Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 42

3-29-2012

GUARDIAN AND WARD Guardians of Beneficiaries of United States Department of Veteran Affairs: Revise Provisions Relating to Guardian's Compensation; Redefine Terminology Relating to Guardians; Revise Notice Procedure Provided by Guardian Applicant; Provide Preference for Assigning Guardianship to Relative of Ward; Revise Rules of Periodic Accounting and Surety Bon Maintenance; Restrict Guardian from Being Named Beneficiary Under Ward's Will or in Ward's Life Insurance

Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review (1996) "GUARDIAN AND WARD Guardians of Beneficiaries of United States Department of Veteran Affairs: Revise Provisions Relating to Guardian's Compensation; Redefine Terminology Relating to Guardians; Revise Notice Procedure Provided by Guardian Applicant; Provide Preference for Assigning Guardianship to Relative of Ward; Revise Rules of Periodic Accounting and Surety Bon Maintenance; Restrict Guardian from Being Named Beneficiary Under Ward's Will or in Ward's Life Insurance," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 42.
Available at: http://scholarworks.gsu.edu/gsulr/vol13/iss1/42

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GUARDIAN AND WARD

Guardians of Beneficiaries of United States Department of Veteran Affairs: Revise Provisions Relating to Guardian's Compensation; Redefine Terminology Relating to Guardians; Revise Notice Procedure Provided by Guardian Applicant; Provide Preference for Assigning Guardianship to Relative of Ward; Revise Rules of Periodic Accounting and Surety Bond Maintenance; Restrict Guardian from Being Named Beneficiary Under Ward's Will or in Ward's Life Insurance

CODE SECTIONS:	O.C.G.A. §§ 29-2-42, 29-6-1 to -18 (amended)
BILL NUMBER:	SB 596
ACT NUMBER:	971
GEORGIA LAWS:	1996 Ga. Laws 1174
SUMMARY:	The Act primarily clarifies terminology and procedures relating to guardianship of a beneficiary of the United States Department of Veteran Affairs (VA). First, the Act redefines a few key definitions used throughout chapter six of title 29. Second, the Act adds a requirement of notice to the VA and also to the proposed ward's relatives when an application for guardianship is filed. Third, the Act establishes a preference for vesting guardianship in a relative of the ward and imposes a maximum number of wards for guardians who are not related to their wards. Fourth, the Act restricts the guardian from being named as a beneficiary in the ward's will or life insurance policy. Fifth, the Act revises guardian compensation, mandates that guardians submit periodic accountings to the court, and sets forth ramifications for failure to follow these provisions. Lastly, the Act provides that the VA shall be a party in interest in any proceeding to appoint or discharge a guardian, and further provides that the VA may become a party in interest in any other proceeding of guardianship established pursuant to any other chapter of title 29.
EFFECTIVE DATE:	July 1, 1996

Published by ScholarWorks @ Georgia State University, 1996
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History

The VA helped to structure the Act's wording.[1] The purpose of the Act is to better protect veterans' benefits when a guardian has been appointed for the veteran.[2] Since many veterans live solely on the entitlement benefits provided by the VA as a recognition of the veteran's service to the country, an unscrupulous guardian misappropriating the benefits could easily leave the veteran destitute.[3] The Georgia General Assembly, along with the VA's Office of District Counsel, the VA's Veterans Services Division, and the Probate Judges Council, revised chapter 29 to render the guardian more accountable to the VA and to the courts for those VA benefits the guardian administers.[4]

SB 596

Redefine Terminology

The Act amends Code section 29-6-1 by revising two definitions used in the chapter.[5] To make clear that only guardians of persons receiving

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1. Telephone Interview with Sen. Ed Harbison, Senate District No. 15 (May 8, 1996) [hereinafter Harbison Interview].

2. *Id.*

3. *Id.*

4. *Id.*; Letter from W.M. Thigpen, Regional Counsel, Department of Veterans Affairs to Sen. Ed Harbison, Chairman Defense and Veterans Affairs Committee (Feb. 14, 1996) [hereinafter Thigpen Letter] (available in Georgia State University College of Law Library); Recommendations of Probate Judges Council on Senate Bill 596 [hereinafter Council Recommendations] (available in Georgia State University College of Law Library).

