

TITLE 13

GUARDIANSHIPS, CONSERVATORSHIPS AND TRUSTS

Chapter 126.	Guardianships and Conservatorships; Gifts to Minors
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129.	Principal and Income Act

Chapter 126

1979 REPLACEMENT PART

Guardianships and Conservatorships; Gifts to Minors

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GUARDIANSHIPS AND CONSERVATORSHIPS

(General Provisions)

126.003 General definitions. As used in chapter 823, Oregon Laws 1973, unless the context requires otherwise:

(1) "Conservator" means a person appointed as conservator to administer the estate of a protected person under ORS 126.157 to 126.413.

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

(3) "Guardian" means a person appointed as guardian of a minor or incapacitated person under ORS 126.060 to 126.143.

(4) "Incapacitated person" means a person who is unable, without assistance, to properly manage or take care of himself or his personal affairs.

(5) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a ward or protected person which may be affected by the proceeding, persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(6) "Minor" means any unmarried person who is younger than 18 years of age.

(7) "Minor ward" is a minor for whom a guardian has been appointed solely because of minority.

(8) "Protective proceeding" is a proceeding under ORS 126.157 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

(9) "Protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made.

(10) "Visitor" is an officer, employe or appointee of the court who does not have a personal interest in the proceeding.

(11) "Ward" is a person for whom a guardian has been appointed. [1973 c 823 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in ORS chapter 126. "This Act" constitutes chapter 823, Oregon Laws 1973, and enacted into law and amended ORS sections which may be found by referring to the 1973 Comparative Section Table located following the Index in volume 6 of Oregon Revised Statutes (1973 Replacement Parts)

126.005 [Repealed by 1961 c 344 §109]

126.006 [1961 c.344 §1; 1969 c.591 §224; repealed by 1973 c.823 §154]

126.007 Notice of proceedings; written objections. (1) Notice, where required by ORS 126.003 to 126.413, means information concerning a proceeding, given by mail or delivered personally by the petitioner or his attorney, requiring the person notified to file written objections to the petition or other matter on or before a date specified in the notice, which date shall be not less than 10 days after the mailing or personal delivery of the notice.

(2) If a date for a hearing has been set, the notice shall specify the date, time and place of the hearing.

(3) If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, information concerning a proceeding may be given by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing.

(4) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(5) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding. [1973 c.823 §2]

126.010 [Repealed by 1961 c.344 §109]

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

126.013 Waiver of notice. A person to whom notice is required by ORS 126.003 to 126.413, including a guardian ad litem, conservator or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. [1973 c.823 §3]

126.015 [1961 c.344 §3, repealed by 1973 c 823 §154]

126.017 Jurisdiction of protective and guardianship proceedings; consolidation.

(1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

(3) When two or more proposed wards or protected persons are children of a common parent, are parent and child, or are husband and wife, the proceedings may be consolidated, but may be terminated with respect to less than all the wards or protected persons in the same manner as in the case of a proceeding concerning one person. [1973 c.823 §4]

126.020 [1961 c.344 §4; repealed by 1973 c.823 §154]

126.025 Payment or delivery for benefit of minor.

(1) A person under a duty to pay or deliver money or personal property to a minor may pay or deliver the money or property, in amounts not exceeding \$5,000 per year, to:

(a) A person having the care and custody of the minor with whom the minor resides;

(b) A guardian of the minor; or

(c) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

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

(3) The persons, except the minor or a financial institution under paragraph (c) of subsection (1) of this section, receiving money or property for a minor, shall apply the money to the support and education of the minor, and shall not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Excess sums shall be preserved for future support of the minor and the balance not so used and the property received for the minor shall be turned over to the minor when he attains majority.

(4) Persons who pay or deliver money or personal property under this section are not responsible for the proper application of the money or property. [1973 c.823 §5]

126.030 Delegation of certain powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward. [1973 c.823 §6]

126.035 Preference in appointing guardian.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian for the minor. Subject to this preference, the court shall appoint as guardian for a minor or incapacitated person 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 incapacitated person contained in a written instrument executed by the incapacitated person while competent.

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

(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. [1973 c 823 §7]

126.040 Letters of guardianship.

Upon acceptance by a guardian or upon appointment by the court, the court shall cause to be issued letters of guardianship to the guardian. Letters of guardianship shall be issued in substantially the following form:

 State of Oregon)
) ss.
 County of _____)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That on _____ (month) _____ (day), 19____, the _____ Court, _____ County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of ward), a(n) _____ (minor or incapacitated person), that the named guardian has qualified and has the authority and shall perform the duties of guardian 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 _____ (month) _____ (day), 19—.

(Seal)

_____, Clerk of the Court

By _____, Deputy

[1973 c.823 §8]

126.045 Persons not qualified to act as guardian or conservator. A person is not qualified to act, or to continue to act, as guardian or conservator who is:

(1) An incompetent;

(2) A minor;

(3) A person suspended from the practice of law in Oregon for misconduct or disbarred in Oregon from the practice of law, during the period of suspension or disbarment;

(4) A person who resigned from the Oregon State Bar when charges of professional misconduct were under investigation or when disciplinary proceedings were pending against him, until he is reinstated; or

(5) A judge of the district court, circuit court, Oregon Tax Court, Court of Appeals or Supreme Court of this state. [1977 c 355 §1]

Note: 12.045 to 12.055 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 126 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation

126.050 Effect of felony conviction on appointment as guardian or conservator; notice to court. (1) A person nominated as guardian or conservator who has been convicted of a felony shall inform the court of the conviction. The conviction shall not disqualify the nominee from acting as guardian or conservator unless the court finds that the facts underlying the conviction are such as to give rise to a reasonable belief that such person will be unfaithful to or neglectful of his trust or that the appointment will not be in the best interests of the minor or protected person.

(2) A nominee who fails to inform the court of a felony conviction may be disqualified from acting as guardian or conservator or may be removed. [1977 c 355 §2]

Note: See note under 126.045.

126.055 Appointment of successor guardian or conservator. (1) When a guardian or conservator dies, or is removed by the court or resigns pursuant to ORS 126.095,

126.123 or 126.267, the court may appoint a successor guardian or conservator. The same procedures and provisions for appointment of an original guardian or conservator shall apply.

