TITLE 13

GUARDIANSHIP, CONSERVATORSHIP, POWER OF ATTORNEY; TRUSTS

Chapter 126. Guardianships and Conservatorships; Gifts to Minors
127. Powers of Attorney; Advance Directives for Health Care; Declarations for Mental Health Treatment
128. Trusts; Charitable Activities
129. Principal and Income Act

Chapter 126

1993 EDITION

Guardianships and Conservatorships; Gifts to Minors

GUARDIANSHIPS AND CONSERVATORSHIPS

(General Provisions)

126.003 General definitions
126.007 Notice of proceedings; written objections
126.013 Waiver of notice
126.017 Jurisdiction of protective and guardianship proceedings; consolidation
126.025 Payment or delivery for benefit of minor
126.030 Delegation of certain powers by parent or guardian; delegation during period of military service
126.035 Preference in appointing guardian
126.040 Letters of guardianship
126.045 Persons not qualified to act as guardian or conservator
126.050 Effect of bankruptcy, felony conviction or misdemeanor conviction on appointment as guardian or conservator; notice to court
126.055 Appointment of successor guardian or conservator

(Guardians of Minors)

126.060 Status of guardian of minor; Children's Services Division as guardian
126.065 Venue for guardianship proceedings for minor
126.070 Procedure for appointment of guardian of minor
126.075 Effect of accepting appointment to be guardian of minor; notice of proceedings to guardian
126.080 Powers and duties of guardian of minor
126.085 Effect of and termination of appointment
126.090 Authority of court in state where minor ward resides; notice to other court
126.095 Petition for removal or resignation; appointment of counsel for ward

(Guardians of Incapacitated Persons)

126.098 When guardianship to be used
126.100 Venue in proceedings for guardianship of incapacitated person
126.103 Procedure for appointment of guardian for incapacitated person
126.107 Findings; appointment
126.113 Effect of accepting appointment to be guardian of incapacitated person; notice of proceedings to guardian
126.114 Appointment of visitor; duties; report
126.117 Means of terminating guardianship for incapacitated person
126.123 Removal or resignation of guardian; order that incapacity no longer exists
126.127 Notice on appointment or removal of guardian of incapacitated person; service; contents
126.133 Appointment of temporary guardian for incapacitated person
126.137 General powers and duties of guardian of incapacitated person
126.143 Authority of court in state where incapacitated ward resides; notice to other court

(Protection of Property of Minors and Incapacitated Persons)

126.157 Protective proceedings
126.163 Jurisdiction of court
126.167 Venue for protective proceedings
126.173 Effect of commencement of proceedings in more than one county; when commenced; effect of commencement
126.177 Transfer of proceedings
126.183 Who may petition; content of petition
126.187 Notice for appointment of conservator or other protective order; copies of accountings; waiver

126.193 Request for notice by interested person; fee; content of request; notice to conservator
126.197 Hearing; order
126.203 Power of court may be exercised directly or through conservator
126.207 Court power to preserve and apply property
126.213 Court power over estate and affairs of minor
126.217 Power of court over estate and affairs of certain persons for reasons other than minority
126.223 Power of competent protected person over estate
126.227 Court may approve certain transactions without conservator
126.229 Sale of protected person's residence

(Conservators)

126.233 Preferences in appointing conservator
126.237 Conservator's bond
126.243 Bond terms and requirements
126.247 Effect of accepting appointment as conservator; notice of proceedings to conservator
126.253 Letters of conservatorship
126.257 Recording order of appointment
126.263 Compensation and expenses payable by estate; court approval
126.267 Death, resignation or removal of conservator
126.273 Petitions subsequent to appointment of conservator
126.277 Filing of inventory required; supplemental inventory
126.283 Conservator's accounting to court; contents
126.287 Conservator's accounting to protected person
126.293 Power of conservator over property of protected person
126.297 Certain transactions voidable
126.303 Status of persons dealing with conservator
126.307 Conservator of estate of minor has duties and powers of guardian
126.313 Powers of conservator
126.317 Duties and powers of conservator to pay expenses of protected person and dependents
126.323 Power of conservator to reimburse for expenditures; advances for services
126.327 Power of conservator to make gifts
126.333 Payment of funds to protected person upon attainment of majority or cessation of disability
126.337 Powers and duties of conservator on death of protected person
126.343 Conservator vested with certain powers of court; limitation of and addition to powers of conservator by court
126.347 Consideration of estate plan of protected person

(Payment of Claims)

126.353 Payment of claims against estate or protected person
126.357 Enforcement of claim against estate or protected person
126.363 Notice of claim to conservator
126.367 Procedure where claim disallowed
126.373 Effect of presentation of claim on statute of limitations
126.377 Preferences of claims

(Miscellaneous)

126.383 Liability of conservator
126.387 Termination of conservatorship
126.393 Disposition of certain estates; winding up conservatorship affairs
126.397 Payment of debt and delivery of property to foreign conservator
126.403 Participation of Department of Veterans' Affairs or Adult and Family Services Division when protected person receives veterans' or welfare benefits

GIFTS TO MINORS

126.805 Definitions for ORS 126.805 to 126.886
126.809 Applicability of ORS 126.805 to 126.886; jurisdiction over custodian
126.812 Nomination of custodian; effective date of custodianship and transfer of custodial property
126.816 Irrevocable gifts or exercise of power of appointment
126.819 Irrevocable transfer by personal representative or trustee to custodian
126.822 Transfer to custodian in absence of authorization
126.826 Irrevocable transfer by person holding property of or owing liquidated debt to minor
126.829 Written acknowledgment of delivery as receipt
126.832 Creation and transfer of custodial property; form of instrument
126.836 Limitations on custodianship
126.839 Validity of transfer
126.842 Duties of custodian; standard of care
126.846 Rights, powers and authority of custodian
126.849 Payments to and expenditures for minor; effect on duty to support minor
126.852 Reimbursement to custodian for reasonable expenses; compensation; bond
126.857 Third person's duties in dealing with custodian
126.859 Claims against custodial property; liability of custodian and minor
126.862 Refusal to serve as custodian; substitute and successor custodians; resignation; removal
126.866 Accounting by custodian; determination of responsibility
126.869 Time of transfer of custodial property to minor or minor's estate
126.875 Accounting by custodian
126.877 Applicability of ORS 126.805 to 126.886 to transfers made after January 1, 1986

