TITLE 13

GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS

Chapter 126. Guardianships and Conservatorships
127. Conserving Property of Missing Persons
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Chapter 126

1957 REPLACEMENT PART

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DEFINITIONS AND APPLICATION

126.005 Definitions. As used in this chapter:

(1) "Spendthrift" includes every person who, by excessive drinking, idleness, gaming or debauchery of any kind, shall spend or lessen his estate so as to expose or likely to expose himself or his family, to want or suffering, or to cause the county to be charged for the expense of the support of himself and his family.

(2) "Incompetent" includes every person who is, by reason of old age, disease, weakness of mind or from any other cause, unable unassisted to properly manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

(3) "Mentally diseased person" means every person of unsound mind, a lunatic, idiot or distracted person who has, after due examination by a board of medical examiners appointed by the court, been found mentally diseased, and on such findings, committed by the court to the custody or control of an officer or institution.

126.010 Effect of this chapter on pending proceedings. All rights and proceedings had and pending in any court under any provision repealed or amended by chapter 524, Oregon Laws 1947, shall be continued and concluded under the statutes so repealed or amended.

126.015 to 126.100 [Reserved for expansion]

APPOINTMENT OF GUARDIAN

126.105 Jurisdiction to appoint guardians; designation of kind of guardianship. The county courts and circuit courts having original and exclusive probate jurisdiction have power in their respective counties to appoint guardians to take care, custody and management of the estates, real and personal, of minors, spendthrifts, incompetents and mentally diseased persons who are incapable of conducting their own affairs, to maintain their families and educate their children; and also appoint guardians for such as shall reside without this state but have an estate within the same. Whenever a guardian is appointed, the court shall direct in the order of appointment whether such guardian shall be guardian of the person or guardian of the estate, or both.

126.110 Court may appoint guardian ad litem. Nothing in this chapter shall impair the power of the Supreme Court, the circuit court, the county court or courts of a justice of the peace to appoint a guardian to defend the interests of any minor impleaded in such courts, or interested in any suit or matter therein pending; nor their power to appoint or allow any person as next friend for a minor to commence, prosecute or defend any suit in his behalf.

126.115 Qualifications of guardians. Guardians shall have the same qualifications as executors and administrators.

126.120 Petition for guardianship; order for hearing; citation. When it appears to the satisfaction of the court from a duly verified petition praying for the appointment of a guardian that a person resident of the county in which the petition is filed is a minor, spendthrift or is incompetent and needs the care of a guardian, or that such person has property in the county needing the care and attention of a guardian, or that such person is a nonresident of the state and has property in the county needing the care and attention of a guardian, the court shall make an order setting a time for the hearing of such petition and directing the issuance of a citation requiring the spendthrift, or the person having the care, custody or control of such minor or incompetent person, or if the minor or incompetent person is in the care, custody or control of any officer or institution, such officer, to appear at such time and place and show cause why a guardian should not be appointed for the person and estate, or either thereof, of such minor, spendthrift or incompetent person.

126.125 Service of citation; proof of service. (1) Except upon petition for the appointment of a guardian for the estate of a nonresident of this state or a mentally diseased person, the citation provided for in ORS 126.120 shall personally be served upon the spendthrift, and upon the person having the care, custody and control of such minor or incompetent person, or the person with whom such minor or incompetent person resides; and if such minor is over the age of 14 years, and in case of an incompetent person, then such citation shall also be personally served upon such minor or incompetent person. If such minor or incompetent person is in the care, custody or control of any officer or institution, the citation shall be served

upon such officer, or upon any officer of such institution upon whom summons may legally be served.

(2) The citation may be served by any disinterested adult person, and shall be served at least 10 days prior to the time set for the hearing. Proof of service, unless made by the sheriff, shall be made by the affidavit of the person making the service.

126.130 Service of notice of hearing for appointment of guardian over property of nonresident. (1) If the petition is for the appointment of a guardian for the property of a minor, incompetent or mentally diseased person residing without the state, the fact of such nonresidency shall be stated in the petition, and unless the petitioner is a nonresident guardian, the notice of hearing shall be served on the person having the care, custody or control of such minor or incompetent person, or on the spendthrift personally, or, if the minor is over the age of 14 years, on the minor personally, or, if the minor or incompetent person is in the care, custody or control of any officer or institution, on such officer or institution. Such notice shall be served and returned as a summons.