(2) When a successor guardian or conservator is appointed, he has all the rights and powers of his predecessor, except that a successor guardian shall not exercise powers given in a will or other written instrument which, by the terms of the will or written instrument, are personal to the guardian named therein. [1977 c 355 §3]

Note: See note under 126.045

(Guardians of Minors)

126.060 Status of guardian of minor. A person becomes a guardian of a minor upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or minor ward. [1973 c 823 §9]

126.065 Venue for guardianship proceedings for minor. The venue for guardianship proceedings for a minor is in the place where the minor resides or is present. [1973 c.823 §10]

126.070 Procedure for appointment of guardian of minor. (1) Notice for the appointment of a guardian of a minor shall be given by the petitioner as required under ORS 126.007 to:

(a) The minor, if he is 14 years of age or older;

(b) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) Any living parent of the minor.

(2) If the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given and the welfare and best interests of the minor will be served by the requested appointment, the court shall make the appointment. In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. [1973 c.823 §11]

126.075 Effect of accepting appointment to be guardian of minor; notice of proceedings to guardian. (1) By accepting appointment, a guardian whether a resident or nonresident of this state, submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. [1973 c 823 §12]

126.080 Powers and duties of guardian of minor. (1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian:

(a) Shall take reasonable care of his ward's personal effects and begin protective proceedings if necessary to protect other property of the ward.

(b) May receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship.

(c) May receive money or property of the ward paid or delivered by virtue of ORS 126.025.

(d) May institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(e) Shall facilitate the ward's educational, social, or other activities and authorize medical or other professional care, treatment or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons

unless it would have been illegal for a parent to have consented.

(f) May consent to the marriage or adoption of his ward.

(g) Shall report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

(h) May prosecute claims of the ward, including those for his personal injury.

(2) Any money or property received under paragraphs (b), (c), (d) and (h) of subsection (1) of this section shall be applied to the ward's current needs for support, care and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Money or property so received by the guardian is not to be used for compensation for his services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian. [1973 c.823 §13; 1977 c.211 §3]

126.085 Effect of and termination of appointment. (1) A guardian's authority and responsibility terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority. Termination does not affect his liability for prior acts or his responsibility to account for, or to discharge obligations from, funds and assets of his ward.

(2) Resignation of a guardian does not terminate the guardianship until it has been approved by the court. [1973 c 823 §14]

126.090 Authority of court in state where minor ward resides; notice to other court. (1) A court in the state where the ward resides has concurrent jurisdiction with the court which appointed the guardian regarding resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If a court in the state where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are begun shall in all appropriate cases notify the other court, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court,

whichever is in the best interests of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

[1973 c.823 §15]

126.095 Petition for removal or resignation; appointment of counsel for ward.

(1) A person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice of a petition for removal or for permission to resign and hearing upon objections to the petition, if any, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward, are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older. [1973 c.823 §16]

(Guardians of Incapacitated Persons)

126.100 Venue in proceedings for guardianship of incapacitated person. The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution under order of a court, venue is also in the county in which that court sits.

[1973 c.823 §17]

126.103 Procedure for appointment of guardian for incapacitated person. (1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, notice shall be given as required under ORS 126.007. On hearing of objections to the petition, if any, the court may appoint an attorney to represent the alleged incapacitated person in the proceeding unless he has counsel of his own choice.

(3) The person alleged to be incapacitated may be examined by a physician who shall submit his report in writing to the court.

(4) The court may also direct a visitor, if appointed, to interview the person seeking appointment as guardian, the physician examining the alleged incapacitated person, and the person or officer of the institution having the care, custody or control of the alleged incapacitated person and to visit the present place of abode of the alleged incapacitated person. The visitor shall submit his report in writing to the court.

(5) Upon hearing of objections to the petition, if any, the person alleged to be incapacitated may be present in person, to see or hear all evidence bearing upon his condition. He may be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests. [1973 c 823 §18]

126.105 [Repealed by 1961 c.344 §109]

126.106 [1961 c.344 §5; 1969 c.591 §225; repealed by 1973 c.823 §154]

126.107 Findings; appointment. The court may appoint a guardian as requested if the court is satisfied that:

(1) The person for whom a guardian is sought is incapacitated; and

(2) The appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. [1973 c.823 §19]

126.110 [Repealed by 1961 c 344 §109]

126.111 [1961 c.344 §6; 1969 c.591 §226; repealed by 1973 c.823 §154]

126.113 Effect of accepting appointment to be guardian of incapacitated person; notice of proceedings to guardian. By accepting appointment, a guardian whether a resident or nonresident of this state, submits personally to the jurisdiction of the court in any proceeding relating to the guardianship. Notice of a proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as known to the petitioner. [1973 c.823 §20]

126.115 [Repealed by 1961 c 344 §109]

126.116 [1961 c.344 §7; repealed by 1973 c.823 §154]

126.117 Means of terminating guardianship for incapacitated person. The authority and responsibility of a guardian for an incapacitated person terminates upon:

(1) The death of the guardian or ward;

(2) An order of the court determining the incapacity of the guardian; or

(3) Removal or resignation under ORS 126.123. [1973 c 823 §21]

126.120 [Repealed by 1961 c.344 §109]

126.121 [1961 c 344 §8; repealed by 1973 c.823 §154]

126.123 Removal or resignation of guardian; order that incapacity no longer exists. (1) On petition of the ward or any other person, the court may remove a guardian and make any other order that may be appropriate.

(2) On petition of the guardian, the court may accept his resignation and make any other order that may be appropriate.

(3) On petition of the ward or any other person, the court may order that he is no longer incapacitated.

(4) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, and may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the court. [1973 c.823 §§22, 23]

126.125 [Repealed by 1961 c 344 §109]

126.126 [1961 c.344 §9; 1969 c 591 §227, repealed by 1973 c 823 §154]

126.127 Notice on appointment or removal of guardian of incapacitated person. In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice shall be given as required under ORS 126.007 to:

(1) The ward or the person alleged to be incapacitated and his spouse, parents and adult children;

(2) Any person who is serving as guardian or conservator or who has the care and custody of the ward or alleged incapacitated person; and

(3) If a person other than the ward or the alleged incapacitated person is not notified under subsection (1) of this section, one of his closest adult relatives, if any can be found.

