

Deberes de tutela

📅 Publicado el: 17 de mayo de 2021

Un tutor es un representante legalmente designado para tomar decisiones y defender los intereses de la persona tutelada —una persona declarada incapacitada o menor de edad—, ayudándola a tomar y comunicar decisiones importantes sobre sus asuntos personales y/o financieros. Los tutores tienen un deber fiduciario para con la persona tutelada, lo que significa que **deben** tomar decisiones en su mejor interés.

Al designar un tutor, el Secretario del Tribunal Superior emitirá una orden que establece sus facultades y obligaciones (<https://www.nccourts.gov/help-topics/guardianship/guardianship>). Dicha orden puede limitar las facultades y obligaciones del tutor, según la capacidad de cada persona tutelada. Un tutor puede o no estar sujeto a todas las obligaciones descritas en este documento. Se debe consultar la orden del Secretario para determinar las obligaciones específicas de cada tutor.

Deberes básicos de la tutela

Existen tres tipos de tutores: tutor general, tutor de la persona y tutor de los bienes. Cada tipo de tutor tiene deberes específicos; sin embargo, todos deben seguir los principios generales de la tutela. Todos los tutores deben:

- Asegúrese de que la tutela se adapte a las necesidades **reales** de cada persona tutelada.
- Tomar decisiones que garanticen la salud y el bienestar de los pacientes, basándose en lo que ellos mismos decidirían si fueran capaces de tomar esas decisiones.
- Recopile información sobre el sistema de valores, los deseos y las necesidades de la persona tutelada, de su familia, amigos o documentos legales como un testamento vital.
- Involucre al paciente en todas las decisiones en la medida de lo posible.

- Permitirle al tutelado la oportunidad de ejercer los derechos que estén dentro de su comprensión y juicio, otorgándole la misma posibilidad de error que a una persona que no es incapaz.
- Apoyar al tutelado en el desarrollo de las habilidades necesarias para asumir la responsabilidad de su propia toma de decisiones.
- Asegúrese de que la tutela se revise periódicamente y considere alternativas a la tutela, incluida la restitución de la capacidad mental o una tutela limitada.

Deberes de un tutor general

Un tutor general toma decisiones sobre el cuidado y mantenimiento de la persona y el patrimonio del tutelado. **El tutor general tiene todas las obligaciones que se enumeran a continuación, tanto de un tutor de la persona como de un tutor del patrimonio.**

Deberes de un tutor de la persona

A guardian of the person is appointed to make decisions about the ward's personal care, including medical and psychological treatment. Specific duties of a guardian of the person include:

- Take custody of the ward's person.
- Make provisions for the ward's care, comfort, and maintenance.
- Take any responsible action necessary to protect the ward from further mistreatment in instances where the guardian learns the ward is being mistreated.
- Arrange for the ward's training, education, employment, habilitation, or rehabilitation.
- Take reasonable care of the ward's clothing, furniture, vehicles, and other personal property.
- Establish the ward's residence, giving preference to places within North Carolina and places that are not treatment facilities. If the only appropriate residence is a treatment facility, give preference to facilities that are community-based.
- Give consent or approval necessary to enable the ward to receive medical, legal, psychological, or other professional care, counsel, treatment, or service.

- Honor any written advance instructions for the ward's medical or mental health care.
- Obtain expert consultation in any instances where there is a question about appropriate medical or psychological treatment, or whether treatment should be provided.
- Give any other type of consent or approval on the ward's behalf that is required or is in the ward's best interest.
- Arrange for regular medical and dental examinations for the ward as needed and as required for annual status reports.
- Turn over the ward's personal effects to the executor or administrator of the ward's estate upon the ward's death.
- Give status reports as required by North Carolina law or Clerk's order.

Duties of a Guardian of the Estate

A guardian of the estate is appointed to collect, preserve, manage, and use the ward's estate to administer the estate in the ward's best interest. These duties may be modified by the Clerk to give some financial responsibility to the ward in a limited guardianship. Specific duties of a guardian of the estate include:

Management of the ward's estate

- To take possession of the ward's entire estate for the ward's use.
- To use his/her special skills or expertise in managing the ward's estate.
- To observe the standard of judgment and care under the circumstances that an ordinarily prudent person would observe in acquiring, reinvesting, exchanging, retaining, selling, and managing the ward's property.

Management of the ward's assets and contracts

- To collect and receive assets due to the ward from any source.
- To protect the ward's assets against damage or loss at the expense of the ward's estate.
- To complete performance of contracts entered into by the ward that continue as obligations of the ward or the ward's estate.

- To refuse to complete contracts as the guardian determines to be in the ward's best interest, taking into account any cause of action that may arise from such failure to complete the contract.

Acquisition, management, and disposal of the ward's property and investments

- To acquire and retain all of the ward's property and investments.
- To abandon or relinquish the ward's rights in any property when the guardian determines, acting reasonably and in good faith, that the property is valueless or is of no benefit or value to the ward or the ward's estate.
- To foreclose any mortgage, deed of trust, or other lien; to bid on such property at foreclosure sale; to acquire such property by deed from the mortgagor or obligor without foreclosure; to retain such property taken over without foreclosure.
- To vote shares of stock or other securities, in person or by proxy.
- To pay sums charged to or accruing against securities owned by the ward.
- To sell, lease, or exchange any of the ward's personal property without court order, provided the aggregate value of the property sold without court order does not exceed \$5,000 over the duration of the accounting period, or \$15,000 over the duration of the estate.
- To petition the Clerk for an order to sell, lease, or exchange any of the ward's personal property if the aggregate value of the property sold will exceed \$5,000 over the duration of the accounting period, or \$15,000 over the duration of the estate.

