

TITLE 13

GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS

- Chapter 126. Guardianships and Conservatorships; Gifts to Minors
127. Conserving Property of Missing Persons
128. Trusts
129. Uniform Principal and Income Act

Chapter 126

1969 REPLACEMENT PART

Guardianships and Conservatorships; Gifts to Minors

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Note: The amendments, repeals and new material in ORS 126.006 to 126.675 effected by 1969 c.591 take effect July 1, 1970.

GUARDIANSHIPS (General Provisions)

126.005 [Repealed by 1961 c.344 §109]

126.006 Definitions for ORS 126.006 to 126.565. As used in ORS 126.006 to 126.565, unless the context requires otherwise:

(1) "Court" means any court having probate jurisdiction or a judge thereof.

(2) "Guardian" means any person appointed under ORS 126.006 to 126.565 as guardian of the person, guardian of the estate, or both, for any other person.

(3) "Incompetent" includes any person who, by reason of mental illness, mental deficiency, advanced age, disease, weakness of mind or any other cause, is unable unassisted to properly manage and take care of himself or his property.

(4) "Institution" includes any public or private institution located within or outside this state.

(5) "Minor" means any person who has not arrived at the age of majority as provided in ORS 109.510 or 109.520.

(6) "Missing person" means any person whose whereabouts is unknown and whose absence is unexplained or who is known to be unable to return to his usual place of abode and is unable to manage his affairs during his absence.

(7) "Spendthrift" includes any person who, by excessive drinking, idleness, gaming or debauchery of any kind, spends, wastes or lessens his estate so as to expose or likely to expose himself or his family to want or suffering, or to cause any public authority or agency to be charged for any expense of the support of himself or his family.

(8) "Ward" means any person for whom a guardian has been appointed.

[1961 c.344 §1; 1969 c.591 §224]

126.010 [Repealed by 1961 c.344 §109]

126.011 [1961 c.344 §2; repealed by 1969 c.591 §305]

126.015 General and special guardians. A guardian appointed under ORS 126.006 to 126.565 is a general guardian. A guardian appointed under any other provision of law is a special guardian.

[1961 c.344 §3]

126.020 Application to guardians ad litem. ORS 126.006 to 126.565 do not apply to guardians ad litem.

[1961 c.344 §4]

(Appointment and Qualification of Guardians)

126.105 [Repealed by 1961 c.344 §109]

126.106 Jurisdiction to appoint guardians. Any court having probate jurisdiction may appoint:

(1) Guardians of the person, guardians of the estate, or both, for resident incompetents or resident minors.

(2) Guardians of the person or guardians of the person and estate for incompetents or minors who, although not residents of this state, are physically present in this state and whose welfare requires such appointment.

(3) Guardians of the estate for resident spendthrifts.

(4) Guardians of the estate for nonresident incompetents, nonresident minors or nonresident spendthrifts who have property within this state.

(5) Guardians of the estate for missing persons who are residents of this state or have property within this state.

[1961 c.344 §5; 1969 c.591 §225]

126.110 [Repealed by 1961 c.344 §109]

126.111 Venue for appointment of guardians. The venue for the appointment of a guardian is:

(1) In the county where the proposed ward resides;

(2) In any county in which any property of the proposed ward is located; or

(3) In any county in which the proposed ward is physically present.

[1961 c.344 §6; 1969 c.591 §226]

126.115 [Repealed by 1961 c.344 §109]

126.116 Proceedings commenced in more than one county. If proceedings for the appointment of a guardian for the same proposed ward are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. If the proper venue is finally determined to be in another county, the court shall cause a transcript of the proceedings and all original papers filed therein, all certified by the clerk of the court, to be sent

to the clerk of the court of the proper county. A proceeding is considered commenced by the filing of a petition. The proceeding first legally commenced for the appointment of a guardian of the estate or a guardian of the person and estate extends to all the property of the proposed ward and ward in this state. [1961 c.344 §7]

126.120 [Repealed by 1961 c.344 §109]

126.121 Transfer of guardianship matters. A court having before it any guardianship matter may transfer the matter to another county in the interest of the ward or, if not contrary to the interest of the ward, for the convenience of the guardian. A petition for the transfer, setting forth the reasons therefor, may be filed in the guardianship proceeding. If the court is satisfied that the transfer is in the interest of the ward or, if not contrary to the interest of the ward, for the convenience of the guardian, the court shall make an order of transfer and cause a transcript of the proceedings in the matter, copies of all original papers filed therein and the original bond filed by the guardian, all certified by the clerk of the court, to be sent to the clerk of the court of the other county. Upon receipt of the transcript, copies and bond, and the filing of them for record, the court of the other county has complete jurisdiction of the matter, and thereafter all proceedings therein shall be as though they were commenced in that court. [1961 c.344 §8]

126.125 [Repealed by 1961 c.344 §109]

126.126 Petition for appointment of guardian. Any person may file with the clerk of the court a petition for the appointment of a guardian. The petition shall include the following information, so far as known by the petitioner:

(1) The name, age, residence and post-office address of the proposed ward.

(2) Whether the proposed ward is an incompetent, minor, missing person or spendthrift, and whether he is a resident or non-resident of this state.

(3) Whether the appointment of a guardian of the person, guardian of the estate, or both, is sought.

(4) The name, residence and postoffice address of the proposed guardian, and that the proposed guardian is qualified to serve as guardian.

(5) A general description and the probable value of the property of the proposed ward and any income to which he is entitled. If any moneys are paid or payable to the proposed ward by the United States through the Veterans Administration, the petition shall so state.

(6) The name and address of any person or institution having the care, custody or control of a proposed ward who is an incompetent or minor.

(7) The reasons why the appointment of a guardian is sought, the relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment.

[1961 c.344 §9; 1969 c.591 §227]

126.130 [Repealed by 1961 c.344 §109]

126.131 Issuance of citation. (1) Except as otherwise provided in ORS 126.136, 126.141 and 126.146, the court, upon the filing of a petition under ORS 126.126, shall order the issuance of a citation requiring the persons or institutions referred to in subsection (2) of this section to appear and show cause why a guardian should not be appointed for the proposed ward.

(2) Citation issued under subsection (1) of this section shall be served:

(a) If the proposed ward is an incompetent, on any person or an officer of any institution having the care, custody or control of the incompetent, and on the incompetent.

(b) If the proposed ward is a minor, on any person or an officer of any institution having the care, custody or control of the minor, and if the minor is 14 years of age or older, on the minor.

(c) If the proposed ward is a missing person, on the missing person and on such other persons as the court may direct.

(d) If the proposed ward is a spendthrift, on the spendthrift.

(e) If the proposed ward is receiving moneys paid or payable by the United States through the Veterans Administration, on a representative of the Veterans Administration.

[1961 c.344 §10; 1969 c.591 §228]

126.135 [Repealed by 1961 c.344 §109]

126.136 Appointment without issuance of citation. The court may, without citation, appoint a guardian for the proposed ward if:

(1) The petitioner is a parent seeking appointment of a guardian for his or her minor

child under 14 years of age who is in the custody of the petitioner.

(2) The proposed ward is a minor 14 years of age or older or is a spendthrift, and the petition is accompanied by the written consent of the minor or spendthrift or the minor or spendthrift consents in open court.

(3) The petitioner is a foreign guardian of a nonresident proposed ward, and the petition is accompanied by an authenticated copy of the record of the appointment and by evidence of existing authority of the foreign guardian.

[1961 c.344 §11]

126.140 [Repealed by 1961 c.344 §109]

126.141 Temporary guardians. If the court determines that the welfare of the proposed ward requires the immediate appointment of a guardian, the court may, with such citation as the court may order or without citation, appoint a temporary guardian to serve until succeeded by another guardian, but in no event for a period of more than 90 days. The temporary guardian shall be subject to such terms and conditions as the court may prescribe in the order of appointment, and except as otherwise provided in the order and in this section, shall be subject to the provisions of ORS 126.006 to 126.565.

[1961 c.344 §12]

126.145 [Repealed by 1961 c.344 §109]

126.146 Service of citation; appearance.

(1) The citation issued under ORS 126.131 shall require the person or institution served to appear and show cause why a guardian should not be appointed for the proposed ward:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If the proposed ward is a missing person, citation shall be served on the missing person by publication

as summons is served by publication in a civil action, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a written waiver of service of citation or makes a general appearance.

[1961 c.344 §13; 1969 c.591 §229]

126.150 [Repealed by 1961 c.344 §109]

126.151 Order of appointment. If it appears to the court that the allegations of the petition are sufficient and that a guardian should be appointed for the proposed ward, the court shall make an order appointing a guardian. The order shall specify whether the guardian appointed is guardian of the person, guardian of the estate, or both; whether the ward is an incompetent, minor, missing person or spendthrift; and whether the ward is a resident or nonresident of this state. The court by order shall specify the amount of the bond to be executed and filed by the guardian.

[1961 c.344 §14; 1969 c.591 §230]

126.155 [Amended by 1953 c.578 §2; repealed by 1961 c.344 §109]

126.156 Guardian for two or more wards. Where the appointment of a guardian for two or more proposed wards who are children of a common parent, are parent and child or are husband and wife is sought, it is not necessary that separate petitions, bonds and other papers be filed with respect to each proposed ward or ward, and the guardianship of all may be considered as one guardianship, except:

(1) As otherwise provided in ORS 126.250 and 126.336.

(2) As the court may otherwise order.

(3) That the guardianship may be terminated with respect to less than all the wards in the same manner as provided by law with respect to a guardianship of a single ward.

[1961 c.344 §15]

126.160 [Repealed by 1961 c.344 §109]

126.161 Qualifications of guardians. Any qualified person whom the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who is:

(1) An incompetent.

(2) A minor.

(3) A person who has been convicted of a felony.

(4) A person suspended for misconduct or disbarred from the practice of law, during the period of the suspension or disbarment.

(5) A nonresident of this state who has not appointed a resident agent to accept service of summons and process in all actions, suits and proceedings with respect to the guardianship and caused the appointment to be filed in the guardianship proceeding.

[1961 c.344 §18]

126.165 [Repealed by 1961 c.344 §109]

126.166 Preferences in appointing guardians. The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian of the person for the minor. Subject to this preference, the court shall appoint as guardian for an incompetent, minor, missing person or spendthrift the qualified person most suitable who is willing to serve, having due regard, among other factors, to:

(1) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(2) Any request for the appointment as guardian for a minor child contained in a will or other written instrument executed by a parent of the minor child.

(3) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(4) The relationship by blood or marriage of the proposed guardian to the proposed ward.

[1961 c.344 §17; 1969 c.591 §231]

126.170 [Repealed by 1961 c.344 §109]

126.171 Bond of guardian. Except as otherwise provided by law, every guardian shall, before entering upon his duties as guardian, execute and file in the guardianship proceeding a bond, with sufficient surety or sureties, in such amount as the court determines necessary for the protection of the ward and the estate of the ward, and conditioned upon the faithful discharge by the guardian of his authority and duties according to law. The bond shall be approved by the court. The bond shall run to all interested persons and shall be for the security and benefit of such persons. Sureties shall be jointly and severally liable with the guardian and with each other.

