

Effective 5/7/2025

75-5-304 Findings -- Limited guardianship preferred -- Order of appointment.

- (1) The court may appoint a guardian as requested if the court finds, by clear and convincing evidence, that:
 - (a) the person for whom a guardian is sought is incapacitated; and
 - (b) the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.
- (2)
 - (a)
 - (i) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists.
 - (ii) If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.
 - (b)
 - (i) An order of appointment of a limited guardianship shall state the limitations of the guardianship.
 - (ii) Letters of guardianship for a limited guardianship shall state the limitations of the guardianship unless the court determines for good cause shown that a limitation should not be listed in the letters.
- (3)
 - (a) Except as provided in Subsection (3)(b), a guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court.
 - (b) Upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding, the court may:
 - (i) dismiss the proceeding; or
 - (ii) enter any other appropriate order.
- (4) If the court grants a guardian with the power to make or assist with health care decisions for an incapacitated person, the court shall include in the order of appointment the name of any interested person for whom the guardian must notify of any significant health care or treatment received by the incapacitated person.

Amended by Chapter 338, 2025 General Session