[1973 c.823 §24]

126.130 [Repealed by 1961 c 344 §109]

126.131 [1961 c.344 §10; 1969 c.591 §228; repealed by 1973 c 823 §154]

126.133 Appointment of temporary guardian for incapacitated person. If the court finds that an emergency exists and no guardian has been appointed or that a guardian is not effectively performing his duties or that the welfare of the incapacitated person requires immediate action, the court may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period and specified purpose. A temporary guardian has the care and custody of the ward for the purpose so specified. The authority of the permanent guardian previously appointed by the court is suspended while the temporary guardian has authority. A temporary guardian may be removed at any time and shall make any report the court requires. ORS 126.003 to 126.143 apply to temporary guardians. [1973 c.823 §25]

126.135 [Repealed by 1961 c.344 §109]

126.136 [1961 c.344 §11; repealed by 1973 c 823 §154]

126.137 General powers and duties of guardian of incapacitated person. (1) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian, except as modified by order of the court:

(a) May to the extent that it is consistent with the terms of the court order relating to detention or commitment of the ward, have custody of the person of his ward and establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, shall provide for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other person-

al effects and begin protective proceedings if other property of his ward is in need of protection.

(c) May consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward.

(d) If a conservator for the estate of the ward has not been appointed, he may:

(A) Begin proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty; and

(B) Receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward except, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He shall exercise care to conserve any excess for the ward's needs.

(2) If a conservator has been appointed:

(a) All of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management, and the guardian shall account to the conservator for funds expended.

(b) The guardian shall control the custody and care of the ward, and may receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(3) A guardian shall give bond and report the condition of his ward and of the estate which has been subject to his possession and control as required by the court. [1973 c.823 §26]

126.140 [Repealed by 1961 c 344 §109]

126.141 [1961 c 344 §12; repealed by 1973 c 823 §154]

126.143 Authority of court in state where incapacitated ward resides; notice to other court. (1) A court in the state where the ward resides has concurrent jurisdiction with the court which appointed the guardian regarding resignation, removal, accounting

and other proceedings relating to the guardianship.

(2) If a court in the state where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are begun shall notify the other court, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed. [1973 c.823 §27]

126.145 [Repealed by 1961 c 344 §109]

126.146 [1961 c.344 §13; 1969 c.591 §229; repealed by 1973 c.823 §154]

126.150 [Repealed by 1961 c 344 §109]

126.151 [1961 c 344 §14; 1969 c 591 §230; repealed by 1973 c.823 §154]

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

126.156 [1961 c 344 §15; repealed by 1973 c.823 §154]

(Protection of Property of Minors and Incapacitated Persons)

126.157 Protective proceedings. Upon petition and after notice and hearing upon objections, if any, as provided in ORS 126.007, the court may appoint a conservator or make other protective order in relation to the estate and affairs of:

(1) A minor if the court determines that a minor:

(a) Owns money or property that requires management or protection which is not otherwise provided;

(b) Has or may have business affairs which may be jeopardized or prevented by minority; or

(c) Needs funds for support of the minor or education and protection is necessary or desirable to obtain or provide the funds.

(2) A person if the court determines that the person is unable to manage the property and affairs of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, age, chronic use of drugs or controlled substances, chronic intoxication, con-

finement, detention by a foreign power or disappearance and:

(a) The person has property which will be wasted or dissipated unless proper management is provided; or

(b) Funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds. [1973 c.823 §28; 1979 c.744 §2]

126.160 [Repealed by 1961 c.344 §109]

126.161 [1961 c.344 §16; repealed by 1973 c.823 §154]

126.163 Jurisdiction of court. After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated.

(2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents.

(3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property in this state. [1973 c.823 §29]

126.165 [Repealed by 1961 c.344 §109]

126.166 [1961 c.344 §17; 1969 c.591 §231; repealed by 1973 c.823 §154]

126.167 Venue for protective proceedings. Venue for proceedings under ORS 126.157 to 126.403 is:

(1) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this state, in any place where he has property. [1973 c.823 §30]

126.170 [Repealed by 1961 c.344 §109]

126.171 [1961 c.344 §18, repealed by 1973 c.823 §154]

126.173 Effect of commencement of proceedings in more than one county; when commenced; effect of commencement. (1) If proceedings for the appointment

of a conservator or other protective order 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.

(2) A proceeding is considered commenced by the filing of a petition. The proceeding first legally commenced for the appointment of a conservator or other protective order extends to all the property of the proposed protected person and protected person in this state.

[1973 c.823 §31]

126.174 [1969 c.591 §233, repealed by 1973 c.823 §154]

126.175 [Repealed by 1961 c.344 §109]

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

126.177 Transfer of proceedings. (1) A court having before it any proceeding for the appointment of a conservator or other protective order may transfer the matter to another county in the interests of the protected person or, if not contrary to the interests of the protected person, for the convenience of the conservator. A petition for the transfer, setting forth the reasons therefor may be filed in the proceeding.

(2) If the court is satisfied that the transfer is in the interest of the protected person, or if not contrary to the interest of the protected person, for the convenience of the conservator, 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 conservator, all certified by the clerk of the court, to be sent to the clerk of the court of the other county.

(3) 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. [1973 c.823 §32]

126.180 [Repealed by 1961 c.344 §109]

126.181 [1961 c.344 §20, repealed by 1973 c.823 §154]

126.183 Who may petition; content of petition. (1) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known:

(a) The interest of the petitioner;

(b) The name, age, residence and address of the person to be protected;

(c) The name and address of his guardian, if any;

(d) The name and address of his nearest relative known to the petitioner;

(e) A general statement of his property with an estimate of the value of the property, including any compensation, insurance, pension or allowance to which he is entitled;

(f) The reason why appointment of a conservator or other protective order is necessary; and

(g) If the appointment of a conservator is requested, the name and address of the person whose appointment is sought and the basis of his priority for appointment. [1973 c.823 §33]

126.185 [Repealed by 1961 c.344 §109]

126.186 [1961 c 344 §21; 1969 c 591 §234; repealed by 1973 c.823 §154]

126.187 Notice by petitioner. Notice for the appointment of a conservator or other protective order, shall be given by the petitioner as required under ORS 126.007 to:

(1) The person to be protected, unless he is the petitioner;

(2) The spouse of the person to be protected or, if there is not a spouse, his parents; and

(3) Any person who has filed a request for notice under ORS 126.193 and to interested persons and other persons as the court may direct. [1973 c.823 §34]

126.190 [Repealed by 1961 c.344 §109]

126.193 Request for notice by interested person; fee; content of request; notice to conservator; government agency as interested person. (1) An interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk of the court a request for notice

subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing.

(2) Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings. [1973 c 823 §35]

126.195 [Repealed by 1961 c.344 §109]

126.197 Hearing; order. (1) Upon receipt of objections to a petition for appointment of a conservator or other protective order, the court shall set a date for hearing on the matters alleged in the petition.

(2) If the petition is because of minority and, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor is 14 years of age or older.

