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## GUARDIAN AND WARD Guardianship Over Property: Revise Reporting Requirements

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## GUARDIAN AND WARD

### *Guardianship Over Property: Revise Reporting Requirements*

<b>CODE SECTION:</b>	O.C.G.A. § 29-5-6 (amended)
<b>BILL NUMBER:</b>	HB 1557
<b>ACT NUMBER:</b>	1422
<b>SUMMARY:</b>	The Act requires that certified copies of the orders of creation and termination of a guardianship over real property of a ward be filed in the county in which the real property is located.
<b>EFFECTIVE DATE:</b>	July 1, 1988

#### *History*

Code section 29-5-6 sets forth procedures for the appointment of a guardian for an allegedly incapacitated person. The Code section outlines the requirements of a petition for guardianship, enumerates review and evaluation procedures, and provides for a hearing to adjudicate competence.<sup>1</sup> The Code section also requires that the court set forth the factual findings and conclusions which support its grant or denial of a petition for guardianship.<sup>2</sup> The completed order must be mailed to the ward, her attorney, her representatives, her guardian ad litem, the appointed guardian, and the petitioner.<sup>3</sup>

Prior to the Act, this Code section did not provide for an official filing of the guardianship order in the county in which the ward lived nor in the county in which the property was located.<sup>4</sup> The Act attempts to address the situation in which an individual is declared incompetent in the court of one county and owns real property located in another county. In this situation there is no opportunity for the title examiner of the county in which the property is located to ascertain that a guardianship has been established over the property.<sup>5</sup> The ward's incapacity and the establish-

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1. O.C.G.A. § 29-5-6(a)—(e) (Supp. 1988).

2. O.C.G.A. § 29-5-6(f)(1) (Supp. 1988). If a guardianship is granted, the contents of the order must reveal, among other things, the type of guardianship created, the nature and extent of the incapacity, the duration of the guardianship, any rights retained by the ward, the reasonable sums or property to be provided in order to allow for the ward's support, and the frequency of evaluations.

3. O.C.G.A. § 29-5-6(f)(2) (Supp. 1988).

4. See 1980 Ga. Laws 1661; 1982 Ga. Laws 796; 1982 Ga. Laws 1221; 1984 Ga. Laws 22; 1987 Ga. Laws 3.

5. Telephone interview with Representative Larry Smith, House District No. 78

ment of a guardianship must be known and recognized in the sale of the ward's property for the deed subsequently to be declared valid.<sup>6</sup>

### HB 1557

The Act amends O.C.G.A. § 29-5-6 by requiring that the petition for the appointment of a guardian<sup>7</sup> and the subsequent order issued by the probate judge<sup>8</sup> contain the name of the county in which the ward has any interest in real property. The amendment also requires that certified copies of the court's orders granting or terminating the guardianship over real property be filed within thirty days of the issuance of the orders in the real property grantor index of each county in which the ward has property.<sup>9</sup> The bill was introduced to assist the title examiner in ascertaining any problems with a deed and to reduce the number of deeds which are invalidated because the existence of a guardianship over the property is unknown. The requirement that a certificate of guardianship be filed in the county in which the ward has an interest in real property puts the title examiner on notice of any effect the guardianship may have on the conveyance of the property.<sup>10</sup>

Initially, HB 1557 was introduced as a new Code section, O.C.G.A. § 29-5-9.1, rather than as an amendment to the section concerning the appointment of a guardian.<sup>11</sup> The House Judiciary Committee was concerned that the original bill's broad-based application to the creation or termination of any guardianship would impose filing responsibilities on those who act solely as guardians of persons rather than of property.<sup>12</sup>

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(Apr. 5, 1988) [hereinafter Smith Interview].

6. The general rule in equity is that a "deed may be deemed invalid and canceled . . . on the ground of mental incapacity if the grantor is shown to be entirely without understanding of the deed at the time of execution." *Hansford v. Robinson*, 255 Ga. 530, 531, 340 S.E.2d 614, 615 (1986). More importantly, a ward's property may be sold only upon order of the probate court in the county in which the guardian was appointed and only for the limited purposes of payment of the ward's debt, provision of the ward's care, maintenance and support of those dependent on the ward, and investment in other property. O.C.G.A. § 29-2-3 (1986). In the event that the guardian of the property deems it necessary to seek the sale of the ward's property, she must file a petition with the probate court detailing specifically the facts, the need for the sale, and the terms of the proposed sale. O.C.G.A. § 29-2-4 (1986). Thus, because the ward is incompetent and a guardian has been appointed over the ward's property, many procedural hurdles have been created to protect the ward's interest. These hurdles must be overcome before the property can be conveyed.

7. O.C.G.A. § 29-5-6(a)(2)(H) (Supp. 1988).

8. O.C.G.A. § 29-5-6(f)(1)(J) (Supp. 1988).

9. O.C.G.A. § 29-5-6(f)(4) (Supp. 1988).

10. Smith Interview, *supra* note 5.

11. HB 1557, as introduced, 1988 Ga. Gen. Assem.

12. Telephone interview with Linda Jones, Department of Human Resources, Division of Family & Children Services (Apr. 4, 1988); HB 1557 (HCS), 1988 Ga. Gen. Assem. The Division of Family & Children Services (DFCS) requested that the language of the original bill be clarified to apply only to guardianship over property.

The committee amended the original version of the bill to apply only to the creation or termination of a guardianship over property.<sup>13</sup> The substitute was incorporated into the final version of the Act.<sup>14</sup>

The Senate Judiciary Committee further clarified the bill in a substitute which omitted the specific reference to adults so that the requirements also apply to minor wards.<sup>15</sup> The committee also made the bill applicable to the termination of guardianship over property; the original bill only applied to the creation of a guardianship.<sup>16</sup> Finally, the Senate substitute deleted the limitation requiring the ward to own the property; thus, the requirements apply to any property in which the ward has an interest.<sup>17</sup> This substitute was incorporated into the final version of the Act.<sup>18</sup>

*D. Smith*

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DFCS, in its capacity as guardian for many incompetents, has no rights or obligations pertaining to the property of the ward.

13. HB 1557 (HCS), 1988 Ga. Gen. Assem.

14. O.C.G.A. § 29-5-6(a)(2)(H) (Supp. 1988).

15. Telephone interview with Senator Nathan Deal, Senate District No. 49 (Apr. 25, 1988); HB 1557 (SCS), 1988 Ga. Gen. Assem.

16. *Compare* HB 1557 (SCS) *with* HB 1557, as introduced, 1988 Ga. Gen. Assem.

17. HB 1557 (SCS), 1988 Ga. Gen. Assem.

18. O.C.G.A. § 29-5-6(f)(1)(J) (Supp. 1988).