(2) Service on any party who is not within the state may be made by publication in a newspaper published in the county and designated by the court once a week for not less than four weeks, or four publishings in all, or such further time as the court or judge thereof may prescribe. When service of the citation is made by publication there shall be published with it a brief description of any property described in the petition. The petitioner may, as an equivalent of service by publication, and in lieu thereof, cause such citation to be served personally on a party outside the state. Such personal service of citation outside the state may be made by any competent person over the age of 21 years, and not a party to the proceedings, and proof thereof made by his affidavit. The affidavit shall state the time and place of service, that he is a competent person, that he is over the age of 21 years, that he is not a party to the proceedings, and that the person, firm, corporation or institution so served is the identical person, firm, corporation or institution named as a party or as parties in said citation. The affidavit may be made before a notary public, or other official authorized to administer oaths, and acting as such by authority of the United States or any state or territory of the United States or the District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit; and the signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to take and certify such affidavit.

(3) The citation so served shall require the party served to appear before such court within 10 days from the date of service thereof upon him, if served within the county wherein the proceedings are pending, or within 20 days, if personally served within any other county of this state; or, if personally served in any other state of the United States or by publication, within four weeks from the date of such personal service thereof upon him or the first publication of such citation; or, if personally served without the United States or by publication in respect of a party outside the United States, within six weeks from the date of such personal service upon him or the first publication of such citation.

(4) If a party appears in such proceedings personally, or, if a minor, by general guardian, duly appointed, qualified and acting, service of citation upon him shall not be necessary, and in so far as he is concerned, the court may proceed at once to determine the matter.

126.135 Appointment of guardian; appointment without notice of hearing. If, upon the hearing, the court is satisfied that the allegations of the petition are sufficient and true, and that no other court in this state has acquired jurisdiction of the matter, it shall make an order appointing a guardian; provided, however, that if the petitioner is a parent asking for appointment of himself or herself as guardian of his or her own minor child under the age of 14 years, or if the petition is accompanied by the written consent, or the consent in open court, of a minor over the age of 14 years or a spendthrift, to the appointment of the guardian, or if the petitioner is the foreign guardian of a nonresident, a minor, spendthrift or incompetent person and his petition is accompanied by the duly authenticated record of the appointment of such foreign guardian, the court may at once, upon presentation of such petition, and without notice of hearing thereof, appoint such guardian; and also, if any person who has previously been judicially adjudicated a mentally diseased person

is in the care, custody or control of an officer or institution, the court may, upon presentation of a verified petition, without notice, appoint such guardian.

126.140 When minor may nominate guardian; nomination and appointment by court. Whenever the minor is above the age of 14 years, he may nominate his own guardian, subject to the approval of the court. If the minor is under the age of 14, or if the minor resides without this state and has an estate herein, or if, after having been served with citation, he neglects to nominate a guardian, or if the guardian nominated by him is not approved by the court, then the court may nominate and appoint the guardian.

126.145 Preferences in appointing guardian of a minor. The court, in naming the guardian of a minor, other than a minor over 14 years of age who has nominated his guardian, shall give preference to the father, mother, adult brother, sister or other nearest relative, in the order named, if the person is a resident of the state, and, in the judgment of the court, a suitable person to act as guardian; if the parents of such minor are divorced, preference shall be given in the appointment to the person awarded the custody of the minor.

126.150 Appointment of testamentary guardian; powers and duties. (1) Subject to the authority in the courts to award the custody of the person of a minor so as to promote the welfare of such minor, every father may, by his last will in writing, appoint a guardian for any of his children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time. If the father is dead, or has not appointed a guardian, and whenever by decree of divorce the mother has been awarded the custody of a child, the mother may, in like manner and with like effect, appoint a testamentary guardian for any of her children.

(2) A testamentary guardian has like powers and performs the same duties with regard to the person and estate of the ward as a guardian appointed by the court, but nothing in this section shall deprive a father or mother of the custody of the person of his or her children, such parents being mentally competent and morally fit to have such custody.