5. O.C.G.A. § 29-6-1 (Supp. 1996). Additionally, some definitions were amended to reflect gender-neutral language. *Id.* Substantive amendments to the words "benefits" and "estate and income," which were introduced in the original bill, were changed back to the wording that existed in the former code by the Senate Defense and Veterans Affairs Committee. *Compare* 1990 Ga. Laws 45, § 1, at 46-47 (formerly found at O.C.G.A. § 29-6-1(1), (2) (1993)) *and* SB 596, as introduced, 1996 Ga. Gen. Assem. *with* O.C.G.A. § 29-6-1(1), (2) (Supp. 1996) *and* SB 596 (SCS), 1996 Ga. Gen. Assem. Senator Harbison, the sponsor of SB 596 and the Chair of the Senate Defense and Veterans Affairs Committee, believed the language in the former code was more encompassing, and since the purpose of this bill is to provide more protection to veterans' benefits, broader definitions were better. Harbison Interview, *supra* note 1. The VA, however, believed that the term "benefit," as defined in the original bill, was in fact too broad. Thigpen Letter, *supra* note 4. The original bill defined "benefit" as "arrears of pay, bonus, pension, compensation, insurance, and all other moneys paid or payable by the United States by reason of service in the armed forces of the United States." SB 596, as introduced, 1996 Ga. Gen. Assem. The VA noted that "[t]he proposed definition has been broadened to the extent that federal benefits other than VA benefits could be included," and since the bill only addressed VA benefits that broadening was unwarranted. Thigpen Letter, *supra* note 4. Similar concerns of overbroad terminology that might include benefits beyond VA benefits were expressed

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VA benefits are affected by these laws,[6] the definition of the word "guardian" was changed from "any person acting as fiduciary for a ward,"[7] to one requiring that the guardian be appointed by the probate court.[8] The Act gives more detail for the definition of "incompetent."[9] The VA felt this change was needed to emphasize the difference between an adjudication of incompetence by court declaration and a rating of incompetence by the VA.[10] As with the former law, a rating of incompetence made by the VA is "prima facie evidence of the necessity for the appointment" of a guardian.[11] A rating of incompetency is simply a VA-specific determination that an individual is incapable of handling his VA benefit check; it has no other legal significance.[12]

Require Notification of Ward's Relatives

The Act effects a major procedural revision placing stricter notification requirements upon application for guardianship.[13] The former Code section required only that the court notify three of the ward's adult relatives who resided in Georgia upon a petition for guardianship when the ward was a minor under fourteen years of age.[14] However, to further serve the goal of protecting the ward, in this case through notification of relatives,[15] the Act requires that the court notify by registered mail, regardless of state of residence,[16] two adult relatives when an application for guardianship is filed, regardless of the age of the proposed ward.[17]

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for the terms "estate" and "income," and proposed changes to these were also deleted from the bill. *Id.*

6. Harbison Interview, *supra* note 1.

7. 1990 Ga. Laws 45, § 1, at 47 (formerly found at O.C.G.A. § 29-6-1(3) (1993)).

8. O.C.G.A. § 29-6-1(3) (Supp. 1996).

9. *Compare* 1990 Ga. Laws 45, § 1, at 47 (formerly found at O.C.G.A. § 29-6-1(4) (1993)) *with* O.C.G.A. § 29-6-1(4) (Supp. 1996); *see also* O.C.G.A. § 29-6-3 (Supp. 1996) (setting forth the certifications necessary when petitioning to become a guardian of an incompetent ward).

10. Telephone Interview with Charles Williamson, Esq., Office of Regional Counsel, Department of Veterans Affairs (June 25, 1996) [hereinafter Williamson Interview].

11. *Compare* 1990 Ga. Laws 45, § 1, at 49 (formerly found at O.C.G.A. § 29-6-3 (1993)) *with* O.C.G.A. § 29-6-3 (Supp. 1996).

12. *Compare* 1990 Ga. Laws 45, § 1, at 49 (formerly found at O.C.G.A. § 29-6-3 (1993)) *with* O.C.G.A. § 29-6-3 (Supp. 1996).

13. *See* O.C.G.A. § 29-6-5 (Supp. 1996).

14. 1958 Ga. Laws 673, § 16, at 683 (formerly found at O.C.G.A. § 29-6-5 (1993)).