[1961 c.344 §18]

126.174 Term of bond; new bond; increasing or reducing bond. (1) The bond of a guardian continues in effect until his final account is approved and an order of discharge is entered, but a surety may terminate his obligation upon notice in writing to the guardian and the court specifying a date, not less than 30 days after the date of the notice, on which the termination becomes effective. Before the date so specified the guardian shall execute and file in the guardianship proceeding a new bond, with sufficient surety or sureties, in the same amount and upon the same conditions. If the guardian fails to do so, his authority as guardian shall cease on the effective date of termination of the obligation of the surety on his bond, the letters of guardianship shall thereupon be canceled and he shall make and file his final account.

(2) The court may at any time increase or reduce the amount of the bond required of a guardian for the protection of the ward and the estate of the ward, either upon its own motion or upon the motion of the guardian or any interested person.

[1969 c.591 §233]

126.175 [Repealed by 1961 c.344 §109]

126.176 [1961 c.344 §9; repealed by 1969 c.591 §305]

126.180 [Repealed by 1961 c.344 §109]

126.181 Filing name and address of guardian. Every guardian shall, before entering upon his duties as guardian, file in the guardianship proceeding his name, residence and post-office address. The guardian promptly shall file in the guardianship proceeding every change in his name, residence or post-office address.

[1961 c.344 §20]

126.185 [Repealed by 1961 c.344 §109]

126.186 Letters of guardianship. When a guardian has filed a bond as provided in ORS 126.171, and his name, residence and post-office address as provided in ORS 126.181, the court shall cause to be issued letters of guardianship to the guardian. Letters of guardianship may be in the following form:

State of Oregon,)
)
) ss.
)
 County of.....)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That on _____, 19____, (month) (day)
 the _____ Court,
 County, State of Oregon, appointed _____
 guardian of the _____
 (name of guardian) (person or estate or person and estate)
 for _____, a(n) _____
 (name of ward) (incompetent, minor, missing person or spendthrift)

that the named guardian has qualified and has the authority and shall perform the duties of guardian of the _____
 (person or estate or person and estate)
 for the named ward as provided by law.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the court at my office on _____, 19____.
 (month) (day)

(Seal) _____, Clerk of the Court
 By _____, Deputy

[1961 c.344 §21; 1969 c.591 §234]

126.190 [Repealed by 1961 c.344 §109]

126.195 [Repealed by 1961 c.344 §109]

126.200 [Repealed by 1961 c.344 §109]

(Authority and Duties of Guardians)

126.205 General functions of guardian of person and estate. A guardian of the person and estate has the authority and shall perform the duties as provided by law for a guardian of the person and a guardian of the estate.

[1961 c.344 §22]

126.210 General functions of guardian of person. (1) Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the ward, and has the authority, and, subject to subsection (2) of this section, shall perform the duties, necessary for the proper care, maintenance, education and support of the ward, including but not limited to the following:

(a) To supply the ward with food, clothing, shelter and incidental necessities.

(b) To authorize medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the ward.

(c) To see that the ward is properly trained and educated and that he has the opportunity to learn a trade, occupation or profession.

(2) In the performance of duties by a guardian of the person under subsection (1) of this section, due regard shall be given to the extent of the estate of the ward. A guardian of the person is not required to incur expenses on behalf of the ward except to the extent that the estate of the ward is sufficient to reimburse the guardian.

[1961 c.344 §23]

126.215 Liability of guardian of person on contracts for ward. If he contracts as guardian for a named ward, a guardian of the person shall not be personally liable on any written or oral contract entered into for or on behalf of the ward which is within his authority as such guardian.

[1961 c.344 §24]

126.220 Reports by guardian of person.

(1) A guardian of the person shall make and file in the guardianship proceeding a written report on the condition of the ward and on the exercise of authority and performance of duties by the guardian:

(a) Annually within 30 days after the anniversary date of his appointment.

(b) At such other times as the court may order.

(2) The guardian of the person shall give a copy of each report to the guardian of the estate, if any, for the ward.

[1961 c.344 §25]

126.225 General functions of guardian of estate. A guardian of the estate shall:

(1) Protect, preserve, manage and dispose of the estate of the ward according to law and for the best interests of the ward.

(2) Apply the estate of the ward for the proper care, maintenance, education and support of the ward and of any person to whom the ward owes a legal duty of support.

(3) Have such other authority and perform such other duties as are provided by law.

[1961 c.344 §26]

126.230 Inventory and appraisal of ward's property.

(1) Within 60 days after the date of his appointment, or, if necessary, such further time as the court may allow, a guardian of the estate shall make and file in the guardianship proceeding a verified inventory of all the property of the ward which comes to his possession or knowledge.

(2) Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of

the estate, he shall either make and file in the guardianship proceeding a verified supplementary inventory within 30 days after the property comes to his possession or knowledge, or include the property in his next accounting, but the court may order which of the two methods the guardian shall follow.

(3) The court may order all or any part of the property of the ward appraised as provided in ORS 113.185.

[1961 c.344 §27; 1969 c.591 §235]

126.235 Recording order of appointment. Within 60 days after the date of his appointment, a guardian of the estate shall cause to be recorded in the record of deeds of each county, other than the county in which the guardian is appointed, in which real property of the ward is situated a copy of the order of appointment certified by the clerk of the court.

[1961 c.344 §28]

126.240 Possession of and title to ward's property. A guardian of the estate shall take possession of all the property of substantial value of the ward, and of rents, income, issues and profits therefrom, whether accruing before or after the appointment of the guardian, and of the proceeds from the sale, mortgage, lease or other disposition thereof. However, the guardian may permit the ward to have possession and control of such personal property and funds for living expenses as are appropriate to the needs and capacities of the ward. The title to all property of the ward is in the ward and not in the guardian.

[1961 c.344 §29]

126.245 Discovery of debts or property. Upon the filing of a petition in the guardianship proceeding by the guardian, the ward or any other interested person, alleging that any person is indebted to the ward, or has, or is suspected of having, concealed, embezzled, converted or disposed of any property of the ward, or has possession or knowledge of any such property or of any writing relating to such property, the court may require such person to appear and answer under oath concerning the matter, and proceed as provided in ORS 114.425.

[1961 c.344 §30; 1969 c.591 §236]

126.250 Investment by guardian. (1) A guardian of the estate may invest the property of the ward as provided in this section,

ORS 128.020 and any other law applicable to investments by guardians. No investment shall be made without prior approval of the court by order in any property other than:

(a) Interest-bearing obligations of or fully guaranteed by the United States;

(b) Interest-bearing general obligations of this state;

(c) Interest-bearing general obligations of any county, city, port district or school district of this state, the issuer of which has not defaulted in the payment of either principal or interest of any general obligation bond within five years next preceding the date of the investment; or

(d) Common trust funds maintained by the guardian as provided in ORS 709.170 and composed only of any property referred to in paragraphs (a) to (c) of this subsection or cash or both.

(2) Subject to subsection (1) of this section, a guardian of the estate for two or more wards may invest the property of two or more of the wards in property in which each ward whose property is so invested shall have an undivided interest. The guardian shall keep a separate record showing the interest of each ward in the investment and the income, profits or proceeds therefrom.

[1961 c.344 §31; 1963 c. 438 §1; 1965 c.402 §1]

126.255 Continuing business of ward. A guardian of the estate, with prior approval of the court by order, may continue any business of the ward. The order may provide for any one or more of the following:

(1) The conduct of the business solely by the guardian, jointly by the guardian with one or more of the ward's partners or joint venturers or as a corporation of which the ward is or becomes a shareholder.

(2) The extent to which the guardian may incur liability of the estate of the ward for obligations arising from the continuation of the business.

(3) Whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate of the ward allocated for use in the business or to the estate as a whole.

(4) The period of time during which the business may be conducted.

(5) Such other conditions, restrictions, regulations and requirements as the court considers proper.

[1961 c.344 §32]

126.260 Acquiring or protecting home of ward or family. A guardian of the estate, with prior approval of the court by order, may use property of an adult ward:

(1) For the acquisition of real property, in which the guardian has no interest, as a home for the ward.

(2) For the protection of the home of the ward or the interest of the ward therein.

(3) For the acquisition or protection of a home for the dependent family of the ward.
[1961 c.344 §33]

126.265 Borrowing money for ward. A guardian of the estate, with prior approval of the court by order, may borrow money for the account of the ward and may mortgage or pledge any property of the ward as security therefor. If the court determines that the borrowing is necessary or proper, the court shall make an order approving the borrowing. The order approving the borrowing may authorize one or more separate loans thereunder. The order shall prescribe the maximum amount of, the maximum rate of interest on and the date of final maturity of the loan or loans, and shall describe the property, if any, to be mortgaged or pledged to secure the loan or loans. Any part of any such loan at any time not fully secured is a general charge upon the estate of the ward, but one who acquires an interest in any of the property of the estate for value and without actual knowledge of the charge takes free from it.

[1961 c.344 §34; 1969 c.591 §237]

126.270 Collecting obligations due ward. A guardian of the estate shall demand, sue for and receive all debts and other choses in action due to the ward. A guardian of the estate, with prior approval of the court by order, may compound or compromise any such debt or other chose in action and give a release and discharge to the debtor or other obligor.

[1961 c.344 §35]

126.275 Representing ward in legal proceedings. A guardian of the estate shall appear for and represent the ward in all actions, suits or proceedings to which the ward is a party, unless a guardian ad litem for the purpose is appointed in the action, suit or proceeding.

[1961 c.344 §36]

126.280 Voidable contracts and transactions of ward. Any contract, except to the extent of the reasonable value of necessities,

and any transaction with respect to the property of a ward made by the ward are voidable by the guardian of the estate for the ward if:

(1) Such contract or transaction was made at any time by the ward while an incompetent or a minor.

(2) Such contract or transaction was made after the appointment of the guardian and before the termination of the guardianship by a ward who is a spendthrift.
[1961 c.344 §37]

126.285 Contracts to convey ward's property made before guardianship. If a ward for whom a guardian of the estate is appointed was, at the time of the appointment, a party to a contract requiring the ward to convey real or personal property, or both, and if the price has been paid either before or after the appointment of the guardian, the guardian of the estate, with prior approval of the court by order, may convey the interest and estate of the ward in the property. The effect of the conveyance shall be the same as though made by the ward while not under legal disability.

[1961 c.344 §38]

126.290 Liability of guardian of estate on contracts for ward. If he contracts as guardian for a named ward, a guardian of the estate shall not be personally liable on any written or oral contract entered into for or on behalf of the ward which is within his authority as such guardian. Any action, suit or proceeding on any such contract shall be brought against the guardian in his fiduciary capacity only and any judgment or decree obtained therein shall be satisfied only from property of the ward.

[1961 c.344 §39]

126.295 Gifts from ward's estate; expenditures for ward's relatives. A guardian of the estate, with prior approval of the court by order, may, from the estate of the ward which is not necessary for the proper care, maintenance, education and support of the ward and of persons to whom the ward owes a legal duty of support:

(1) Make reasonable gifts, on behalf of the ward, to charitable or religious institutions or to persons who are or have been related to the ward by blood or marriage. If the court determines that a gift made under this subsection shall be treated as an advancement, the court shall so provide in the order authorizing the gift.

