



CHAPTER 35A
ARTICLE 14 - SALE, MORTGAGE, EXCHANGE OR LEASE OF WARD'S ESTATE

N.C.G.S. § 35A-1301.

Special proceedings to sell, exchange,
mortgage, or lease.

SOURCE	LAST AMENDMENT IN THIS TEXT	RETRIEVED	SOURCE FINGERPRINT
General Statutes of North Carolina, as published by the General Assembly	c. 473, s. 6 — second act in the lineage	21 September 2026, 03:43 UTC	0e94677eee45ed5a0161b9a3 - 531678660d4bf643103ccebb - 484c4f3c26a97b2b

§ 35A-1301(a) Whenever used herein, the word "guardian" shall be construed to include general guardian, guardian of the estate, ancillary guardian, next friend, guardian ad litem, or commissioner of the court acting pursuant to this Article, but not a guardian who is guardian of the person only; and the word "mortgage" shall be construed to include deeds of trust.

§ 35A-1301(b) A guardian may apply to the clerk, by verified petition setting forth the facts, to sell, mortgage, exchange, or lease for a term of more than three years, any part of his ward's real estate, and such proceeding shall be conducted as in other cases of special proceedings. The clerk, in his discretion, may direct that the next of kin or presumptive heirs of the ward be made parties to such proceeding. The clerk may order a sale, mortgage, exchange, or lease to be made by the guardian in such way and on such terms as may be most advantageous to the interest of the ward, upon finding by satisfactory proof that:

- (1) The ward's interest would be materially promoted by such sale, mortgage, exchange, or lease, or
- (2) The ward's personal estate has been exhausted or is insufficient for his support and the ward is likely to become chargeable on the county, or
- (3) A sale, mortgage, exchange, or lease of any part of the ward's real estate is necessary for his maintenance or for the discharge of debts unavoidably incurred for his maintenance, or

- (4) Any part of the ward's real estate is required for public purposes, or
- (5) There is a valid debt or demand against the estate of the ward; provided, when an order is entered under this subdivision, (i) it shall authorize the sale of only so much of the real estate as may be sufficient to discharge such debt or demand, and (ii) the proceeds of sale shall be considered as assets in the hands of the guardian for the benefit of creditors, in like manner as assets in the hands of a personal representative, and the same proceedings may be had against the guardian with respect to such assets as might be taken against an executor, administrator or collector in similar cases.

The order shall specify particularly the property thus to be disposed of, with the terms of leasing or sale or exchange or mortgage, and shall be entered at length on the records of the court. The guardian may not mortgage the property of his ward for a term of years in excess of the term fixed by the court in its order.

- § 35A-1301(c)** In the case of a ward who is a minor, no sale, mortgage, exchange, or lease under this Article shall be made until approved by the superior court judge, nor shall the same be valid, nor any conveyance of the title made, unless confirmed and directed by the judge, and the proceeds of the sale, mortgage, exchange, or lease shall be exclusively applied and secured to such purposes and on such trusts as the judge shall specify.
- § 35A-1301(d)** All petitions filed under this section wherein an order is sought for the sale, mortgage, exchange, or lease of the ward's real estate shall be filed in the county in which all or any part of the real estate is situated.
- § 35A-1301(e)** The procedure for a sale pursuant to this section shall be as provided by Article 29A of Chapter 1 of the General Statutes.
- § 35A-1301(f)** Nothing herein contained shall be construed to divest the court of the power to order private sales as heretofore ordered in proper cases.
- § 35A-1301(g)** On and after June 1, 1973, no sales of property belonging to minors or incompetent persons prior to that date by next friend, guardian ad litem, or commissioner of the court regular in all other respects shall be declared invalid nor shall any claim or defense be asserted on the grounds that said sale was not made by a duly appointed guardian as provided herein or on the grounds that said minor or incompetent person was not represented by a duly appointed guardian.

END OF SECTION TEXT

APPARATUS FOLLOWS — DERIVED, NOT ENACTED

APPARATUS I
2 ACTS

Amendment lineage

The State prints this history as a single parenthetical at the foot of the section. It is reproduced verbatim in the colophon and unpacked below in order of enactment.

1987		1988		1989
TICK HEIGHT = ACTS IN THAT YEAR		DASHED = RECODIFICATION, NOT AMENDMENT		
Nº	YEAR	ACT	CHARACTER	
01	1987	c. 550, s. 1	ENACTED	
02	1989	c. 473, s. 6	AMENDED	

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 35A-1301 (1989).

PINPOINT

N.C. Gen. Stat. § 35A-1301(a) (1989).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

COLOPHON

Provenance

This document reproduces the text of one section of the General Statutes of North Carolina from a source file whose SHA-256 digest is printed on every page. The digest fixes the bytes this export was made from; if the State's file changes, the digest will not match.

The text of the section is unaltered. Subsection designators have been moved from the run of text into the margin. The amendment history and the table of authorities are derived from the section by mechanical extraction — they add no characterization of the law.

This is not the official text. The official text is published by the General Assembly of North Carolina.

HISTORY PARENTHETICAL, AS PRINTED BY THE STATE
(1987, c. 550, s. 1; 1989, c. 473, s. 6.)

SET IN SPECTRAL AND ARCHIVO
NORTH CAROLINA LAW — STATUTE EXPORT, FORMAT V1

