CHAPTER 30.1-27
GUARDIANS OF MINORS

30.1-27-01. (5-201) Status of guardian of minor - General.

A person becomes a guardian of a minor under this chapter by acceptance of a testamentary appointment and approval by the court. The guardianship status continues until terminated, without regard to the location of the guardian and minor ward.

30.1-27-02. (5-202) Testamentary appointment of guardian of minor.

The parent of a minor may appoint by will a guardian of an unmarried minor. A testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated and remains effective upon approval by the court either after or without a hearing, if, before acceptance, both parents are dead or the surviving parent's rights have been terminated by prior court order. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile and upon approval by the court either after or without a hearing. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having the minor's care or to the minor's nearest adult relative under section 27-20.3-02. Within forty-five days of the filing of acceptance, the testamentary guardian must file with the court a criminal history record check report and affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and shall provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

30.1-27-03. (5-203) Objection by minor of fourteen or older to testamentary appointment.

Repealed by S.L. 2019, ch. 274, § 9.

30.1-27-04. (5-204) Court appointment of guardian of minor - Conditions for appointment.

Repealed by S.L. 2019, ch. 274, § 9.

30.1-27-05. (5-205) Jurisdiction and venue.

1. The district court where the will is probated has exclusive jurisdiction over the following procedures that are governed by this chapter:
   a. To approve the acceptance of a testamentary appointment of a guardian; and
   b. To transfer a case to juvenile court in the event of an objection to the testamentary appointment under section 30.1-27-07.
2. The juvenile court under chapter 27-20.1 has exclusive original jurisdiction over proceedings to consider objections to the testamentary appointment under section 30.1-27-07 and over the court appointment of a guardian of a minor except the appointment of a guardian for a minor becoming an incapacitated adult under section 30.1-28-03.3. Any person interested in the welfare of a minor may petition the juvenile court for the appointment of a guardian under section 27-20.1-05 in the following situations:
   a. If there is a living parent of the minor, known or unknown;
   b. If the testamentary guardian fails to accept appointment as guardian within sixty days after the death of the minor's last living parent;
   c. If both parents are dead or the surviving parent's rights have been terminated by prior court order, but there has been no appointment of a guardian for the minor by will; or
   d. If a guardianship of a minor is sought for any other reason.

30.1-27-06. (5-206) Court appointment of guardian ad litem - Approval of acceptance of testamentary appointment.

1. Upon the filing of an acceptance of a testamentary appointment, the court shall appoint a guardian ad litem promptly. The guardian ad litem fees must be paid from the estate of the deceased parent, if available.
2. The duties of the guardian ad litem include:
   a. Personally interviewing the minor, the testamentary guardian, and other persons interested in the welfare of the minor;
   b. Explaining the guardianship proceeding to the minor in the language, mode of communication, and terms that the minor is most likely to understand, including the nature and consequences of the proceeding, the rights to which the minor is entitled, and the available legal options, including the right to retain an attorney to represent the minor;
   c. Advocating for the best interests of the minor consistent with section 14-09-06.2. The appointed guardian ad litem may not represent the minor in a legal capacity;
   d. Consulting juvenile court and other agency records to determine whether the testamentary guardian has a criminal history of abuse, neglect, exploitation, and review of the criminal history records. The guardian ad litem may access confidential juvenile court records and other confidential agency records in the exercise of the guardian ad litem's official duties;
   e. Submitting a written report to the court within sixty days of the guardian ad litem's appointment containing the guardian ad litem's findings on whether the appointment of the testamentary guardian is in the best interests of the child;
   f. Notifying the court if the minor objects to the appointment of the testamentary guardian; and
   g. If the guardian ad litem's report states the guardian ad litem believes the appointment of the testamentary guardian is contrary to the best interests of the minor, the case must be transferred to juvenile court.
3. The guardian ad litem shall serve a copy of the report on the minor if the minor is fourteen years of age or older, the testamentary guardian, the person having the minor's care or the minor's nearest adult relative under section 27-20.3-02, and the personal representative of the deceased parent's estate.
4. After reviewing the guardian ad litem's report, the court may approve the acceptance of the testamentary appointment without a hearing if no objection is raised by the minor, the guardian ad litem, or any other person within fourteen days of the filing of the report of the guardian ad litem.
5. The appointment of the guardian ad litem terminates immediately after the approval of the acceptance or upon transfer of the case to juvenile court.
6. Upon the court's approval of the guardian's acceptance of the appointment, the court shall issue letters of guardianship. The letters of guardianship must include:
   a. The name, address, and telephone number of the guardian;
   b. The full name of the minor;
   c. Any limitations on the guardian's authority to make decisions on behalf of the minor;
   d. The expiration date of the appointment; and
   e. The date by which the guardian must file the annual report required under section 27-20.1-15.
7. A written report prepared and submitted under this section is closed to the public and is not open to inspection except by the court, parties to the proceeding or the parties' counsel, other persons for those purposes as the court may order for good cause, and others authorized by court rule.
8. Medical, psychological, or other treatment information protected by federal law or regulation and any financial account numbers related to a child are confidential and may not be disclosed except to parties to the proceeding, their counsel, and others authorized by court rule. The court may permit access by other persons for good cause.

30.1-27-07. (5-207) Objection to the appointment of the testamentary guardian of minor - Procedure.

1. Any person interested in the welfare of a minor subject to a testamentary appointment of a guardian, including the minor, may object to the appointment of the testamentary guardian as contrary to the best interests of the minor within fourteen days of the filing of the report of the guardian ad litem.
2. An objection must contain a statement alleging specific facts that demonstrate the appointment of the testamentary guardian is contrary to the best interests of the minor.
3. Upon filing of the objection or on the court's own motion, the court immediately shall transfer the case to the juvenile court in the county where the original probate matter was filed.

30.1-27-08. (5-208) Acceptance of appointment.

By accepting a testamentary appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

30.1-27-09. (5-209) Powers and duties of guardian of minor.

The powers and duties of a guardian of a minor under this chapter are defined under section 27-20.1-15.

30.1-27-10. (5-210) Termination of appointment of guardian - General.

Repealed by S.L. 2019, ch. 274, § 9.

30.1-27-11. (5-211) Proceedings subsequent to approval or findings - Transfer to juvenile court.

1. Upon approval of the guardian's acceptance of the appointment of the guardian of a minor and issuance of the letters of guardianship, the court shall transfer the guardianship file to the juvenile court where the minor resides.
2. The juvenile court under section 27-20.1-02 has exclusive jurisdiction for any filings or proceedings subsequent to approval and issuance of the letters of guardianship.

30.1-27-12. (5-212) Resignation or removal proceedings.

Repealed by S.L. 2019, ch. 274, § 9.