126.879 Validation of transfer made before January 1, 1986

126.882 Application and construction of ORS 126.805 to 126.886

126.886 Short title

PUBLIC GUARDIANS AND CONSERVATORS

126.905 Office of public guardian and conservator; expenses; termination

126.915 Effect of vacancy in office of public guardian and conservator

126.925 Powers and duties of public guardian and conservator

126.935 Bond; exoneration of surety

126.945 Deposit of funds

126.955 Reimbursement of public guardian and conservator's expenses from estate of ward or protected person

126.965 Fees prohibited

CROSS REFERENCES

Action against guardian or conservator for waste, 105.805

Admissibility of Department of Human Resources computer printout reflecting payment of public assistance, 25.220

Appointment of guardian in adoption proceedings, 109.335

Banks and trust companies as conservator, 707.310, 709.150

Bond premium or expense of letter of credit, allowance as expenses, 742.352

Certain investments:

Common trust funds, 709.170

Mortgage insured obligations as legal investments and securities for deposit, 742.284

Property insured by Federal Housing Administration, 86.610, 86.620

Challenge to juror for implied bias on grounds of guardian-ward relationship, 136.220

Conservator, liability as stockholder, 711.505

Conservatorship Revolving Account of Director of Veterans' Affairs, 406.085

Director of Veterans' Affairs as conservator of veteran's estate, 406.050

Earnings of enrollee in work release program, disposition, 144.470, 144.525

Foreign guardian, scope of authority in state, 43.180, 86.130

Interstate Compact on Mental Health, guardian of mentally ill or deficient, 428.310 (Art. VIII)

Juvenile court and institutions, guardianship custody of child, powers, obligations, Chs. 418, 419A, 419B, 419C

Liability for damages caused by foster child under care of Children's Services Division, 30.297

Matters assigned to family court department in circuit courts, 3.408

Multiple-party deposit accounts, 708.600 to 708.661

Proceedings to obtain support for child receiving public assistance, 109.015, Ch. 416

Records in guardianship and conservatorship proceedings, 7.240

Recovery of public assistance in guardianship or conservatorship proceedings, 411.795, 412.600, 413.200

Savings association conservatorships, 722.474, 722.476

Securities, nonapplicability of Oregon Securities Law, 59.035

Special or local laws for sale of realty of minor or disabled persons prohibited, Const. Art. IV, §23

Sterilization of minor child or incapacitated person, consent by guardian or conservator prohibited, Ch. 436

Trust deed, sale, notice, 86.740

Unclaimed property, disposition, 98.302 to 98.436 and 98.992

Validation of sales and deeds by conservators, 93.810

Welfare, recovery of assistance; lien on judgments in favor of minor recipient; guardian's duty to protect judgment, 416.590

Workers' compensation, benefits, payments to parent or guardian of minor, 656.228

126.045

Disbarred or suspended lawyer ineligible to act as guardian or conservator, 126.045

Judge ineligible to act as guardian or conservator, 126.045

126.157

"Controlled substances" defined, 475.005

Extinguishment of future interests, 105.770 to 105.774

126.237

Bonds and undertaking, deposits in lieu, Ch. 22

126.313

Investment in bonds of Oregon Mass Transit Financing Authority, 391.640

126.805 to 126.886

Banking laws generally, Ch. 706

Gift tax, Ch. 119

Insurance policies, Ch. 743

Investment securities, Ch. 78

Securities (Blue Sky Law), Ch. 59

126.805

Savings and loan associations, Ch. 722

"Security" defined, 59.015

126.842

Principal and Interest Act, Ch. 129

126.846

Duties of trustees and fiduciaries, 128.055 to 128.065

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 126.403, 127.005 and 127.015.

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

(3) "Emergency" means an immediate and serious danger to life or health.

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

(5) "Incapacitated person" means an adult whose ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety or to manage the person's financial resources. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(6) "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.

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

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

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

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

(11) "Visitor" means a person who is an officer, employee or special appointee of the court, who has no personal interest in the proceedings and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated.

(12) "Ward" is a person for whom a guardian has been appointed. [1973 c.823 §1; 1983 c.535 §1; 1987 c.690 §1; 1991 c.546 §3]

Note: Legislative Counsel has substituted "chapter 823, Oregon Laws 1973," for the words "this Act" in section 1, chapter 823, Oregon Laws 1973, compiled as 126.003. Specific ORS references have not been substituted, pursuant to 173.160. The range of sections for which substitutions would be required yields ORS references too numerous to be useful. These sections may be determined by referring to the 1973 Comparative Section Table located in Volume 15 of ORS.

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 126.403, 127.005 and 127.015 means information concerning a proceeding, given by mail or by personal service, 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 15 days after the mailing or personal service of the notice. A copy of the petition or motion shall accompany 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; 1987 c.690 §2; 1989 c.230 §1]

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 126.403, 127.005 and 127.015 except an alleged incapacitated person, may waive notice by a writing signed by the person and filed in the proceeding. [1973 c.823 §3; 1987 c.690 §8]

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 $10,000 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 subsection (1)(c) 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 the minor 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; 1981 c.175 §1]

126.030 Delegation of certain powers by parent or guardian; delegation during period of military service. (1) Except as provided in subsection (2) or (3) of this section, 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 the powers of the parent or guardian regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

(2) A parent or a guardian of a minor child may delegate the powers designated in subsection (1) of this section to a school administrator for a period not exceeding 12 months.

