

## Duties of a Guardian

A guardian is a legally appointed surrogate decision maker and advocate who helps the ward — an individual who has been determined to be incompetent or is a minor — make and communicate important decisions about her personal and/or financial affairs. Guardians have a fiduciary duty to the ward, meaning that they must make decisions in the ward's best interest.

When appointing a guardian, the Clerk of Superior Court will enter an order that sets forth the powers and duties of the guardian. The order may limit the guardian's powers and duties, depending upon each of the individual ward's capacities. A guardian may or may not be charged with all the duties reviewed in this document. The Clerk's order should be consulted to determine the specific duties of any particular guardian.

### **Basic Guardianship Duties**

There are three types of guardians – general guardian, guardian of the person, and guardian of the estate. Each type of guardian has specific duties; however, all types of guardians must follow general guardianship principles. All guardians must:

- Ensure that the guardianship is tailored to meet the *actual* needs of the individual ward.
- Make decisions that ensure the health and well-being of the ward, based on what the ward would decide if capable of making the decision.
- Seek information about the ward's value system, wishes, and needs from the ward, the ward's family, friends, or legal documents such as a Living Will.
- Involve the ward in all decisions to the extent possible.
- Allow the ward the opportunity to exercise rights that are within his/her comprehension and judgment, allowing the ward the same possibility for error as a person who is not incompetent.
- Support the ward in developing the necessary skills to assume responsibility for his/her own decision-making.

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- Ensure the guardianship is periodically reviewed and consider alternatives to guardianship, including restoration to competency or a limited guardianship.

### **Duties of a General Guardian**

A general guardian makes decisions for the care and maintenance of the ward's person and of the ward's estate. The general guardian has all the duties listed below of both a guardian of the person and a guardian of the estate.

### **Duties of a Guardian of the Person**

A guardian of the person is appointed to make decisions about the ward's personal care, including medical and psychological treatment. Specific duties of a guardian of the person include:

- Take custody of the ward's person.
- Make provisions for the ward's care, comfort, and maintenance.
- Take any responsible action necessary to protect the ward from further mistreatment in instances where the guardian learns the ward is being mistreated.
- Arrange for the ward's training, education, employment, habilitation, or rehabilitation.
- Take reasonable care of the ward's clothing, furniture, vehicles, and other personal property.
- Establish the ward's residence, giving preference to places within North Carolina and places that are not treatment facilities. If the only appropriate residence is a treatment facility, give preference to facilities that are community-based.
- Give consent or approval necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service.
- Honor any written advance instructions for the ward's medical or mental health care.
- Obtain expert consultation in any instances where there is a question about appropriate medical or psychological treatment, or whether treatment should be provided.
- Give any other type of consent or approval on the ward's behalf that is required or is in the ward's best interest.
- Arrange for regular medical and dental examinations for the ward as needed and as required for annual status reports.

- Turn over the ward's personal effects to the executor or administrator of the ward's estate upon the ward's death.
- Give status reports as required by North Carolina law or Clerk's order.

### **Duties of a Guardian of the Estate**

A guardian of the estate is appointed to collect, preserve, manage, and use the ward's estate to administer the estate in the ward's best interest. These duties may be modified by the Clerk to give some financial responsibility to the ward in a limited guardianship. Specific duties of a guardian of the estate include:

- Management of the ward's estate:
  - To take possession of the ward's entire estate for the ward's use.
  - To use his/her special skills or expertise in managing the ward's estate.
  - To observe the standard of judgment and care under the circumstances that an ordinarily prudent person would observe in acquiring, reinvesting, exchanging, retaining, selling, and managing the ward's property.
- Management of the ward's assets and contracts:
  - To collect and receive assets due to the ward from any source.
  - To protect the ward's assets against damage or loss at the expense of the ward's estate.
  - To complete performance of contracts entered into by the ward that continue as obligations of the ward or the ward's estate.
  - To refuse to complete contracts as the guardian determines to be in the ward's best interest, taking into account any cause of action that may arise from such failure to complete the contract.
- Acquisition, management, and disposal of the ward's property and investments:
  - To acquire and retain all of the ward's property and investments.
  - To abandon or relinquish the ward's rights in any property when the guardian determines, acting reasonably and in good faith, that the property is valueless or is of no benefit or value to the ward or the ward's estate.