126.155 Allowance of attorney's fees for defense against petition. When a guardian is appointed for a spendthrift or for an incompetent or mentally diseased person, the court shall make an allowance to be paid by the guardian for all reasonable attorney's fees incurred by the ward, in defending himself against the petition. [Amended by 1953 c.578 §2]

126.160 Bond of guardian and its conditions. Every guardian shall give bond with surety or sureties to the State of Oregon, in such sum as the court may order, with conditions as follows:

(1) To make a true inventory of all the real estate and of all the goods, chattels, rights and credits of the ward that shall come to his possession or knowledge, and to return the same into the court at such time as the judge may order.

(2) To dispose of and manage all such estate and effects according to law, and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and in relation to the custody, education and maintenance of the ward.

(3) To render on oath an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment and at such other times as the county court shall direct.

(4) At the expiration of his trust, to settle his accounts with the court or with his ward, or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

126.165 Bond of testamentary guardian. Every testamentary guardian shall give bond as required in ORS 126.160; provided, that when the testator in the will appointing the guardian shall have ordered or requested that such bonds shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the court thinks proper to require it.

126.170 Bond of guardian of nonresident. Every guardian appointed for a nonresident shall give bond to the State of Oregon as required in ORS 126.160, excepting that the provisions respecting the inventory, the disposal of the estate and the account to be rendered by the guardian, shall be confined

to such estate and effects which come to his hands in this state, and the provisions respecting the custody of the ward shall not be applicable unless the ward comes to reside in this state.

126.175 New bond; discharge of existing sureties. The court may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case and upon the like terms as are prescribed with regard to executors or administrators.

126.180 Limitation on action against sureties of guardian. No action shall be maintained against the sureties in any undertaking given by a guardian unless it is commenced within three years from the date of discharge of such guardian.

126.185 First guardianship of nonresident exclusive. The guardianship which shall first be lawfully granted of any person residing without this state extends to all the estate of the ward within the same, and excludes the jurisdiction of the court of any other county.

126.190 Transfer of guardianship matter to another county. The court of any county having jurisdiction of any guardianship matter has power, whenever the interest of the ward and convenience of the guardian shall require, to transfer the same to any other county.

126.195 Petition for removal to another county; order for removal. The petition for removal of a guardianship to another county shall set forth the reasons for such change of venue; and if satisfied the same are sufficient, the court shall make the order of removal, and direct that certified copies of the record of the guardianship and the original undertaking filed by the guardian be transmitted to the clerk of the county to which such transfer is made, there to be filed.

126.200 Jurisdiction of court of county to which guardianship is transferred. Upon the receipt of such transcript and undertaking, and the filing of the same for record, the court of the county to which the matter is transferred shall have complete jurisdiction of the cause, the guardian, his wards and their estate; and thereafter all proceedings therein shall be as though they began in that court.

126.205 to 126.300 [Reserved for expansion]

POWERS AND DUTIES OF GUARDIANS

126.305 Powers of guardian of minor. Every guardian appointed for a minor shall have the custody and tuition of the minor, unless otherwise ordered by the court, and shall have the care and management of his estate, and shall continue in office until the minor attains the age of legal majority, unless sooner legally discharged.

126.310 Powers of guardian of incompetent or mentally diseased person. Every guardian appointed for an incompetent or for a mentally diseased person shall have the care and custody of the person of the ward unless otherwise ordered by the court, and the care and management of his estate until legally discharged.

126.315 Powers of guardian of spendthrift. Every guardian appointed for a spendthrift shall have the care and custody of the person of the ward, or the care and management of his estate, or both, as the court may direct, until he is legally discharged.

126.320 Duties of guardians of estates. It is the duty of the guardian of every estate:

(1) To make and file an inventory of all the property of the ward, both real and personal, that comes into his possession or knowledge, and to cause the same to be appraised as in case of the estate of a decedent, unless appraisement is dispensed with by order of the court.

(2) To manage and dispose of all such estate and effects according to law, and for the best interests of the ward; with the approval of the court, to invest the funds of the ward in accordance with the statutes of the State of Oregon then pertaining to investments by fiduciaries; and to discharge faithfully his trust in relation thereto, and in relation to the custody, education and maintenance of the ward.

