



# SPECIAL FIDUCIARIES AND TEMPORARY GUARDIANS

THE NEW N.C. GEN. STAT. §35A-1121



# THE PROBLEM

- A need arises where a person subject to guardianship (and adult or a minor), needs someone to act to secure services, or handle business or financial affairs, where the need for assistance is time-limited or just needed to deal with a special circumstance.
  - Example:
    - Received an inheritance
    - Need to sell real or personal property
    - Need to execute a contract
    - Need to handle financial matters in order to maintain eligibility for SSI or Medicaid

# PRE-OCTOBER 2021 SOLUTION: GUARDIAN OF THE ESTATE AND ALL THAT ENTAILS

- File a petition if the person isn't already subject to guardianship
- Serve the petition
- Attend a hearing
- Have a GOE appointed
- Obtain a bond
- Obtain letters
- File a preliminary inventory
- File a motion in the cause to get approval to do what's needed (sell property, fund a SNT, permission to spend-down)
- Serve the petition and attend a hearing
- File a 90-day inventory
- Do the Act you requested permission to do
- File a Motion in the Cause to Modify to end GOE
- Serve Motion and attend the hearing.
- File a final accounting and be released as GOE

POST OCTOBER 2021:

## GS § 35A-1121 – SPECIAL FIDUCIARY AND TEMPORARY GUARDIAN

- What is it?
  - § 1121
    - Allows the Court, *without appointing a guardian*, to authorize a single transaction or protective arrangement that would have otherwise required the appointment of a guardian of the estate.
    - Even a something that has *already* occurred.
      - “Authorize, direct or *ratify* ...

# WHAT'S A SINGLE PROTECTIVE ARRANGEMENT?

- “A transaction necessary or desirable to achieve any service, care or safety arrangement meeting the foreseeable needs of the” person subject to guardianship.
- Court can authorize a *special fiduciary* to execute the transaction
- Examples (They’re right there in the statute!)
  - Payment, delivery, deposit, or retention of funds or property
  - Sale, mortgage, lease, or transfer of property
  - Entry into a contract for an annuity, life care, training, education
  - Funding of a trust
  - Fund or administer an ABLÉ account
- **Not a Replacement for a Guardian of the Person**

# WHAT IF YOU NEED TO DO SOMETHING THAT ISN'T REALLY SERVICE, CARE OR SAFETY? DO YOU NEED TO A GOE?

- Not necessarily
- Statute also provides for a transaction relating to a person subject to guardianship's "property and business affairs"
  - Any contract
  - Trust, or
  - Other transaction

# WHAT'S REQUIRED?

- 1. An adjudication is still necessary
- 2. Instead of appointing a guardian, a special fiduciary or temporary guardian would be appointed.
- 3. A very detailed Motion/Request and a Very Detailed Order
- 4. Bond?

# SPECIAL FIDUCIARY OR TEMPORARY GUARDIAN

- Is it really a single act/transaction or short set of acts/transaction?
- Is there a need for more close monitoring by the court?
- Does the desired action actually require a guardian?
  - Self-settled special needs trust



## SPECIAL FIDUCIARY OR TEMPORARY GUARDIAN?

- Temporary Guardian route requires:
  - Very specific and detailed Order
  - Time limit
  - Reporting?
  - Bonding?

## IS ONE OF THESE A FIT FOR ME?

- Is there a SPECIFIC need for services, care or safety, or a need to address a SPECIFIC financial or business need?
- Can the work be done quickly, either all at once, or within a limited time?
- Is there a continuing need for management?
- Yes, Yes, No ....
- A single transaction guardianship might be a good fit.