(3) If the petition is for reasons other than minority, the court may appoint an attorney to represent the person to be protected unless the person has counsel chosen by the person. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs or controlled substances, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected.

(4) Upon finding that a basis for the appointment of a conservator or other protective order has been established, the court will make an appointment or other appropriate protective order. [1973 c.823 §36; 1979 c.744 §3]

126.200 [Repealed by 1961 c 344 §109]

126.203 Power of court may be exercised directly or through conservator. The powers enumerated in ORS 126.207 to 126.217 may be exercised by the court directly or through a conservator in respect to the estate and affairs of a protected person. [1973 c.823 §37]

126.205 [1961 c.344 §22, repealed by 1973 c.823 §154]

126.207 Court power to preserve and apply property. While a petition for appointment of a conservator or other protective order is pending and without notice to others, the court may preserve and apply the property of the person to be protected as required for his benefit or the benefit of his dependents. [1973 c.823 §38]

126.210 [1961 c.344 §23; repealed by 1973 c.823 §154]

126.213 Court power over estate and affairs of minor. Upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court may exercise those powers over the estate and affairs of the minor which may be necessary for the best interests of the minor, his family and members of his household. [1973 c.823 §39]

126.215 [1961 c.344 §24; repealed by 1973 c.823 §154]

126.217 Power of court over estate and affairs of certain persons for reasons other than minority. (1) Subject to the provisions of subsection (2) of this section and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court may, for the benefit of the person and members of his household, exercise all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to the power to:

(a) Make gifts in trust or otherwise in reasonable amounts;

(b) Provide support for other persons as authorized by the court;

(c) Convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(d) Exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(e) Enter into contracts;

(f) Settle any debt or other chose in action;

(g) Create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life;

(h) Exercise options of the disabled person to purchase securities or other property;

(i) Exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(j) Exercise his right to an elective share in the estate of his deceased spouse; and

(k) Renounce any interest by testate or intestate succession or by inter vivos transfer.

(2) The court may exercise or release powers of appointment of which the protected person is donee, renounce interests, make gifts in trust or otherwise in reasonable amounts or change beneficiaries under insurance and annuity policies, only if satisfied, after notice to interested persons and hearing on objections, if any, as required under ORS 126.007, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power. [1973 c.823 §40]

126.220 [1961 c.344 §25; repealed by 1973 c.823 §154]

126.223 Power of competent protected person over estate. (1) A protected person, if mentally competent, may make wills, change beneficiaries of life insurance and annuity policies and exercise any power of appointment or any elective right to share in the estate of a deceased spouse.

(2) Except as provided in this section and ORS 126.293, a protected person for whom a conservator has been appointed cannot convey or encumber his estate or make any contract or election affecting his estate. [1973 c.823 §41]

126.225 [1961 c.344 §26; repealed by 1973 c.823 §154]

126.227 Court may approve certain transactions without conservator. (1) If it is established that a basis exists as described in ORS 126.157 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify:

(a) Any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person, including but not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or

other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) Any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(2) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done under the order of appointment. [1973 c.823 §42]

126.230 [1961 c.344 §27; 1969 c 591 §235; repealed by 1973 c.823 §154]

(Conservators)

126.233 Preferences in appointing conservator. (1) The court may appoint as conservator of the estate of a protected person an individual, or a corporation with power to serve as trustee in this state. The court shall appoint the qualified person most suitable who is willing to serve giving preference to the following:

(a) A conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.

(b) An individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.

(c) The spouse of the protected person.

(d) An adult child of the protected person.

(e) A parent of the protected person, or a person nominated by the will of a deceased parent.

(f) Any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition.

(g) A person nominated by the person who is caring for him or paying benefits to him.

(h) Any person the court considers qualified to act as a conservator of the estate of the protected person.

(2) A person mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) of this section may nominate in writing a person to serve in his stead. [1973 c 823 §43]

126.235 [1961 c.344 §28; repealed by 1973 c.823 §154]

126.237 Conservator's bond. (1) The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as specified by the court. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities and money deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(2) Sureties shall be jointly and severally liable with the guardian and with each other.

(3) Letters of conservatorship shall not issue until the bond of the conservator, if required, is approved by the court. [1973 c 823 §44]

126.240 [1961 c.344 §29; repealed by 1973 c 823 §154]

126.243 Bond terms and requirements. (1) The bond of a conservator 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 conservator 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 conservator shall execute and file in the proceedings a new bond, with sufficient surety or sureties, in the same amount and upon the same conditions. If the conservator fails to do so, his authority as conservator shall cease on the effective date of termination of the obligation of the surety on his bonds, the letters of conservatorship 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 conservator for the protection of the protected person and the estate of the protected person, either upon its own motion or upon the motion of the conservator or any interested person. [1973 c 823 §45]

126.245 [1961 c.344 §30; 1969 c 591 §236; 1971 c.743 §315; repealed by 1973 c.823 §154]

126.247 Effect of accepting appointment as conservator; notice of proceedings to conservator. (1) As an acceptance of the appointment the conservator shall file in the proceeding his name, residence and post-office address. The conservator promptly shall file in the proceeding every change in his name, residence or post-office address.

(2) By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate.

(3) Notice of any proceeding shall be given to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner. [1973 c.823 §46]

126.250 [1961 c.344 §31; 1963 c.438 §1, 1965 c 402 §1; repealed by 1973 c 823 §154]

126.253 Letters of conservatorship. When a conservator has filed a bond, if one is required, and his name, residence and post-office address as provided in ORS 126.237 to 126.247, the court shall cause to be issued letters of conservatorship to the conservator. Letters of conservatorship shall be in substantially the following form:

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

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, That on _____ (month), _____ (day), 19____, the _____ Court, _____ County, State of Oregon, appointed _____ (name of conservator), conservator of the estate of _____ (name of protected person), that the named conservator has qualified and has the authority and shall perform the duties of conservator of the estate of the named protected person 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)____ (day) 19____.