(3) To pay out of the personal estate, if sufficient, and if not, out of his real estate, all just debts due from his ward, upon obtaining a license for the sale thereof; to settle all accounts of the ward, and to demand, sue for and receive all debts due to him, or with the approval of the court compound the same and give a discharge to the debtor upon receiving a fair and just dividend of his estate

and of his effects; to appear for and represent his ward in all legal proceedings unless another person is appointed for that purpose as guardian ad litem.

(4) To render on oath annually and at such other times as the court may direct an account of the property in his hands, and of the management and disposition of all such property, including the proceeds of all real property sold by him.

(5) At the expiration of his trust, to settle his accounts with the court or with his ward, or his legal representatives, and to pay and deliver over all the property and effects remaining in his hands, or due from him on such settlement, to the person or persons who are lawfully entitled thereto. [Amended by 1957 c.237 §1]

126.325 Management of estate; application of income; investment of funds; transfer of estates under $1,000 to parents of ward. (1) Every guardian shall manage the estate of his ward frugally and without waste and apply the income, profits and the proceeds from the sale of real or personal property, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there is a family.

(2) A guardian may, with the approval of the court, invest the funds of his ward in participations in common trust funds maintained pursuant to ORS 709.170 whether the investments comprising such common trust fund are controlled by ORS 128.020 to 128.050, or are otherwise restricted.

(3) Where the estate of the ward consists of personal property or money having a value of not more than $1,000, a guardian may, with the approval of the court, pay or transfer all said personal property or money to the parents or either of them to be expended for the current care, maintenance and education of the ward, or as the court shall direct, and close the estate. [Amended by 1953 c.102 §2; 1957 c.662 §2]

126.330 Concealment, embezzlement or disposition of property of ward; proceedings. Upon complaint made to the probate court by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided respecting persons suspected of concealing or embezzling the effects of a deceased person.

126.335 Transactions of spendthrift voidable after appointment of guardian. After the appointment of a guardian for a spendthrift, all contracts, except for necessaries, and all gifts, sales and transfers of real or personal estate made by such spendthrift thereafter and before the termination of the guardianship are voidable.

126.340 Conveyance pursuant to previous contract of ward other than minor. If any person under guardianship, other than a minor person, was at the time of appointment of a guardian of his estate a party to a bond for a deed or other enforcible contract requiring such ward to convey real estate, the interest and title of the ward may be conveyed by such guardian upon full compliance with the terms and conditions of such bond or contract by the other party thereto, and a deed so made shall transfer the same title as though made by such ward while competent.

126.345 Report to court; order authorizing conveyance. A conveyance pursuant to ORS 126.340 shall be made upon report to the court having jurisdiction of the estate, showing that all the terms and conditions of the bond or contract have been met so as to entitle the other party thereto to a conveyance. The judge of such court shall, if satisfied therewith, thereupon make an order authorizing and directing the execution and delivery of the requisite deed to the proper parties.

126.350 Ward receiving benefits from Veterans' Administration; duty of guardian; investment of funds; limitation on compensation. (1) Whenever a guardian has been appointed by any court of this state for the estate of any minor, mentally diseased or incompetent person, who is receiving or thereafter receives compensation, insurance, pension or other benefit from the United States Veterans' Administration, a representative of the Veterans' Administration may serve upon the guardian, and file with the clerk of the court appointing the guardian, a notice requesting that a copy of all accounts, petitions for the sale, lease or mortgage of the property of the estate, petitions for allowances of any nature from the funds of

the estate, and petitions for the investment of the funds of the estate, filed in the estate, be served upon a representative of the Veterans' Administration, to be designated in the notice. Thereafter it shall be the duty of such guardian to serve upon the representative of the Veterans' Administration a copy of all such accounts and petitions before the same are filed in the estate. The representative of the Veterans' Administration shall, unless hearing is waived in writing, be entitled to 10 days' notice of the time for the hearing, served upon or mailed to the representative, upon any such account or petition, and at the time so set be entitled to be heard.

