

Article 10.

Returns and Accounting.

§ 35A-1260. Applicability.

This Article applies only to general guardians and guardians of the estate. (1987, c. 550, s. 1.)

§ 35A-1261. Inventory or account within three months.

Every guardian, within three months after his appointment, shall file with the clerk an inventory or account, upon oath, of the estate of his ward; but the clerk may extend such time not exceeding six months, for good cause shown. (1987, c. 550, s. 1; 1989, c. 473, s. 26.)

§ 35A-1262. Procedure to compel inventory or account.

(a) In cases of default to file the inventory or account required by G.S. 35A-1261, the clerk must issue an order requiring the guardian to file the inventory or account within the time specified in the order, or to show cause why he should not be removed from office or held in civil contempt, or both. If after due service of the order, the guardian does not, within the time specified in the order, file such inventory or account, or obtain further time to file the same, the clerk may remove him from office, hold him in civil contempt as provided in Article 2 of Chapter 5A, or both.

(b) The guardian shall be personally liable for the costs of any proceeding incident to his failure to file the inventory or account required by G.S. 35A-1261. Such costs shall be taxed against him by the clerk and may be collected by deduction from any commissions that may be found due the guardian upon final settlement of the estate. (1987, c. 550, s. 1; 1989, c. 473, s. 27.)

§ 35A-1263. Repealed by Session Laws 1989, c. 473, s. 28.

§ 35A-1263.1. Supplemental inventory.

Whenever any property not included in the original inventory report becomes known to the guardian or whenever the guardian learns that the valuation or description of any property or interest therein indicated in the original inventory is erroneous or misleading, he shall prepare and file with the clerk a supplementary inventory in the same manner as prescribed for the original inventory. The clerk shall record the supplemental inventory with the original inventory. A guardian who fails to file a supplementary inventory as required by this section shall be subject to the enforcement provisions of G.S. 35A-1262. (1989, c. 473, s. 29.)

§ 35A-1264. Annual accounts.

Every guardian shall, within 30 days after the expiration of one year from the date of his qualification or appointment, and annually, so long as any of the estate remains in his control, file in the office of the clerk an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year in the form of debit and credit. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate; and having carefully revised and audited such account, if he approve the same, he must endorse his approval thereon, which shall be deemed prima facie evidence of correctness. (1987, c. 550, s. 1.)

§ 35A-1265. Procedure to compel accounting.

(a) If any guardian omits to account, as directed in G.S. 35A-1264, or renders an insufficient and unsatisfactory account, the clerk shall forthwith order such guardian to render a full and satisfactory account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if the guardian fails to appear or refuses to exhibit such account, the clerk may issue an attachment against him for contempt and commit him until he exhibits such account, and may likewise remove him from office. In all proceedings hereunder the defaulting guardian will be liable personally for the costs of the said proceedings, including the costs of service of all notices or writs incidental to, or thereby acquiring, and also including reasonable attorney fees and expenses incurred by a successor guardian or other person in bringing any such proceeding, or other proceedings deemed reasonable and necessary to discover or obtain possession of assets of the ward in the possession of the defaulting guardian or which the defaulting guardian should have discovered or which the defaulting guardian should have turned over to the successor guardian. The amount of the costs and attorney fees and expenses of such proceeding may be deducted from any commissions which may be found due said guardian on settlement of the estate.

(b) Where a corporation is guardian, the president, cashier, trust officer or the person or persons having charge of the particular estate for the corporation, or the person to whom the duty of making reports of said estate has been assigned by the officers or directors of the corporation, may be proceeded against and committed to jail as herein provided as if he or they were the guardian or guardians personally: Provided, it is found as a fact that the failure or omission to file such account or to obey the order of the court in reference thereto is willful on the part of the officer charged therewith: Provided further, the corporation itself may be fined and/or removed as such guardian for such failure or omission. (1987, c. 550, s. 1; 1989, c. 473, s. 16.)

§ 35A-1266. Final account and discharge of guardian.

Within 60 days after a guardianship is terminated under G.S. 35A-1295, the guardian shall file a final account for the period from the end of the period of his most recent annual account to the date of that event. If the clerk, after review of the guardian's account, approves the account, the clerk shall enter an order discharging the guardian from further liability. (1987, c. 550, s. 1; 1989, c. 473, s. 32.)

§ 35A-1267. Expenses and disbursements credited to guardian.

Every guardian may charge in his annual account all reasonable disbursements and expenses; and if it appear that he has really and bona fide disbursed more in one year than the profits of the ward's estate, for his education and maintenance, the guardian shall be allowed and paid for the same out of the profits of the estate in any other year; but such disbursements must, in all cases, be suitable to the degree and circumstances of the estate of the ward. (1987, c. 550, s. 1.)

§ 35A-1268. Guardian to exhibit investments and bank statements.

At the time the accounts required by this Article and other provisions of law are filed, the clerk shall require the guardian to exhibit to the court all investments and bank statements showing cash balance, and the clerk shall certify on the original account that an examination was made of all investments and the cash balance, and that the same are correctly stated in the account: Provided, such examination may be made by the clerk in the county in which such guardian resides or the county in which such securities are located and, when the guardian is a duly authorized bank or

trust company, such examination may be made by the clerk in the county in which such bank or trust company has its principal office or in which such securities are located; the certificate of the clerk of such county shall be accepted by the clerk of any county in which such guardian is required to file an account; provided that banks organized under the laws of North Carolina or the acts of Congress, engaged in doing a trust and fiduciary business in this State, when acting as guardian or in other fiduciary capacity, shall be exempt from the requirements of this section, when a certificate executed by a trust examiner employed by a governmental unit, by a bank's internal auditors who are responsible only to the bank's board of directors or by an independent certified public accountant who is responsible only to the bank's board of directors is exhibited to the clerk and when said certificate shows that the securities have been examined within one year and that the securities were held at the time of the examination by the fiduciary or by a clearing corporation for the fiduciary and that the person making such certification has no reason to believe said securities are not still so held. Nothing herein contained shall be construed to abridge the inherent right of the clerk to require the production of securities, should he desire to do so. (1987, c. 550, s. 1.)

§ 35A-1269. Commissions.

The clerk shall allow commissions to the guardian for his time and trouble in the management of the ward's estate, in the same manner and under the same rules and restrictions as allowances are made to executors, administrators and collectors under the provisions of G.S. 28A-23-3 and G.S. 28A-23-4. (1987, c. 550, s. 1; 1989, c. 473, s. 21.)