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

[1973 c.823 §47]

126.255 [1961 c.344 §32; repealed by 1973 c.823 §154]

126.257 Recording order of appointment. Within 90 days after the date of his appointment, a conservator shall cause to be recorded in the record of deeds of each county, other than the county in which the conservator is appointed, in which real property of the protected person is situated a copy of the order of appointment certified by the clerk of the court. [1973 c 823 §55]

126.260 [1961 c.344 §33; repealed by 1973 c 823 §154]

126.263 Compensation and expenses payable by estate. If not otherwise compensated for services rendered, any visitor, attorney, physician, conservator or temporary conservator appointed in a protective proceeding may receive reasonable compensation from the estate. [1973 c.823 §48]

126.265 [1961 c.344 §34; 1969 c.591 §237; repealed by 1973 c 823 §154]

126.267 Death, resignation or removal of conservator. The court may remove a conservator for cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor. [1973 c 823 §49]

126.270 [1961 c.344 §35; repealed by 1973 c.823 §154]

126.273 Petitions subsequent to appointment of conservator. (1) Any interested person or other person interested in the welfare of a person for whom a conservator has been appointed may file a petition for an order:

- (a) Requiring bond or security or additional bond or security, or reducing bond;
- (b) Requiring an accounting for the administration of the trust;
- (c) Directing distribution;

(d) Removing the conservator and appointing a temporary or successor conservator; or

(e) Granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility. [1973 c.823 §50]

126.275 [1961 c.344 §36; repealed by 1973 c.823 §154]

126.277 Filing of inventory required; supplemental inventory. (1) Within 90 days after the date of his appointment, unless a longer time is granted by the court, a conservator shall file in the protective proceeding an inventory of all the property of the estate of the protected person that has come into his possession or knowledge. The inventory shall show the estimates by the conservator of the respective true cash values as of the date of the protective order.

(2) Whenever any property of the estate of the protected person, not included in the inventory, comes into the possession or knowledge of the conservator, he shall either file in the protective proceeding a supplemental inventory within 30 days after the date of receiving possession or knowledge, or include the property in his next accounting. [1973 c.823 §§51, 52]

126.280 [1961 c.344 §37; repealed by 1973 c.823 §154]

126.283 Conservator's accounting to court. (1) Within 30 days after each anniversary of his appointment, unless the court by order provides otherwise or after the death of the protected person or the termination of his minority or disability, a conservator shall account to the court for the administration of the protected estate.

(2) The conservator shall provide a copy of each accounting to:

(a) The protected person if he is 14 years of age or older and has capacity to understand it;

(b) The guardian of the protected person, if any; and

(c) The personal representative of the protected person, if any.

(3) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith. An order, made upon

notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(4) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify. [1973 c.823 §53]

126.285 [1961 c.344 §38; repealed by 1973 c.823 §154]

126.287 Conservator's accounting to protected person. Notwithstanding ORS 126.283, if the protected person recovers from his disability or is a minor who attains the age of majority a conservator may settle his account of the estate of the protected person with the protected person without filing a report with the court. The protected person shall give a receipt to the conservator for the property delivered to the protected person. The protected person shall file with the court a copy of the receipt issued by the protected person to the conservator. When the receipt is filed, the court shall terminate the protective order. [1973 c.823 §54]

126.290 [1961 c.344 §39; repealed by 1973 c.823 §154]

126.293 Power of conservator over property of protected person. A conservator shall take possession of all the property of substantial value of the protected person, and of rents, income, issues and profits therefrom whether accruing before or after the appointment of the conservator, and of the proceeds from the sale, mortgage, lease or other disposition thereof. However, the conservator may permit the protected person to have possession and control of property and funds for living requirements as appropriate to the needs and capacities of the protected person. The title to all property of the protected person is in the protected person and not in the conservator. [1973 c.823 §56]

126.295 [1961 c.344 §40; 1969 c.591 §238; repealed by 1973 c.823 §154]

126.297 Certain transactions voidable. Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by

the court after notice as required under ORS 126.007 to interested persons and others as directed by the court and a hearing of objections, if any. [1973 c.823 §57]

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

126.303 Status of persons dealing with conservator. (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in ORS 126.203 to 126.217, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are indorsed on letters as provided in ORS 126.343 are effective as to third persons. A person is not required to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection provided under subsection (1) of this section:

(a) Extends to instances in which some procedural irregularity or jurisdictional defect occurs in proceedings leading to the issuance of letters.

(b) Is not substituted for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries. [1973 c 823 §58]

126.305 [Repealed by 1961 c.344 §109]

126.306 [1961 c.344 §42; repealed by 1973 c 823 §154]

126.307 Conservator of estate of minor has duties and powers of guardian. A conservator has the powers conferred in ORS 126.313 and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of a minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in ORS 126.080 until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided under ORS 126.060 to 126.095. [1973 c.823 §59]

126.310 [Repealed by 1961 c.344 §109]

126.311 [1961 c.344 §43; repealed by 1973 c.823 §154]

126.313 Powers of conservator. A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

(1) Collect, hold and retain assets of the estate including land wherever situated, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(2) Receive additions to the estate;

(3) Continue or participate in the operation of any business or other enterprise;

(4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) Invest and reinvest estate assets and funds as would a trustee;

(6) Deposit estate funds in a bank including a bank operated by the conservator;

(7) Acquire or dispose of an estate asset including land wherever situated for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset in connection with the exercise of any power vested in the conservator;

(8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(9) Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations, and to dedicate easements to public use without consideration;

(10) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(13) Vote a security, in person or by general or limited proxy;

(14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) Sell or exercise stock subscription or conversion rights, to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(17) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(18) Borrow money to be repaid from estate assets or otherwise and mortgage or pledge property of the protected person as security therefor, to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made;

(19) Pay or contest any claim, to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(20) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(21) Allocate items of income or expense to either income or principal, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(22) Pay any sum distributable to a protected person or a dependent of the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(23) Employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator to advise or assist him in the performance

of his administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(25) Prosecute claims of the protected person including those for his personal injury; and

(26) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

[1973 c.823 §60; 1975 c.226 §1; 1977 c.211 §2]

126.315 [Repealed by 1961 c.344 §109]

126.316 [1961 c.344 §44; repealed by 1973 c.823 §154]

126.317 Duties and powers of conservator to pay expenses of protected person and dependents. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents if the conservator:

(1) Considers recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless:

(a) The conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support; or

(b) The recommendations are clearly not in the best interests of the protected person.

(2) Expends or distributes sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(a) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(b) The accustomed standard of living of the protected person and members of his household; and

(c) Other funds or sources used for the support of the protected person.

(3) Expends funds of the estate for the support of persons legally dependent on the protected person, others who are members of the protected person's household who are unable to support themselves, and who are in need of support and other persons who were receiving support from the protected person before the appointment of the conservator.

