

# Single Protective Arrangements and Single Transactions



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# New G.S. 35A-1121

## **§ 35A-1121. Authorization of a single protective arrangement or single transaction without appointing guardian.**

(a) If it is established in a proper proceeding that a basis exists for the appointment of a guardian of a minor or an incompetent person, the clerk of superior court, without appointing a guardian, may order a single protective arrangement or single transaction for the benefit of a minor or incompetent person as follows:

- (1) Authorize, direct, or ratify any transaction necessary or desirable to achieve any service, care, or safety arrangement meeting the foreseeable needs of the minor or incompetent person, and authorize a special fiduciary to execute any such transaction on behalf of the minor or incompetent person, including any of the following:
  - a. The payment, delivery, deposit, or retention of funds or property.
  - b. The sale, mortgage, lease, or other transfer of property in accordance with the requirements of subsection (c) of this section.
  - c. The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education.
  - d. The establishment, funding, or addition to a suitable trust, including, but not limited to, a trust for the benefit of the minor or incompetent person pursuant to 42 U.S.C. § 1396p(d)(4).
  - e. The establishment, funding, or administration of an ABL account, as defined in section 529A of the Internal Revenue Code.
- (2) Authorize, direct, or ratify any contract, trust, or other transaction relating to the minor or incompetent person's property and business affairs, and authorize a special fiduciary to execute any such contract, trust, or other transaction on behalf of the minor or incompetent person, if the clerk of superior court determines that the transaction is in the best interest of the minor or incompetent person.

(b) Before approving a protective arrangement or other transaction under this section, the clerk of superior court shall consider the interests of creditors and dependents of the minor or incompetent person and, in view of the disability, whether the minor or incompetent person needs the continuing protection of a guardian. The clerk of superior court may appoint a temporary guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the clerk of superior court of all matters done pursuant to the order of appointment.

(c) The sale, mortgage, exchange, lease, or gift of any property by a special fiduciary or temporary guardian appointed as provided in this section shall be subject to the same procedural and reporting requirements that would otherwise apply to the sale, mortgage, exchange, lease, or gift of such property by a guardian of the estate or general guardian, pursuant to this Chapter. (2021-53, s. 2.2.)



# Example:

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After being appointed as the GOP, DSS discovers John has a car worth around \$10,000.



# John has or will receive property....

1. Application for GOE
2. Appointment and qualification of GOE
  - Post a bond
  - Take oath
  - Obtain letters
3. Motion to approve the transaction and hearing (depending on action of GOE)
4. File an inventory and account





# New G.S. 35A-1121

Allows a party to request and the court to order a “single protective arrangement or transaction” for the benefit of an incompetent person or minor without appointing a guardian (in the clerk’s discretion – the clerk “MAY” authorize)

Effective and applies to proceedings initiated on or after October 1, 2021.

# Availability

1. **Respondent** to a 35A proceeding is adjudicated incompetent – petition for adjudication (SP-200) and adjudication must occur (SP-202)
  - Adjudication required to trigger availability of these provisions a respondent
2. Application made for appointment of guardian for **minor**

G.S. 35A-1120

# Transactions for service, care, or safety

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Allows the clerk, without appointing a guardian, to:

1. Authorize, direct, or ratify any transaction necessary or desirable to achieve any service, care, or safety arrangement that meets the foreseeable needs of the incompetent person or minor
2. Authorize a **special fiduciary** to execute a transaction on behalf of the incompetent person or minor.

G.S. 35A-1121(a)(1)

# Transactions for property and business affairs

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Allows the clerk, without appointing a guardian, to:

1. Authorize, direct or ratify any contract, trust, or other transaction relating to a minor or incompetent person's property and business affairs
2. Authorize a **special fiduciary** to execute such contract, trust, or other transaction on behalf of the incompetent person or minor if the clerk determines it is in the best interests of the minor or incompetent person.

G.S. 35A-1121(a)(2)



# Temporary Guardian

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The clerk may appoint a **temporary guardian** to assist in the accomplishment of any protective arrangement or other transaction.

## Temporary guardian

- has the authority conferred by the order and
- serves until discharged by order after report to the clerk of all matters done pursuant to the order.

