 14, effective January 1, 1986.

§ 34-17. Discharge of guardian.

When a minor ward for whom a guardian has been appointed under the provisions of this Chapter or other laws of this State shall have attained his or her majority, and if incompetent shall be declared competent by the Bureau and by an order of the clerk of the superior court of the county in which such guardian was appointed, and when any incompetent ward, not a minor, shall be declared competent by said Bureau and by an order of the clerk of the superior court of the county in which such guardian was appointed, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose. The certificate of the Director, or his representative, setting forth the fact that an incompetent ward has been rated competent by the Bureau on examination in accordance with the laws and regulations governing such Bureau shall be prima facie evidence upon which the court may declare such ward competent. (1929, c. 33, s. 17; 1955, c. 1272, s. 3.)

§ 34-18. Construction of Chapter.

This Chapter shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Bureau. (1929, c. 33, s. 18.)