

Article 7.

Guardian's Bond.

§ 35A-1230. Bond required before receiving property.

Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no general guardian or guardian of the estate shall be permitted to receive the ward's property until he has given sufficient surety, approved by the clerk, to account for and apply the same under the direction of the court, provided that if the guardian is a nonresident of this State and the value of the property received exceeds one thousand dollars (\$1,000) the surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized surety company, or secured by cash in an amount equal to the amount of the bond or by a mortgage executed under Chapter 109 of the General Statutes on real estate located in the county, the value of which, excluding all prior liens and encumbrances, shall be at least one and one-fourth times the amount of the bond; and further provided that the nonresident shall appoint a resident agent to accept service of process in all actions and proceedings with respect to the guardianship. The clerk shall not require a guardian of the person who is a resident of North Carolina to post a bond; the clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties. (1987, c. 550, s. 1; 1989, c. 473, s. 2; 2005-333, s. 3.)

§ 35A-1231. Terms and conditions of bond; increase on sale of realty or personal property.

(a) Before issuing letters of appointment to a general guardian or guardian of the estate the clerk shall require the guardian to give a bond payable to the State. The clerk shall determine the value of all the ward's personal property and the rents and profits of the ward's real estate by examining, under oath, the applicant for guardianship or any other person or persons. The penalty in the bond shall be set as follows:

- (1) Where the bond is executed by personal sureties, the penalty must be at least double the value so determined by the clerk;
- (2) Where the bond is executed by a duly authorized surety company, the penalty may be fixed at not less than one and one-fourth times the value so determined by the clerk;
- (3) Provided, however, the clerk may accept bond in estates where the value determined by the clerk exceeds the sum of one hundred thousand dollars (\$100,000), in a sum equal to one hundred and ten percent (110%) of the determined value.

The bond must be secured with two or more sufficient sureties, jointly and severally bound, and must be acknowledged before and approved by the clerk. The bond must be conditioned on the guardian's faithfully executing the trust reposed in him as such and obeying all lawful orders of the clerk or judge relating to the guardianship of the estate committed to him. The bond must be recorded in the office of the clerk appointing the guardian, except, if the guardianship is transferred to a different county, it must be recorded in the office of the clerk in the county where the guardianship is docketed.

(b) If the court orders a sale of the ward's real property, or if the guardian expects or offers to sell personal property that he knows or has reason to know has a value greater than the value used in determining the amount of the bond posted, the guardian shall, before receiving the proceeds of the sale, furnish bond or increase his existing bond to cover the proceeds if real estate is sold, or to cover the increased value if personal property is sold. The bond, or the increase in the existing bond, shall be twice the amount of the proceeds of any real property sold, or of the

increased value of any personal property sold, except where the bond is executed by a duly authorized surety company, in which case the penalty of the bond need not exceed one and one-fourth times the amount of the real property sold or the increased value of the personal property sold. (1987, c. 550, s. 1; 1989, c. 473, s. 9.)

§ 35A-1232. Exclusion of deposited money in computing amount of bond.

(a) When it appears that the ward's estate includes money that has been or will be deposited in an account with a financial institution upon condition that the money will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

(b) The applicant for letters of guardianship, or a general guardian or guardian of the estate, may deliver to any such financial institution any such money in the applicant's or the guardian's possession or may allow such financial institution to retain any such money already deposited or invested with it; in either event, the applicant or guardian shall secure and file with the court a written receipt including the agreement of the financial institution, duly acknowledged by an authorized officer of the financial institution, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money from an applicant for letters of guardianship, the financial institution shall be protected to the same extent as though it had received the same from a general guardian or a guardian of the estate.

(c) The term "account with a financial institution" as used in this section means any account in a bank, savings and loan association, credit union, trust company, or registered securities broker or dealer.

(d) The term "money" as used in this section means the principal of the ward's estate and does not include the income earned by the principal, which may be withdrawn without any authorization of the court. (1987, c. 550, s. 1; 2009-309, s. 1.)

§ 35A-1233. Clerk's authority to reduce penalty of bond.

When a guardian has disbursed either income or income and principal of the estate according to law, for the purchase of real estate or the support and maintenance of the ward or the ward and his dependents or any lawful cause, and when the personal assets and income of the estate from all sources in the hands of the guardian have been diminished, the penalty of the guardian's bond may be reduced in the discretion of the clerk to an amount not less than the amount that would be required if the guardian were first qualifying to administer the personal assets and income. (1987, c. 550, s. 1.)

§ 35A-1234. Action on bond.

Any person injured by a breach of the condition of the guardian's bond may prosecute a suit thereon, as in other actions. (1987, c. 550, s. 1.)

§ 35A-1235. One bond sufficient when several wards have estate in common.

When the same person is appointed guardian for two or more minors or incompetent persons possessed of one estate in common, the clerk may take one bond only in such case, upon which each of the wards or their heirs or personal representatives may have a separate action. (1987, c. 550, s. 1.)

§ 35A-1236. Renewal of bond.

Every guardian who is required to post a bond and who does so other than through a duly authorized surety company shall renew his bond before the clerk every three years during the continuance of the guardianship. The clerk shall issue a citation against every such guardian failing to renew his bond, requiring the guardian to renew the bond within 20 days after service of the citation. On return of the citation duly served and failure of the guardian to comply, the clerk shall remove the guardian and appoint a successor. This section shall not apply to a guardian whose bond is executed by a duly authorized surety company. (1987, c. 550, s. 1.)

§ 35A-1237. Relief of endangered sureties.

Any surety of a guardian, who is in danger of sustaining loss by his suretyship, may file a motion in the cause before the clerk where the guardianship is docketed, setting forth the circumstances of his case and demanding relief. The guardian shall have 10 days after service of the motion to answer the motion. If, upon the hearing, the clerk deems the surety entitled to relief, the clerk may order the guardian to give a new bond or to indemnify the surety against apprehended loss, or may remove the guardian from his trust. If the guardian fails to give a new bond or security to indemnify within a reasonable time when required to do so, the clerk must enter a peremptory order for his removal, and his authority as guardian shall cease. (1987, c. 550, s. 1; 1989, c. 473, s. 20.)

§ 35A-1238. Clerk's liability.

(a) If any clerk commits the estate of a ward to the guardianship of any person without taking good and sufficient bond for the same as required by law, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained for want of sufficient bond being taken; but if the sureties were good at the time of their being accepted, the clerk shall not be liable.

(b) If any clerk willfully or negligently does, or omits to do, any other act prohibited, or other duty imposed on him by law, by which act or omission the estate of any ward suffers damage, the clerk shall be liable on his official bond, at the suit of the aggrieved party, for all loss and damages sustained from such act or omission. (1987, c. 550, s. 1.)

§ 35A-1239. Health and Human Services bond.

The Secretary of the Department of Health and Human Services shall require or purchase individual or blanket bonds for all disinterested public agents appointed to be guardians, whether they serve as guardians of the estate, guardians of the person, or general guardians, or one blanket bond covering all agents, the bond or bonds to be conditioned upon faithful performance of their duties as guardians and made payable to the State. The premiums shall be paid by the State. (1987, c. 550, s. 1; 1997-443, s. 11A.17.)