

# You've been appointed guardian and the ward has a Durable Power of Attorney (POA)

## How do I terminate the POA?

**Durable POA**  
Governed by G.S. Chapter 32C

### What type of guardian are you?

**GG or GOE†**

**GOP**

Was the POA previously registered with a North Carolina register of deeds office?

Yes

No, it was not registered

Both GOEs and GGs have the authority to terminate the POA without a court order. A GOE or GG terminates a previously registered POA by

Both GOEs and GGs have the authority to terminate the POA without a court order. (G.S. 32C-1-110(a)(7))

1. executing and acknowledging an instrument of revocation,
2. serving the revocation on the agent pursuant to Rule 5 of the N.C. Rules of Civil Procedure,\* and
3. registering the revocation and proof of service with the same register of deeds where the POA is registered. (G.S. 32C-1-110(a)(7) and (h).)

No statutory procedure is prescribed. A GOE or GG may:

1. execute and acknowledge a written notice of termination,
2. serve the notice on the agent,\* and
3. file a copy of the written notice and proof of service in the court's guardianship "E" file to evidence the termination and the date of the termination.

You may file a petition with the court to remove the agent for breach of fiduciary duty. (G.S. 32C-1-117.) If the court removes the agent and another agent is not authorized to act under the POA, the POA, in effect, terminates.

*Note:* G.S. 32C-1-116(a) provides a non-exhaustive list of the types of POA proceedings that fall under the clerk of superior court's original jurisdiction. The proceeding is commenced in the same manner as an estate proceeding. (G.S. 32C-1-116(c).) There is no form petition available.

### Key Terms

**Power of Attorney (POA):** A writing or other record that grants authority to an agent to act in the place of the principal. (G.S. 32C-1-102(9).) G.S. Chapter 32C applies to POAs; it does not apply to a power to make health care decisions. (G.S. 32C-1-103(2).)

**Durable:** With respect to a POA, the incapacity of the principal does not terminate the POA. (G.S. 32C-1-102(2).)

**Guardian of the Estate (GOE):** A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward. (G.S. 35A-1202(9).)

**Guardian of the Person (GOP):** A guardian appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward. (G.S. 35A-1202(10).)

**General Guardian (GG):** A guardian of both the estate and the person. (G.S. 35A-1202(7).)

**Ward:** A person adjudicated incompetent or who has a court-appointed guardian. (G.S. 35A-1202(15).)

### I want information from the agent.

**Scenario:** A guardian is appointed by the clerk. The guardian is not the same as the agent under the durable POA governed by G.S. Chapter 32C. The guardian wants information from the agent related to the agent's actions on behalf of the principal pursuant to the POA, including in connection with concerns that the agent misused the principal's property.

**Law:** After the appointment of a **GOE** or **GG**, the agent is accountable to the GOE or GG. (G.S. 32C-1-108(b).) GOEs and GGs have the right to request, and the agent has a duty to disclose, receipts, disbursements, and transactions conducted on behalf of the principal, unless the POA provides otherwise. (G.S. 32C-1-114(h).) If the agent fails to respond to the GOE's or GG's request, the GOE or GG may file a petition initiating a POA proceeding to compel an accounting by the agent before the clerk of superior court. (G.S. 32C-1-116.) The proceeding is commenced in the same manner as an estate proceeding. (G.S. 32C-1-116(c).) There is no form petition available. The clerk's order to compel may include an order compelling the production of evidence substantiating any expenditure made by the agent from the principal's assets. (G.S. 32C-1-116(a)(1).)

A **GOP** does not have the right to request disclosure of receipts, disbursements, and transactions from the agent. However, the GOP does have standing to file a proceeding seeking a court order compelling an accounting by the agent under G.S. 32C-1-116(a) and (c). The proceeding is commenced in the same manner as an estate proceeding. (G.S. 32C-1-116(c).) There is no form petition available.

† GG and GOE includes an interim GOE and interim GG to the extent authorized by the clerk in the order appointing the interim guardian.

\*Termination of an agent's authority is not effective as to the agent or as to another person who, without actual knowledge of the termination, acts in good faith. (G.S. 32C-1-110(d).)

# You've been appointed guardian and the ward has a **Health Care Power of Attorney (Health Care POA)**

## How do I suspend the health care agent's authority?