(2) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the ward by blood or marriage.

(3) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for, and reasonable funeral and burial expenses of, persons who are or have been related to the ward by blood or marriage.

[1961 c.344 §40; 1969 c.591 §238]

126.300 [1961 c.344 §41; repealed by 1969 c.591 §305]

126.305 [Repealed by 1961 c.344 §109]

126.306 Exercising rights under ward's insurance policies. A guardian of the estate, with prior approval of the court by order, may exercise for and on behalf of the ward any option or other right of the ward under any policy of insurance, except the right to change beneficiaries of any policy of life insurance.

[1961 c.344 §42]

126.310 [Repealed by 1961 c.344 §109]

126.311 Claims against ward's estate. A guardian of the estate shall pay from the guardianship estate all just claims against the ward, the estate or the guardian as such, whether accruing before or after the appointment of the guardian and whether arising in contract or in tort or otherwise, as provided in ORS 126.316 to 126.331.

[1961 c.344 §43]

126.315 [Repealed by 1961 c.344 §109]

126.316 Claims of guardian or arising from guardian's contracts. A guardian of the estate may pay from the guardianship estate his own claims against the ward or the estate, and claims accruing after the appointment of the guardian arising from contracts entered into by the guardian for or on behalf of the ward, without compliance with ORS 126.321 to 126.331, but such claims and the payment thereof shall be reported by the guardian in his account made and filed in the guardianship proceeding next following each such payment.

[1961 c.344 §44]

126.320 [Amended by 1957 c.237 §1; repealed by 1961 c.344 §109]

126.321 Presenting claims to guardian; verification. Except as provided in ORS 126.316, all claims against the ward, the guardianship estate or the guardian of the

estate as such shall be presented to the guardian of the estate. Each such claim shall be in writing, shall describe the nature and the amount thereof, if ascertainable, and shall be accompanied by the affidavit of the claimant, or someone on his behalf who has personal knowledge of the fact, to the effect that the amount claimed is justly due, that no payments have been made thereon which are not credited and that there is no just counterclaim thereto, to the knowledge of the affiant, except as therein stated. If such claim is founded on a written instrument, the original or a copy thereof with all indorsements shall be attached to the claim, and the original instrument shall be exhibited to the guardian or the court, upon demand, unless it is lost or destroyed, in which case its loss or destruction shall be stated in the claim.

[1961 c.344 §45]

126.325 [Amended by 1953 c.102 §2; 1957 c.662 §2; repealed by 1961 c.344 §109]

126.326 Examination and allowance or rejection of claims by guardian. A guardian of the estate shall examine each claim presented to him. If the guardian is satisfied that the claim is just, he shall indorse upon it the words "Examined and allowed," with the date thereof, officially subscribe such notation and pay the claim from the guardianship estate. If the guardian is not satisfied that the claim is just, he shall indorse upon it the words "Examined and rejected," with the date thereof, officially subscribe such notation and return the rejected claim to the claimant within 60 days after the date the claim was presented to the guardian.

[1961 c.344 §46]

126.330 [Repealed by 1961 c.344 §109]

126.331 Claimant's recourse when claim rejected or not acted upon. (1) If, within 60 days after the date the claim was presented to the guardian, a rejected claim is returned to the claimant or the guardian of the estate fails to approve or reject and return a claim, the claimant, before the claim is barred by the statute of limitations, may either:

(a) File the claim or a like claim in the guardianship proceeding for summary determination by the court; or

(b) Commence an action or suit on the claim. Such action or suit shall be brought against the guardian in his fiduciary capacity only and any judgment or decree obtained therein shall be satisfied only from property of the ward.

(2) If a claimant files a claim or a like claim in the guardianship proceeding for summary determination, the claimant shall serve notice of such filing on the guardian. Within 30 days after such service the guardian may serve notice of objection to summary determination on the claimant and file a copy of such notice in the guardianship proceeding. If the guardian so serves such notice and files such copy, summary determination shall not be had. If the guardian fails to so serve such notice and file such copy, the court shall hear the matter after notice to the claimant and guardian. Upon the hearing the court shall determine the claim or like claim in a summary manner, and shall make an order allowing or rejecting the claim, either in whole or in part. No appeal may be taken from such order of the court made upon such summary determination.

[1961 c.344 §47]

126.335 [Repealed by 1961 c.344 §109]

126.336 Accounting by guardian. (1) A guardian of the estate shall make and file in the guardianship proceeding a written verified account of his administration:

(a) Unless the court orders otherwise, annually within 30 days after the anniversary date of his appointment.

(b) Upon filing his petition to resign and before his resignation is accepted by the court.

(c) Within 30 days after the date of his removal.

(d) Within 90 days after the date of termination of the guardianship.

(e) At such other times as the court may order.

(2) Each account made and filed by a guardian of the estate shall include the following information:

(a) The period of time covered by the account.

(b) The amount of the property of the ward according to the inventory, or if there was a previous account, the amount of the balance of the next previous account, and all property and rents, income, issues, profits and proceeds from property received during the period covered by the account.

(c) All disbursements made during the period covered by the account. Receipts for such disbursements shall accompany all accounts except those accounts described in ORS 406.085.

(d) The property of the ward on hand.

(e) Such other information as the guardian considers necessary to show the condition of the affairs of the guardianship or as the court may order.

(3) Each account made and filed by a guardian of the estate for two or more wards shall show the interest of each ward in receipts, disbursements and property on hand. [1961 c.344 §48; 1965 c.402 §2; 1969 c.384 §1]

126.338 Distribution of copies of accounts; court settlement of accounts. (1) Before filing any account other than his final account, a guardian of the estate shall cause a copy of the account to be mailed or delivered:

(a) If the ward has been committed or admitted to, and not discharged from, a state institution listed in ORS 426.010, 427.010 or 428.420, to the Mental Health Division and to the superintendent of the institution who has presented a written request for a copy to the guardian and filed a copy of the request in the guardianship proceeding before the filing of the account.

(b) If there is a guardian of the person for the ward other than the guardian of the estate, to the guardian of the person.

(c) If the ward is a minor 14 years of age or older or a spendthrift, to the ward.

(d) If the ward is a minor, a missing person or an incompetent, to the ward's spouse who is not under legal disability and to those of the ward's children, parents, brothers or sisters who are not under legal disability and have presented a written request for a copy to the guardian and filed a copy of the request in the guardianship proceeding before the filing of the account.

(2) A guardian of the estate shall file with each account other than his final account his affidavit or other proof satisfactory to the court that copies of the account have been mailed or delivered as provided in subsection (1) of this section, showing the names of the persons to whom, and the addresses to or at which, the copies were mailed or delivered.

(3) A guardian of the estate shall cause a copy of his final account to be mailed or delivered to a ward not under legal disability, to each person to whom copies of other accounts are required to be mailed or delivered as provided in subsection (1) of this section, to the executor or administrator of a deceased ward's estate and to a successor guardian. Within 10 days after the date of the mailing

or delivery, any such person may make and file in the guardianship proceeding written objections to the final account.

(4) The court, before settlement of any account, may provide for inspection of the balance of the property of the ward on hand. The court shall settle each account filed by a guardian of the estate by allowing or disallowing, either in whole or in part, or surcharging such account; but without prejudice to objections thereto at the time and in the manner that objections may be made to a final account.

[1965 c.402 §4; 1969 c.591 §239; 1969 c.597 §§16, 277]

126.340 [Repealed by 1961 c.344 §109]

126.341 Compensation and expenses of guardian. A guardian shall be allowed such compensation for his services as guardian as the court considers just and reasonable. A guardian shall be allowed his necessary and reasonable expenses incurred in exercising his authority and performing his duties as guardian, including attorney's fees. The compensation and expenses of a guardian shall be determined by the court, and may be allowed by the court either upon settlement of any account filed in the guardianship proceeding by a guardian of the estate for the ward, or at any other time before the termination of the guardianship upon the petition of the guardian for such determination and allowance. Compensation and expenses determined and allowed by the court shall be paid from the estate of the ward.

[1961 c.344 §49]

126.345 [Repealed by 1961 c.344 §109]

126.346 Veterans Administration participation in guardianship of ward receiving veteran's benefits. (1) Where a guardian of the estate has been appointed for a ward who is receiving moneys paid or payable by the United States through the Veterans Administration, a representative of the Veterans Administration may give to the guardian and file in the guardianship proceeding, written notice requesting that a copy of all accounts and petitions for court approval of any guardianship matter requiring court approval which are to be filed in the guardianship proceeding be given to a representative of the Veterans Administration designated in the notice. After such notice is given and filed the guardian shall give a copy of all such accounts and petitions to the designated representative of the Veterans Administration before they are filed in the guardianship

proceeding, and, unless the notice is waived in writing, shall give written notice of the hearing by the court on each such account or petition to the designated representative of the Veterans Administration at least 10 days before the date of the hearing. A representative of the Veterans Administration may appear and be heard at any such hearing.

(2) If a guardian of the estate for a ward who is receiving moneys paid or payable by the United States through the Veterans Administration fails to file in the guardianship proceeding any account or report required by law, the court, upon the petition of a representative of the Veterans Administration, shall make an order requiring the guardian to file the account or report or to show cause why he should not be required to do so.

[1961 c.344 §50; 1965 c.402 §5]

126.350 [Repealed by 1961 c.344 §109]

126.351 Removing nonresident ward's property to his residence. Where a guardian of the estate for a nonresident ward has been appointed in this state and the ward has a guardian appointed in the state in which the ward resides and the ward has property within this state that is capable of being removed, the property may be removed to the place where the ward resides upon the petition of either the guardian appointed in this state or such foreign guardian filed in the guardianship proceeding. If such foreign guardian is the petitioner, the petition shall be accompanied by an authenticated copy of the record of the appointment and by evidence of existing authority of the foreign guardian. If such foreign guardian is the petitioner, he shall cause the petition to be served on the guardian appointed in this state. Notice of the hearing on the petition shall be given at least 10 days before the date set for such hearing. If, upon the hearing, the court determines that it is for the best interests of all concerned, the court shall make an order directing the guardian appointed in this state to deliver the property to such foreign guardian.

[1961 c.344 §51]

126.355 [Repealed by 1961 c.344 §109]

126.360 [Repealed by 1961 c.344 §109]

126.365 [Repealed by 1961 c.344 §109]

126.370 [Repealed by 1961 c.344 §109]

(Sale, Lease and Other Disposition of Ward's Property)

126.405 [Amended by 1957 c.237 §2; repealed by 1961 c.344 §109]

126.406 Sale or lease of ward's property; purposes. A guardian of the estate, with prior approval of the court by order, may sell or lease any of the property of the ward:

(1) For the purpose of paying claims against the ward, the guardianship estate or the guardian of the estate as such.

(2) For the purpose of providing for the proper care, maintenance, education and support of the ward and of any person to whom the ward owes a legal duty of support.

(3) For the purpose of investing the proceeds.

(4) For any other purpose that is in the best interests of the ward.

[1961 c.344 §52; 1969 c.591 §240]

126.410 [Repealed by 1961 c.344 §109]

126.411 Petition for sale or lease. A guardian of the estate may file in the guardianship proceeding a petition for the sale or lease of any property of the ward. The petition shall include the following information, so far as known by the petitioner:

(1) The name, age, residence and post-office address of the ward.

(2) Whether the ward is an incompetent, minor, missing person or spendthrift.

(3) The name and address of any person or institution having the care, custody or control of a ward who is an incompetent or minor.

(4) A general description and the probable value of all the property of the ward that has come to the possession or knowledge of the guardian and not theretofore disposed of, and of all the property to which the ward may be entitled upon any distribution of any estate or of any trust.

(5) The income being received from the property to be sold or leased, from all other property of the ward and from all other sources, and the application of such income.

(6) Such other information concerning the guardianship estate and the condition of the ward as is necessary to enable the court to be fully informed.

(7) The purpose of the proposed sale or lease, a general description of the requirements for such purpose and the aggregate amount needed therefor.

(8) A specific description of the property to be sold or leased.

[1961 c.344 §53; 1969 c.591 §241]

126.415 [Amended by 1957 c.237 §3; repealed by 1961 c.344 §109]

126.416 Sale or lease of personal property. Except as provided in ORS 126.471, if the court, upon the filing of a petition under ORS 126.411 for the sale or lease of personal property, determines that the sale or lease is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale or lease to be made subject to such terms and conditions as the court may consider necessary or proper. The court may, in its discretion, order a hearing upon such petition and with such notice as the court may order or without notice. If the proceeds of the sale exceed \$1,000, the guardian, within 15 days after the date of the sale, shall make and file in the guardianship proceeding a return of his proceedings concerning the sale, but such sale need not be confirmed by the court.

[1961 c.344 §54; 1969 c.591 §242]

126.420 [Amended by 1959 c.325 §1; repealed by 1961 c.344 §109]

126.421 Lease of real property for less than five years. Except as provided in ORS 126.471, if the court, upon the filing of a petition under ORS 126.411 for the lease of real property for a term not exceeding five years, determines that the lease is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the lease to be made subject to such terms and conditions as the court may consider necessary or proper. The court may, in its discretion, order a hearing upon such petition and with such notice as the court may order or without notice.

[1961 c.344 §55]

126.425 [Amended by 1959 c.325 §2; repealed by 1961 c.344 §109]

126.426 Sale or lease for more than five years of real property; issuance of citation.

(1) Except as otherwise provided in ORS 126.431 and 126.471, the court, upon the filing of a petition under ORS 126.411 for the sale of real property, or the lease of real property for a term exceeding five years, shall order the issuance of a citation requiring the persons or institutions referred to in subsection (2) of this section to appear and show cause why an order for the sale or lease should not be made.

(2) Citation issued under subsection (1) of this section shall be served:

(a) If the ward is an incompetent, on any person or an officer of any institution having the care, custody or control of the incompetent, and on the incompetent.

(b) If the ward is a minor, on any person or an officer of any institution having the care, custody or control of the minor, and if the minor is 14 years of age or older, on the minor.

(c) If the ward is an incompetent or minor in the care, custody or control of any institution, on any person paying or liable for the care and maintenance of the incompetent or minor at the institution.

(d) If the ward is a missing person, on the missing person and on such other persons as the court may direct.

(e) If the ward is a spendthrift, on the spendthrift.

[1961 c.344 §56; 1969 c.591 §243]

126.430 [Repealed by 1961 c.344 §109]

126.431 Service of citation; appearance.

(1) The citation issued under ORS 126.426 shall require the person or institution served to appear and show cause why an order for the sale or lease should not be made:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If the ward is a missing person, citation shall be served on the missing person by publication as summons is served by publication in a civil action, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a

written waiver of service of citation or makes a general appearance.

[1961 c.344 §57; 1969 c.591 §244]

126.435 [Repealed by 1961 c.344 §109]

126.436 Order for sale or lease; terms and conditions. If it appears to the court that the sale or lease referred to in ORS 126.426 is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale or lease to be made. A sale or lease ordered shall be made subject to such terms and conditions as the court may consider necessary or proper.

[1961 c.344 §58; 1963 c.417 §1; 1969 c.591 §245]

126.440 [Repealed by 1961 c.344 §109]

126.441 Public or private sale of real property; notice of sale; sale on credit. (1) The order for the sale of real property under ORS 126.436 or 126.471 shall direct that the sale be public or, if the court determines that it is in the best interests of the ward, private. If public, the sale shall be made in the same manner as like property is sold on execution, or, if the court determines that it is in the best interests of the ward, the court may order the property to be sold on the premises or elsewhere.

(2) When the sale of real property is upon credit, the guardian may take the promissory note of the purchaser for the deferred balance of the purchase money, with a mortgage upon the property to secure the payment thereof, or the guardian may sell the property on contract of sale, with title reserved until the deferred balance of the purchase price and interest thereon, if any, are paid.

[1961 c.344 §59; 1969 c.591 §246]

126.445 [Repealed by 1959 c.325 §4]

126.446 [1961 c.344 §60; repealed by 1969 c.591 §305]

126.450 [Repealed by 1961 c.344 §109]

126.451 Return of sale of real property; objections; hearing. Except as provided in ORS 126.471, within 10 days after the date of the sale of real property, the guardian shall make and file in the guardianship proceeding a return of his proceedings concerning the sale. Within 15 days after the date of the filing of the return, any person may file in the guardianship proceeding his objection to the confirmation of the sale. The court shall hear the objections, if any, filed within the time prescribed.

[1961 c.344 §61]

126.455 [Repealed by 1961 c.344 §109]

126.456 Confirming or vacating sale of real property. (1) Upon the hearing under ORS 126.451 of objections to the sale of real property or in the absence of objections, the court shall make an order confirming the sale and directing the execution of a proper conveyance to the proper person by the guardian, unless the court determines that:

(a) There was substantial irregularity in the sale;

(b) The sum bid for the property is unreasonably less than the value of the property; or

(c) By reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned.

(2) If the court determines that there was substantial irregularity in the sale, the court shall make an order vacating the sale and directing that the property be resold as though no prior sale had been made.

(3) If the court determines that the sum bid for the property is unreasonably less than the value of the property, the court shall make an order vacating the sale and directing that the property be resold subject to confirmation as provided in this section.

(4) If the court determines that, by reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned, the court shall make an order vacating the sale, and either directing that the property be resold to the higher bidder without further order, or directing that the property be resold subject to confirmation as provided in this section.

[1961 c.344 §62; 1969 c.591 §247]

126.460 [Repealed by 1961 c.344 §109]

126.461 Conveyance of real property; contents; effect. The effect of a conveyance of real property by a guardian under ORS 126.456 shall be the same as though made by the ward while not under legal disability.

[1961 c.344 §63; 1969 c.591 §248]

126.465 [Repealed by 1961 c.344 §109]

126.466 Recording orders confirming or directing sale of real property. Within 60 days after the date of the order of the court confirming or directing the sale of real property of the ward situated in any county other than the county in which the order was made, the guardian shall cause to be recorded in the record of deeds of such other county a

copy of the order for the sale and of the order confirming or directing the sale, both certified by the clerk of the court.

[1961 c.344 §64]

126.470 [Repealed by 1961 c.344 §109]

126.471 Sale or lease of property of spendthrift ward. (1) If the court, upon the filing of a petition under ORS 126.411 for the sale or lease of any of the property of a ward who is a spendthrift, determines that the ward is competent and consents to the sale or lease and that the sale or lease is necessary or proper for any purpose referred to in ORS 126.406, the court may order the sale or lease to be made subject to such terms and conditions as the court may consider necessary, without the issuance of citation or confirmation by the court. If the proceeds of the sale exceed \$1,000, the guardian, within 15 days after the date of the sale, shall make and file in the guardianship proceeding a return of his proceedings concerning the sale.

(2) In the absence of a determination by the court that the ward who is a spendthrift is competent and consents to the sale or lease of his property, such sale or lease may be made only as otherwise provided in ORS 126.406 to 126.495.

(3) The effect of a conveyance of real property by a guardian under subsection (1) of this section shall be the same as though made by the ward while not under legal disability.

(4) Within 60 days after the date of the order under subsection (1) of this section for the sale of real property of the ward situated in any county other than the county in which the order for the sale was made, the guardian shall cause to be recorded in the record of deeds of such other county a copy of the order for the sale certified by the clerk of the court.

[1961 c.344 §65; 1969 c.591 §249]

126.475 [Repealed by 1961 c.344 §109]

126.476 Exchange, partition, sale or surrender of ward's property. (1) A guardian of the estate, with prior approval of the court by order, may accept an offer to exchange real or personal property, or both, of the ward for real or personal property, or both, of another, or to effect a voluntary partition of real or personal property, or both, in which the ward owns an undivided interest, where it appears from the petition therefor

and the court determines that such exchange or partition is in the best interests of the ward.

(2) A guardian of the estate, with prior approval of the court by order, may accept an offer for the purchase or surrender of the interest or estate of the ward in real or personal property, or both, where it appears from the petition therefor and the court determines that:

(a) The interest or estate of the ward in such property is contingent or dubious;

(b) The interest or estate of the ward in such property is a servitude upon the property of the offeror;

(c) The interest or estate of the ward in such property is an undivided interest in property in which the offeror owns or is offering to purchase another or the other undivided interest or interests; or

(d) For any other reason, there is no market for the interest or estate of the ward in such property except by such sale or surrender to the offeror.

(3) A guardian of the estate may file in the guardianship proceeding a petition for authority to accept an offer under subsection (1) or (2) of this section. The petition shall include the following information, so far as known by the petitioner:

(a) The name, age, residence and post-office address of the ward.

(b) Whether the ward is an incompetent, minor, missing person or spendthrift.

(c) The name and address of any person or institution having the care, custody or control of a ward who is an incompetent or minor.

(d) The name and address of the offeror.

(e) A specific description of the property, interest or estate to be exchanged, partitioned, sold or surrendered, and the price or property to be received therefor.

(f) Such other information as the petitioner may consider necessary to enable the court to be fully informed in respect of the subject matter.

(4) If the property, interest or estate to be exchanged, partitioned, sold or surrendered consists solely of personal property or an interest or estate therein, the provisions of ORS 126.416 shall apply, except that no return of his proceedings need be made and filed by the guardian.

(5) If the property, interest or estate to

be exchanged, partitioned, sold or surrendered consists in whole or in part of real property or an interest or estate therein, the provisions of ORS 126.426 and 126.431 and subsection (1) of ORS 126.471 shall apply, except that no return of his proceedings need be made and filed by the guardian.

(6) Upon the entry of an order of the court authorizing acceptance of an offer under subsection (1) or (2) of this section, the guardian may execute such instruments as are appropriate to effect such exchange, partition, sale or surrender. If the guardian executes a conveyance of real property or an interest or estate therein, the provisions of ORS 126.461 and 126.466 and subsections (3) and (4) of ORS 126.471 shall apply.

(7) Except as otherwise provided in this section, the provisions of ORS 126.406 to 126.471 do not apply to exchanges, partitions, sales or surrenders under this section.

[1961 c.344 §66; 1969 c.591 §250]

126.480 [Repealed by 1961 c.344 §109]

126.481 Acquisition of ward's property by guardian. A guardian may purchase or acquire by exchange, surrender, partition or lease any property of the ward, but such transaction shall always be reported to and be subject to confirmation by the court. If such transaction involves the sale of real property or the lease of real property for a term exceeding five years to the guardian, citation shall be issued to and served on all persons entitled, at the time of filing the petition for such sale or lease, to inherit from the ward in the event of his death. If such transaction involves the sale of personal property to the guardian, issuance and service of citation shall be made as provided in the case of the sale of real property to the guardian. Except as otherwise provided in this section, the provisions of ORS 126.406 to 126.495 apply to such transactions.

[1961 c.344 §67]

126.485 Limitation on recovery of property sold by guardian. No action, suit or proceeding for the recovery of any property of the ward sold by a guardian of the estate shall be maintained by the ward, or by any person claiming under him, unless it is commenced not later than one year after the removal of the ward's legal disability or after the termination of the guardianship, whichever event occurs last.

[1961 c.344 §68]

126.490 Collateral attack on sale, mortgage, lease or other disposition of ward's property. No proceedings for the sale, exchange, surrender, partition, mortgage, pledge or lease of any property of the ward by a guardian of the estate are subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the sale, exchange, surrender, partition, mortgage, pledge or lease had jurisdiction to do so.

[1961 c.344 §69; 1963 c.417 §2; 1969 c.591 §251]

126.495 Transfer of ward's property not an ademption. In case of the sale or other transfer by a guardian of the estate of any real or personal property specifically devised or bequeathed by a ward who was competent to make a will at the time he executed the will but was not competent to make a will at the time of the sale or transfer and never regained such competency, or specifically devised or bequeathed by a ward who was a missing person subsequently found to be dead and who did not make a valid will after the sale or transfer, so that the devised or bequeathed property is not contained in the estate of the ward at the time of his death, the devisee or legatee may at his option take the value of the property at the time of the death of the ward with the incidents of a general devise or bequest, or the proceeds of such sale or other transfer with the incidents of a specific devise or bequest.

[1961 c.344 §70; 1969 c.591 §252]

(Changing Guardians; Terminating Guardianships)

126.505 [Repealed by 1961 c.344 §109]

126.506 Removal of guardian; citation to guardian. (1) The court may remove a guardian if the court determines that:

(a) The guardian has become disqualified, mentally incompetent, unsuitable or otherwise incapable of exercising his authority and performing his duties as provided by law;

(b) The guardian of the estate has mismanaged the estate of the ward;

(c) The guardian has failed to perform any duty as provided by law or by any lawful order of the court; or

(d) For any other reason, it is in the best interests of the ward or the estate of

the ward that another person be appointed as guardian.

(2) Upon its own motion or upon a petition filed by a ward who is a minor 14 years of age or older or a spendthrift, by any person for or on behalf of a ward who is an incompetent or a minor under 14 years of age or by any other interested person, the court may make an order directing the issuance of a citation requiring the guardian to appear and show cause why he should not be removed. The citation shall require the guardian to appear and show cause within the applicable period of time required for appearance after service of summons, and shall be served and returned as summons is served on a defendant and returned in a civil action.

[1961 c.344 §71]

126.510 [Repealed by 1961 c.344 §109]

126.511 Successor guardians. When a guardian dies, is removed by order of the court or his resignation is accepted by the court, the court, upon its own motion or upon a petition filed by any interested person, may appoint another guardian in his place in the same manner and subject to the same requirements as are provided by law for an original appointment of a guardian.

[1961 c.344 §72]

126.515 [Repealed by 1961 c.344 §109]

126.516 Disposition of guardianship estates under \$1,000; winding up guardianship affairs. Where, at the time of the appointment of the guardian or thereafter, the estate of a ward consists of personal property having a value not exceeding by more than \$1,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay such expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the guardianship proceeding proper receipts or other evidence satisfactory to the court showing such delivery. The guardianship is terminated by the order of the court, but

the guardian is not subject to ORS 126.527 or 126.530.

[1961 c.344 §73; 1965 c.402 §6]

126.520 Termination of guardianship. A guardianship is terminated:

(1) If the guardianship is for a minor, by his arriving at the age of majority as provided in ORS 109.510 or 109.520;

(2) By the death of the ward; or

(3) Upon order of the court, if the court determines that the guardianship no longer is necessary. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or both.

[1961 c.344 §74]

126.525 Termination of guardian's functions. Except as otherwise provided in ORS 126.336, 126.338, 126.527, 126.530 and 126.535, the authority and duties of a guardian terminate when the guardianship is terminated.

[1961 c.344 §75; 1965 c.402 §7]

126.527 Winding up guardianship affairs after termination of guardianship other than by death of ward. Within 90 days after the date of termination of a guardianship of the estate other than by the death of the ward, or, if necessary, such further time as the court by order may allow upon a petition filed in the guardianship proceeding by the guardian of the estate during or within a reasonable time after the 90-day period and upon such notice and hearing on that petition, or without notice or hearing, as the court may order, the guardian of the estate shall wind up the affairs of the guardianship. His authority and duties, including his right to possession of all property of the ward in the physical possession of the guardian or another, and the provisions of law applicable thereto shall continue for such purpose, as follows:

(1) The guardian shall pay from the guardianship estate:

(a) All expenses of administration of the guardianship estate, including expenses of winding up the affairs of the guardianship, allowed before or after the termination; and

(b) All claims against the estate allowed before or after the termination.

(2) Payment of expenses and claims under subsection (1) of this section shall be made first from money of the guardianship estate, and then, if there is not sufficient money, from any one or more of the following:

(a) Proceeds of the encumbrance of any other property of the estate;

(b) Proceeds of the sale of any other personal property of the estate; or

(c) Proceeds of the sale of real property of the estate, if the petition for such sale was filed before the termination of the guardianship and the court by order authorizes the guardian to proceed with the sale.

(3) The guardian shall deliver to the ward all property of the ward in his possession after payment, if any, of expenses and claims under subsections (1) and (2) of this section. The ward shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the guardianship proceeding proper receipts or other evidence satisfactory to the court showing such delivery.

[1965 c.402 §9]

126.530 Winding up guardianship affairs after termination of guardianship by death of ward. Within 90 days after the date of termination of a guardianship of the estate by the death of the ward, or, if necessary, such further time as the court by order may allow upon a petition filed in the guardianship proceeding by the guardian of the estate during or within a reasonable time after the 90-day period and upon such notice and hearing on that petition, or without notice or hearing, as the court may order, the guardian of the estate shall wind up the affairs of the guardianship. His authority and duties, including his right to possession of all property of the ward in the physical possession of the guardian or another, and the provisions of law applicable thereto shall continue for such purpose, as follows:

(1) The guardian shall pay from the guardianship estate:

(a) All expenses of administration of the guardianship estate, including expenses of winding up the affairs of the guardianship, allowed before or after the termination;

(b) All claims against the estate allowed before or after the termination; and

(c) If the estate of the ward is solvent, and with prior approval of the court by order, expenses for the proper care, maintenance and support of the ward's surviving spouse and minor children during the winding-up period.

(2) Payment of expenses and claims under subsection (1) of this section shall be made first from money of the guardianship

estate, and then, if there is not sufficient money, from any one or more of the following:

(a) Proceeds of the encumbrance of any other property of the estate;

(b) Proceeds of the sale of any other personal property of the estate; or

(c) Proceeds of the sale of real property of the estate, if the petition for such sale was filed before the termination of the guardianship and the court by order authorizes the guardian to proceed with the sale.

(3) Except as otherwise provided in subsection (5) of this section, the guardian shall deliver to the executor or administrator of the ward's estate all property of the ward in his possession after payment, if any, of expenses and claims under subsections (1) and (2) of this section. At any time during the winding-up period the court, upon a petition filed in the guardianship proceeding by the executor or administrator, may order the guardian to deliver to the executor or administrator any part of the property of the ward in his possession not necessary for such payment. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the guardianship proceeding proper receipts or other evidence satisfactory to the court showing such delivery.

(4) If the sale or encumbrance of property of the guardianship estate is necessary for the payment of all expenses and claims referred to in paragraphs (a) and (b) of subsection (1) of this section, and if such sale or encumbrance cannot be made and the proceeds used to pay all such expenses and claims within the winding-up period, the guardian shall pay none of such expenses and claims, but such expenses and claims are liens upon and shall be paid first from property delivered under subsection (3) of this section.

(5) If the ward died intestate and if the guardianship estate exceeds the aggregate amount of the expenses and claims referred to in subsection (1) of this section and the expenses of last sickness and funeral of the ward, but does not exceed such aggregate amount by more than \$1,000, the guardian may, after payment of such expenses and claims from the guardianship estate, deliver all property of the ward in his possession to:

(a) The ward's surviving spouse;

(b) If there is no surviving spouse, the ward's surviving children in equal shares;

(c) If there is no surviving spouse and no surviving children, the ward's surviving parent or parents in equal shares;

(d) If there is no surviving spouse, no surviving children and no surviving parent or parents, the ward's surviving brothers and sisters in equal shares; or

(e) If any person who may receive property under this subsection is under legal disability, the guardian of the estate, if any, for such person, and if none, the person designated by the court in a proceeding under ORS 126.555.

The guardian may rely upon proof by affidavit which he believes to be true to establish the fact of intestacy and the relationship of those surviving the ward who may receive property under this subsection. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered, but the recipient is accountable as to the property so delivered to an executor or administrator, if any, of the ward's estate, and if none, to any person beneficially interested therein. The guardian shall file in the guardianship proceeding proper receipts or other evidence satisfactory to the court showing such delivery.

[1961 c.344 §76; 1965 c.402 §10]

126.535 Orders of court in winding up guardianship affairs. After the termination of a guardianship of the estate, the court may make such orders as the court considers proper to enable the guardian of the estate to wind up the affairs of the guardianship.

[1961 c.344 §77]

126.540 Discharge of guardian; exoneration of surety; vacating order. The court, after hearing objections filed pursuant to ORS 126.338 to the final account and upon settlement of the final account and determination that property of the ward has been delivered to the person lawfully entitled thereto, shall discharge the guardian and exonerate the surety on his bond. The court may, in its discretion and upon such terms as may be just, at any time within one year after notice thereof, vacate the order discharging the guardian to permit recovery against the guardian and the surety on his bond, or either of them, when it appears that the failure of the claimant to object to the final account of the

guardian resulted from fraud or misrepresentation of the guardian or the surety on his bond or from the mistake, inadvertence, surprise or excusable neglect of the claimant.
[1961 c.344 §78; 1969 c.591 §253]

126.545 Recording order discharging guardian. After the entry of the order of the court discharging a guardian of the estate upon the termination of the guardianship, any person may cause to be recorded in the record of deeds of each county, other than the county in which the discharge was made, in which real property of the ward is situated on the date of the discharge, a copy of the order discharging the guardian certified by the clerk of the court.
[1961 c.344 §79]

(Transactions Without Oregon Guardianship)

126.555 Settling claims or receiving or selling property without guardianship. (1) In addition to the authorization under ORS 126.557 for payment or delivery of money or tangible chattels to or for a minor, where it appears that a guardian of the estate for a person under legal disability has not been appointed, any court having probate jurisdiction, upon petition therefor and with such notice, or without notice, as the court may order, and without the appointment of a guardian of the estate for such person, may make an order authorizing a person designated in the order to:

(a) Settle any debt or other chose in action not exceeding \$1,000 due to the person under legal disability and receive payment thereof;

(b) Receive property having a value not exceeding \$1,000 of the person under legal disability; or

(c) Sell for cash with such notice, or without notice, as the court may order, any of the real or personal property having a value not exceeding \$1,000 of the person under legal disability and receive the proceeds thereof.

(2) The person designated in the order of the court under subsection (1) of this section may give a release and discharge for any debt or other chose in action so settled and paid or for any property so received, or may execute such instruments as are appropriate to effect the conveyance or transfer of any real or personal property so sold for

cash. He shall hold, invest or use all funds or other property so received as ordered by the court.
[1961 c.344 §80; 1965 c.402 §11; 1969 c.591 §256]

126.557 Money or tangible chattels to or for minor. (1) Any person under a duty to pay or deliver money or tangible chattels to a minor may perform that duty, in amounts not exceeding \$5,000 in the aggregate, by paying or delivering the money or chattels to:

(a) The minor, if he is 18 years of age or older;

(b) A parent or other relative of the minor with whom the minor resides; or

(c) A guardian of the person for the minor.

(2) This section does not apply if the person making the payment or delivery has actual knowledge that a guardian of the estate for the minor has been appointed or that proceedings for the appointment of a guardian of the estate for the minor are pending.

(3) A person, other than the minor, receiving delivery of tangible chattels under subsection (1) of this section may sell them for cash without order of court.

(4) Moneys received by a person, other than a minor, under subsection (1) or (3) of this section may be applied by that person to the support and education of the minor, excluding any compensation or other payments to himself except by way of reimbursement for out-of-pocket expenses for goods and services furnished by third persons that were necessary for the support and education of the minor. Any money and any unsold chattels in excess of sums required for the support and education of the minor shall be preserved for the future support and education of the minor and any balance not so used shall be turned over to the minor when he arrives at the age of majority as provided in ORS 109.510 or 109.520.

(5) Persons owing money or property to minors who pay or deliver it pursuant to paragraph (b) or (c) of subsection (1) of this section shall not be responsible for the proper application thereof.

[1969 c.591 §255]

126.560 Delivering property or paying obligations to foreign guardian. Where a guardian of the estate for a nonresident has not been appointed in this state, but the nonresident has a foreign guardian and has property within this state that is capable of being removed, or a person within this state

is indebted to such nonresident, the person in possession of the property may deliver such property, or the person indebted may pay such debt, to the foreign guardian for and on behalf of such nonresident. The delivery of such property or the payment of such debt is, to the extent of such delivery or payment, a release and discharge with respect to such property or debt.

[1961 c.344 §81]

126.565 Sale, mortgage, lease or other disposition of nonresident's property by foreign guardian. Where a guardian of the estate for a nonresident has not been appointed in this state, but the nonresident has a foreign guardian and has property within this state, the foreign guardian, with prior approval by order of the court having probate jurisdiction for the county in which the property is situated, may sell, exchange, surrender, partition, mortgage, pledge or lease any of the property within this state of the nonresident in the same manner and upon the same terms and conditions as in the case of sale, exchange, surrender, partition, mortgage, pledge or lease of any of the property of the ward by a guardian of the estate appointed in this state. The petition for the sale, exchange, surrender, partition, mortgage, pledge or lease filed by the foreign guardian shall be accompanied by an authenticated copy of the record of the appointment and by evidence of existing authority of the foreign guardian.

[1961 c.344 §82]

126.570 When power of attorney not terminated by disability. (1) When a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains no words which otherwise limit the period of time of its effectiveness, the powers of the attorney in fact or agent shall be exercisable by him on behalf of the principal notwithstanding later disability or incompetence of the principal at law.

(2) All acts done by the attorney in fact or agent pursuant to the power of attorney during any period of disability or incompetence of the principal at law shall have the same effect and shall inure to the benefit of and bind the principal as though the principal were not disabled or incompetent.

(3) If a guardian of the estate or conservator of the estate is appointed thereafter for the principal, the attorney in fact or agent, during the continuation of that appointment,

shall account to the guardian or conservator rather than to the principal. The guardian or conservator has the same power that the principal would have, but for his disability or incompetence, to revoke, suspend or terminate all or any part of the power of attorney.

[1969 c.591 §257]

CONSERVATORSHIPS

126.605 [Amended by 1953 c.687 §5; repealed by 1961 c.344 §109]

126.606 Definitions for ORS 126.606 to 126.675. As used in ORS 126.606 to 126.675, unless the context requires otherwise:

(1) "Conservator" means any person appointed under ORS 126.606 to 126.675 as conservator of the estate of any other person.

(2) "Court" means any court having probate jurisdiction or a judge thereof.

(3) "Ward" means any person for whose estate a conservator has been appointed.

[1961 c.344 §83]

126.610 [Amended by 1953 c.687 §5; repealed by 1961 c.344 §109]

126.611 [1961 c.344 §84; repealed by 1969 c.591 §305]

126.615 [Repealed by 1961 c.344 §109]

126.616 Jurisdiction to appoint conservators. Any court having probate jurisdiction may appoint conservators of the estate of residents and of nonresidents of this state who have property within this state.

[1961 c.344 §85]

126.617 [1953 c.687 §5; repealed by 1961 c.344 §109]

126.620 [Amended by 1953 c.687 §5; repealed by 1961 c.344 §109]

126.621 Petition for appointment of conservator. Any adult person who considers himself unable properly and prudently to protect, preserve, manage and dispose of his property or to manage his business, if any, may file with the clerk of the court a petition for the appointment of a conservator to protect, preserve, manage and dispose of his property and to manage his business, if any. The petition shall include the following information, so far as known by the petitioner:

(1) The name, age, residence and post-office address of the petitioner.

(2) The name, residence and post-office address of the proposed conservator, and that the proposed conservator is qualified to serve as conservator.

(3) A general description and the probable value of the property of the petitioner and any income to which he is entitled. If any moneys are paid or payable to the petitioner by the United States through the Veterans Administration, the petition shall so state.

(4) The reasons why the appointment of a conservator is sought.
[1961 c.344 §86]

126.625 [Repealed by 1961 c.344 §109]

126.626 Order of appointment; citation to Veterans Administration. (1) If it appears to the court that the allegations of the petition are sufficient and that the proposed conservator should be appointed, the court shall make an order appointing him conservator. The court by order shall specify the amount of the bond to be executed and filed by the conservator. Except as provided in subsection (2) of this section, there need be no issuance of citation or other notice, unless ordered by the court.

(2) If the petitioner is receiving moneys paid or payable by the United States through the Veterans Administration, the court, before appointing a conservator, shall direct the issuance of a citation requiring a representative of the Veterans Administration to appear and show cause why the conservator should not be appointed for the petitioner. The citation shall be personally served on a representative of the Veterans Administration and returned as a summons is served and returned. A representative of the Veterans Administration may appear and be heard on the appointment. If a representative of the Veterans Administration waives in writing the citation, there shall be no issuance of citation.
[1961 c.344 §87]

126.630 [Repealed by 1961 c.344 §109]

126.631 Letters of conservatorship. When a conservator has filed a bond and his name, residence and postoffice address as provided by law, the court shall cause to be issued letters of conservatorship to the conservator. Letters of conservatorship may be in the following form:

State of Oregon,)
)
) ss.
)
 County of.....)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That on....., 19.....,
 the..... Court, (month) (day) County,
 State of Oregon, appointed.....
 (name of conservator)

conservator of the estate of.....
 (name of ward)

that the named conservator has qualified and has the authority and shall perform the duties of conservator of the estate of the named ward as provided by law.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the court at my office on.....
 (month)

....., 19.....
 (day)

(Seal), Clerk of the Court
 By....., Deputy

[1961 c.344 §88]

126.635 [Repealed by 1961 c.344 §109]

126.636 Conservatorship governed as guardianship of estate. Except as otherwise provided in ORS 126.606 to 126.675, a conservator shall:

- (1) Have the same qualifications as a guardian of the estate;
- (2) Be bonded as required of a guardian of the estate;
- (3) Have the authority and perform the duties of a guardian of the estate; and
- (4) Be subject to all other provisions of law relating to a guardian of the estate.
[1961 c.344 §89]

126.637 Continuing business of ward. The court, by order, may authorize a conservator to continue any business of the ward solely or jointly with one or more of the ward's partners or joint venturers or as a corporation of which the ward is or becomes a shareholder. The order may be made upon the petition for the appointment of the conservator and that he shall be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.
[1969 c.591 §259]

126.638 Gifts from ward's estate; expenditures for ward's relatives. (1) The court, by order, may authorize a conservator, from the estate of the ward which is not necessary for the proper care, maintenance, education and support of the ward and of persons to

whom the ward owes a legal duty of support, to:

(a) Make reasonable gifts, on behalf of the ward, to charitable or religious institutions or to persons who are or have been related to the ward by blood or marriage. If the court determines that a gift made under this paragraph shall be treated as an advancement, the court shall so provide in the order authorizing the gift.

(b) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the ward by blood or marriage.

(c) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for, and reasonable funeral and burial expenses of, persons who are or have been related to the ward by blood or marriage.

(2) The order may be made upon the petition for the appointment of the conservator and that he be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.

[1969 c.591 §260]

126.639 Accounting by conservator. (1)

A conservator shall make and file in the conservatorship proceeding a written verified account of his administration at the times and of the kind required of a guardian of the estate by ORS 126.336.

(2) Before filing any account other than his final account, a conservator shall cause a copy of the account to be mailed or delivered to the ward. If the ward is incompetent, the conservator shall cause a copy of the account to be mailed or delivered to the ward's spouse who is not under legal disability and to those of the ward's children, parents, brothers or sisters who are not under legal disability and have presented a written request for a copy to the conservator and filed a copy of the request in the conservatorship proceeding before the filing of the account. Proof by affidavit of the mailing or delivery shall be filed with the account.

(3) A conservator shall cause a copy of his final account to be served on the ward if living and competent; otherwise, on the guardian of the estate for the ward or the executor or administrator of the deceased ward's estate and on each person to whom copies of other accounts are required to be mailed or delivered as provided in subsection (1) of this section.

Objections to the final account may be made within 30 days after the date of the service.
[1969 c.591 §261]

126.640 [Repealed by 1961 c.344 §109]

126.641 Disposition of personal property of ward who is nonresident or leaves state. When a ward is a nonresident of or removes from this state and has property within this state that is capable of being removed, the conservator, with prior approval of the court by order and upon such terms and conditions and in such manner as the court considers necessary and proper, may deliver all or any part of such property to the ward, his personal representative or a person designated by the ward.

[1961 c.344 §90]

126.645 [Repealed by 1961 c.344 §109]

126.646 Sale, mortgage, lease and other disposition of ward's property. Any property of the ward may be sold, exchanged, surrendered, partitioned, mortgaged, pledged or leased by a conservator in the same manner as provided by law for the sale, exchange, surrender, partition, mortgage, pledge or lease of any property of a spendthrift for whom a guardian of the estate has been appointed.

[1961 c.344 §91]

126.650 [Amended by 1953 c.687 §5; repealed by 1961 c.344 §109]

126.651 Removal of conservator; citation to conservator. (1) The court may remove a conservator if the court determines that:

(a) The conservator has become disqualified, mentally incompetent, unsuitable or otherwise incapable of exercising his authority and performing his duties as provided by law;

(b) The conservator has mismanaged the estate of the ward;

(c) The conservator has failed to perform any duty as provided by law or by any lawful order of the court; or

(d) For any other reason, it is in the best interests of the ward that another person be appointed conservator.

(2) Upon its own motion or upon a petition filed by the ward or by any other person for or on behalf of the ward, the court may make an order directing the issuance of a citation requiring the conservator to appear and show cause why he should not be

removed. The citation shall require the conservator to appear and show cause within the applicable period of time required for appearance after service of summons, and shall be served and returned as summons is served on a defendant and returned in a civil action.

[1961 c.344 §92]

126.655 [Repealed by 1961 c.344 §109]

126.656 Successor conservators. When a conservator dies, is removed by order of the court or his resignation is accepted by the court, the court, upon a petition filed by the ward, may appoint another conservator of the estate of the ward.

[1961 c.344 §93]

126.660 Termination of conservatorship. (1) A conservatorship is terminated:

(a) By the death of the ward; or

(b) By the appointment and qualification of a guardian of the person and estate or a guardian of the estate for the ward.

(2) The court by order may terminate a conservatorship if the court determines that:

(a) The ward is competent and desires to terminate the conservatorship; or

(b) The conservatorship no longer is necessary.

[1961 c.344 §94; 1965 c.402 §12]

126.665 Winding up conservatorship affairs after termination of conservatorship other than by death of ward. If a conservatorship is terminated other than by the death of the ward, the conservator shall wind up the affairs of the conservatorship. His authority and duties, including his right to possession of all property of the ward in the physical possession of the conservator or another, and the provisions of law applicable thereto shall continue for such purpose, as follows:

(1) The conservator shall pay from the conservatorship estate:

(a) All expenses of administration of the conservatorship estate, including expenses of winding up, allowed before or after the termination; and

(b) All claims against the estate allowed before or after the termination.

(2) Payment of expenses and claims under subsection (1) of this section shall be made first from money of the conservatorship estate, and then, if there is not sufficient money, from any one or more of the following:

(a) Proceeds of the encumbrance of any real or personal property of the estate;

(b) Proceeds of the sale of personal property of the estate; or

(c) Proceeds of the sale of real property of the estate, if the petition for such sale was filed before the termination of the conservatorship and the court by order authorizes the conservator to proceed with the sale.

(3) The conservator shall conduct the winding up diligently and conclude it within 90 days after the date of the termination unless, upon a petition filed in the conservatorship proceeding by the conservator during or within a reasonable time after the expiration of the 90-day period and upon such notice, or without notice, and such hearing as the court may order, the court by order extends the time within which the winding up shall be concluded.

(4) Upon the conclusion of the winding up, the conservator shall account and deliver to the ward, if competent, or to the guardian of the estate for the ward, if the ward is not competent, all property of the ward remaining in his possession. The ward or guardian shall give a receipt therefor to the conservator. The receipt is a release and acquittance to the conservator as to the property so delivered. The conservator shall file in the conservatorship proceeding proper receipts or other evidence satisfactory to the court showing such delivery.

[1965 c.402 §14]

126.670 Winding up conservatorship affairs after termination of conservatorship by death of ward. If a conservatorship is terminated by the death of the ward, the conservator shall wind up the affairs of the conservatorship. His authority and duties, including his right to possession of all property of the ward in the physical possession of the conservator or another, and the provisions of law applicable thereto shall continue for such purpose during the winding-up period, which shall be the same as that described in subsection (3) of ORS 126.665, as follows:

(1) The conservator shall pay expenses and claims and encumber or sell property of the conservatorship estate therefor as provided in subsections (1) and (2) of ORS 126.665. If money of the conservatorship estate is not sufficient for the payment of all such expenses and claims and sufficient proceeds cannot be obtained therefor within the winding-up period from the encumbrance or

sale of property of the estate, the conservator shall pay none of such expenses and claims, but they are liens upon the property delivered by the conservator to the executor or administrator of the ward's estate.

(2) If the estate of the ward is solvent, the conservator, with prior approval of the court by order, shall pay expenses for the proper care, maintenance and support of the ward's surviving spouse and minor children during the winding-up period.

(3) At any time during the winding-up period the court, upon a petition filed in the conservatorship proceeding by the executor or administrator, may order any part of the property of the ward not necessary for the payment of expenses and claims referred to in subsections (1) and (2) of this section to be delivered to the executor or administrator.

(4) If the ward died intestate and if the conservatorship estate exceeds the aggregate amount of the expenses and claims referred to in subsections (1) and (2) of this section and the expenses of last sickness and funeral of the ward, but does not exceed such aggregate amount by more than \$1,000, the conservator may pay such expenses and claims and deliver all property of the ward remaining in his possession to:

(a) The ward's surviving spouse;

(b) If there is no surviving spouse, the ward's surviving children in equal shares;

(c) If there is no surviving spouse or child, the ward's surviving parent or parents in equal shares;

(d) If there is no surviving spouse, child or parent, the ward's surviving brothers and sisters in equal shares; or

(e) If any person who may receive property under this subsection is under legal disability, the guardian of the estate, if any, for such person or, if there is none, the person designated by the court in a proceeding under ORS 126.555.

The conservator may rely upon proof by affidavit which he believes to be true to establish the fact of intestacy and the relationship of those surviving the ward who may receive property under this subsection.

(5) Except as otherwise provided in subsection (4) of this section, upon the appointment and qualification of an executor or administrator of the ward's estate and upon the conclusion of the winding up, the conservator shall account and deliver to the execu-

tor or administrator all property of the ward remaining in his possession.

(6) The recipient of property delivered under this section shall give a receipt therefor to the conservator. The receipt is a release and acquittance to the conservator as to the property so delivered. The conservator shall file in the conservatorship proceeding proper receipts or other evidence satisfactory to the court showing such delivery.

[1965 c.402 §15]

126.675 Orders of court in winding up conservatorship affairs; discharge of conservator; exoneration of surety; vacating order. (1) After the termination of a conservatorship, the court may make orders as provided in ORS 126.535.

(2) The court, after hearing objections made pursuant to ORS 126.639 to the final account and upon settlement of the final account and determination that property of the ward has been delivered to the person lawfully entitled thereto, shall discharge the conservator and exonerate the surety on his bond. The court may, in its discretion and upon such terms as may be just, at any time within one year after notice thereof, vacate the order discharging the conservator to permit recovery against the conservator and the surety on his bond, or either of them, when it appears that the failure of the claimant to object to the final account of the conservator resulted from fraud or misrepresentation of the conservator or the surety on his bond or from the mistake, inadvertence, surprise or excusable neglect of the claimant.

(3) A copy of the order discharging the conservator may be recorded as provided in ORS 126.545.

[1965 c.402 §16; 1969 c.591 §262]

GIFTS TO MINORS

126.805 Definitions for ORS 126.805 to 126.880. As used in ORS 126.805 to 126.880, except where the context otherwise requires:

(1) "Adult" means any person who has attained the age of 21 years.

(2) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(3) A security is in "registered form" when its terms specify a person entitled to the security or to the rights it evidences and specify that its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer.

(4) "Bank" means a commercial bank,

savings bank, trust company or savings and loan association.

(5) "Broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

(6) "Custodial property" includes:

(a) All securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in ORS 126.805 to 126.880.

(b) The income from the custodial property.

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(7) "Custodian" means the person designated as custodian under ORS 126.805 to 126.880. The term also includes a successor custodian.

(8) "Legal representative" means the executor, administrator, guardian or conservator of the property of the person to whose legal representative reference is made.

(9) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in ORS 126.805 to 126.880 or on the life of a member of the minor's family.

(10) "Member of the minor's family" means the minor's parents, grandparents, brothers, sisters, uncles or aunts, whether of the whole blood or the half blood or through legal adoption.

(11) "Minor" means any person who has not attained the age of 21 years.

(12) "Security" means any note, stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, certificate of deposit for a security or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing.

[1959 c.640 §1; 1967 c.300 §1]

126.810 Manner of making gift. Any adult person may make a gift of securities, life insurance policies, annuity contracts or money to a minor in the following manner:

(1) Securities, if in registered form, shall be registered by the donor in his own name or in the name of any adult member of the minor's family or in the name of any guardian of the minor, followed by substantially the following words: "as custodian, under the laws of Oregon, for _____, a minor." (name of minor)

(2) Securities, if in bearer form, shall be delivered by the donor to any adult member of the minor's family, other than the donor, or to any guardian of the minor, accompanied by a deed of gift duly acknowledged in substantially the following form, signed by the donor and the person designated therein as custodian:

DEED OF GIFT UNDER THE LAWS OF THE STATE OF OREGON

I, _____, do hereby deliver to _____ as custodian under the laws of Oregon for _____, a minor, the following security (or securities):
Principal amount \$ _____ of the _____ Serial number of security _____
(name of donor) (name of custodian) (name of minor) (description of security) (signature of donor)

I, _____ do hereby acknowledge receipt of the above-described security (or securities).
Dated: _____ (signature of custodian)

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, an adult member of the minor's family or a guardian of the minor, followed by substantially the following words: "as custodian, under the laws of Oregon, for _____, a minor."
(name of minor)

(4) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, an adult member of the minor's family, or a guardian

of the minor, followed by substantially the following words: "as custodian, under the laws of Oregon, for _____, a minor." ^(name of minor)
 [1959 c.640 §2; 1967 c.300 §2]

126.815 Gift irrevocable; rights and duties of guardian of minor with respect to gift. (1) A gift made in the manner prescribed in ORS 126.810 shall be irrevocable and shall convey to the minor indefeasibly vested legal title to the securities, life insurance policies, annuity contracts or money thus delivered, but no guardian of the person or property of the minor shall have any rights, duties or authority with respect to any custodial property held at any time by the custodian under the authority of ORS 126.805 to 126.880 unless the guardian shall himself be or become custodian in accordance with ORS 126.805 to 126.880.

(2) A gift made under authority of ORS 126.805 to 126.880 to a guardian of the minor as custodian shall be deemed to have satisfied the requirements of ORS 126.805 to 126.880 if the person to whom delivery has been made is either guardian of the person or guardian of the property of the minor, duly appointed in the State of Oregon or in the state, territory or country where the minor was domiciled at the time of the delivery of the gift.

[1959 c.640 §3; 1967 c.300 §3]

126.820 Duties of custodian. (1) The custodian shall hold, manage, invest and reinvest the custodial property as provided by ORS 126.805 to 126.880. He shall collect the income therefrom and apply so much or the whole thereof and so much or the whole of the other custodial property as he may deem advisable for the support, maintenance, education and general use and benefit of the minor, in such manner, at such time or times, and to such extent as the custodian in his absolute discretion may deem suitable and proper, without court order, without regard to the duty of any person to support the minor and without regard to any other funds which may be applicable or available for the purpose.

(2) The circuit court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(3) To the extent that custodial property is not so expended, it shall be delivered or paid over to the minor when he becomes an adult, or if the minor dies before he becomes an adult it shall thereupon be delivered or paid over to the estate of the minor.

[1959 c.640 §4]

126.825 Powers of custodian. (1) The custodian may sell, exchange, convert, surrender or otherwise dispose of any or all of the custodial property in such manner and at such time or times, for such prices and upon such terms as he may deem advisable. He shall have the power in his sole and absolute discretion to retain any or all custodial property delivered to him within the meaning and under the authority of ORS 126.805 to 126.880 without reference to the statutes relating to permissible investments by fiduciaries. He shall invest and reinvest the custodial property in such securities as would be acquired by prudent men of discretion and intelligence who are seeking a reasonable income and the preservation of their capital, without reference to the statutes relating to permissible investments by fiduciaries or hold part or all of the custodial property in one or more bank accounts in his name as such custodian. He may vote in person or by general or limited proxy with respect to any securities held by him. He may consent directly or through a committee or other agent to the reorganization, consolidation, dissolution or liquidation of any corporations, the securities of which may be held by him, or the sale, lease, pledge or mortgage of any property by or to any such corporation.

(2) If the subject of the gift is a life insurance policy or annuity contract the custodian:

(a) In his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(b) May pay premiums on the policy or contract out of the custodial property.

[1959 c.640 §5; 1967 c.300 §4]

126.830 Additional powers and duties of custodian. (1) In addition to the rights, powers and duties set forth in ORS 126.805 to

126.880 with respect to any custodial property, the custodian, in his name as such custodian, shall have all the powers of management which a guardian of the property of the minor would have.

(2) The custodian may execute and deliver any and all instruments in writing which he may deem advisable to carry out any of the powers set forth in ORS 126.805 to 126.880.
[1959 c.640 §6]

126.835 Exemption of third persons from liability. No issuer of securities, transfer agent, broker, bank, life insurance company or other person acting on the instruction of any person purporting to act as a donor or in the capacity of a custodian shall be responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated under ORS 126.805 to 126.880, or whether any purchase, sale or transfer to or by any person purporting to act in the capacity of custodian is in accordance with or authorized by ORS 126.805 to 126.880, or shall be obliged to inquire into the validity under ORS 126.805 to 126.880 of any instrument or instructions executed or given by a person purporting to act as donor or in the capacity of a custodian, or be bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer of securities, transfer agent, broker, bank, life insurance company or other person acting on any instrument of designation of a successor custodian, executed as provided in subsection (1) of ORS 126.856 by a minor to whom a gift has been made in a manner prescribed by ORS 126.805 to 126.880 and who has attained the age of 14 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under ORS 126.805 to 126.880 of the instrument of designation. No minor as the owner of any securities, life insurance policy or annuity contract issued or registered pursuant to ORS 126.805 to 126.880 in the name of the custodian shall have any right of action, suit or other proceeding against an issuer of securities, transfer agent, broker, bank, life insurance company or other person acting on the instructions of any person purporting to act as a donor or custodian pursuant to ORS 126.805

to 126.880 unless such issuer of securities, transfer agent, broker, bank, life insurance company or other person acts with actual knowledge of such facts that acting on the instructions of the custodian or donor amounts to bad faith.
[1959 c.640 §7; 1967 c.300 §5]

126.840 How securities and other property are to be held. (1) All registered securities held by the custodian from time to time shall be registered in his name followed by substantially the following words: "as custodian, under the laws of Oregon, for—
_____, a minor."

(2) The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian followed by substantially the following words: "as custodian, under the laws of Oregon, for _____, a
minor."
(name of minor)

(3) All other custodial property held by the custodian for the minor under the authority of ORS 126.805 to 126.880 shall be kept separate and distinct from the custodian's own personal funds and property and shall be maintained at all times in such a manner as to identify it clearly as the minor's property held by the custodian under the authority of ORS 126.805 to 126.880.
[1959 c.640 §8]

126.845 Expenses of custodian; when compensation allowed. (1) A person acting as custodian, other than a guardian of the property of the minor, shall receive no compensation for his services but shall be entitled to reimbursement from the custodial property for the reasonable expenses incurred in the performance of his duties under ORS 126.805 to 126.880.

(2) A guardian of the property of the minor, when acting as custodian under the authority of ORS 126.805 to 126.880, may receive such additional compensation for his services as guardian as he would be entitled to receive if the custodial property held by him as custodian under ORS 126.805 to 126.880 were held by him in his capacity as guardian, in addition to the other property of the minor held by him in his capacity as guardian.
[1959 c.640 §9]

126.850 Bond and liabilities of custodian; removal of custodian. (1) Except as otherwise provided in subsection (2) of this

section, a custodian shall be under no obligation to give bond for the faithful performance of his duties and shall not be liable for any losses to the custodial property held by him except such as are the result of his bad faith or intentional wrongdoing or result from his investing the custodial property in a manner other than as prescribed in ORS 126.805 to 126.880.

(2) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of 14 years, may petition the circuit court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(3) Upon the filing of a petition as provided in subsection (2) of this section, the circuit court shall grant an order, directed to the custodian on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the circuit court finds to be in the best interests of the minor.

[1959 c.640 §§10, 12; 1967 c.300 §6]

126.855 [1959 c.640 §11; repealed by 1967 c.300 §7; (126.856 enacted in lieu of 126.855)]

126.856 Designation of successor custodian; effect; responsibilities of custodian or legal representative. (1) Only an adult member of the minor's family or a guardian of the minor is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate an eligible successor before he dies or becomes legally incapacitated, and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor.

(2) The designation of a successor custodian as provided in subsection (1) of this section takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(a) Causes the item, if it is a security in registered form or a life insurance policy or

an annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed by substantially the following words: "as custodian, under the laws of Oregon for _____, a minor."; and

(name of minor)

(b) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (1) of this section shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) of this section by the custodian or, if none, the successor custodian named by the minor if he has no guardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (1) of this section more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

[1967 c.300 §8 (enacted in lieu of 126.855)]

126.860 Procedure upon death, ineligibility or incapacity of custodian. In the event of the ineligibility, death or incapacity of the custodian or successor custodian before the minor becomes an adult and if there is a duly appointed and acting guardian of the property of the minor, such guardian shall become the successor custodian. If there is no duly appointed and acting guardian of the property of the minor and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1) of ORS 126.856, a donor, his legal representative, the

legal representative of the custodian, guardian of the person of the minor, an adult member of the minor's family or the minor, if he has attained the age of 14 years, shall petition the circuit court for the designation of a successor custodian.

[1959 c.640 §§13, 14; 1967 c.300 §9]

126.865 [1959 c.640 §15; repealed by 1967 c.300 §11]

126.870 Powers and duties of successor custodian. Any successor custodian shall have all the rights, powers and duties of a custodian under the authority of ORS 126.805 to 126.880.

[1959 c.640 §16]

126.875 Accounting by custodian. The custodian shall not be required to account to the minor or to any other person for his acts and proceedings unless the minor, a parent of the minor, the legal representative of the minor or a successor custodian shall petition the circuit court for such an accounting no later than two years after the minor becomes an adult or dies before becoming an adult.

[1959 c.640 §17]

126.880 Not exclusive method of making gifts to minors. ORS 126.805 to 126.880 is not intended to be an exclusive method for making gifts to minors.

[1959 c.640 §18; 1967 c.300 §10]

PUBLIC GUARDIANS

126.905 Office of public guardian; expenses; termination. The county court or board of county commissioners of any county:

(1) After making a determination that there exists a need within the county for a guardian for persons who do not have relatives or friends willing to serve as a guardian and capable of assuming the duties of guardianship, may create within the county the office of public guardian and such subordinate positions as may be necessary to operate effectively the office of public guardian within the county.

(2) May expend county funds for the purpose of operating the office of public guardian.

(3) After establishment of the office of public guardian within a county, upon the finding that the county does not need the service of a public guardian, may terminate such office.

[1969 c.627 §1]

126.915 Effect of vacancy in office of public guardian. The person appointed to the office of public guardian shall serve in the office at the pleasure of the appointing authority. If the person holding the office of public guardian in a county is removed from office, dies, becomes incapacitated or resigns, his removal, death, incapacity or resignation shall operate to remove such public guardian as guardian of all estates then under his guardianship.

[1969 c.627 §2]

126.925 Powers and duties of public guardian. (1) The public guardian may serve as the guardian of the person or estate, or both, of any person of whom the court having probate jurisdiction in such county may have jurisdiction pursuant to ORS 126.106. The public guardian may serve as guardian of the person and estate or person or estate upon the petition of any person filed in accordance with the provisions of ORS 126.126, or upon his own petition.

(2) When appointed as guardian by the court having probate jurisdiction, the public guardian shall serve as provided in ORS 126.006 to 126.565, except as otherwise specifically stated to the contrary in ORS 126.905 to 126.965.

(3) The public guardian in his discretion may employ private attorneys where the fees for such attorneys can be defrayed out of funds of the guardianship estate.

[1969 c.627 §§3, 6]

126.935 Bond; exoneration of surety. (1) Before entering into office as public guardian, the person appointed to such office shall file an official bond in such amount as may be fixed from time to time by the board of county commissioners or the county court, which bond shall inure to the joint benefit of the several guardianship estates in which he is acting as guardian and the county. Such public guardian shall not be required to file bonds in individual estates.

(2) Upon removal of the guardian in accordance with the provisions of ORS 126.915, the surety on the public guardian's bond shall be exonerated upon order to that effect of the court having probate jurisdiction in such county.

[1969 c.627 §4]

126.945 Deposit of funds. All funds coming into the custody of the public guardian shall be deposited in the county treasury and

disbursed by proper warrant, or shall be deposited in one or more banks or invested in one or more insured savings and loan associations authorized to do business within the county, or as provided by ORS 126.250.

[1969 c.627 §5]

126.955 Reimbursement of guardian's expenses from estate of ward. The public guardian shall have a claim against the ward's estate for his reasonable expenses incurred in the execution of the guardianship and such compensation for his services and those of his attorney as the court having probate juris-

diction in such county deems just and reasonable. If the public guardian is compensated by the county for his services, any reimbursement of expenses or compensation shall be paid to the county.

[1969 c.627 §7]

126.965 Fees prohibited. No fee shall be charged or received by the county clerk for the filing of any petition asking for the appointment of the public guardian or for any official service performed by such county clerk in the course of such guardianship proceedings.

[1969 c.627 §8]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 1, 1969.

Robert W. Lundy
Legislative Counsel