G.S. 35A-1121(b)



# Special Fiduciary vs. Temporary Guardian

*What's the difference?*

**Special Fiduciary** may be appointed to execute any transaction, contract, or trust necessary to

- Achieve service, care, or safety arrangement
- Take necessary action relating to property and business affairs

**Temporary Guardian** may be appointed “to assist in the accomplishment of any protective arrangement or other transaction authorized under this section”

# Special fiduciary vs. Temporary Guardian

Required Procedures & Forms	Special Fiduciary	Temporary Guardian
Order Authorizing Arrangement or Transaction	Required. No AOC form Available.	Required. No AOC form Available.
Application for Letters	Not required.	Required. AOC-E-206, -208.
Order on Application for Letters	Not required.	Required. AOC-E-402.
Letters	Not required.	Required. AOC-E-421.
Bond	Not required unless ordered.	Required if Article 7 of G.S. Chapter 35A applies. AOC-E-401.
Oath	Required. AOC-E-400.	Required. AOC-E-400.
Fees	Required, if administering asset pursuant to G.S. 7A-307(a)	Required, if administering asset pursuant to G.S. 7A-307(a)
Accounting or report	Not required unless ordered.	Required. For accountings use AOC-E-506.





# Specific vs. All Purpose

## Use a Special Fiduciary when...

- The contemplated action is clear and specific.
- The Order can do most of the heavy lifting.

## Use a Temporary Guardian when...

- Multiple steps are needed.
- Multiple parties may need to recognize the fiduciary's authority.
- The office of guardian is required or preferable to complete the activity (*i.e., establish d(4)(A) special need trust, sign a deed*).



# Clerk Authorization Required

## Considerations for the clerk

- Best interests of the incompetent person or minor
- Interests of creditors
- Interests of dependents
- **Whether, in light of the disability, the minor or incompetent person needs the continuing protection of a guardian**

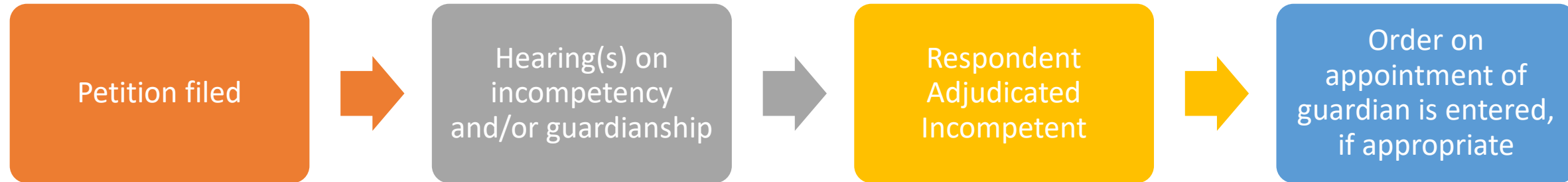
G.S. 35A-1121(b)



# Remember for John....

- GS 35A-1121 orders do not avoid an adjudication of incompetency
- Any person can seek a single protective arrangement or transaction in connection with the original adjudication or years later after an adjudication of incompetency depending on when the need arises
- It could replace the need for a GOE or a GOP (or both in VERY limited circumstances)

# Who, when, and how are these requests for adults made?



- ☐ Petitioner makes a written request simultaneous with filing the petition, ideally as an attached motion, but possible included directly in the petition.
- ☐ Any party files a written motion after the petition has been filed but prior to the adjudication of incompetence.
- ☐ Any party makes an oral motion during the hearing on adjudication or a hearing on appointment of a guardian.
- ☐ A motion is filed in the guardianship matter months or years later.
- ☐ Sua sponte by the clerk, at any time.

