

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH50090-MG-125A (02/01)

Short Title: NC Guardianship Bill of Rights. (Public)

Sponsors: Representatives Farmer-Butterfield, Morey, and Meyer (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT ESTABLISHING A NORTH CAROLINA GUARDIANSHIP BILL OF RIGHTS.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 35A of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 8A.

7 "Guardianship Bill of Rights.

8 "**§ 35A-1247. Purpose.**

9 The purpose of this Article is to maintain, to the greatest extent possible, the fundamental  
10 rights of persons who have been adjudicated to be incompetent adults as defined in  
11 G.S. 35A-1101(7), or who are being considered for placement under a guardianship, and to  
12 provide for these persons a fuller capacity for exercising rights and making decisions within  
13 their comprehension and judgment.

14 "**§ 35A-1247.1. Declaration of rights.**

15 (a) Rights of Persons Adjudicated to Be Incompetent Adults. – Each person adjudicated  
16 to be an incompetent adult shall have the following rights:

- 17 (1) To be treated with dignity and respect in all matters and to have the person's  
18 preferences and desires considered.
- 19 (2) To request at any time that the court do any of the following:  
20 a. Terminate the guardianship.  
21 b. Increase or decrease decision-making power given to the person's  
22 guardian.  
23 c. Replace the person appointed as guardian with another person.  
24 d. Transfer the guardianship to another county.
- 25 (3) To hire an attorney to represent the person in any of the matters specified in  
26 subdivision (2) of this subsection and to appeal any rulings.
- 27 (4) To retain all the rights, benefits, responsibilities, and privileges granted by  
28 the United States Constitution, the North Carolina Constitution, and any  
29 federal or State laws, except as specifically limited by a court-ordered  
30 guardianship or otherwise lawfully restricted.
- 31 (5) To be involved in decisions affecting the person, including decisions about  
32 the person's care, living arrangements, activities, social interactions, and  
33 religious activities, to the extent reasonably possible.
- 34 (6) To be involved in decisions about the person's health care, with assistance  
35 from others to understand the risks and benefits of health care options,  
36 including the right to refuse treatment.



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- 1           (7)    To provide input about the person's living arrangements, to be notified of  
2           any proposed changes to the person's primary residence, including a move to  
3           a nursing home or other facility, and to ask the court not to allow the  
4           guardian to sell the person's primary residence.
- 5           (8)    To vote.
- 6           (9)    To marry, unless the court states otherwise.
- 7           (10)   To communicate with others by mail, telephone, and personal visits, unless  
8           such communication has been restricted by the guardian for good cause,  
9           such as to protect the person from the risk of harm posed by specific  
10           interactions.
- 11          (11)   To have private electronic communication with others, unless such  
12           communication has been restricted by the court.
- 13          (12)   To participate in decisions about management of the person's property and  
14           assets.
- 15          (13)   To have a copy of the guardianship order, letters of guardianship, and  
16           contact information for the probate court that issued the order and letters.
- 17          (14)   To receive information and be able to communicate to the court in all  
18           matters in the person's native language or preferred mode of communication.
- 19          (15)   To obtain copies of the guardian's annual accounting and inventory.
- 20          (16)   To have an individual previously appointed by the person as a health care  
21           agent to serve in that role.
- 22          (17)   To have an individual previously appointed by the person as a durable power  
23           of attorney to serve in that role, unless revoked by the guardian.
- 24          (18)   To engage in estate planning, including the execution of a will.
- 25          (19)   To be informed of the name, address, telephone number, and purpose of  
26           Disability Rights North Carolina, or another organization dedicated to  
27           protecting and advocating for the rights of people with disabilities, and to  
28           communicate and meet privately with representatives of that organization.
- 29          (20)   To contact Adult Protective Services at your local Department of Social  
30           Services to report abuse, neglect, or exploitation for violation of personal  
31           rights without fear of retaliation.
- 32          (b)    Rights of Persons Being Considered for Guardianship. – A person who is being  
33           considered for a guardianship maintains the following rights:
- 34           (1)    To employ less restrictive alternatives to a guardianship, including all of the  
35            following:
- 36            a.    Creating a power of attorney.
- 37            b.    Creating a living will.
- 38            c.    Designating a representative payee to manage the person's finances.
- 39            d.    Enlisting the support of community resources.
- 40            e.    Choosing individuals the person trusts to help obtain information  
41            needed to manage the person's affairs, make informed decisions,  
42            consider options, and communicate decisions to others.
- 43            f.    Engaging in mediation to allow others concerned about the person to  
44            agree upon and work together in the person's best interest.
- 45           (2)    To nominate the name of a specific person to serve as guardian if one is  
46            appointed.
- 47           (3)    To be notified and given a copy of the petition for guardianship at least 10  
48            days prior to the hearing.
- 49           (4)    To respond to or refute claims made in the petition.

- 1           (5)    To be given the date and location of the hearing and to be present at the  
2                    hearing and, if the date or location is not convenient, to request that the date,  
3                    location, or both, be changed.  
4           (6)    To request that the hearing be private or to request a jury trial.  
5           (7)    To be represented by an attorney of the person's choice or by an appointed  
6                    guardian ad litem.  
7           (8)    To appeal the ruling to superior court."  
8           **SECTION 2.** This act becomes effective October 1, 2017.