15. Harbison Interview, *supra* note 1.

16. *Id.* Senator Harbison noted that if he were ever to become a ward of a fiduciary guardian, he would want his "favorite Uncle in North Carolina to know about it." *Id.*

17. O.C.G.A. § 29-6-5 (Supp. 1996). The section also sets forth procedures for notification when less than two adult relatives can be located. *Id.*

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Establish Preference for Vesting Guardianship

Recognizing that a ward's loved one is in many cases the best choice to serve as the ward's guardian, the Act provides a preference order for the court to follow when appointing a guardian.[18] The preference order established in the Act, via reference to another Code section within title 29, is identical to that order used in vesting guardianship over incapacitated adults.[19]

The Act increases, from five to ten, the number of wards the court may appoint to a guardian who is neither a family member, a bank, a trust company, nor a county guardian.[20] The Act's sponsor believed that ten wards was still a reasonable number to be financially managed by a guardian.[21]

Restrict Guardian Use of Ward's Benefit

Because of the concern that a guardian may be in an advantageous position to exert undue influence over the ward, the Act significantly restricts the testamentary gifts and life insurance benefits that a guardian may receive.[22] The former Code section made no such restrictions.[23] Under the Act, the guardian is prohibited from being named beneficiary of any life insurance policy purchased with the ward's VA benefits and established after the guardian's appointment.[24] Any testamentary devise to the guardian created after the establishment of guardianship is null and void, unless the guardian is the ward's next of kin under Georgia laws of descent and distribution.[25]

In a further attempt to prevent an improper transfer of property from the ward to the guardian,[26] the Code section requires that any

18. *Id.* § 29-6-6(c) (referencing 1980 Ga. Laws 1661, § 1, at 1663-65 (codified at O.C.G.A. § 29-5-2 (1993) (giving preferences in vesting guardianship)).

19. *See* 1980 Ga. Laws 1661, § 1, at 1663-64 (codified at O.C.G.A. § 29-5-2(c) (1993)).

20. *Compare* 1929 Ga. Laws 248, § 4, at 251-52 (formerly found at O.C.G.A § 29-6-8 (1993)) *with* O.C.G.A. § 29-6-8(a)(4) (Supp. 1996).

21. Harbison Interview, *supra* note 1.

22. *Id.*; O.C.G.A. § 29-6-11(b), (c) (Supp. 1996).

23. *See* 1958 Ga. Laws 673, § 18, at 684 (formerly found at O.C.G.A. § 29-6-11 (1993)).

24. O.C.G.A. § 29-6-11(b) (Supp. 1996). The Act further requires that the only permissible beneficiary is the ward's estate. *Id.*

25. *Id.* § 29-6-11(c). Interestingly, unlike the provision for testamentary gifts, the Act does not create a next of kin exception for life insurance benefits. *See id.* When asked about this, Senator Harbison was unconvinced that the exception should not also exist in the life insurance provision. Harbison Interview, *supra* note 1.

26. Harbison Interview, *supra* note 1.

property, personal or real,[27] purchased by the guardian using the ward's benefits be "titled in the name of the current guardian or any successor guardian for (name of ward) a beneficiary of" the VA.[28]

A general restriction on the use of the ward's income[29] remains in effect under the Act.[30] However, a provision in the bill as introduced, which allowed the guardian to encroach upon the ward's estate for an amount of less than $1000 without any notification to the VA,[31] was struck in Committee[32] because it was seen as defeating the Act's intended protection of veterans.[33]

Revise Guardian Compensation and Accounting

The Act substantially changes the Code provisions regarding the computation and reporting of guardians' compensation. First, the Act specifically and expressly excludes guardians of wards who receive VA benefits from collecting the standard guardians' and administrators' commission of one-half of one percent of the market value of the ward's estate, or any extra compensation for delivery of property in kind or traveling expenses, also allowed to other guardians.[34] Again, the overriding legislative intent of protecting veterans' benefits was the impetus for this change.[35] The Act does allow the guardian to be compensated at a commission rate of five percent of the monthly income received by the ward.[36] Guardians of wards receiving at least $350.00 per month are guaranteed a minimum monthly commission of at least thirty-five dollars.[37] Under the 1993 version of the Code section, there

27. *Id.*
28. O.C.G.A. § 29-6-11(d) (Supp. 1996).
29. *Id.* § 29-6-1(2). Income is defined as any VA benefits, plus any earnings, interest, or profits derived from VA benefits. *Id.*
30. *Compare* 1958 Ga. Laws 673, § 18, at 684 (formerly found at O.C.G.A. § 29-6-11 (1993)) *with* O.C.G.A. § 29-6-11(a) (Supp. 1996).
31. SB 596, as introduced, 1996 Ga. Gen. Assem.
32. SB 596 (SCS), 1996 Ga. Gen. Assem.
33. Harbison Interview, *supra* note 1.
34. *Compare* 1988 Ga. Laws 367, § 1, at 368 (formerly found at O.C.G.A. § 29-2-42 (1993)) *with* O.C.G.A. § 29-2-42(c) (Supp. 1996).
35. Harbison Interview, *supra* note 1.
36. O.C.G.A. § 29-6-15(a) (Supp. 1996).
37. *Id.* As introduced, the bill permitted a minimum compensation of $75 per month. SB 596, as introduced, 1996 Ga. Gen. Assem. Both the VA and Senator Harbison believed that $75 per month might be too onerous an amount for many veterans' estates. Harbison Interview, *supra* note 1; Thigpen Letter, *supra* note 4. While the bill was in the Senate Defense and Veterans Affairs Committee, Senator Harbison succeeded in reducing the monthly compensation to $50 per month. SB 596 (SCS), 1996 Ga. Gen. Assem. A floor amendment by Senator Harbison further reduced the compensation amount to $35 per month. SB 596 (SCSFA), 1996 Ga. Gen. Assem.

