



CHAPTER 35A
ARTICLE 21 - STANDBY GUARDIANSHIP

N.C.G.S. § 35A-1374.

Appointment by written designation; form.

SOURCE General Statutes of North Carolina, as published by the General Assembly	LAST AMENDMENT IN THIS TEXT S.L. 2015-205, s. 1 — second act in the lineage	RETRIEVED 21 September 2026, 03:43 UTC	SOURCE FINGERPRINT e531e33c95f3476685e99183 - 70e930ae9c719c0741035127 - 2bb276c531d0308b
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§ 35A-1374(a) A designator may designate a standby guardian by means of a written designation, signed by the designator in the presence of two witnesses at least 18 years of age, other than the standby guardian or alternate standby guardian, who shall also sign the writing. Another person may sign the written designation on the behalf of and at the direction of the designator if the designator is physically unable to do so, provided that the designation is signed in the presence of the designator and the two witnesses.

§ 35A-1374(b) A designation of a standby guardian shall identify the designator, the minor child or incompetent adult, the person designated to be the standby guardian, and the person designated to be the alternate standby guardian, if any, and shall indicate that the designator intends for the standby guardian or the alternate standby guardian to become the guardian of the minor child or incompetent adult in the event that the designator either:

- (1) Becomes incapacitated;
- (2) Becomes debilitated and consents to the commencement of the standby guardian's authority;
- (3) Dies prior to the commencement of a judicial proceeding to appoint a guardian of the person or general guardian of a minor child; or
- (4) Consents to the commencement of the standby guardian's authority.

§ 35A-1374(c) The authority of the standby guardian under a designation shall commence upon the same conditions as set forth in G.S. 35A-1373(i) through (l), as if the order referred to therein was a written description under this section.

- § 35A-1374(d)** The standby guardian or, if the standby guardian is unable or unwilling to serve, the alternate standby guardian shall commence a proceeding under this Article to be appointed guardian of the person or general guardian of the minor child or incompetent adult by, in the case of a minor child, filing a petition with the clerk of superior court of the county in which the minor child resides or is domiciled at the time of filing or, in the case of an incompetent adult, filing a petition with the clerk of superior court in the county where the guardianship is docketed. The petition shall be filed after receipt of either:
- (1) A copy of a determination of incapacity made pursuant to G.S. 35A-1375;
 - (2) A copy of a determination of debilitation made pursuant to G.S. 35A-1375 and a copy of the designator's written consent to such commencement;
 - (3) A copy of the designator's written consent to such commencement, made pursuant to G.S. 35A-1373(l); or
 - (4) Proof of death of the designator, such as a copy of a death certificate or a funeral home receipt.
- § 35A-1374(e)** The standby guardian shall file a petition pursuant to subsection (d) of this section within 90 days of the date of the commencement of the standby guardian's authority under this section, or the standby guardian's authority shall lapse after the expiration of those 90 days, to recommence only upon filing of the petition.
- § 35A-1374(f)** A petition filed pursuant to subsection (d) of this section shall:
- (1) Append the written designation of such person as standby guardian; and
 - (2) Append a copy of either (i) the determination of incapacity of the designator; (ii) the determination of debilitation of the designator and the written consent of the designator; (iii) the designator's consent; or (iv) proof of death of the designator, such as a copy of a death certificate or a funeral home receipt; and
 - (3) If the petition is by a person designated as an alternate standby guardian, state that the person designated as the standby guardian is unwilling or unable to act as standby guardian, and the basis for that statement; and
 - (4) State whether there are any lawsuits, in this State or any other jurisdiction, involving the minor child or incompetent adult and, if so, identify the parties, the case numbers, and the states and counties where filed; and

- (5) Be verified by the standby guardian or alternate standby guardian in front of a notary public or another person authorized to administer oaths.

§ 35A-1374(g) A copy of the petition and written notice of the time, date, and place set for a hearing shall be served upon any biological or adoptive parent of the minor child who is not a designator (if the petition concerns a minor child), on such persons as would be required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an incompetent adult), and on any other person the clerk may direct, including the minor child or incompetent adult. If the petition concerns a minor child, service shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties may waive their right to notice of the hearing and the clerk may proceed to consider the petition upon determining that all necessary parties are before the court and agree to have the petition considered.

§ 35A-1374(h) If at or before the hearing any parent entitled to notice under subsection (c) of this section presents to the clerk a written claim for custody of the minor child, the clerk shall stay further proceedings under this Article pending the filing of a complaint for custody of the minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint, shall dismiss the petition. If no such complaint is filed within 30 days after the claim is presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

§ 35A-1374(i) At the hearing, the clerk shall receive evidence necessary to determine whether the requirements of this section have been satisfied. The clerk shall enter an order appointing the standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child or incompetent adult if the clerk finds that:

- (1) The person was duly designated as a standby guardian or alternate standby guardian;

- (2) That (i) there has been a determination of incapacity of the designator; (ii) there has been a determination of debilitation and the designator has consented to the commencement of the standby guardian's authority; (iii) the designator has consented to that commencement; or (iv) the designator has died, such information coming from a document, such as a copy of a death certificate or a funeral home receipt;
- (3) That the best interests of the minor child or incompetent adult will be promoted by the appointment of the person designated as standby guardian or alternate standby guardian as guardian of the person or general guardian of the minor child or incompetent adult;
- (4) That the standby guardian or alternate standby guardian is fit to serve as guardian of the person or general guardian of the minor child or incompetent adult; and
- (5) That, if the petition is by a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to serve as standby guardian.

§ 35A-1374(j)

The designator may revoke a standby guardianship created under this section by:

- (1) Notifying the standby guardian in writing of the intent to revoke the standby guardianship prior to the filing of the petition under this section; or
- (2) Where the petition has already been filed, by executing a written revocation, filing it in the office of the clerk with whom the petition was filed, and promptly providing the standby guardian with a copy of the written revocation.

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.

1995		2005		2015
TICK HEIGHT = ACTS IN THAT YEAR		DASHED = RECODIFICATION, NOT AMENDMENT		
Nº	YEAR	ACT	CHARACTER	
01	1995	c. 313, s. 1	ENACTED	

APPARATUS II
4 AUTHORITIES

Authorities referenced

Every G.S. cross-reference appearing in the text of this section, in order of first appearance. Nothing is characterized; the operative language is quoted from the section itself.

REFERENCE	APPEARS IN	OPERATIVE LANGUAGE IN THIS SECTION
G.S. 35A-1373(i)	(c)	"same conditions as set forth in"
G.S. 35A-1375	(d)(1)	"determination of incapacity made pursuant to"
G.S. 35A-1373(l)	(d)(3)	"to such commencement, made pursuant to"
G.S. 35A-1207	(g)	"a motion in the cause under"

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 35A-1374 (2015).

PINPOINT

N.C. Gen. Stat. § 35A-1374(a) (2015).

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

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HISTORY PARENTHETICAL, AS PRINTED BY THE STATE
(1995, c. 313, s. 1; 2015-205, s. 1.)

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