(3) A parent or guardian of a minor child may delegate the powers designated in subsection (1) of this section for a period not exceeding the term of active duty service plus 30 days when the parent or guardian is a member of the organized militia of this state or any other reserve component of the United States Armed Forces who is required to enter and serve in the active military service of the United States under a call or order by the President of the United States. If the minor child is living with the child's other parent, delegation under this subsection must be to the parent with whom the minor child is living unless a court finds that such a delegation would not be in the best interests of the minor child. [1973 c.823 §6; 1981 c.872 §1; 1993 c.230 §1]

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 or incapacitated person contained in a will or other written instrument executed by a parent of the minor or incapacitated person.

(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; 1983 c.535 §2]

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 the person, until the person 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: 126.045 to 126.055 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 Preface to Oregon Revised Statutes for further explanation.

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

(2) A nominee or appointee who fails to inform the court as required by subsection (1) of this section may be disqualified from acting as guardian or conservator or may be removed. [1977 c.355 §2; 1991 c.895 §1]

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, the successor has all the rights and powers of the 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; Children's Services Division as guardian. (1) 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.

(2) The Children's Services Division may be made guardian of a minor upon appointment by the court if the minor has no living parents and if no willing, qualified and suitable relative or other person is available and has petitioned the court for appointment as a guardian. In that case, the division shall be considered a "person" under ORS 126.060 to 126.090. [1973 c.823 §9; 1987 c.466 §1]

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 ap-

pointment of a guardian of a minor shall be given by the petitioner as required under ORS 126.007 to:

(a) The minor, if the minor 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;

(c) Any living parent of the minor; and

(d) If the Children's Services Division proposes to be appointed a guardian for the purpose of consenting to the adoption of a minor, the minor's brothers, sisters, aunts, uncles and grandparents whose identity and address can be ascertained with reasonable diligence, and any persons named as potential guardians in a will filed for probate action executed by a 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; 1987 c.466 §2]

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 the guardian by ordinary mail at the address as listed in the court records and to the 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 the minor and unemancipated child, except that a guardian is not legally obligated to provide from the funds of the guardian 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 the 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 the ward.

(g) Shall report the condition of the ward and of the ward's estate which has been subject to the possession or control of the guardian, 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 the personal injury of the ward.

(2) Any money or property received under subsection (1)(b), (c), (d) and (h) 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 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 the liability of the guardian for prior acts or the responsibility of the guardian to account for, or to discharge obligations from, funds and assets of the 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)

126.098 When guardianship to be used. (1) Guardianship for an incapacitated person shall be used only as is necessary to promote and protect the well-being of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual mental and physical limitations.

(2) An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records. [1987 c.690 §7; 1991 c.895 §2]

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 the welfare of the incapacitated person may petition for a finding of incapacity and appointment of a guardian. The petition shall:

(a) State the name, age and present residence address of the proposed ward;

(b) State the name, age and address of the proposed guardian, the relationship of the proposed guardian to the proposed ward and whether the proposed guardian is a public or private agency or organization or employee thereof that provides services to the proposed ward;

(c) Allege the proposed ward's lack of capacity in one or more areas that require the assistance of an appointed guardian; and

(d) State the factual information on which the allegation made pursuant to paragraph (c) of this subsection is based, and the names and addresses of all persons known to the petitioner who have direct knowledge regarding the allegation.

(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 the person has counsel chosen by the person.

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

(4) The court shall direct a visitor to interview the person seeking appointment as guardian, the physician or psychologist examining the alleged incapacitated person, the person or officer of the institution having the care, custody or control of the alleged inca-

pacitated person, the alleged incapacitated person at the present residence of the person and others who may have relevant information. Except as otherwise provided by law, the visitor shall submit a report in writing to the court within 30 days of being appointed visitor. The visitor may not serve the notice required by subsection (2) of this section except in a temporary guardianship proceeding.

(5) The report of the visitor shall state:

(a) Whether the visitor believes that:

(A) The allegations contained in the petition are substantially correct;

(B) A guardianship is necessary as a means of providing continuing care and supervision; and

(C) The proposed guardian is qualified and is willing to serve;

(b) The name, address and telephone number of each person interviewed to prepare the report, the date of the interview and the relationship of the interviewee to the alleged incapacitated person; and

(c) The recommendations of the visitor with regard to:

(A) The appropriateness of the guardianship and the proposed guardian;

(B) Any limitations that should be imposed; and

(C) The necessity for further evaluation.

(6) The report of the visitor shall be signed before a notary public.

(7) The State Court Administrator may prescribe a form to be used by visitors for filing their reports.

(8) 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 the condition of the person. The alleged incapacitated person may be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or psychologist and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or counsel for the person so requests.

(9) An order appointing a temporary guardian is a judgment for the purposes of ORS 19.010. The authority of a temporary guardian shall continue during any appeal unless the court orders that the authority be suspended or limited during the appeal. [1973 c.823 §18; 1983 c.535 §3; 1987 c.690 §3; 1991 c.546 §4; 1991 c.895 §3]

Note: The amendments to 126.103 by section 3, chapter 895, Oregon Laws 1991, apply only to protective proceedings commenced on or after August 7, 1991. See section 7, chapter 895, Oregon Laws 1991. The amendments to 126.103 by section 4, chapter 546, Oregon Laws 1991, apply only to the appointment of temporary guardians occurring on or after July 14, 1991. See section 5, chapter 546, Oregon Laws 1991.