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was no minimum monthly commission for guardians; instead, compensation was five percent of all funds received in a given year.[38] Some lawmakers believed a flat five percent compensation was inadequate to cover costs incurred by the guardian in administering the estate.[39]

Under the Act, all guardians, except banks, must file yearly a surety bond for an "amount not less than the sum of the value of the estate at the time of the last accounting and funds estimated to become payable during the ensuing year."[40] While the former Code section also required filing a yearly surety bond, the required amount was that which the guardian estimated to be due and payable during the ensuing year.[41] The Senate Defense and Veterans Affairs Committee rejected language in the original bill, which set the bond amount at the sum of the on-hand funds when guardianship was appointed, instead substituting the language in the new Code section.[42]

The requirement that a yearly accounting be filed with the probate court is virtually unchanged, except for two relatively minor revisions.[43] First, the Act requires that any money the guardian received as commission must also be included in the accounting.[44] Second, although failure to submit an accounting is still grounds for removal, the Act now provides that the court must first demand an accounting and allow a guardian thirty days to file.[45] If the guardian fails to submit an accounting, even after the court's demand, the court must notify the surety of the guardian's failure.[46] Only then can the surety, any interested party, or the court move to remove the guardian, which can be accomplished without a hearing or further notification to the guardian.[47]

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38. 1929 Ga. Laws 248, § 8, at 254 (formerly found at O.C.G.A. § 29-6-15(a) (1993)).

39. Williamson Interview, *supra* note 11. The VA opposed the change from 5% to a minimum monthly compensation, because of concerns that the monthly and current compensation might prove excessive for small estates, and because a provision in the original O.C.G.A. § allowed for a guardian to petition for extra compensation. *Id.; see* 1929 Ga. Laws 248, § 8, at 254 (formerly found at O.C.G.A. § 29-6-15(c) (1993)).

40. O.C.G.A. § 29-6-9(a), (b) (Supp. 1996).

41. 1958 Ga. Laws 673, § 17, at 684 (formerly found at O.C.G.A. § 29-6-9(a) (1993)).

42. *Compare* SB 596, as introduced, 1996 Ga. Gen. Assem. *with* SB 596 (SCS), 1996 Ga. Gen. Assem. It should be noted that the VA does not believe this to be a substantial change from the previous Code. Williamson Interview, *supra* note 11.

43. *Compare* 1937 Ga. Laws 684, § 2, at 687 (formerly found at O.C.G.A. § 29-6-12 (1993)) *with* O.C.G.A. § 29-6-12 (Supp. 1996).

44. O.C.G.A. § 29-6-12 (Supp. 1996).

45. *Id.* § 29-6-13.

46. *Id.*

47. *Id.*

HeinOnline -- 13 Ga. St. U. L. Rev. 178 1996-1997

: GUARDIAN AND WARD Guardians of Beneficiaries of United States Dep

Provide VA as Party in Interest

In addition to continuing automatic status as a party in interest in any proceeding regarding the appointment or discharge of a guardian of a VA benefit-receiving veteran,[48] the Act now allows the VA to petition the court to become a party in interest in proceedings regarding any guardianship encompassed by title 29.[49] In addition, if party in interest status is granted, the VA will be entitled to all notification regarding the guardian under this Act.[50]

Kim Dammers

48. *Compare* 1937 Ga. Laws 684, § 3, at 687 (formerly found at O.C.G.A. § 29-6-14 (1993)) *with* O.C.G.A. 29-6-14(a) (Supp. 1996).

49. O.C.G.A. § 29-6-14(b) (Supp. 1996).

50. *Id.* The VA does not believe this change is material; instead, it maintains that the previous Code allowed the VA to petition the court to become the party in interest whenever this Code chapter was implicated. Williamson Interview, *supra* note 11.

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