# Include the Request with the Petition, AOC-SP-200

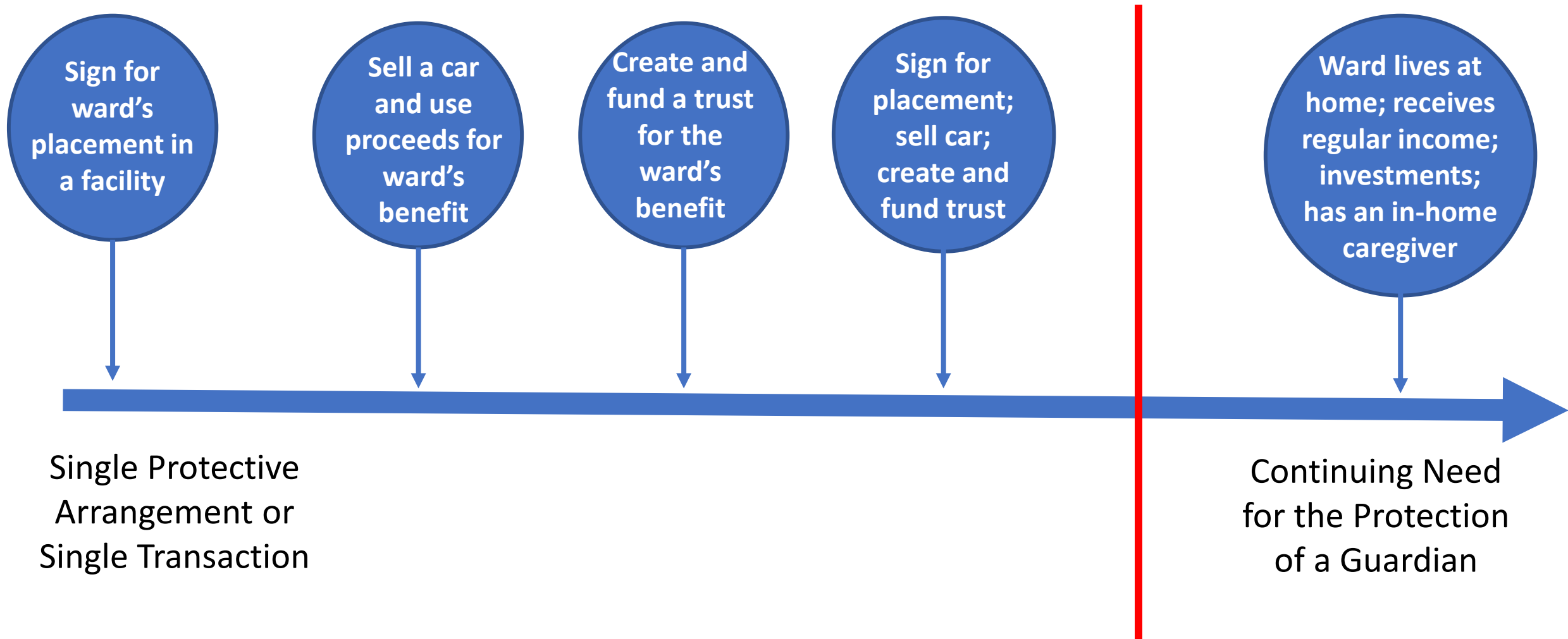
STATE OF NORTH CAROLINA			File No.
County			
<b>NOTE TO PETITIONER:</b> <i>If you are petitioning the court to accept guardianship on transfer from another state, this is not an appropriate form to use.</i>			In The General Court Of Justice Superior Court Division Before The Clerk
<b>IN THE MATTER OF</b>			<b>PETITION FOR ADJUDICATION OF INCOMPETENCE AND APPLICATION FOR APPOINTMENT OF GUARDIAN OR LIMITED GUARDIAN</b> <input type="checkbox"/> <b>AND MOTION FOR APPOINTMENT OF INTERIM GUARDIAN (AOC-SP-198)</b>  G.S. 35A-1105, -1112, -1114, -1210; 35B-17, -18
Full Name Of Respondent			
Telephone No. Of Respondent			
Address Of Respondent			
County Of Residence Of Respondent		Date Of Birth	
Race*	Sex*	<small>*Race and sex are collected so that this information may be transmitted to NICS in the event of a qualifying adjudication under G.S. 14-409.43(a)(6).</small>	
<input type="checkbox"/> Respondent Indigent	Respondent's Drivers License No.	State	
Name And Address Of Petitioner			
County Of Residence Of Petitioner		Telephone No. Of Petitioner	
Petitioner's Relationship To Respondent Or Interest In Proceeding			
Name And Address Of Attorney For Petitioner			
Telephone No. Of Petitioner's Attorney		State Bar No.	
Name And Address Of Treatment Facility If Respondent Is An Inpatient			
<p>The undersigned, being duly sworn, requests that the Court, after notice and hearing, adjudicate the respondent above to be incompetent, and also applies for the appointment of the person(s) named below to serve, in the capacity indicated, as guardian(s) of the respondent.</p> <p>In support of this Petition, the undersigned states:</p> <p>1. During the past twelve (12) months, the above-named respondent was physically present as follows:</p>			
<b>Period of Physical Presence</b> <small>(include up to the 12 months prior to the filing date of the petition; do not list periods of temporary absence)</small>			<b>Address</b>
<b>From</b>	<b>To</b>		
	Present		



