

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1394  
Committee Substitute Favorable 5/25/05

Short Title: Testamentary Recommendation of Guardian.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE PARENTS OF AN INCOMPETENT ADULT WHO IS  
NOT MARRIED TO RECOMMEND A GUARDIAN FOR THAT ADULT BY  
WILL OR OTHER DOCUMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 35A is amended by adding a new section  
to read:

**"§ 35A-1212.1. Recommendation of appointment of guardian by will or other  
writing.**

Any parent may by will recommend appointment of a guardian for an unmarried  
child who has been adjudicated an incompetent person and specify desired limitations  
on the powers to be given to the guardian. If both parents make such recommendations,  
the will with the latest date shall, in the absence of other relevant factors, prevail. Such  
recommendation shall be a strong guide for the clerk in appointing a guardian, but the  
clerk is not bound by the recommendation if the clerk finds that a different appointment  
is in the incompetent adult's best interest. If the will specifically so directs, a guardian  
appointed pursuant to such recommendation may be permitted to qualify and serve  
without giving bond, unless the clerk finds as a fact that the interest of the incompetent  
adult would be best served by requiring the guardian to give bond."

**SECTION 2.** G.S. 35A-1214 reads as rewritten:

**"§ 35A-1214. Priorities for appointment.**

The clerk shall consider appointing a guardian according to the following order of  
priority: an individual recommended under G.S. 35A-1212.1; an individual; a  
corporation; or a disinterested public agent. No public agent shall be appointed guardian  
until diligent efforts have been made to find an appropriate individual or corporation to  
serve as guardian, but in every instance the clerk shall base the appointment of a  
guardian or guardians on the best interest of the ward."

**SECTION 3.** G.S. 35A-1230 reads as rewritten:

**"§ 35A-1230. Bond required before receiving property.**

1        Except as otherwise provided by G.S. 35A-1212.1 and G.S. 35A-1225(a), no general  
2 guardian or guardian of the estate shall be permitted to receive the ward's property until  
3 he has given sufficient surety, approved by the clerk, to account for and apply the same  
4 under the direction of the court, provided that if the guardian is a nonresident of this  
5 State and the value of the property received exceeds one thousand dollars (\$1,000) the  
6 surety shall be a bond under G.S. 35A-1231(a) executed by a duly authorized surety  
7 company, or secured by cash in an amount equal to the amount of the bond or by a  
8 mortgage executed under Chapter 109 of the General Statutes on real estate located in  
9 the county, the value of which, excluding all prior liens and encumbrances, shall be at  
10 least one and one-fourth times the amount of the bond; and further provided that the  
11 nonresident shall appoint a resident agent to accept service of process in all actions and  
12 proceedings with respect to the guardianship. The clerk shall not require a guardian of  
13 the person who is a resident of North Carolina to post a bond; the clerk may require a  
14 nonresident guardian of the person to post a bond or other security for the faithful  
15 performance of the guardian's duties."

16            **SECTION 4.** This act is effective when it becomes law.