(2) If any such guardian fails or refuses to file any account or report required by law the court shall, upon the petition of such representative of the Veterans' Administration, make an order requiring the guardian to file the report or account or to show cause for failure so to do.

(3) Such guardian, under the direction of the court and without notice to any party except to the representative of the Veterans' Administration, may invest the available funds of the ward in securities in which trust companies are permitted to invest trust funds, and shall make no other investments except under the direction of the court, upon petition, after 10 days' notice to all persons interested in the estate and hearing in open court.

(4) Compensation shall not be allowed to any such guardian of the estate only from any moneys received from the United States in the form of compensation, insurance, pension or other benefit in excess of five percent of the amount of such moneys received during the period covered by the account and the revenue or profit from any property previously acquired therewith in whole or in part or one-half of one percent of the reasonable value of the estate at the time of annual accounting, with an annual minimum of $37.50, except that additional reasonable compensation may be allowed by the court where extraordinary services have been performed by such guardian.

126.355 Removal of property of nonresident ward. When the guardian and ward are both nonresidents of this state, and the ward is entitled to property within this state which is capable of being removed, such property may be removed to the place of domicile of the ward upon the petition of the guardian to the court having jurisdiction of the estate. The petition must be accompanied by a duly authenticated copy of the record of a court of competent jurisdiction, showing the appointment and qualification of the guardian in the state or territory in which he and the ward are domiciled. The guardian shall serve upon the resident executor, administrator, guardian, agent or trustee having custody of the estate, a copy of such petition and notice of the time when the same will be heard. Upon the hearing of the petition, if the court is satisfied that it is for the best interests of all concerned that the petition should be granted, he shall make an order accordingly; thereafter such foreign guardian may sue for and receive the same in his own name, for the use and benefit of the ward.

126.360 Claims against ward's estate. All claims against the estate of a ward must be verified and filed with the guardian and proved in the same manner provided for the filing and proving of claims against the estate of a deceased person.

126.365 Allowance of expenses and compensation. Every guardian shall, from time to time, be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and also compensation for his services, and for the services of his attorney, as the court shall consider just and reasonable.

126.370 Account of joint guardians. When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any one of them.

126.375 to 126.400 [Reserved for expansion]

SALE, LEASE OR MORTGAGE OF WARD'S PROPERTY

126.405 Petition and order for sale, lease or mortgage of ward's property. Whenever it appears to the satisfaction of the court, from the petition of any guardian, that it is necessary or proper to sell, lease or mortgage any of the real or personal property of any ward for the purpose of paying or refunding any indebtedness of the ward, or for the care, support or education of the ward or the support of his family, or to redeem any property of the ward covered by mortgage or other lien, or that it would be for the benefit of the ward to sell any of

his real or personal property, the court may make an order directing the sale, either at public or private sale, or for the leasing or mortgaging of such real or personal property, as to the court seems proper. [Amended by 1957 c.237 §2]

126.410 Leases under five years. The court may order leases, not exceeding a term of five years, to be made upon such terms, conditions and notice as it sees fit.

126.415 Contents of petition for sale or mortgage or lease for a term exceeding five years. The petition of the guardian, whether for the sale or mortgage of property, or the leasing of the same for a term exceeding five years, shall substantially set forth:

(1) The value and character of all personal property belonging to the ward that has come to the knowledge or possession of the guardian and not theretofore disposed of.

(2) The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate or the execution of any trust.

(3) If there is no personal property belonging to the ward in possession or expectancy, or if none has come into the hands of the guardian, or if no rents have been received, such facts shall be stated in the petition.

(4) The income then being received from the real property of the ward and the application thereof.

(5) Each item of indebtedness and the amount and character of any lien, if the sale is to be made for the liquidation thereof.

(6) The age of the ward and where and with whom residing.

(7) All other facts in relation to the estate and condition of the ward necessary to enable the court to be fully advised. [Amended by 1957 c.237 §3]

126.420 Issuance of citation; order to show cause. When it appears to the satisfaction of the court from the petition that the necessity for the sale of any real property or any interest therein is probable, or that the sale thereof probably would be beneficial to the ward or his estate, the court shall make an order fixing a time for a hearing on such petition and direct that a citation issue to the person having the care, custody or control of such minor or incompetent person, or to the spendthrift himself, or if the minor is over the age of 14 years, to the minor himself, or if the minor or incompetent person is in the care, custody or control of any officer or institution, to such officer or institution, to appear at the time set for the hearing and show cause why an order for the sale should not be made.