# File a Motion in the Cause, AOC-E-415

<b>STATE OF NORTH CAROLINA</b>		File No. <input type="text"/>
<input type="text"/> County		In The General Court Of Justice Superior Court Division Before The Clerk
<b>IN THE MATTER OF</b>		<b>MOTION IN THE CAUSE (GUARDIANSHIP)</b>
Name And Current Address Of Ward <input type="text"/>		
County Of Residence Of Ward <input type="text"/>		
Name, Street Address, PO Box, City, State And Zip Code Of Moving Party <input type="text"/>		
County Of Residence Of Moving Party <input type="text"/>		
Moving Party's Relationship To Ward Or Interest In Proceeding <input type="text"/>		G.S. 35A-1201, -1207, -1212 Name, Street Address, PO Box, City, State And Zip Code Of Moving Party's Attorney <input type="text"/> State Bar No. <input type="text"/> Nature Of Impairment <input type="text"/>
The undersigned requests that the Court, after notice* and hearing:		
<input type="checkbox"/> modify general guardianship to guardianship of the person.		
<input type="checkbox"/> add to the rights and privileges of the ward.		
<input type="checkbox"/> modify general guardianship to guardianship of the estate.		
<input type="checkbox"/> limit the rights and privileges of the ward.		
<input type="checkbox"/> modify guardianship of the person to general guardianship.		
<input type="checkbox"/> Other/Comment: <input type="text"/>		
<input type="checkbox"/> modify guardianship of the estate to general guardianship.		
<b>*NOTE:</b> Form AOC-E-211 is available to be used as a Notice of Hearing form for a hearing on a Motion In The Cause (Guardianship).		
In support of this Motion, the undersigned states:		
<input type="checkbox"/> 1. The current guardian is:		
Name And Address Of Current Guardian <input type="text"/>		
<input type="checkbox"/> 2. The ward's next of kin, if any, and other persons known to have an interest in the proceeding are:		
Name And Address <input type="text"/>		Name And Address <input type="text"/>

When is something a **single** protective arrangement or **single** transaction?



*What  
should the  
order  
contain?*

Authority to achieve  
the single transaction  
or protective  
arrangement.

Specifics about what  
must happen.

Tailoring to fit each  
situation (*there's a  
reason there is no  
AOC form...*)



**Precision is  
the key.**

How do we get  
from A to B?

Spell out each  
step.



***Practice Tip:*** Doing this at the outset  
will also help determine whether  
you need a Special Fiduciary or a  
Temporary Guardian.



# Example:

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John has \$10,000 car.

DSS as GOP determines John needs to apply for long-term Medicaid to pay for his nursing home expenses. He would also benefit from the purchase of a pre-need irrevocable burial policy and payment of the balance of funds to the nursing home to complete a spend-down.

*What should the order contain?*



*What must  
happen?*

## MAKE A LIST

1. Authority to sell the car
2. Direction to purchase pre-need policy
3. Direction to purchase any other needed items(?)
4. Direction to pay remaining funds to nursing home
5. Direction to apply for Medicaid
6. Obligation to report back to court upon completing these tasks by a date certain



# Five Categories to watch out for:

- *Sale*
- *Mortgage*
- *Exchange*
- *Lease*
- *Gift*



# Sales of Real Property

- Still required to file special proceeding per 35A-1301.
- May need to serve presumptive heirs.
- Subject to judicial sale procedures and reporting requirements under Article 29A of G.S. Chapter 1.
- *These cannot be waived.*





# Questions?

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# Resources

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<https://civil.sog.unc.edu/more-on-single-protective-arrangements-and-single-transactions-under-g-s-chapter-35a/>