- To foreclose any mortgage, deed of trust, or other lien; to bid on such property at foreclosure sale; to acquire such property by deed from the mortgagor or obligor without foreclosure; to retain such property taken over without foreclosure.
- To vote shares of stock or other securities, in person or by proxy.
- To pay sums charged to or accruing against securities owned by the ward.
- To sell, lease, or exchange any of the ward's personal property without court order, provided the aggregate value of the property sold without court order does not exceed \$5,000 over the duration of the accounting period, or \$15,000 over the duration of the estate.
- To petition the Clerk for an order to sell, lease, or exchange any of the ward's personal property if the aggregate value of the property sold will exceed \$5,000 over the duration of the accounting period, or \$15,000 over the duration of the estate.
- Payment of the ward's expenses and management of the ward's debts and obligations:
  - To pay the debts of the ward incurred prior to the date the ward was adjudicated incompetent if the debt was incurred for necessary living expenses or taxes.
  - To pay the debts of the ward incurred for necessary living expenses or taxes.
  - To pay debts that involve a lien on real or personal property if the ward has an equity interest in the property.
  - To pay debts of the ward when the guardian believes it is in the best interest of the ward or the ward's estate.
  - To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.
  - To expend estate income on the ward's behalf.
  - To petition the Clerk for prior approval of expenditures of estate principal.
  - To pay for necessary expenses of administering the ward's estate from the ward's estate.
  - To borrow money for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or encumber the ward's estate as may be required to secure such loans.

- Use of the ward's land and operation of the ward's business:
  - To lease the ward's land for a term of not more than three years.
  - To continue any business venture or farming operation in which the ward was engaged when necessary or desirable to preserve the value of the ward's interest in the business.
- Take actions on the ward's behalf:
  - To maintain any action or proceeding to (1) recover possession of any of the ward's property, (2) determine the title to ward's property, and (3) recover damages for any injury done to ward's property.
  - To negotiate, arbitrate, defend, abandon, settle, or otherwise deal with any other claims in favor of or against the ward.
- To pay advancements to the ward's children or grandchildren with prior court approval.
- To employ experts (such as lawyers or investment advisors) to advise or assist the guardian in the performance of his duties as guardian.
- To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.
- To obey all orders of the court pertaining to the guardianship.
- To comply with the statutory accounting requirements.
- To file a final accounting with the Clerk upon the ward's death.

### **Accounting Requirements of a Guardian of the Estate**

Accountings must be filed with the Clerk at the following times:

- Within three months of the guardian's initial appointment.
- Within three months of discovering the existence of additional property not included in previous accountings.
- Within 30 days of the expiration of one year from the date of the guardian's initial appointment, and annually thereafter.
- Within 60 days after the guardianship is terminated.

With each accounting, the guardian must produce vouchers or verified proof for all deposits into the estate and payments made out of the estate. The guardian must provide with the accounting all investment and bank statements showing the cash balances of the accounts.

### **Duties of a Disinterested Public Agent**

Disinterested public agents, such as the Department of Social Services, appointed as a general guardian, guardian of the person, or guardian of the estate must comply with both the basic guardianship duties and duties specific to the type of guardian of which the public agent is acting.

In addition, there are further duties imposed specifically upon disinterested public agents. They are:

- To visit the ward as frequently as needed and appropriate.
- To have contact related to the ward no less than once every 90 days.
- To obtain training on the powers and responsibilities of guardians.
- To notify the Clerk when he/she ceases to qualify as a disinterested public agent so that the Clerk can appoint a successor guardian.
- To file status reports to the designated agency assigned at the time of the guardian's appointment, or if none was assigned, to the Clerk.

### **Status Reports**

Status reports must be made at the following times:

- Initial report within six months of the initial appointment.
- Second report within one year after the initial appointment.
- Subsequent reports annually thereafter.

Status reports must include the following information:

- A report of recent medical and dental examinations of the ward by one or more physicians or dentists.
- A report on the guardian's performance of his/her duties.
- A report of the ward's condition, needs, and development.

## **Prohibited Guardian Actions**

- Using ward's real or personal property for anything or anyone else other than the ward.
- Intermingling the ward's money with the guardian's personal funds.
- Appearing on any of the ward's accounts as a joint account holder or as a payee upon the ward's death.
- Borrowing money from the ward.
- Loaning the ward's money to someone else without a court order.
- Writing checks for "cash" without court authorization of regular cash distributions to ward.
- Disbursing the ward's funds to himself or herself.
- Paying himself or herself a commission or reimbursement without court approval.
- Selling ward's personal or real property without court order when the aggregate value of items sold is more than \$1,500.
- Leasing the ward's land for more than three years.
- Using a minor ward's funds for the ward's maintenance and education without court permission, if the guardian is the ward's parent.
- Failing to deliver a minor ward his/her property upon turning 18 and completion of final accounting.
- Consenting to sterilization of the ward without medical necessity and court approval.

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Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Contact us for assistance or to request this information in an alternate format.

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