[1973 c.823 §61]

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

126.321 [1961 c.344 §45; repealed by 1973 c.823 §154]

126.323 Power of conservator to reimburse for expenditures; advances for services. Funds expended under ORS 126.317 may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances. [1973 c 823 §62]

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

126.326 [1961 c.344 §46; repealed by 1973 c.823 §154]

126.327 Power of conservator to make gifts. If the estate is ample to provide for the purposes implicit in the distributions authorized under ORS 126.317, a conservator for a protected person may make gifts in a reasonable amount to charity and other objects as the protected person might have been expected to make. [1973 c.823 §63]

126.330 [Repealed by 1961 c.344 §109]

126.331 [1961 c.344 §47; repealed by 1973 c.823 §154]

126.333 Payment of funds to protected person upon attainment of majority or cessation of disability. When a minor who has not been adjudged disabled under subsection (2) of ORS 126.157 attains his majority or when a conservator is satisfied that a protected person's disability, other than minority, has ceased, the conservator, after meeting all

prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former minor or protected person as soon as possible. [1973 c.823 §64]

126.335 [Repealed by 1961 c.344 §109]

126.336 [1961 c.344 §48; 1965 c.402 §2; 1969 c.384 §1; repealed by 1973 c.823 §154]

126.337 Powers and duties of conservator on death of protected person. (1) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to the personal representative of the decedent or other persons entitled thereto.

(2) If after 40 days from the death of the protected person a person has not been appointed personal representative and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment.

(3) Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under ORS 126.193 and to any person nominated executor in any will of which the applicant is aware, the court may, upon determining that there is no objection, order the conferral of the power and indorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this subsection shall have the effect of an order of appointment of a personal representative as provided in ORS chapters 113 to 116 except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior re-transfer to the conservator as personal representative. [1973 c.823 §65; 1975 c.245 §2]

126.338 [1965 c 402 §4; 1969 c.591 §239, 1969 c.597 §§16, 277; repealed by 1973 c.823 §154]

126.340 [Repealed by 1961 c.344 §109]

126.341 [1961 c.344 §49; repealed by 1973 c.823 §154]

126.343 Conservator vested with certain powers of court; limitation of and addition to powers of conservator by court. Subject to the restrictions in subsection (2) of ORS 126.217 the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by ORS 126.307 to 126.337, any power which the court itself could exercise under ORS 126.213 and 126.217. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by ORS 126.307 to 126.337, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by ORS 126.307 to 126.337, the limitation shall be indorsed upon his letters of appointment. [1973 c.823 §66]

126.345 [Repealed by 1961 c 344 §109]

126.346 [1961 c 344 §50, 1965 c 402 §5; repealed by 1973 c.823 §154]

126.347 Consideration of estate plan of protected person. In investing the estate, selecting assets of the estate for distribution under ORS 126.317 to 126.327, and utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person. [1973 c.823 §67]

126.350 [Repealed by 1961 c 344 §109]

126.351 [1961 c 344 §51; repealed by 1973 c 823 §154]

(Payment of Claims)

126.353 Payment of claims against estate or protected person. (1) A conservator shall pay from the estate claims against the estate and against the protected person arising before or after the conservatorship upon their presentation, allowance and maturity. Claims which become absolute at an uncertain time or upon the happening of an uncertain event shall not be allowed. The conservator may allow claims against the

estate of a protected person in part and disallow them in the remaining part.

(2) A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator or the attorney for the conservator a written statement of the claim stating its basis, the name and address of the claimant and of the claimant's attorney if the claimant is represented by an attorney in respect to the claim and the amount claimed;

(b) The claimant may file the claim with the clerk of the court in which the proceeding is pending, so headed as to identify the protected person and the clerk's number of the proceeding, and deliver or mail a copy of the statement to the conservator or his attorney.

(3) If the conservator disallows the claim in whole or in part, or if the conservator finds that the claim is valid but not due, he shall notify the claimant or his attorney in writing of his disallowance or finding.

(4) The presentation of a claim and any defect in form or substance may be waived by the conservator or by the court if the claim, properly stated, is a valid and absolute obligation of the estate.

(5) The conservator may reconsider any claim previously rejected or allowed, or may compromise any claim against the estate of a protected person, including contingent, unliquidated and unmatured claims. [1973 c.823 §68, 69, 72]

126.355 [Repealed by 1961 c.344 §109]

126.357 Enforcement of claim against estate or protected person. (1) An action upon a claim shall not be brought until the claim is disallowed or 60 days have elapsed from the date of its presentment without allowance and payment.

(2) A creditor of the protected person or his estate whose claim is secured shall not exercise remedies against the collateral until at least 30 days after the claim is presented and after notice to the conservator or his attorney, that he intends to exercise remedies against the collateral, but the court may shorten the period for cause.

(3) The conservator may convey the collateral to the secured creditor in satisfaction or partial satisfaction of the claim if the secured creditor agrees to accept the conveyance in satisfaction or partial satisfaction of the debt. [1973 c.823 §§70, 71]

126.360 [Repealed by 1961 c.344 §109]

126.363 Notice of claim to conservator. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate. [1973 c.823 §73]

126.365 [Repealed by 1961 c.344 §109]

126.367 Procedure where claim disallowed. (1) If the conservator disallows a claim in whole or in part, or if the conservator does not allow or disallow a claim within 60 days after it is presented, the claimant may:

(a) File in the conservatorship proceeding a request for a summary determination of the claim by the court, with proof of service of a copy upon the conservator or his attorney; or

(b) Commence a separate action against the conservator on the claim in a court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant requests a summary hearing, the conservator may, within 30 days after service of the request, notify the claimant in writing that if he desires to prove the claim he must commence a separate action against the conservator within 60 days after service of the notice. If the claimant fails to commence an action against the conservator within that time, the claim is barred.

(3) Neither party may appeal from an order allowing or disallowing in whole or in part a claim which has been considered upon a summary hearing. [1973 c.823 §74]

126.370 [Repealed by 1961 c.344 §109]

126.373 Effect of presentation of claim on statute of limitations. (1) The presentation of a claim tolls any statute of limitation until 30 days after the claim is disallowed or if the claim is not allowed or disallowed within 60 days after it is presented until 90 days after it is presented.