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. (1) The court may appoint a guardian as requested if the court finds by clear and convincing evidence that:

(a) The person for whom a guardian is sought is incapacitated in one or more areas alleged in the petition;

(b) The appointment is necessary as a means of providing continuing care and supervision of the person of the incapacitated person, and no less restrictive alternative is appropriate; and

(c) The proposed guardian is both qualified and suitable, and is willing to serve.

(2) Based on information from the petition, the report of the visitor, the report of the physician or psychologist examining the alleged incapacitated person if there was an examination and evidence presented at the hearing pursuant to ORS 126.103 (8) if there was a hearing, the court shall make a guardianship order that is no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward. [1973 c.823 §19; 1983 c.535 §4; 1987 c.690 §4]

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 the guardian by ordinary mail at the address as listed in the court records and to the address as known to the petitioner. [1973 c.823 §20]

126.114 Appointment of visitor; duties; report. At any time after the appointment of a guardian, the court, acting on its own motion, may appoint a visitor and direct the visitor to interview the guardian and the physician or psychologist examining the incapacitated person, and may send the visitor to the place where the ward resides or is detained to observe conditions and report in writing to the court. [1983 c.535 §7]

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 the resignation of the guardian and make any other order that may be appropriate.

(3) On petition of the ward or any other person, the court may order that the ward or other person 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; service; contents. (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person, or the appointment of a temporary guardian or temporary suspension of a guardian, notice shall be given as required under ORS 126.007 to:

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

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

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

(2) Notice shall be served personally on the alleged incapacitated person. A copy of the petition and any temporary guardianship order shall be attached to the notice. The notice shall be written in language reasonably understandable by the proposed ward and be printed in type size equal to at least 12-point type. It shall set forth the date upon which the petition was filed, the date upon which objections to the petition are due, information regarding the appointment and purpose of a visitor, the purpose and possible consequences of the hearing and the rights of the ward or respondent in the proceedings.

(3) The notice required to be served upon the alleged incapacitated person shall list the following rights of the person:

(a) The right to be represented by an attorney, to contact and retain an attorney at any time, to thereafter contact that attorney at any time and to have records released to the attorney.

(b) The right to be informed of any free or low cost legal and other relevant services available in the area.

(c) The right to have access to personal records.

(d) The right to request a hearing. If the petition is for the appointment of a temporary guardian under the provisions of ORS 126.133, the notice shall indicate that the hearing will be held within two judicial days after the request for a hearing is filed, regardless of whether the fees required under ORS 21.310 have been paid by the person requesting the hearing.

(e) The right to present evidence and cross-examine witnesses.

(f) The right to request that the power of the guardian, if any, be limited by the court.

(g) The right to request the removal of the guardian or a modification of the guardianship order.

(4) The court may require that the notice to be served upon the alleged incapacitated person contain such other matters as the court may deem appropriate. [1973 c.823 §24; 1987 c.690 §5; 1991 c.546 §2; 1991 c.895 §6]

Note: The amendments to 126.127 by section 6, chapter 895, Oregon Laws 1991, apply only to protective proceedings commenced on or after August 7, 1991. See section 7, chapter 895, Oregon Laws 1991. The amendments to 126.127 by section 2, chapter 546, Oregon Laws 1991, apply only to the appointment of temporary guardians occurring on or after July 14, 1991. See section 5, chapter 546, Oregon Laws 1991.

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. (1) If the court makes a specific finding based on clear and convincing evidence that an emergency exists and no guardian has been appointed or that a guardian is not effectively performing duties or that the welfare of the incapacitated person requires immediate ac-

tion, the court may, with notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 30 days and a 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.

(2) Notice under this section shall be given as provided in ORS 126.127 at least two judicial days prior to appointment of a temporary guardian. Upon application of a petitioner and a finding by the court that the emergency requires immediate appointment of a temporary guardian, the court may waive the requirement that notice be given prior to appointment of a temporary guardian, but in all such cases notice shall be given within two judicial days after the appointment.

(3) Upon good cause shown, the court may extend the period of temporary guardianship an additional 30 days beyond the period specified in subsection (1) of this section.

(4) If no hearing is requested after notice is given under this section, the court shall appoint a visitor who shall, within three judicial days after the appointment of a temporary guardian, conduct an interview of the person for whom the temporary guardian has been appointed. The visitor shall make a report to the court based on the interview within five judicial days after the appointment of a temporary guardian. The report shall be limited to the conditions alleged to support the appointment of a temporary guardian, except as the court may otherwise order.

(5) If a hearing is requested, the hearing shall be held within two judicial days after the request for a hearing is filed, regardless of whether the fees required under ORS 21.310 have been paid by the person requesting the hearing. [1973 c.823 §25; 1991 c.546 §1]

Note: The amendments to 126.133 by section 1, chapter 546, Oregon Laws 1991, apply only to the appointment of temporary guardians occurring on or after July 14, 1991. See section 5, chapter 546, Oregon Laws 1991.

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) In the general performance of powers and duties respecting the ward, a guardian of an incapacitated person:

(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 the ward and establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward, shall provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and begin protective proceedings if other property of the 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, the guardian 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 that 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 that the guardian may not use funds from the ward's estate for room and board which the guardian or guardian's 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. The guardian shall exercise care to conserve any excess for the ward's needs.

(2) Pursuant to ORS 126.107 (2), the guardianship order of the court may modify the powers and duties of a guardian described in subsection (1) of this section by specifying the authority of the guardian to act only in those specific areas in which the ward has a demonstrated incapacity.

(3) 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 services of the guardian and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circum-

stances. 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.

(4) A guardian is not liable to third persons for acts of the ward solely by reason of the guardian and ward relationship.

(5) A guardian may not authorize the sterilization of the ward.

(6) A guardian may not prevent the ward from contacting or retaining counsel, or releasing records to counsel.