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126.425 Service of citation; appearance. (1) The citation shall be served and returned as a summons. Service on any party who is not within the state may be made by publication in a newspaper published in the county and designated by the court once a week for not less than four weeks, or for four publishings in all, or such further time as the court or judge thereof may prescribe. When service of the citation is made by publication there shall be published with it a brief description of any property described in the petition.

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(2) The guardian may, as an equivalent of service by publication, and in lieu thereof, cause such citation personally to be served on a party outside the state. Such personal service of citation outside the state may be made by any competent person over the age of 21 years and not a party to the proceedings, and proof thereof made by his affidavit. The affidavit shall state the time and place of service, that he is a competent person, that he is over the age of 21 years, that he is not a party to the proceedings, and that the person, firm, corporation or institution so served is the identical person, firm, corporation or institution named as a party or as parties in said citation. Such affidavit may be made before a notary public, or other official authorized to administer oaths, and acting as such by authority of the United States or any state or territory of the United States or the District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit; and the signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to take and certify such affidavit.

(3) The citation so served shall require the party served to appear before such court within 10 days from the date of service thereof upon him, if served within the county wherein the proceedings are pending, or within 20 days, if personally served within any other county of this state; or, if personally served in any other state of the United States or by publication, within four weeks from the date of such personal service thereof upon him or the first publication of such citation; or if served without the United

States or by publication in respect of a party outside the United States, within six weeks from the date of such personal service upon him or the first publication of such citation.

(4) If a party appears in such proceedings personally, or, if a minor, by general guardian, duly appointed, qualified and acting, service of citation upon him shall not be necessary, and in so far as he is concerned, the court may proceed at once to determine the matter.

126.430 Grant of license to sell real property; additional bond. (1) If, upon the hearing, the court finds that it is for the benefit of the ward that any real property be sold, it shall grant a license therefor and prescribe the terms thereof.

(2) If it appears to the court that the penal sum of the bond previously given by the guardian is not equal to that required by law plus the amount probably to be realized on the sale of the real property ordered sold, if the undertaking is executed by a surety company qualified to transact business in this state, or plus double such amount if executed by others than such surety company, the court shall require the guardian to give an additional bond with one or more sufficient sureties in such sum as it may fix, to be void if the guardian shall account for and dispose of the proceeds of the sale according to law. Before proceeding to sell any real property under any order of sale the guardian shall file with the clerk of the court any additional bond so required of him, which additional bond shall have been approved by the judge of the court having jurisdiction. No such additional bond shall be required if a testamentary guardian has been appointed and by the terms of the will it is directed that he be permitted to serve without bond.

126.435 Procedure governing sale; when sale may be ordered without notice. When an order for sale of the real property by the guardian has been made, all the provisions of the law with reference to sales by executors and administrators prescribing the procedure to be followed subsequent to the entry of the order for sale shall be applicable to the sale by the guardian; provided, however, the court may order the sale of real property, or any undivided interest in real property, of the ward without notice when it appears from the inventory that such real property, or any undivided interest therein, is $500 or less.

126.440 Duration of order of sale; extension. No order authorizing a guardian to sell the real property of a ward shall be in force for more than one year after the date of such order, but such license to sell may, upon petition to the court, be extended for such time as to the court may seem proper.

126.445 Additional undertaking by guardian. If it appears to the court that the amount of the undertaking previously given by the guardian is not a sufficient protection to the estate and those interested therein, in view of such sale of the real property, the court shall require the guardian, before the day of the sale, to give such additional undertaking as the court deems necessary, which shall be approved and filed the same as the undertaking theretofore given.

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126.450 Sale or mortgage of property without notice; returns; confirmation. The court may, when satisfied that it is to the best interests of the ward, direct the sale of any personal property of the ward, or the mortgaging of any real or personal property of the ward without notice. Every guardian must, within 10 days after such sale, when the proceeds thereof exceed the sum of $200, file a return of such sale; but such sale need not be confirmed.