(2) The filing of a request for a summary determination of a claim which has been disallowed in whole or in part is, in the application of statutes of limitation, the commencement of an action. [1973 c.823 §75]

126.377 Preferences of claims. If it appears that the estate in conservatorship is likely to be exhausted before all claims are paid, preference is to be given to claims for

the care, maintenance and education of the protected person or his dependents and claims for expenses of administration. [1973 c.823 §76]

(Miscellaneous)

126.383 Liability of conservator. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action. [1973 c.823 §77]

126.387 Termination of conservatorship. (1) The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order.

(2) The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. The order of termination shall direct the conservator to deliver the assets in his possession to the protected person or his successors:

(a) Immediately, to the extent that they are not required for payment of expenses of administration and debts incurred by the conservator for the account of the estate of the protected person; and

(b) Upon entry of an order approving the

final account or surcharging the conservator, to the extent of any balance remaining. [1973 c.823 §78]

126.393 Disposition of certain estates; winding up conservatorship affairs.

Where, at the time of the appointment of the conservator or thereafter, the estate of the protected person consists of personal property having a value not exceeding by more than \$5,000 the aggregate amount of unpaid expenses of administration of the protected estate and claims against the estate, the conservator, with prior approval of the court by order, may pay the expenses and claims from the estate and deliver all the remaining personal property to the person designated by the court 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 conservator. The receipt is a release and acquittance to the conservator as to the property so delivered. The conservator shall file in the protective proceeding proper receipts or other evidence satisfactory to the court showing such delivery. The protective order is terminated by the order of the court. [1973 c.823 §79]

126.397 Payment of debt and delivery of property to foreign conservator. (1) A person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating that:

(a) A protective proceeding relating to the protected person is not pending in this state; and

(b) The foreign conservator is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. [1973 c.823 §80]

126.403 Participation of Veterans Administration or Adult and Family Services Division when protected person receives veterans' or welfare benefits. (1)

Where a conservator has been appointed for a protected person who is receiving moneys paid or payable by the United States through the Veterans Administration or by the State of Oregon through the Adult and Family Services Division of the Department of Human Resources, a representative of the Veterans Administration or Adult and Family Services Division may give to the conservator and file in the protective proceeding, written notice requesting that a copy of all accounts and petitions for court approval of any conservatorship matter requiring court approval which are to be filed in the protective proceeding be given to a representative of the Veterans Administration or Adult and Family Services Division designated in the notice. After the notice is given and filed the conservator shall give a copy of all the accounts and petitions to the designated representative of the Veterans Administration or Adult and Family Services Division before they are filed in the protective proceeding, and, unless the notice is waived in writing, shall give written notice of the hearing by the court on each account or petition to the designated representative of the Veterans Administration or Adult and Family Services Division at least 10 days before the date of the hearing. A representative of the Veterans Administration or Adult and Family Services Division may appear and be heard at any hearing.

(2) If a conservator for a protected person who is receiving moneys paid or payable by the United States through the Veterans Administration or by the State of Oregon through the Adult and Family Services Division fails to file in the protective proceeding any account or report required by law, the court, upon the petition of a representative of the Veterans Administration or Adult and Family Services Division, shall make an order requiring the conservator to file the account or report or to show cause why he should not be required to do so. [1973 c 823 §81]

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

126.406 [1961 c.344 §52; 1969 c.591 §240; repealed by 1973 c.823 §154]

126.407 When power of attorney not affected during period of disability; accounting to conservator. (1) When a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing does not contain words which otherwise limit the period of time of its effec-

tiveness, the powers of the attorney-in-fact or agent shall be exercisable by him on behalf of the principal notwithstanding the later disability or incompetence of the principal at law.

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

(3) If a conservator is appointed thereafter for the principal, the attorney-in-fact or agent, during the continuation of that appointment, shall account to the conservator rather than to the principal. The 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 or agency. [1973 c.823 §82]

126.410 [Repealed by 1961 c.344 §109]

126.411 [1961 c.344 §53; 1969 c.591 §241; repealed by 1973 c.823 §154]

126.413 Power of attorney not revoked until death or disability known. (1) The death of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact or agent who, without actual knowledge of the death of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees and personal representatives.

(2) An affidavit, executed by the attorney-in-fact or agent stating that he did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. [1973 c.823 §83]

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

126.416 [1961 c.344 §54, 1969 c.591 §242, repealed by 1973 c.823 §154]

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

126.421 [1961 c.344 §55; repealed by 1973 c.823 §154]

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

126.426 [1961 c.344 §56; 1969 c.591 §243; repealed by 1973 c.823 §154]

126.430 [Repealed by 1961 c.344 §109]

126.431 [1961 c.344 §57; 1969 c.591 §244; repealed by 1973 c.823 §154]

126.435 [Repealed by 1961 c.344 §109]

126.436 [1961 c.344 §58; 1963 c.417 §1; 1969 c.591 §245; repealed by 1973 c.823 §154]

126.440 [Repealed by 1961 c.344 §109]

126.441 [1961 c.344 §59; 1969 c.591 §246; repealed by 1973 c.823 §154]

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 [1961 c.344 §61; repealed by 1973 c.823 §154]

126.455 [Repealed by 1961 c.344 §109]

126.456 [1961 c.344 §62; 1969 c.591 §247; repealed by 1973 c.823 §154]

126.460 [Repealed by 1961 c.344 §109]

126.461 [1961 c.344 §63; 1969 c.591 §248, repealed by 1973 c.823 §154]

126.465 [Repealed by 1961 c.344 §109]

126.466 [1961 c.344 §64; repealed by 1973 c.823 §154]

126.470 [Repealed by 1961 c.344 §109]

126.471 [1961 c.344 §65; 1969 c.591 §249; repealed by 1973 c.823 §154]

126.475 [Repealed by 1961 c.344 §109]

126.476 [1961 c.344 §66; 1969 c.591 §250; repealed by 1973 c.823 §154]

126.480 [Repealed by 1961 c.344 §109]

126.481 [1961 c.344 §67; repealed by 1973 c.823 §154]

126.485 [1961 c.344 §68; repealed by 1973 c.823 §154]

126.490 [1961 c.344 §69; 1963 c.417 §2; 1969 c.591 §251; repealed by 1973 c.823 §154]

126.495 [1961 c.344 §70, 1969 c.591 §252; repealed by 1973 c.823 §154]

126.505 [Repealed by 1961 c.344 §109]

126.506 [1961 c.344 §71; repealed by 1973 c.823 §154]

126.510 [Repealed by 1961 c 344 §109]

126.511 [1961 c.344 §72; repealed by 1973 c.823 §154]

126.515 [Repealed by 1961 c 344 §109]

126.516 [1961 c.344 §73, 1965 c.402 §6; repealed by 1973 c 823 §154]

126.520 [1961 c 344 §74; repealed by 1973 c.823 §154]

126.525 [1961 c 344 §75; 1965 c.402 §7; repealed by 1973 c 823 §154]

126.527 [1965 c 402 §9; repealed by 1973 c.823 §154]

126.530 [1961 c 344 §76; 1965 c.402 §10; repealed by 1973 c 823 §154]

126.535 [1961 c.344 §77; repealed by 1973 c.823 §154]