(7) A guardian shall give bond and, within 30 days after each anniversary of the appointment of the guardian, file with the court a written report. The report shall be in substantially the following form:

IN THE_____ COURT _____ COUNTY, STATE OF OREGON DEPARTMENT OF PROBATE

In the matter of the Guardianship of) No._____
_____)
(Enter Name of Ward))
An Incapacitated Person.)

GUARDIAN'S REPORT

Pursuant to ORS 126.137 (7) the undersigned duly appointed, qualified and acting guardian of the above-named incapacitated person reports to the court as follows:

1. My name is:_____

2. My residence address and telephone number are:

_____

_____ Phone:_____

3. The name, if applicable, and address of the place where the ward now resides are:

_____

_____

4. A description of the ward's place of residence and of programs, activities or services in which the ward is involved is as follows:

_____

_____

5. The name of the person primarily responsible for the care of the ward at the ward's place of residence is:_____

6. The name and address of any hospital or other institution where the ward is now admitted on a temporary basis are:

_____

_____

7. A brief description of the ward's physical condition is:

_____

_____

8. A brief description of the ward's mental condition is:

_____

_____

9. A brief description of contacts made with the ward during the past year is:

_____

_____

10. A brief description of major decisions made on the ward's behalf during the past year is:

_____

_____

11. The reasons, if any, why the guardianship should continue are:

_____

_____

12. The dollar amount and source of income that the ward receives, and expenditures made for the ward, are as follows:

Source of Income	Dollar Amount	Payee	Expenditures Made and To Whom
_____	_____	_____	_____
_____	_____	_____	_____

13. A list of the money and other property which the ward now owns, including any items of money or property which I hold for the ward, and the estimated dollar value of each of the items is as follows:

Money/ Property	Dollar Value/ Location	Transactions Made
_____	_____	_____
_____	_____	_____

Dated: _____

(Sign here) Guardian _____

[1973 c.823 §26; 1983 c.535 §5; 1991 c.895 §4]

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, confinement, 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 the dependents of the protected person.

(3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and the title of the protected person 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 the person 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 the estate, affairs or welfare of the person including the parent, guardian, or custodian of the person, or any person who would be adversely affected by lack of effective management of the property and affairs of the person 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 the guardian of the person to be protected, if any;

(d) The name and address of the nearest relative of the person to be protected known to the petitioner;

(e) A general statement of the property of the person to be protected with an estimate of the value of the property, including any compensation, insurance, pension or allowance to which the person 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, the basis of priority for appointment and whether the proposed conservator is a public or private agency or organization or employee thereof that provides services to the person to be protected. [1973 c.823 §33; 1991 c.895 §5]

Note: The amendments to 126.183 by section 5, chapter 895, Oregon Laws 1991, apply only to protective proceedings commenced on or after August 7, 1991. See section 7, chapter 895, Oregon Laws 1991.

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 for appointment of conservator or other protective order; copies of accountings; waiver. (1) Notice for the appointment of a conservator or other protective order, shall be given by the petitioner as required under ORS 126.007 as follows:

(a) Adult protected persons: Except when the person to be given notice is the petitioner, a petition to appoint a conservator, terminate a conservatorship, remove a conservator or appoint a successor or special conservator and a petition for approval, direction or authority filed by a conservator, together with notice thereof, shall be served upon:

(A) The protected or proposed protected person;

(B) The spouse of the protected or proposed protected person or, if there is no spouse or if the spouse is the petitioner, then upon the parents of such person or, if none, the adult children of such person or, if none, the nearest relative of the person named in the petition for appointment;

(C) Any guardian of the protected or proposed protected person;

(D) Any conservator of the protected person;

(E) Any interested person who has filed a request for notice; and

(F) Such other persons as the court may direct.

(b) Minors: Except when the person to be given notice is the petitioner, a petition to appoint a conservator, terminate a conservatorship, remove a conservator or appoint a successor or special conservator and a petition for approval, direction or authority filed by a conservator, together with notice thereof, shall be served upon:

(A) The minor, if over 14 years of age;

(B) Both parents of the minor;

(C) Any conservator of the minor;

(D) Any guardian of the minor;

(E) Any interested person who has filed a request for notice; and

(F) Such other persons as the court may direct.

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

(a) The protected person, unless the protected person lacks the capacity to understand it, and the specific reason for the lack of understanding is alleged in the accounting;

(b) The spouse of the protected person;

(c) The parents of a minor under 14 years of age;

(d) Any guardian of the protected person or minor;

(e) Any personal representative of the protected person's estate, appointed by the court after the death of the protected person;

(f) Interested persons who have filed a request for notice; and

(g) Such other persons as the court may direct.

(3) Any person entitled to notice or a copy of other information under this section may waive notice, the receipt of such information or the time for filing objections to the matter and may consent to the immediate entry of an order granting the requested relief. [1973 c.823 §34; 1989 c.230 §2]

126.190 [Repealed by 1961 c.344 §109]

126.193 Request for notice by interested person; fee; content of request; notice to conservator. 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 or personally deliver a copy of the demand to the conservator if one has been appointed or to the conservator's attorney of record. A request is not effective unless it contains a statement showing the interest of the person making it and the address of the person, or that of the attorney of the person, and is effective only as to matters occurring after the filing and service. [1973 c.823 §35; 1989 c.230 §3]

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 the benefit of the person to be protected or the benefit of the dependents of the person to be protected. [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, family of the minor and members of the household of the minor. [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 the household of the person, exercise all the powers over the estate and affairs of the person which the person 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 the contingent and expectant interests of the person in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

(d) Exercise or release the powers of the person 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 the disability or life of the person;

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

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

(j) Exercise the right of the person to an elective share in the estate of the deceased spouse of the person; 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 the person 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 the estate of the person or make any contract or election affecting the estate of the person. [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 the estate of the person 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 the disability of the person, 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]

126.229 Sale of protected person's residence. Notice to those persons as required by ORS 126.187 and approval by the court shall be required prior to the sale of the protected person's principal residence. For purposes of this section, "principal residence" means a residence which is owned by the protected person and in which the protected person resides or last resided, whether or not the protected person resides in the residence at the time approval to sell is sought from the court. [1989 c.230 §8]

Note: 126.229 was added to and made a part of 126.003 to 126.403 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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 the person 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 the person 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 the person or paying benefits to the person.

