

LEGISLATIVE UPDATE – OCTOBER 2021

To obtain relief under G.S. 35A-1121, it must first be “established in a proper proceeding that a basis exists for the appointment of a guardian.” What does that mean?

Adults and other incompetent persons. For an adult, emancipated minor, and certain minors age 17 ½ or older, this means that the relief set out in G.S. 35A-1121 is not available unless they are adjudicated incompetent. Typically, an incompetency proceeding is initiated using North Carolina Administrative Office of the Courts (AOC) form petition, AOC-SP-200, and an order is entered by the clerk of superior court using the AOC form order, AOC-SP-202. The court may not order the remedies set out in G.S. 35A-1121 unless the respondent to the incompetency proceeding is adjudicated incompetent. This is unlike interim guardianship, which may be granted while an incompetency proceeding is pending. G.S. 35A-1114.

Minor. Minors, by contrast, are incompetent as a matter of law and no adjudication of incompetency occurs as part of a minor guardianship proceeding. To seek the appointment of a guardian for a minor, an application is made with the clerk. Most applicants use the AOC form application, AOC-E-208. A guardian of the estate may be appointed for any minor. G.S. 35A-1221. A guardian of the person may only be appointed for a minor where the minor has no natural guardian. G.S. 35A-1221. If the single arrangement or transaction sought on behalf of a minor would execute a power or duty that falls under the authority of a guardian of the person, as set out in G.S. 35A-1241, the arrangement or transaction may not be ordered unless the minor has no natural guardian.