126.540 [1961 c 344 §78; 1969 c.591 §253; repealed by 1973 c 823 §154]

126.545 [1961 c 344 §79; repealed by 1973 c 823 §154]

126.555 [1961 c 344 §80; 1965 c.402 §11; 1969 c.591 §256, repealed by 1973 c 823 §154]

126.557 [1969 c 591 §255; repealed by 1973 c 823 §154]

126.560 [1961 c.344 §81; repealed by 1973 c 823 §154]

126.565 [1961 c.344 §82; repealed by 1973 c 823 §154]

126.570 [1969 c.591 §257, repealed by 1973 c 823 §154]

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

126.606 [1961 c 344 §83, repealed by 1973 c 823 §154]

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 [1961 c 344 §85; repealed by 1973 c.823 §154]

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 [1961 c 344 §86, repealed by 1973 c.823 §154]

126.625 [Repealed by 1961 c.344 §109]

126.626 [1961 c 344 §87; repealed by 1973 c 823 §154]

126.630 [Repealed by 1961 c 344 §109]

126.631 [1961 c 344 §88, repealed by 1973 c.823 §154]

126.635 [Repealed by 1961 c 344 §109]

126.636 [1961 c.344 §89; repealed by 1973 c.823 §154]

126.637 [1969 c.591 §259; repealed by 1973 c 823 §154]

126.638 [1969 c.591 §260; repealed by 1973 c.823 §154]

126.639 [1969 c.591 §261; repealed by 1973 c.823 §154]

126.640 [Repealed by 1961 c.344 §109]

126.641 [1961 c 344 §90, repealed by 1973 c.823 §154]

126.645 [Repealed by 1961 c.344 §109]

126.646 [1961 c.344 §91, repealed by 1973 c 823 §154]

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

126.651 [1961 c.344 §92, repealed by 1973 c 823 §154]

126.655 [Repealed by 1961 c.344 §109]

126.656 [1961 c.344 §93; repealed by 1973 c.823 §154]

126.660 [1961 c.344 §94, 1965 c.402 §12; repealed by 1973 c.823 §154]

126.665 [1965 c 402 §14; repealed by 1973 c 823 §154]

126.670 [1965 c 402 §15; repealed by 1973 c.823 §154]

126.675 [1965 c 402 §16; 1969 c.591 §262, repealed by 1973 c.823 §154]

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 18 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 transac-

tions 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 18 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; 1973 c 827 §18]

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 _____ (name of minor), a 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, _____ (name of donor), do hereby deliver to _____ (name of custodian) as custodian under the laws of Oregon for _____ (name of minor), a minor, the following security (or securities):

Principal amount \$ _____ of the _____
(description of security) Serial number of security _____.
_____ (signature of donor)

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

Dated: _____

(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 _____ (name of minor), a 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 _____ (name of minor), a minor." [1959

c 640 §2; 1967 c 300 §2]

126.815 Gift irrevocable; rights and duties of guardian of minor or conservator of minor's estate 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 minor or conservator of his estate 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 or conservator 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 or conservator of his estate 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 minor or conservator of his estate, 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; 1973 c.823 §110]

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 conservator 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; 1973 c.823 §111]

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 _____ (name of minor), 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 _____ (name of minor), a 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 conservator 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 conservator 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 conservator 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 conservator, in addition to the other property of the minor held by him in his capacity as conservator. [1959 c.640 §9; 1973 c.823 §112]

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 obli-

gation 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, a conservator of the estate 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; 1973 c.823 §113]

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, a conservator 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 _____ (name of minor), a minor."; and

(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 or conservator and has attained the age of 14 years or in the possession and control of the guardian of the minor or conservator if the minor has a guardian or conservator. 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); 1973 c.823 §114]

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 or conservator of the property of the minor, the guardian or conservator shall become the successor custodian. If there is no duly appointed and acting guardian or conservator 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 or conservator of the estate 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; 1973 c.823 §115]

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 AND CONSERVATORS

126.905 Office of public guardian and conservator; 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 or conservator for persons who do not have relatives or friends willing to serve as a guardian or conservator and capable of assuming the duties of guardianship or conservatorship, may create within the county the office of public guardian and conservator and such subordinate positions as may be necessary to operate effectively the office of public guardian and conservator within the county.

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

(3) After establishment of the office of public guardian and conservator within a county, upon the finding that the county does not need the service of a public guardian and conservator, may terminate the office. [1969 c.627 §1; 1973 c.823 §116]

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 and conservator. (1) The public guardian and conservator may serve as the guardian or conservator, or both, of any person of whom the court having probate jurisdiction in the county may have jurisdiction. The public guardian and conservator may serve as guardian or conservator upon the petition of any person or upon his own petition.

(2) When appointed as guardian or conservator by the court having probate jurisdiction, the public guardian and conservator shall serve as provided in ORS 126.003 to 126.413, except as specifically stated to the contrary in ORS 126.905 to 126.965.

(3) The public guardian and conservator in his discretion may employ private attorneys if the fees for the attorneys can be defrayed out of funds of the guardianship or conservatorship estate. [1969 c.627 §§3, 6; 1973 c 823 §117]

126.935 Bond; exoneration of surety. (1) Before entering into office as public guardian and conservator, the person appointed to the 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 court having probate jurisdiction, which bond shall inure to the joint benefit of the several guardianship or conservatorship estates in which he is acting as guardian or conservator and the county. The public guardian and conservator shall not be required to file bonds in individual estates.

(2) Upon removal of the public guardian and conservator in accordance with the provisions of ORS 126.915, the surety on the public guardian and conservator bond shall be exon-

erated upon order to that effect of the court having probate jurisdiction in the county.

[1969 c.627 §4; 1973 c.823 §118]

126.945 Deposit of funds. All funds coming into the custody of the public guardian and conservator 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 subsection (5) of ORS 126.313. [1969 c.627 §5; 1973 c 823 §119]

126.955 Reimbursement of public guardian and conservator's expenses from estate of ward or protected person. The public guardian and conservator shall have a claim against the ward's or protected person's estate for his reasonable expenses

incurred in the execution of the guardianship or conservatorship and such compensation for his services and those of his attorney as the court having probate jurisdiction in the county deems just and reasonable. If the public guardian and conservator is compensated by the county for his services, any reimbursement of expenses or compensation shall be paid to the county. [1969 c.627 §7; 1973 c.823 §120]

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 and conservator or for any official service performed by the county clerk in the course of the guardianship or conservatorship proceedings. [1969 c.627 §8; 1973 c 823 §121]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel