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

(2) A person mentioned in subsection (1)(a), (c), (d), (e) or (f) of this section may nominate in writing a person to serve in the stead of the person. [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 the control of the conservator 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 the final account is approved and an order of discharge is entered, but a surety may terminate the obligation of the surety 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, the authority as conservator shall cease on the effective date of termination of the obligation of the surety on the bonds of the conservator, the letters of conservatorship shall thereupon be canceled and the conservator shall make and file the final account of the conservator.

(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 the name, residence and post-office address of the conservator. The conservator promptly shall file in the proceeding every change in the name, residence or post-office address of the conservator.

(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 the conservator by registered or certified mail at the address as listed in the petition for appointment or as thereafter reported to the court and to the 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 the name, residence and post-office address of the conservator 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 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; court approval. (1) Funds of the estate may be used to pay reasonable compensation to any visitor, attorney, physician, conservator or special conservator for services rendered in the protective proceeding or on behalf of the conservator or protected person.

(2) Court approval shall be required prior to payment of compensation from the estate to the conservator, to the special conservator or to the conservator's attorney of record unless the conservator is a trust company or a national bank that has complied with ORS 709.030 or the Director of Veterans' Affairs, in which case payment of conservator fees shall only require approval at the time of each accounting. Petition for payment of such compensation shall be filed and served in the manner described in ORS 126.187. [1973 c.823 §48; 1989 c.230 §4]

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 the death, resignation or removal of the conservator, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor of the conservator. [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 the fiduciary responsibility of the conservator. [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 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 the possession or knowledge of the conservator. 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, the conservator 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 the next accounting.

(3) If the estate of the protected person includes real property, the conservator may have recorded in the deed record of the clerk of the county in which the real property is situated a certified copy of the inventory required by subsections (1) and (2) of this section or an abstract in substantially the following form:

The protected person's name is _____.

Guardianship/Conservatorship #_____.
County where proceedings are pending _____. Conservator is _____. Conservator's address is _____. Attorney's name _____. Attorney's address _____

The following real property is subject to proceedings:_____

DATED _____.

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this_____ day of _____, 19___ by _____.

_____
Notary Public for Oregon
My commission expires: _____

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this_____ day of _____, 19___ by _____ of _____ a corporation, on behalf of the corporation.

_____
Notary Public for Oregon
My commission expires: _____

[1973 c.823 §§51,52; 1987 c.586 §29]

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

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

(2) Each account shall include the following information:

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

(b) The total value of the property with which the conservator is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

(c) All money and property received during the period covered by the accounting.

(d) All disbursements made during the period covered by the account. Vouchers for disbursements shall accompany the account, unless otherwise provided by order or rule of the court, or unless the conservator is a trust company or a national bank that has complied with ORS 709.030, but that conservator shall:

(A) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own expense at the place of business of the conservator during the conservator's normal business hours at any time prior to the end of one year following the date on which the order approving the final account is entered; and

(C) Include in each annual account and the final account a statement that the vouchers are not filed with the account but are maintained by the conservator and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(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 the liabilities of the conservator 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 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 the control of the conservator, to be made in any manner the court may specify. [1973 c.823 §53; 1987 c.728 §1; 1989 c.230 §5]

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 the disability of the protected person or is a minor who attains the age of majority a conservator may settle the 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, the spouse, agent or attorney of the conservator, or any corporation or trust in which the conservator 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 the conservator 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.

(3) A person who holds property in which the protected person has an interest, or who is indebted either to the protected person, or to the protected person and others, may deal with the conservator with respect to the property or debt to the same extent that such person could deal with the protected person were the protected person not under disability. [1973 c.823 §58; 1981 c.906 §1]

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 the conservator 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 the judgment of the conservator, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator 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) Except as limited in ORS 126.229, 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 the guardian of the protected person or if none, to a relative or other person with custody of the person of the protected person;

(23) Employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator to advise or assist the conservator in the performance of 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, except that payment to the conservator's attorney of record shall be subject to the provisions of ORS 126.263;

(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 duties;

(25) Prosecute claims of the protected person including those for the personal injury of the protected person; 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; 1989 c.230 §6]

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 the dependents of the protected person 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. The conservator 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 the affairs of the protected person and the estate which has been conserved for the protected person;

(b) The accustomed standard of living of the protected person and members of the household of the protected person; 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 ORS 126.157 (2) attains 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 the possession of the conservator, inform the executor or a beneficiary named therein that the conservator 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 the conservator 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 retransfer 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 ORS 126.217 (2) the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on the conservator 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 the conservator 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 the letters of appointment of the conservator. [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 the will of the protected person, any revocable trust of which the protected person is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the death of the protected person to another or others which the protected person 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 the attorney of the conservator.

(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, the conservator shall notify the claimant or the attorney of the claimant in writing of the disallowance or finding of the conservator.

(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 the estate of the protected person 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 the attorney of the conservator, that the creditor 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 the attorney of the conservator; 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 the claimant desires to prove the claim the claimant 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 the dependents of the protected person 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 the fiduciary capacity of the conservator in the course of administration of the estate unless the conservator fails to reveal the representative capacity of the conservator 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 the conservator is personally at fault.

(3) Claims based on contracts entered into by a conservator in the fiduciary capacity of the conservator, 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 the fiduciary capacity of the conservator, 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, the personal representative of the protected person, 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 the possession of the conservator to the protected person or 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 $10,000 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; 1981 c.175 §2]

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 appointment and an affidavit

made by the person or on behalf of the person 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 Department of Veterans' Affairs 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 Department of Veterans' Affairs or by the State of Oregon through the Adult and Family Services Division of the Department of Human Resources, a representative of the United States Department of Veterans' Affairs 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 United States Department of Veterans' Affairs 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 United States Department of Veterans' Affairs or Adult and Family Services Division before or at the time 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 United States Department of Veterans' Affairs or Adult and Family Services Division at least 15 days before the date of the hearing. A representative of the United States Department of Veterans' Affairs 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 Department of Veterans' Affairs 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 United States Department of Veterans' Affairs or Adult and Family Services Division, shall make an order requiring the conservator to file the account or report or to show cause why the conservator should not be required to do so. [1973 c.823 §81; 1989 c.230 §9; 1991 c.67 §24]

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 [1973 c.823 §82; renumbered 127.005 in 1989]

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 [1973 c.823 §83; renumbered 127.015 in 1989]

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 126.886. As used in ORS 126.805 to 126.886, except where the context otherwise requires:

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

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the account of the person or for others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means circuit court.

(6) "Custodial property" includes:

(a) Any interest in property transferred to a custodian under ORS 126.805 to 126.886.

(b) The income from that interest in property.

(7) "Custodian" means the person designated as custodian under ORS 126.812 or a successor or substitute custodian designated under ORS 126.862.

(8) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means the personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole blood or the half blood or through legal adoption.

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

(12) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under ORS 126.832.

(15) "Transferor" means a person who makes a transfer under ORS 126.805 to 126.886.

(16) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers. [1959 c.640 §1; 1967 c.300 §1; 1973 c.827 §18; 1981 c.443 §1; 1983 c.457 §1; 1985 c.665 §1]

126.809 Applicability of ORS 126.805 to 126.886; jurisdiction over custodian. (1) ORS 126.805 to 126.886 apply to a transfer that refers to ORS 126.805 to 126.886 in the designation under ORS 126.832 (1) by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ORS 126.805 to 126.886 despite a subsequent change in residence of a transferor, the minor or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under ORS 126.805 to 126.886 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a substantially similar Act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state. [1985 c.665 §3]

126.810 [1959 c.640 §2; 1967 c.300 §2; 1981 c.443 §2; repealed by 1985 c.665 §27]

126.812 Nomination of custodian; effective date of custodianship and transfer of custodial property. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "As custodian for_____ (name of minor) under the Oregon Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payer, issuer or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under ORS 126.832 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under ORS 126.832. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to ORS 126.832. [1985 c.665 §4]

126.815 [1959 c.640 §3; 1967 c.300 §3; 1973 c.823 §110; 1981 c.443 §3; repealed by 1985 c.665 §27]

126.816 Irrevocable gifts or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to ORS 126.832. [1985 c.665 §5]

126.817 [1983 c.457 §3; repealed by 1985 c.665 §27]

126.819 Irrevocable transfer by personal representative or trustee to custodian. (1) A personal representative or trustee may make an irrevocable transfer pursuant to ORS 126.832 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under ORS 126.812 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under ORS 126.812, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under ORS 126.832. [1985 c.665 §6]

126.820 [1959 c.640 §4; 1983 c.457 §4; repealed by 1985 c.665 §27]

126.822 Transfer to custodian in absence of authorization. (1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to ORS 126.832, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to ORS 126.832.

(3) A transfer under subsection (1) or (2) of this section may be made only if:

(a) The personal representative, trustee or conservator considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds $10,000 in value. [1985 c.665 §7]

126.825 [1959 c.640 §5; 1967 c.300 §4; 1981 c.443 §4; repealed by 1985 c.665 §27]

126.826 Irrevocable transfer by person holding property of or owing liquidated debt to minor. (1) Subject to subsections (2) and (3) of this section, a person not subject to ORS 126.819 or 126.822 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to ORS 126.832.

(2) If a person having the right to do so under ORS 126.812 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under ORS 126.812 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $5,000 in value. [1985 c.665 §8]

126.829 Written acknowledgment of delivery as receipt. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to ORS 126.805 to 126.886. [1985 c.665 §9]

126.830 [1959 c.640 §6; 1973 c.823 §111; repealed by 1985 c.665 §27]

126.832 Creation and transfer of custodial property; form of instrument. (1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act"; or

(B) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary indorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act"; or

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "As custodian for _____(name of minor) under the Oregon Uniform Transfers to Minors Act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payer, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for_____ (name of minor) under the Oregon Uniform Transfers to Minors Act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act"; or

(B) Delivered to an adult other than the transferor or to a trust company, indorsed to that person followed in substance by the

words: "As custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act"; or

(g) An interest in any property not described in paragraphs (a) to (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of paragraph (a)(B) of this subsection and paragraph (g) of this subsection:

TRANSFER UNDER THE OREGON UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: _____

_____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Oregon Uniform Transfers to Minors Act.

Dated: _____

_____

(Signature of Custodian)

---

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable. [1985 c.665 §10]

126.835 [1959 c.640 §7; 1967 c.300 §5; 1981 c.443 §5; repealed by 1985 c.665 §27]

126.836 Limitations on custodianship. A transfer may be made only for one minor and only one person may be the custodian. All custodial property held under ORS 126.805 to 126.886 by the same custodian for the benefit of the same minor constitutes a single custodianship. [1985 c.665 §11]

126.839 Validity of transfer. (1) The validity of a transfer made in a manner prescribed in ORS 126.805 to 126.886 is not affected by:

(a) Failure of the transferor to comply with ORS 126.832 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under ORS 126.832 (1); or

(c) Death or incapacity of a person nominated under ORS 126.812 or designated under ORS 126.832 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to ORS 126.832 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in ORS 126.805 to 126.886 and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ORS 126.805 to 126.886.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of ORS 126.805 to 126.886 and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ORS 126.805 to 126.886. [1985 c.665 §12]

126.840 [1959 c.640 §8; repealed by 1985 c.665 §27]

126.842 Duties of custodian; standard of care. (1) A custodian shall:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to

identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "As a custodian for _____ (name of minor) under the Oregon Uniform Transfers to Minors Act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained 14 years of age. [1985 c.665 §13]

126.845 [1959 c.640 §9; 1973 c.823 §112; 1981 c.443 §7; repealed by 1985 c.665 §27]

126.846 Rights, powers and authority of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of ORS 126.842. [1985 c.665 §14]

126.849 Payments to and expenditures for minor; effect on duty to support minor. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) The duty or ability of the custodian personally or of any other person to support the minor; or

(b) Any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor. [1985 c.665 §15]

126.850 [1959 c.640 §§10,12; 1967 c.300 §6; 1973 c.823 §113; repealed by 1985 c.665 §27]

126.852 Reimbursement to custodian for reasonable expenses; compensation; bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under ORS 126.816, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in ORS 126.862 (6), a custodian need not give a bond. [1985 c.665 §16]

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

126.856 [1967 c.300 §8 (enacted in lieu of 126.855); 1973 c.823 §114; 1981 c.443 §6; repealed by 1985 c.665 §27]

126.857 Third person's duties in dealing with custodian. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under ORS 126.805 to 126.886 for, any act of the purported custodian;

(3) The validity or propriety under ORS 126.805 to 126.886 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian. [1985 c.665 §17]

126.859 Claims against custodial property; liability of custodian and minor. (1) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property or a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault. [1985 c.665 §18]

126.860 [1959 c.640 §§13,14; 1967 c.300 §9; 1973 c.823 §115; repealed by 1981 c.443 §8]

126.862 Refusal to serve as custodian; substitute and successor custodians; resignation; removal. (1) A person nominated under ORS 126.812 or designated under ORS 126.832 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under ORS 126.812, the person who made the nomination may nominate a substitute custodian under ORS 126.812; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under ORS 126.832 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under ORS 126.816 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained 14 years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained 14 years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a conservator of the minor or a trust company. If the minor has not attained 14 years of age or fails to act within 60 days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained 14 years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under ORS 126.816 or to require the custodian to give appropriate bond. [1985 c.665 §19]

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

126.866 Accounting by custodian; determination of responsibility. (1) A minor who has attained 14 years of age, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under ORS 126.859 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under ORS 126.805 to 126.886 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under ORS 126.862 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property. [1985 c.665 §20]

126.869 Time of transfer of custodial property to minor or minor's estate. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under ORS 126.816 or 126.819;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under ORS 126.822 or 126.826; or

(3) The minor's death. [1985 c.665 §21]

126.870 [1959 c.640 §16; repealed by 1985 c.665 §27]

126.875 Accounting by custodian. The custodian shall not be required to account to the minor or to any other person for the acts and proceedings of the custodian 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 attains a lesser age as provided in ORS 126.805 to 126.886 or dies before becoming an adult or attaining that lesser age. [1959 c.640 §17; 1983 c.457 §5; 1985 c.665 §26]

126.877 Applicability of ORS 126.805 to 126.886 to transfers made after January 1, 1986. ORS 126.805 to 126.886 apply to a transfer within the scope of ORS 126.809 made after January 1, 1986, if:

(1) The transfer purports to have been made under the Oregon Uniform Gifts to Minors Act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ORS 126.805 to 126.886 is necessary to validate the transfer. [1985 c.665 §22]

126.879 Validation of transfer made before January 1, 1986. (1) Any transfer of custodial property made before January 1, 1986, is validated notwithstanding that there was no specific authority in ORS 126.805 to 126.886 prior to January 1, 1986, for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) ORS 126.805 to 126.886 apply to all transfers made before January 1, 1986, in a manner and form prescribed in the Oregon Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on January 1, 1986.

(3) ORS 126.805 and 126.869 with respect to the age of a minor for whom custodial property is held under ORS 126.805 to 126.886 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of 18 years of age after October 4, 1973, and before January 1, 1986. [1985 c.665 §23]

126.880 [1959 c.640 §18; 1967 c.300 §10; repealed by 1985 c.665 §27]

126.882 Application and construction of ORS 126.805 to 126.886. ORS 126.805 to 126.886 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 126.805 to 126.886 among states enacting it. [1985 c.665 §24]

126.886 Short title. ORS 126.805 to 126.886 may be cited as the "Oregon Uniform Transfers to Minors Act." [1985 c.665 §25]

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 and conservator. The person appointed to the office of public guardian and conservator shall serve in the office at the pleasure of the appointing authority. If the person holding the office of public guardian and conservator in a county is removed from office, dies, becomes incapacitated or resigns, the removal, death, incapacity or resignation shall operate to remove such public guardian and conservator as guardian and conservator of all estates then under the guardianship and conservatorship of the person. [1969 c.627 §2; 1983 c.740 §13]

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 per-

son 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 the own petition of the public guardian and conservator.

(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 126.403, 127.005 and 127.015 except as specifically stated to the contrary in ORS 126.905 to 126.965.

(3) The public guardian and conservator in the discretion of the public guardian and conservator 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 the person 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 exonerated 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 ORS 126.313 (5). [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 reasonable expenses incurred in the execution of the guardianship or conservatorship and such compensation for services and those of the attorney of the public guardian and conservator 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 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 any court having probate jurisdiction for the filing of any petition asking for the appointment of the public guardian and conservator or for any official service performed by that court in the course of the guardianship or conservatorship proceedings. [1969 c.627 §8; 1973 c.823 §121; 1991 c.790 §10]