Payment of the ward's expenses and management of the ward's debts and obligations

- To pay the debts of the ward incurred prior to the date the ward was adjudicated incompetent if the debt was incurred for necessary living expenses or taxes.
- To pay the debts of the ward incurred for necessary living expenses or taxes.
- To pay debts that involve a lien on real or personal property if the ward has an equity interest in the property.
- To pay debts of the ward when the guardian believes it is in the best interest of the ward or the ward's estate.

- To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the ward's estate.
- To expend estate income on the ward's behalf.
- To petition the Clerk for prior approval of expenditures of estate principal.
- To pay for necessary expenses of administering the ward's estate from the ward's estate.
- To borrow money for the purpose of paying debts, taxes, and other claims against the ward, and to mortgage, pledge, or encumber the ward's estate as may be required to secure such loans.

Use of the ward's land and operation of the ward's business

- To lease the ward's land for a term of not more than three years.
- To continue any business venture or farming operation in which the ward was engaged when necessary or desirable to preserve the value of the ward's interest in the business.

Take actions on the ward's behalf

- To maintain any action or proceeding to (1) recover possession of any of the ward's property, (2) determine the title to ward's property, and (3) recover damages for any injury done to ward's property.
- To negotiate, arbitrate, defend, abandon, settle, or otherwise deal with any other claims in favor of or against the ward. To pay advancements to the ward's children or grandchildren with prior court approval.
- To employ experts (such as lawyers or investment advisors) to advise or assist the guardian in the performance of his duties as guardian.
- To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.
- To obey all orders of the court pertaining to the guardianship.
- To comply with the statutory accounting requirements.
- To file a final accounting with the Clerk upon the ward's death.

Accounting Requirements of a Guardian of the Estate

Accountings must be filed with the Clerk at the following times:

- Within three months of the guardian's initial appointment.
- Within three months of discovering the existence of additional property not included in previous accountings.
- Within 30 days of the expiration of one year from the date of the guardian's initial appointment, and annually thereafter.
- Within 60 days after the guardianship is terminated.

With each accounting, the guardian must produce vouchers or verified proof for all deposits into the estate and payments made out of the estate. The guardian must provide with the accounting all investment and bank statements showing the cash balances of the accounts.

Duties of a Disinterested Public Agent

Disinterested public agents, such as the Department of Social Services, appointed as a general guardian, guardian of the person, or guardian of the estate must comply with both the basic guardianship duties and duties specific to the type of guardian of which the public agent is acting.

In addition, there are further duties imposed specifically upon disinterested public agents. They are:

- To visit the ward as frequently as needed and appropriate.
- To have contact related to the ward no less than once every 90 days.
- To obtain training on the powers and responsibilities of guardians.
- To notify the Clerk when he/she ceases to qualify as a disinterested public agent so that the Clerk can appoint a successor guardian.
- To file status reports to the designated agency assigned at the time of the guardian's appointment, or if none was assigned, to the Clerk.

Status Reports

Status reports must be made at the following times:

- Initial report within six months of the initial appointment.
- Second report within one year after the initial appointment.
- Subsequent reports annually thereafter.

Status reports must include the following information:

- A report of recent medical and dental examinations of the ward by one or more physicians or dentists.
- A report on the guardian's performance of his/her duties.
- A report of the ward's condition, needs, and development.

Prohibited Guardian Actions

- Using ward's real or personal property for anything or anyone else other than the ward.
- Intermingling the ward's money with the guardian's personal funds.
- Aparecer en cualquiera de las cuentas del tutelado como cotitular o como beneficiario tras el fallecimiento del tutelado.
- Pedir dinero prestado al distrito.
- Prestar el dinero del tutelado a otra persona sin una orden judicial.
- Emitir cheques por "efectivo" sin autorización judicial para realizar distribuciones regulares de efectivo al tutelado.
- Dispensar los fondos del tutelado a sí mismo o a sí mismo.
- Pagarse a sí mismo una comisión o reembolso sin la aprobación de un tribunal.
- Vender bienes muebles o inmuebles del tutelado sin orden judicial cuando el valor total de los artículos vendidos supere los 1.500 dólares.
- Arrendar el terreno del distrito por más de tres años.

- Utilizar los fondos de un menor tutelado para su manutención y educación sin

¿Encontraste hoy lo que necesitabas?

- ~~Háganoslo saber para que podamos mejorar!~~
No entregar a un menor tutelado sus bienes al cumplir 18 años y completar la rendición de cuentas final.



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NO

- ~~Consentir la esterilización de la sala sin necesidad médica ni aprobación judicial.~~

Compartir

Ofrecemos alternativas a la tutela

(<https://disabilityrightsn.org/resources/alternatives-to-guardianship>). .



DESCARGAR PDF ([HTTPS://DISABILITYRIGHTSN.ORG/?PAGE=E2PDF-DOWNLOAD&UID=52E23AB41762D878C6856DA3F8F35356](https://disabilityrightsn.org/?PAGE=E2PDF-DOWNLOAD&UID=52E23AB41762D878C6856DA3F8F35356))

Hoja informativa

Regístrate para recibir noticias y actualizaciones.

SUSCRÍBASE A NUESTRO BOLETÍN ELECTRÓNICO.
([HTTPS://DISABILITYRIGHTSN.ORG/CONTACT-US/NEWSLETTER](https://disabilityrightsn.org/contact-us/newsletter))

Complicarse

Consulta nuestras campañas actuales.

ACTÚA AHORA
([HTTPS://DISABILITYRIGHTSN.ORG/TAKE-ACTION/CURRENT-CAMPAIGNS](https://disabilityrightsn.org/take-action/current-campaigns))

¿Preguntas o comentarios?

Cómo contactar con nuestro personal.

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