126.455 Sale or mortgage of property under foreign guardianship; procedure. When any minor, incompetent, mentally diseased person or spendthrift, domiciled out of this state, is under guardianship in the place of his domicile, and has no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the court having probate jurisdiction in any county in this state in which there may be real or personal property of the ward. Thereafter that court may authorize the sale or mortgage by such foreign guardian of any real or personal property, or any part thereof belonging to the ward in this state in the same manner and upon the same terms and conditions as are prescribed in the case of sales by a guardian appointed in this state.

126.460 Distribution of proceeds of sale of realty upon settlement of estate; exoneration of guardian and sureties. In every case of the sale of real estate as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of guardianship, shall be considered as real estate of the ward and shall be disposed of

among the same persons and in the same manner as the real estate would have been if it had not been sold. However, after such sale, if the court by order so directs, the proceeds of sale, or so much thereof as has not been lawfully expended, may be transmitted to the guardian of the ward in the jurisdiction wherein the latter is domiciled to be disposed of according to the laws of that state; and upon the filing of the official receipt of the domiciliary guardian, acknowledging that he has received the net proceeds, the guardian in Oregon shall be deemed to have fully accounted for the proceeds, and both he and the surety or sureties upon his bonds, given generally or specially, shall be exonerated from further liability to account for the proceeds.

126.465 Limitation on recovery of property sold by guardian. No suit or action for the recovery of any property sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless it is commenced within one year after the removal of any legal disability, or, in the case of a spendthrift, within one year next after the termination of the guardianship.

126.470 Irregularities not to avoid sale or mortgage. In case of a suit or action relating to any property sold or mortgaged by a guardian in which the validity of such sale or mortgage is contested, the sale or mortgage shall not be avoided on account of any irregularities in the proceedings, provided it appears that:

(1) The sale or mortgage was authorized by a court of competent jurisdiction.

(2) The guardian gave an undertaking as required and approved by the judge.

(3) He gave notice of the time and place of sale as prescribed by law.

(4) The premises were sold according to such notice to a purchaser in good faith, and the sale of real property confirmed by the court.

126.475 When sale good against person claiming under adverse title. If the validity of any sale made by a guardian under the provisions of this chapter is drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings; provided, that the guardian was authorized to make the sale by the proper court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

126.480 Liability of guardian for misconduct. If, in relation to any sale conducted under the authority of this chapter, there is any neglect or misconduct in the proceedings of the guardian by which any person interested in the estate suffers damage, such aggrieved party may recover such damage in a suit on the bond of the guardian or otherwise as the case may require.

126.485 to 126.500 [Reserved for expansion]

DISCHARGE OF GUARDIAN; REOPENING ADMINISTRATION

126.505 Removal of guardian; grounds. Whenever it appears to the court that any guardian has neglected his duty, or otherwise is disqualified, the court, either on its own motion, after notice, or upon application made by any creditor, ward or other person interested in the estate, may, in the manner and upon the grounds provided for the removal of an executor or administrator, remove such guardian.

126.510 Discharge of guardian; discontinuing administration. (1) The marriage of any female who is under guardianship as a minor operates as a discharge of her guardian.

(2) A guardian appointed for a minor, a spendthrift, an incompetent or a mentally diseased person, may be discharged by the court when it appears upon the application of the ward, or otherwise, that such guardianship is no longer necessary.

126.515 When closed guardianship may be reopened. Whenever it appears to the court that assets of a ward were not included in the original inventory, or for other sufficient cause, the court may order any closed guardianship reopened for further administration, or for any other purpose that, in the discretion of the court, may seem necessary.

126.520 to 126.600 [Reserved for expansion]

CONSERVATORSHIPS

126.605 Appointment of conservator. Whenever any person deems himself unfitted by reason of advanced age or physical disability and weakness to properly and prudently

manage or care for his real or personal property, or manage his business with prudence and understanding, the probate court may, upon his verified petition, without notice or public hearing, appoint a conservator to assume charge and management of his real and personal property and business subject to the direction of the court. Upon the appointment of a conservator and until the conservator is removed, a ward shall be without power to manage his estate. [Amended by 1953 c.687 §5]

126.610 Qualifications; bond; application of guardianship law. A conservator shall have the same qualifications as executors and administrators, and give bond as required of guardians and be subject to all provisions of law relating to guardians so far as they apply to the estate of their wards except as otherwise provided in ORS 126.617. [Amended by 1953 c.687 §5]

126.615 Inventory and appraisal. A conservator shall, within 30 days after his appointment, or, if necessary, such further time as the court may allow, make and file with the court an inventory, verified by his oath, of the estate of the ward which shall come into his possession or knowledge and cause the same to be appraised as in case of the estate of a decedent, unless appraisement be dispensed with by order of the court.

126.617 Sale, mortgage or lease of ward's real property. (1) Upon the filing of a petition showing that it is in the interest of the estate of the ward that his real property be sold, mortgaged or leased, and if it appears to the satisfaction of the court that the ward is competent and consents thereto, the court may authorize the conservator to sell, mortgage or lease, for terms exceeding five years, real property of the ward without citation, notice of sale or confirmation; but the conservator must, when the proceeds thereof exceed the sum of $200, file a return reporting the same within 10 days after such transaction.

(2) If the petition of the conservator is silent concerning the competency of the ward or if the court does not find that the ward is competent, the procedure shall conform to that provided by law for like transactions by guardians.

(3) A conservator may lease property for terms not exceeding five years without order of court. [1953 c.687 §5]

126.620 Management of ward's property; application of income and proceeds of sale. A conservator shall manage the real and personal property and business of his ward prudently, frugally and without waste. He may apply the income, profits and the proceeds from the sale of real or personal property, so far as may be necessary, to the comfortable and suitable maintenance and support of the ward, his family or dependents, and to the payment of all just debts which are due from his ward. [Amended by 1953 c.687 §5]

126.625 Investment of ward's funds. A conservator may, with the approval of the court, invest the funds of his ward in participations in common trust funds maintained pursuant to ORS 709.170 whether the investments comprising such common trust fund are controlled by ORS 128.020 to 128.050, or are otherwise restricted.

126.630 Settling accounts; receiving debts due wards; representation of ward. A conservator shall settle all accounts of his ward and demand, sue for and receive all debts due him or, with the approval of the probate court, may compromise the same and give a discharge to the debtor. He shall appear for and represent his ward in all actions, suits and proceedings.

126.635 Annual accounts. Unless otherwise directed by the court, every conservator shall file with the court annually within 30 days after the anniversary date of his appointment, and also within 30 days after termination of his appointment, a written verified account of his administration.

126.640 Transfer of ward's personal property when ward becomes a nonresident. A conservator whose ward removes from this state may transfer and pay over the whole or any part of the ward's personal property to the ward or a guardian, conservator, trustee, committee or other person appointed by competent authority in the state or county where the ward resides, upon such terms and in such manner as the probate court by which he was appointed may decree upon petition filed therefor.

126.645 Conservator's compensation and expenses. Every conservator shall be allowed the amount of all his reasonable expenses including attorneys' fees, incurred in the execution of his trust, and shall also have such compensation for his services as the court considers just and reasonable.

126.650 Removal or resignation of conservator. (1) If a conservator becomes a nonresident of this state or mentally ill or otherwise disqualified or incapable of performing his trust or is unsuitable therefor, the probate court, after notice to him and to all other persons interested, may remove him.

(2) Upon the request of a conservator, the probate court may allow him to resign his trust.

(3) A conservator may be removed by the probate court upon the application of the ward, or upon the appointment of a guardian for the ward, or whenever it appears to the court that the conservator has neglected his duty or is otherwise disqualified, or upon death of the ward or when it appears that the conservatorship is no longer deemed necessary. The court may also, on its own motion, after notice to the conservator and to all other persons interested, and for cause remove a conservator. [Amended by 1953 c.687 §5]

126.655 Ratification of matters undertaken prior to termination of appointment; appointment of successor. (1) All matters undertaken by the conservator on behalf of the ward prior to the termination of his appointment may be ratified and approved by the court.

(2) Upon removal, resignation or death of a conservator, the probate court may on its own motion or on petition of the ward appoint a successor conservator.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel