

1 54.34 (1) (i) The name and post-office address of the person or institution
2 having the, if any, that has care and custody of the proposed ward or the facility, if
3 any, that is providing care to the proposed ward.

4 SECTION 68. 880.07 (1) (j) of the statutes is renumbered 54.34 (1) (j) and
5 amended to read:

6 54.34 (1) (j) The interest of the petitioner, and, if a public official ~~or creditor~~ is
7 the petitioner, ~~then the fact of indebtedness or continuing liability for maintenance~~
8 ~~or continuing breach of the public peace as well as and~~ the authority of the petitioner
9 to act.

10 SECTION 69. 880.07 (1m) of the statutes is repealed.

11 SECTION 70. 880.07 (2) of the statutes is renumbered 54.34 (2) and amended
12 to read:

13 54.34 (2) A petition for guardianship may also include an application for
14 protective placement or protective services or both under ch. 55.

INSERT 62-14

15 SECTION 71. 880.07 (4) of the statutes is repealed.

****NOTE: Instead of moving s. 54.34 (3) (renumbered from 880.07 (4)), stats., I repealed it, because, as you noted, it's redundant to s. 54.60 (5).

INSERT 62-15

16 SECTION 72. 880.08 (intro.) of the statutes is renumbered 54.38 (2) (intro.) and
17 amended to read:

18 54.38 (2) NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND
19 DELIVERY. (intro.) Upon the filing of a petition for guardianship, ~~and the court being~~
20 of the person or of the estate, including appointment or change of a guardian, if the
21 court is satisfied as to compliance with s. 880.07 54.34, the court shall, except as
22 provided in sub. (3), order service of notice on the proposed ward and guardian, if any.

to serve
The petitioner to serve

to deliver

1 ~~and delivery of~~ notice ~~by the petitioner~~ to interested persons of the time and place
2 of the hearing as follows: (2)

3 SECTION 73. 880.08 (1) (title) of the statutes is repealed.

4 SECTION 74. 880.08 (1) of the statutes is renumbered 54.38 (2) (a) and amended
5 to read:

ward

and on the existing guardian, if any, by personal service or by registered or certified mail

6 54.38 (2) (a) A petitioner shall have notice served of a petition for appointment
7 ~~or change of a guardian upon~~ On the proposed incompetent ~~ward and existing~~
8 ~~guardian, if any,~~ by personal service at least 10 days before the time set for hearing.

9 If such proposed incompetent the proposed ward is in custody or confinement, ~~a~~ the
10 petitioner shall have notice served by registered or certified mail on the proposed
11 incompetent's ward's custodian, who shall immediately serve it on the proposed
12 incompetent ward. The process server or custodian shall inform the proposed
13 incompetent ward of the complete contents of the notice and certify thereon ~~and~~
14 petition, motion, or other required document; certify on the notice that the process
15 server or custodian served and informed the proposed incompetent ~~and returned~~
16 ward; and return the certificate and notice to the circuit judge. The notice shall
17 include the names of all persons who are petitioning for guardianship. A copy of the
18 petition shall be attached to the notice. The court shall cause the proposed
19 incompetent, if able to attend, to be produced at the hearing. The proposed
20 incompetent is presumed able to attend unless, after a personal interview, the
21 guardian ad litem certifies in writing to the court the specific reasons why the person
22 is unable to attend. If the person is unable to attend a hearing because of physical
23 inaccessibility or lack of transportation, the court shall hold the hearing in a place
24 where the person may attend if requested by the proposed ward, guardian ad litem,
25 adversary counsel or other interested person. Such notice shall also be given

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1 ~~personally or by mail at least 10 days before the hearing to the proposed~~
2 ~~incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other~~
3 ~~persons who have legal or physical custody of the proposed incompetent whose~~
4 ~~names and addresses are known to the petitioner or can with reasonable diligence~~
5 ~~be ascertained, to any governmental or private agency, charity or foundation from~~
6 ~~which the proposed incompetent is receiving aid and to such other persons or entities~~
7 ~~as the court may require. The court shall then proceed under s. 880.33 court.~~ ✓

8 **SECTION 75.** 880.08 (2) of the statutes is repealed.

9 **SECTION 76.** 880.08 (3) (title) ^x of the statutes is repealed.

✓10 **SECTION 77.** 880.08 (3) (am) (intro.) of the statutes is renumbered 54.38 (3)
11 (intro.) and amended to read:

✓12 54.38 (3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. (intro.)

13 ~~When~~ If the proposed ward is a minor, ~~notice shall be given as provided in s. 879.05~~

14 the court shall order ~~distribution~~ of notice by the petitioner of the time and place of

15 the hearing to all of the following persons, if applicable: delivery

✓16 **SECTION 78.** 880.08 (3) (am) 1. of the statutes is renumbered 54.38 (3) (a) and
17 amended to read:

✓18 54.38 (3) (a) The proposed ward's spouse, if any.

✓19 **SECTION 79.** 880.08 (3) (am) 2. of the statutes is renumbered 54.38 (3) (b) and
20 amended to read:

✓21 54.38 (3) (b) The proposed ward's parents parent, unless the parent's parental
22 rights have been judicially terminated. ✓

✓23 **SECTION 80.** 880.08 (3) (am) 3. of the statutes is renumbered 54.38 (3) (c) and
24 amended to read:

1 54.38 (3) (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years
2 of age ~~unless the minor appears at the hearing.~~

3 **SECTION 81.** 880.08 (3) (am) 4. of the statutes is renumbered 54.38 (3) (d) and
4 amended to read:

5 54.38 (3) (d) Any other person, ~~agency, institution, welfare department or other~~
6 ~~entity having~~ that has the legal or actual physical custody of the minor.

****NOTE: I did not change "that" to "who," as requested, since the term "person" may encompass units of government, etc.

7 **SECTION 82.** 880.08 (3) (e) of the statutes is repealed.

8 **SECTION 83.** 880.08 (4) of the statutes is renumbered 54.38 (4) and amended
9 to read:

10 54.38 (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper
11 subject to continue under guardianship shall be given as required ~~for the~~
12 appointment of a guardian under subs. (1), (2), and (3).

13 **SECTION 84.** 880.09 (intro.) of the statutes is renumbered 54.15 (intro.) and
14 amended to read:

15 **54.15 ~~Nomination; selection of guardians~~ Selection of guardian;**
16 **nominations; preferences; other criteria.** (intro.) The court shall do one of the
17 following and shall consider all of the following nominations made by any interested
18 person ~~and, in its discretion, shall appoint a proper guardian, having due regard for~~
19 the following applicable preferences, and criteria in determining who is appointed
20 as guardian:

21 **SECTION 85.** 880.09 (1) (title) of the statutes is repealed.

22 **SECTION 86.** 880.09 (1) of the statutes is renumbered 54.15 (4) (b) and amended
23 to read:

who is

*or
or older*

1 54.15 (4) (b) A minor ~~over~~ 14 years may in writing in circuit court nominate his
2 or her own guardian, but if the minor is in the armed service, is ~~without~~ outside of
3 the state, or if other good reason exists, the court may dispense with the minor's right
4 of nomination.

~~***NOTE: Have I amended this paragraph as you wish?~~

5 SECTION 87. 880.09 (2) of the statutes is renumbered 54.15 (5) and amended
6 to read: or with serious and persistent mental illness ~~or with serious and persistent mental illness~~ *the court finds that the appointment is not in the*

7 54.15 (5) PREFERENCE PARENT OF A PROPOSED WARD. If one or both of the parents
8 of a minor, ~~a developmentally disabled person or a person with other like incapacity~~ *proposed ward's best interests*
9 or an individual with developmental disability are suitable and willing, the court
10 shall appoint one or both of them as guardian unless the ~~proposed ward objects.~~ *RESTORE TO PLAIN TEXT*
11 court shall appoint a corporate guardian under s. 880.35 only if no suitable
12 individual guardian is available. *consider a proposed ward's objection to the appointment of his or her parent*

***NOTE: Your instructions on this subsection are as follows:
"... please delete "or other person with other like incapacity" and change. Perhaps we should check with WCA as to whether there are any other situations where parents should be preferred ...?" How do you want me change the phrase? Have you been able to check with WCA?
Should the parent of a spendthrift receive preference under this subsection? (Current law does not mention parents of spendthrifts.)

13 SECTION 88. 880.09 (3) (title) of the statutes is repealed.

14 SECTION 89. 880.09 (3) of the statutes is renumbered 54.15 (4) (c) and amended
15 to read: is 14 years or older

16 54.15 (4) (c) If neither parent of a minor who has not attained the age of 15 is
17 suitable and willing to be appointed guardian, the court may appoint the nominee
18 of a minor. *the*

~~***NOTE: Have I amended this paragraph as you wish?~~

19 SECTION 90. 880.09 (4) of the statutes is repealed.

unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests

1 SECTION 91. 880.09 (5) of the statutes is repealed.

2 SECTION 92. 880.09 (6) of the statutes is renumbered 54.15 (6) and amended
3 to read:

4 54.15 (6) ~~TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS~~ NOMINATION BY
5 PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may
6 by will nominate a guardian and successor guardian of the person or estate of ~~for~~ any
7 of his or her minor children who ~~are~~ is in need of guardianship. For ~~a person over~~
8 ~~the age of an individual who is aged 18 or older and is found to be in need of~~
9 guardianship ~~under s. 880.33~~ 54.10 by reason of a developmental disability or other
10 ~~like incapacity~~ serious and persistent mental illness, a parent may by will nominate
11 a testamentary guardian. The parent may waive the requirement of a bond for such
12 an estate that is derived through a will.

13 SECTION 93. 880.09 (7) (title) of the statutes is repealed.

14 SECTION 94. 880.09 (7) of the statutes is renumbered 54.15 (4) (a) and amended
15 to read:

a reasonable and informed

16 54.15 (4) (a) Any ~~person~~ individual other than a minor aged 14 years or younger
17 may, ~~at such time as if the person has sufficient capacity~~ individual does not have
18 incapacity to such an extent that he or she is unable to form ~~an intelligent~~ preference,
19 execute a written instrument, in the same manner as the execution of a will under
20 s. 853.03, nominating ~~a person~~ another to be appointed as guardian of his or her
21 person or ~~property~~ estate or both ~~in the event that if a guardian is in the future~~
22 appointed. ~~Such nominee shall be appointed as guardian by the~~ for the individual.
23 The court shall appoint this nominee as guardian unless the court finds that the
24 appointment of ~~such nominee is not in the best interests of the person for whom,~~ or
25 ~~for whose property, the guardian is to be appointed~~ proposed ward.

1 SECTION 95. 880.10 of the statutes is renumbered 54.38 (5) and amended to
2 read:

3 54.38 (5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason
4 the court fails to appoint as guardian the nominee of the minor, the guardian who
5 qualifies shall give notice of the guardian's appointment to the minor by certified
6 mail addressed to the minor's last-known post-office address and shall file an
7 affidavit of ~~such~~ the mailing ~~shall be filed~~ with the court within 10 days after the
8 issuance of letters notice is given.

9 SECTION 96. 880.12 of the statutes is repealed.

10 SECTION 97. 880.125 of the statutes is repealed.

11 SECTION 98. 880.13 (title) of the statutes is renumbered 54.46 (5) (title).

12 SECTION 99. 880.13 (1) of the statutes is renumbered 54.46 (5) (a) and amended
13 to read:

14 54.46 (5) (a) ~~Form~~ Amount and sufficiency of bond. Upon the appointment of
15 a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court
16 may require a bond given in accordance with ch. 878 and s. 895.345 The order under
17 sub. (3) shall specify the amount of any bond required to be given by the guardian
18 of the estate, conditioned upon the faithful performance of the duties of the guardian
19 of the estate. No bond may be required for the guardian of the person.

20 SECTION 100. 880.13 (2) (title) of the statutes is renumbered 54.46 (5) (b) (title).

21 SECTION 101. 880.13 (2) (a) of the statutes is renumbered 54.46 (5) (b) (intro.)
22 and amended to read:

23 54.46 (5) (b) (intro.) Unless required under s. ~~880.60~~ (9), the court may waive
24 the requirement of a bond at under any of the following circumstances:

25 1. At any time in its discretion or if

2. If so requested in a will wherein in which a nomination appears.

SECTION 102. 880.13 (2) (b) of the statutes is renumbered 54.46 (5) (b) 3. and amended to read:

54.46 (5) (b) 3. ~~Whenever~~ If a guardian has or will have possession of funds of the ward with a total value of ~~\$40,000~~ \$100,000 or less, and the court ~~may direct~~ directs deposit of the funds in an insured account of a bank, credit union, savings bank, or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. ~~In such event the court may waive the requirement of a bond.~~

SECTION 103. 880.13 (3) of the statutes is repealed.

SECTION 104. 880.14 of the statutes is renumbered 54.46 (6) and amended to read:

54.46 (6) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. ~~When~~ If a guardian of the estate has given bond as, if required, and the bond has been approved by the ~~judge~~ court, letters under the seal of the court shall be issued to the guardian of the estate. If a court determination and order appointing a guardian of the person is entered, letters under the seal of the court shall be issued to the guardian of the person.

SECTION 105. 880.15 (title) of the statutes is ~~renumbered 54.50 (1) (title)~~.

SECTION 106. 880.15 (1) of the statutes is renumbered 54.50 (1) (b) and amended to read:

54.50 (1) (b) Appointment Duration and extent of authority. ~~If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it~~ The court may

1 appoint a temporary guardian for a ward for a period not to exceed 60 days ~~unless~~
2 ~~further extended for 60 days by order of the court. The court may extend the period~~
3 ~~only once., except that the court may extend this period for good cause shown for one~~
4 ~~additional 60-day period. The court may impose no further temporary guardianship~~
5 ~~on the ward for at least 90 days after the expiration of the temporary guardianship~~
6 ~~and any extension. The court's determination and order appointing the temporary~~
7 ~~guardian shall specify the authority of the temporary guardian and shall be limited~~
8 ~~to those acts that are reasonably related to the reasons for appointment that are~~
9 ~~specified in the petition for temporary guardianship. The authority of the temporary~~
10 ~~guardian shall be is limited to the performance of duties respecting specific property,~~
11 ~~or to the performance of particular those acts, as stated in the order of appointment.~~
12 ~~All provisions of the statutes concerning the powers and duties of guardians shall~~
13 ~~apply to temporary guardians except as limited by the order of appointment. The~~
14 ~~temporary guardian shall make the reports the court directs and shall account to the~~
15 ~~court upon termination of authority. The court assigned to exercise jurisdiction~~
16 ~~under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary~~
17 ~~guardian of a minor for medical purposes but shall proceed in accordance with this~~
18 ~~section~~ Unless the court first specifically approves and orders bond, the temporary
19 guardian may not sell real estate or expend an amount in excess of \$2,000.

20 **SECTION 107.** 880.15 (1m) of the [✓]statutes is repealed.

✓21 **SECTION 108.** 880.15 (1s) of the [✓]statutes is renumbered 54.38 (6) and amended

22 to read:

✓23 54.38 (6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The
24 ~~person petitioning petitioner~~ for appointment of a temporary guardian shall cause
25 ~~give notice to be given under s. 880.08 of that~~ [✓]the petition to the minor, spendthrift

(3)(d)

1 ~~or alleged incompetent and, if the appointment is made, shall give notice of the~~
 2 ~~appointment to the ward. The time limits of s. 880.08 do not apply to notice given~~
 3 ~~under this subsection proposed ward. The notice shall be served before or at the time~~
 4 ~~the petition is filed or as soon thereafter as possible and shall include notice of the~~
 5 ~~right to counsel and of the right to petition for reconsideration or modification of the~~
 6 ~~temporary guardianship at any time under s. 880.34 within 30 days of receipt of the~~
 7 ~~notice 54.50 ~~(1)(c)2~~. The petitioner shall serve notice of the order for hearing on the~~
 8 ~~proposed ward before the hearing or not later than 3 calendar days after the hearing.~~
 9 ~~If the petitioner serves notice after the hearing is conducted and the court has~~
 10 ~~entered an order, the petitioner shall include the court's order with the notice of the~~
 11 ~~order for hearing.~~

****NOTE: As requested, I retained s. 880.15 (1s), stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

12 **SECTION 109.** 880.15 (2) of the statutes is repealed.

13 **SECTION 110.** 880.15 (3) of the statutes is renumbered 54.50 ~~(1)(d)~~ and
 14 amended to read:

15 54.50 ~~(1)(d)~~ ⁴ ^{CS} ^{no I} ⁽⁴⁾ Cessation of powers. If the temporary guardianship is not sooner
 16 terminated the The duties and powers of the temporary guardian shall cease upon
 17 the issuing of letters of permanent guardianship to the guardian of the ward, or, if
 18 the ward is a minor, upon his becoming of age, or when it shall be judicially
 19 determined ^{the} expiration of the time period, ~~or extension of the time period,~~ specified
 20 in sub. ~~(1)(b)~~, or if the court sooner determines that any other disability of the
 21 temporary ward which situation of the ward that was the cause of the temporary
 22 guardianship has terminated. Upon the termination of the temporary guardian's
 23 duties and powers, a temporary guardian of the person shall file with the court any

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1 report that the court requires. A temporary guardian of the estate shall, upon the
 2 ~~termination of duties and powers~~, account to the court and deliver to the person or
 3 ~~persons entitled to them all the estate of the ward in his or her hands~~ the ward's
 4 estate over which the temporary guardian of the estate has had control. Any action
 5 ~~which~~ that has been commenced by the temporary guardian may be prosecuted to
 6 final judgment by the successor or successors in interest, if any.

***NOTE: Please review this paragraph to ensure that it meets your intent.

~~72~~ SECTION 111. 880.17 of the statutes is renumbered 54.54.

INSERT 72-7

8 SECTION 112. 880.173 (title) of the statutes is repealed.

9 SECTION 113. 880.173 (1) of the statutes is renumbered 54.20 (2) (h) and
 10 amended to read:

11 54.20 (2) (h) ~~A guardian of the estate appointed under this chapter for a~~
 12 ~~married person may exercise with the approval of the court, except as limited under~~
 13 ~~s. 880.37, any management and control right over the marital property or property~~
 14 ~~other than marital property and any right in the business affairs which the married~~
 15 ~~person could exercise under ch. 766 if the person were not determined under s. 880.12~~
 16 ~~to be a proper subject for guardianship. Under this section, a guardian may consent~~
 17 ~~to act together in or join in any transaction for which consent or joinder of both~~
 18 ~~spouses is required or may execute~~ Execute under s. 766.58 a marital property
 19 agreement with the ~~other~~ ward's spouse or intended spouse, but may not make,
 20 amend or revoke a will.

INSERT
72-20

***NOTE: I understand that, because of the creation of s. 54.21, s. 54.20 (2) (h) is not intended to overrule any of the court's interpretation of s. 880.173 in *The Guardianship of F.E.H.*, 154 Wis.2d 576 (1990).

21 SECTION 114. 880.173 (2) of the statutes is repealed.

22 SECTION 115. 880.175 (title) of the statutes is repealed.

✓ 1 **SECTION 116.** 880.175 of the statutes is renumbered 54.20 (2) (b) and amended
2 to read:

✓ 3 54.20 (2) (b) ~~Upon petition by the guardian, a parent, the spouse, any issue or~~
4 ~~next of kin of any person, assets of the person may, in the discretion of the court and~~
5 ~~upon its order, after such notice as the court may require, be transferred~~ Transfer
6 assets of the ward to the trustee or trustees of an any existing revocable living trust
7 ~~created by the person for the benefit of~~ that the ward has created for himself or
8 herself and those dependent upon the person for support any dependents, or, if the
9 ward is a minor, to the trustee or trustees of ~~a~~ any trust created for the exclusive
10 benefit of the person, ~~if a minor, which~~ ward that distributes to him or her at age 18
11 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as ~~he or she~~
12 appoints if he or she dies prior to age 18 or 21 the ward has appointed by a written
13 instrument that is executed after the ward attains age 14.

****NOTE: Is this provision now worded as you intend?

14 **SECTION 117.** 880.18 (title) of the statutes is renumbered 54.60 (title).

✓ 15 **SECTION 118.** 880.18 of the statutes is renumbered 54.60 (1) and amended to
16 read:

✓ 17 54.60 (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate ~~has been~~
18 ~~appointed an inventory shall be made in the same manner and subject to the same~~
19 ~~requirements as are provided for the inventory of a decedent's estate. An appraisal~~
20 ~~of all or any part of the ward's estate shall be made when ordered by the court~~ prepare
21 an inventory that lists all of the ward's ~~property and~~ interests in property, including
22 any marital property interest, regardless of how the asset is titled.

23 **SECTION 119.** 880.19 (title) of the statutes is repealed.

24 **SECTION 120.** 880.19 (1) (title) of the statutes is repealed.

✓1 **SECTION 121.** 880.19 (1) of the statutes is renumbered 54.19 (1) and amended
2 to read:

✓3 54.19 (1) ~~The guardian of the estate shall take~~ Take possession of all of the
④ ward's real and personal property, and of any rents, income, ~~issues~~ ^{issues} and benefits
5 ~~therefrom, whether accruing before or after the guardian's appointment from the~~
6 ~~property, and of the~~ any proceeds arising from the sale, mortgage, lease, or exchange
7 ~~thereof of the property and prepare an inventory of these.~~ Subject to ~~such this~~
8 possession, the title of all such ~~the estate~~ and to the increment and proceeds thereof
9 ~~shall be of the estate~~ is in the ward and not in the guardian. It is the duty of the
10 ~~guardian of the estate to protect and preserve it, to retain, sell and invest it as~~
11 ~~hereinafter provided, to account for it faithfully, to perform all other duties required~~
12 ~~of the guardian by law and at the termination of the guardianship to deliver the~~
13 ~~assets of the ward to the persons entitled thereto.~~

14 **SECTION 122.** 880.19 (2) (title) of the statutes is repealed.

✓15 **SECTION 123.** 880.19 (2) (a) of the statutes is renumbered 54.20 (1) (intro.) and
16 amended to read:

✓17 54.20 (1) STANDARD. (intro.) ~~The~~ In exercising the powers under this section,
18 the guardian of the estate may, without the approval of the court, retain any real or
19 ~~personal property possessed by the ward at the time of appointment of the guardian~~
20 ~~or subsequently acquired by the ward by gift or inheritance without regard to ch. 881,~~
21 ~~so long as such retention constitutes the exercise of~~ shall use the judgment and care
22 ~~under the circumstances then prevailing, which~~ that persons of prudence, discretion,
23 and intelligence exercise in the management of their own affairs, ~~not in regard to~~
24 ~~speculation but in regard to~~ including the permanent, rather than speculative,
25 ~~disposition of their funds, considering~~ and consideration of the probable income as

1 well as the ~~probable~~ and safety of their capital. In addition, in exercising powers and
2 duties under this section, the guardian of the estate shall consider, consistent with
3 the functional limitations of the ward, all of the following:

✓ 4 SECTION 124. 880.19 (2) (b) of the [✓]statutes is renumbered 54.20 (3) (g) ^f and
5 amended to read: ^f

✓ 6 54.20 (3) (g) ^f ~~The guardian of the estate may, with the approval of the court,~~
7 ~~after such notice as the court directs, retain~~ Retain any real or personal property
8 possessed by that the ward at the time of the appointment of the possesses when the
9 guardian ~~or subsequently acquired by~~ is appointed or that the ward acquires by gift
10 or inheritance ~~for such period of time as shall be designated in the order of the court~~
11 ~~approving such retention, without regard to ch. 881 during the guardian's~~
12 appointment.

13 SECTION 125. 880.19 (3) (title) of the statutes is repealed.

✓ 14 SECTION 126. 880.19 (3) of the statutes is renumbered 54.20 (2) (k) ^k and
15 amended to read:

✓ 16 54.20 (2) (k) ^k ~~In all cases where in which the court deems it determines that it~~
17 is advantageous to continue the business of a ward, ~~such business may be continued~~
18 ~~by the guardian of the estate on such~~ continue the business on any terms and
19 conditions ~~as may be specified in the order of the court.~~

20 SECTION 127. 880.19 (4) (title) of the statutes is repealed.

✓ 21 SECTION 128. 880.19 (4) (a) of the statutes is renumbered 54.20 (3) (h) and
22 amended to read:

✓ 23 54.20 (3) (h) ~~The guardian of the estate may, without approval of the court,~~
24 invest Invest and reinvest the proceeds of sale of any ~~guardianship~~ assets of the ward

1 and any of the ward's other moneys in the guardian's possession in accordance with
2 ch. 881.

✓ 3 **SECTION 129.** 880.19 (4) (b) of the statutes is renumbered 54.20 (3) (i) and
4 amended to read:

✓ 5 54.20 (3) (i) ~~The guardian of the estate may, with the approval of the court, after~~
6 Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786,
7 invest the proceeds of sale of any guardianship assets of the ward and any of the
8 ward's other moneys in the guardian's possession in such the real or personal
9 property ~~as the court determines that is determined by the court~~ to be in the best
10 interests of the guardianship estate, without regard to ch. 881 of the ward.

✓ 11 **SECTION 130.** 880.19 (4) (c) of the statutes is renumbered 54.18 (3) (a) and
12 amended to read:

✓ 13 54.18 (3) (a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to
14 himself or herself ~~or, unless the court first approves the terms, rate of interest, and~~
15 ~~any requirement for security, lend funds of the ward to another.~~

16 **SECTION 131.** 880.19 (5) (title) of the statutes is repealed.

✓ 17 **SECTION 132.** 880.19 (5) (a) of the statutes is renumbered 54.20 (3) (j) and
18 amended to read:

✓ 19 54.20 (3) (j) ^g The guardian of the estate may, without approval of the court, sell
20 Subject to ch. 786, sell any ^{asset} property of the guardianship estate of the ^{ward} ward that is
21 acquired by the guardian pursuant to sub. (4) under par (h) or (i) ^{at fair market value}

✓ 22 **SECTION 133.** 880.19 (5) (b) of the statutes is renumbered 54.22 and amended
23 to read:

✓ 24 **54.22 Petition for authority to sell, mortgage, pledge, lease, or**
25 **exchange ward's property.** The court, on the application petition of the guardian

1 of the estate or of any other person interested in the estate of ~~any a~~ ward, after ~~such~~
 2 ~~notice if any, as~~ any notice that the court directs, may authorize or require the
 3 guardian to sell, mortgage, pledge, lease, or exchange any property of the
 4 guardianship estate of the ward upon such terms as the court may order, subject to
 5 ch. 786, for the purpose of paying the ward's debts, providing for the ward's care,
 6 maintenance, and education and the care, maintenance, and education of the ward's
 7 dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best
 8 interest of the ward.

****NOTE: I am repeating this NOTE because the response was somewhat unclear. This provision appears to be in direct conflict with s. 54.19 (2), (3), and (4), each of which require the guardian to act with respect to the ward's property in ways that are redundant to this provision, but *without* requiring court approval. Which alternative do you prefer? Is the issue related to a dollar value on the property, i.e., property over a value of, say, \$100,000 would require court approval before the guardian may act? Or should either this provision or s. 54.19 (2), (3), and (4) drop out?

✓ 9 **SECTION 134.** 880.19 (5) (c) of the statutes is renumbered 54.18 (3) (b) and
 10 amended to read:

✓ 11 54.18 (3) (b) ~~No guardian shall purchase~~ Purchase property of the ward, ~~unless~~
 12 ~~sold at public sale~~ except at fair market value, subject to ch. 786, and with the
 13 approval of the court, ~~and then only if the guardian is a spouse, parent, child, brother~~
 14 ~~or sister of the ward or is a cotenant with the ward in the property.~~

****NOTE: I corrected the numbering of the paragraphs under this subsection. I had mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s. 54.18 (3) (a).

15 **SECTION 135.** 880.19 (5) (d) of the statutes is repealed.

16 **SECTION 136.** 880.19 (6) of the statutes is renumbered 54.23 and amended to
 17 read:

18 **54.23 Trust Banks and trust companies, exemption from investment**
 19 **restraints.** ~~The limitations of this section~~ Nothing in this chapter relating to the
 20 retention, sale, investment, or reinvestment of any asset shall not be applicable may

to the best of the guardian's information and belief

1 ~~be interpreted to be inapplicable to any bank or trust company authorized to exercise~~
2 ~~trust powers.~~

INSERT
78-2

3 ✓ SECTION 137. 880.191 (1) of the statutes is renumbered 54.60 (7) and amended
4 to read:

income and assets of the ward

5 ✓ 54.60 (7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by

of the estate

6 ~~the guardian's oath that every inventory required of the guardian and verification~~

7 shall be to the effect that the inventory is true of ~~that~~ *of the estate* includes all property which ~~that~~

8 ~~belongs to his or her decedent's estate or his or her ward, which has come to the estate~~

9 ~~of the ward in the guardian's possession or knowledge, and that upon diligent~~

10 ~~inquiry the guardian has not been able unable to discover any property belonging to~~

11 ~~the estate or ward which is not included therein that the inventory does not include.~~

12 The court, at the request of any party interested, or on its own motion, may examine

13 the guardian *of the estate* on oath in relation thereto, as to the inventory or in relation to any

14 supposed omission from the inventory.

INSERT 78-14

15 SECTION 138. 880.192 of the statutes is repealed.

INSERT 78-15

16 SECTION 139. 880.21 of the statutes is repealed.

and if the court's order includes a finding that the ward may not make contracts

17 ✓ SECTION 140. 880.215 of the statutes is renumbered 54.47 and amended to
18 read:

19 ✓ 54.47 Lis pendens, void contracts. A certified copy of the petition and order

20 for hearing provided for in ss. 880.07 54.34 and 880.08 54.38 may be filed in the office

21 of the register of deeds for the county; and if ~~and if~~ if a guardian shall be is appointed upon

22 such application after a hearing on the petition, all contracts, except for necessities

23 at reasonable prices, and all gifts, sales, and transfers of property made by such

24 ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified

25 ~~copy of such petition and the order as aforesaid,~~ shall be void. The are void, except

1 ~~that the validity of a contract made by a person ward under a limited guardianship~~
 2 ~~is not void, however, unless the determination is made by the court in its court's order~~
 3 ~~includes a finding under s. 880.33 (3) that the ward is incapable of exercising the~~
 4 ~~power to may not make contracts.~~

are void, unless ratified by the guardian in writing

***NOTE: Have I amended this section as you intend?

5 SECTION 141. 880.22 (title) of the statutes is repealed.

6 SECTION 142. 880.22 (1) (title) of the statutes is repealed.

7 SECTION 143. 880.22 (1) of the statutes is renumbered 54.19 (7) and amended
 8 to read: *including by filing tax returns and paying any taxes owed,*

9 54.19 (7) Every general guardian shall With respect to claims, pay the just
 10 legally enforceable debts of the ward ~~out of from~~ the ward's personal estate and the
 11 ~~income of the ward's real estate, if sufficient, and if not, then out of the ward's real~~
 12 ~~estate upon selling the same as provided by law. But a temporary guardian shall pay~~
 13 ~~the debts of his or her ward only on order of the court.~~ *and assets*

14 SECTION 144. 880.22 (2) (title) of the statutes is repealed.

15 SECTION 145. 880.22 (2) of the statutes is renumbered 54.20 (2) ~~(m)~~ and
 16 amended to read:

17 54.20 (2) ~~(m)~~ The guardian or a creditor of any ward may apply Apply to the
 18 court for adjustment of any claims against the ward incurred ~~prior to~~ before entry
 19 of the order appointing the guardian or the filing of a lis pendens as provided in s.
 20 ~~880.215~~ 54.47. The court shall by order fix the time and place it will adjust claims
 21 and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice
 22 of the time and place ~~so fixed and limited~~ these times and the place shall be given by
 23 publication as ~~in estates of decedents; and all statutes relating to claims against and~~
 24 ~~in favor of estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall

1 apply. ~~As in the settlement of estates of deceased persons, after~~ After the court has
2 made the order, no action or proceeding may be commenced or maintained in any
3 court against the ward upon any claim ~~of over~~ which the circuit court has jurisdiction.

4 SECTION 146. 880.23 (title) of the statutes is repealed.

5 SECTION 147. 880.23 of the statutes is renumbered 54.20 (3) ~~(k)~~ and amended
6 to read:

7 54.20 (3) ~~(k)~~ ~~The guardian shall settle~~ Settle all accounts of the ward and may
8 demand, sue for, collect and receive all debts and claims for damages due him or her,
9 or may, with the approval of the circuit court, compound and discharge the same, and
10 shall appear for and represent his or her the ward in all actions and proceedings
11 except where those for which another person is appointed for that purpose.

12 SECTION 148. 880.24 (title) of the statutes is repealed.

13 SECTION 149. 880.24 (1) of the statutes is repealed.

14 SECTION 150. 880.24 (2) of the statutes is renumbered 54.42 (4) and amended
15 to read:

16 54.42 (4) ~~WARD'S RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS.~~

17 ~~When~~ If a guardian is appointed the court may allow reasonable expenses incurred
18 by the ward in contesting the appointment.

19 SECTION 151. 880.24 (3) (title) of the statutes is renumbered 54.46 (4) (title) and
20 amended to read:

21 54.46 (4) (title) FEES AND COSTS OF PETITIONER.

22 SECTION 152. 880.24 (3) (a) (intro.) of the statutes is renumbered 54.46 (4) (a)
23 (intro.) and amended to read:

24 54.46 (4) (a) Petitioner's attorney fees and costs. (intro.) ~~Except as provided in~~
25 ~~par. (b), when~~ if a guardian is appointed, the court shall award from the ward's estate

CS

CONTESTING

j

claims and

Payment from
the ward's
income or
assets of

These expenses are payable before
other attorney or guardian ad
litem fees.

RESTORE TO
PLAIN TEXT

shall, if the court determines it
reasonable,

3

3

3

3

income and
assets

1 payment of the petitioner's reasonable attorney fees and costs, ~~including those fees~~
2 ~~and costs, if any, related to protective placement of the ward, unless the court finds,~~
3 after considering all of the following, that it would be inequitable to do so:

****NOTE: In the Legislative Council draft WLC: 0220/P1, "including those fees and costs, if any, related to protective placement of the ward" is stricken. Do you wish to also strike that language in this draft?

****NOTE: I did not eliminate "Except as provided in par. (b)" from this paragraph, as requested, because the new paragraph (b) (formerly numbered s. 54.32, renumbered from s. 880.33 (2) (a) 3, stats.) (guardian ad litem and defense fees for indigents; liability) seems to be a clear exception to paragraph (a).

4 ✓ SECTION 153. 880.24 (3) (a) 1. to 3. of the statutes are renumbered 54.46 (4) (a)
5 1. to 3.

6 ✓ SECTION 154. 880.24 (3) (a) 4. of the statutes is renumbered 54.46 (4) (a) 5.

7 ✓ SECTION 155. 880.24 (3) (b) of the statutes is renumbered 54.46 (4) (a) 4. and
8 amended to read:

9 ✓ 54.46 (4) (a) 4. ~~If the court finds that~~ Whether the ward had executed a durable
10 power of attorney under s. 243.07 or a power of attorney for health care under s.
11 155.05 or had engaged in other advance planning ~~to avoid guardianship, the court~~

12 may not make the award specified in par. (a).

for financial and health care decision making

13 ✓ SECTION 156. 880.245 of the statutes is renumbered 54.62 (6) and amended to
14 read:

RESTORE TO PLAIN TEXT

15 ✓ 54.62 (6) ACCOUNTING BY AGENT ^{3rd} ~~THIRD~~ PARTIES TO GUARDIAN. ~~The circuit court,~~
16 ~~upon the application of any~~ If a guardian appointed by it a court so requests, the court
17 ~~may order any person who has been entrusted by the guardian with any part of the~~
18 estate ~~income or assets~~ of a decedent or ward to appear before the court, and may
19 require the person to render a full account, on oath, of ~~any property or papers~~
20 ~~belonging to the estate which have come to the person's possession~~ the income or
21 assets and of his or her ~~proceedings thereon~~ action regarding the income or assets.

1 If the person refuses to appear and render an account, the court may proceed against
2 him or her as for contempt.

****NOTE: I think current law refers to "decedent or ward" because of the way s. 54.64 (1) is worded (guardianship continues during life of ward, etc.). I eliminated "decedent," but I'm unsure if that's the right decision.

****NOTE: There is no definition of "estate" or of "property" in ch. 880, stats., and I would defer to your judgment as to whether the terms include both assets and income. I have in this subsection changed all references to "estate" or "property" to "income or assets." Do you want me to define "estate" for ch. 54 as including income and assets?

3 SECTION 157. 880.25 (title) of the statutes is repealed.

4 SECTION 158. 880.25 (1) of the statutes is renumbered 54.62 (1) and amended

5 to read:

the ward's assets or income

6 54.62 (1) ANNUAL REPORTS. ~~Every~~ Except as provided in sub. (3) or unless
7 waived by a court, every guardian, except including a corporate guardian, shall, prior

8 to April 15 of each year, file an account under oath ~~specifying~~ that specifies the
9 amount of ~~property~~ received and held or invested by the guardian, the nature and

10 manner of the investment, and the guardian's receipts and expenditures during the
11 preceding calendar year. ~~When ordered by the court,~~ The court may order the

12 guardian ~~shall within 30 days to~~ render and file, within 30 days, a like account for
13 ~~any shorter term less than a year.~~ In lieu of the filing of these accounts before April

14 15 of each year, the court may, by appropriate order upon motion of the guardian,
15 direct the guardian of an estate to thereafter render and file the annual accountings

16 within 60 days after the anniversary date of the guardian's qualification as guardian,
17 with the accounting period from the anniversary date of qualification to the ensuing

18 annual anniversary date. ~~When any guardian of a minor has custody of the ward and~~
19 ~~the care of the ward's education, the guardian's report shall state the time that the~~

20 ~~ward attended school during the time for which the account is rendered and the name~~
21 ~~of the school.~~ The guardian shall also report any change in the status of the surety

1 upon the guardian's bond. If the court determines it to be in the ward's best interests,
2 the court may specify the persons to whom the guardian shall distribute copies of the
3 account.

4 **SECTION 159.** 880.25 (2) of the statutes is renumbered 54.62 (2) and amended
5 to read:

6 54.62 (2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall
7 produce for examination by the court, or ~~some~~ by a person satisfactory to the court,
8 evidence of all of the ward's securities, evidences of deposit depository accounts, and
9 other investments reported, which shall be described in the account in sufficient
10 detail so that they may be readily identified. ~~It shall be ascertained~~ The court or
11 person satisfactory to the court shall ascertain whether the evidence of securities,
12 evidences of deposit depository accounts, and other investments correspond with the
13 account.

****NOTE: I replaced the term "deposit" with "depository accounts," and defined that term in s. 54.01 (5) using the definition in s. 815.18 (2) (e), stats. Is this the meaning you intended? I also added "of the ward's" in the first sentence; it's unnecessary to add it to the second, because the referent "the evidence of ... etc." suffices.

14 **SECTION 160.** 880.25 (3) of the statutes is renumbered 54.66 (2) and amended
15 to read:

16 54.66 (2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards~~
17 ~~jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The
18 guardian shall be required to render of a ward with a small estate, as specified in s.
19 54.62 (3) (a), need not file a final account ~~only upon the termination of the guardian's~~
20 guardianship, unless otherwise ordered by the court. The guardian shall instead
21 provide the court with a list of the ward's assets that remain at the time the
22 guardianship terminates, including at the death of the ward.

1 **SECTION 161.** 880.25 (4) of the statutes is renumbered 54.62 (5) and amended

2 to read:

3 54.62 (5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined
4 ~~under the court's direction and if it as the court directs.~~ If the account is not
5 satisfactory ~~it shall be examined on 8 days' notice and,~~ the court shall ~~make such~~
6 ~~order thereon~~ order action as justice requires. Notice and shall direct that notice be
7 provided to the guardian ~~may be served~~ personally or by certified mail ~~as the court~~
8 ~~directs.~~ When the examination of a guardian's account is upon notice. If notice is
9 provided to the guardian under this subsection, the court may appoint a guardian
10 ad litem of for the ward may be appointed.

11 **SECTION 162.** 880.25 (5) of the statutes is renumbered 54.62 (7) (intro.) and
12 amended to read:

13 54.62 (7) NOTICE OF FINAL ACTION ON AN ACCOUNT. (intro.) No action by the court
14 ~~upon any on an account shall be~~ is final unless it is upon the guardian first provides
15 notice: to all of the following:

16 **SECTION 163.** 880.251 of the statutes is repealed.

17 **SECTION 164.** 880.26 (title) of the statutes is repealed.

18 **SECTION 165.** 880.26 (1) (intro.) of the statutes is renumbered 54.64 (3) (intro.)
19 and amended to read:

20 54.64 (3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON. (intro.)
21 A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

22 **SECTION 166.** 880.26 (1) (a) of the statutes is renumbered 54.64 (3) (c) and
23 amended to read:

24 54.64 (3) (c) A ~~formerly~~ minor ward attains ~~his or her majority, unless the minor~~
25 is incompetent age 18.

, as applicable

INSERT 84-16

, unless the guardianship was ordered on the grounds of incompetency

***NOTE: The provision changes current law, which appears to continue a guardianship without other action when a minor, incompetent ward reaches age 18. Just to be sure, are you intending that an incompetent minor's guardianship of the person terminate when he or she reaches 18 and that the guardianship be re-petitioned, etc.?

1 SECTION 167. 880.26 (1) (b) of the statutes is renumbered 54.64 (3) (d) and
2 amended to read:

whose guardianship was not ordered on the grounds of incompetency

3 54.64 (3) (d) A minor ward lawfully marries.

~~***NOTE: What if the minor is incompetent? (See ***NOTE under par. (c))?~~

4 SECTION 168. 880.26 (1) (c) of the statutes is renumbered 54.64 (3) (a) and
5 amended to read:

income and assets, or terminated the guardianship under sub. (2)(d)

6 54.64 (3) (a) The court adjudicates a former ward who was formerly found to
7 be incompetent to be competent no longer incompetent or a ward who was formerly
8 found to be a spendthrift to be capable of handling his or her property.

9 SECTION 169. 880.26 (2) (intro.) of the statutes is renumbered 54.64 (4) (intro.)
10 and amended to read:

11 54.64 (4) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE ESTATE. (intro.)
12 A guardianship of the estate shall terminate when if any of the following occurs:

13 SECTION 170. 880.26 (2) (a) of the statutes is renumbered 54.64 (4) (c) and
14 amended to read:

15 54.64 (4) (c) A formerly minor ward attains his or her majority age 18.

~~***NOTE: Please see the ***NOTE under s. 54.64 (3)(c).~~

16 SECTION 171. 880.26 (2) (b) of the statutes is renumbered.

~~***NOTE: Please see the ***NOTE under s. 54.64 (3) (d).~~

INSERT
85-16

17 SECTION 172. 880.26 (2) (c) of the statutes is renumbered 54.64 (4) (a) and
18 amended to read:

income and assets

1 54.64 (4) (a) The court adjudicates a ~~former ward who was formerly found to~~
2 ~~be incompetent or a spendthrift to be no longer incompetent or a ward who was~~
3 ~~formerly found to be a spendthrift to be capable of handling his or her property.~~

4 SECTION 173. 880.26 (2) (d) of the statutes is renumbered 54.64 (4) (e) and
5 amended to read:

6 54.64 (4) (e) A ward dies, except when the estate can be settled as provided by
7 s. ~~880.28~~ 54.66 (4).

****NOTE: Have I drafted this paragraph as you wish? If s. 54.66 (4) applies, would the court just terminate the guardianship after the summary settlement, or do we need to provide specific authority for the court to do that?

8 SECTION 174. 880.26 (3) of the statutes is renumbered 54.64 (5) (intro.) and
9 amended to read:

income and assets

do not exceed the amount specified in s. 867.03 (1g)

10 54.64 (5) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP. (intro.) ~~When the~~ If a court
11 ~~determines that the estate of the a ward is below \$5,000~~ and reduced to a point where are
12 it is to the advantage of the ward to dispense with the guardianship, the court may
13 ~~terminate~~ do one of the following:

14 (a) Terminate the guardianship and authorize order disposition of the
15 remaining assets as provided by s. ~~880.04 (2)~~ 54.12 (1). The court, as a part of the
16 disposition, may order ~~a suitable amount paid to the county treasurer under order~~
17 ~~of the court or reserved in the guardianship to assure the ward a decent burial, a~~
18 ~~marker and care for the grave. In the case of an insolvent guardianship, the court~~
19 ~~may order an amount not exceeding \$400 reserved in the guardianship or paid to the~~
20 ~~county treasurer under order of the court to assure the ward a decent burial~~ the
21 guardian to make appropriate financial arrangements for the burial or other
22 disposition of the remains of the ward.

1 SECTION 175. 880.27 of the statutes is renumbered 54.66 (1) and amended to
2 read:

3 54.66 (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT. ~~Upon termination~~
4 of If a court terminates a guardianship, or ~~upon resignation, removal or death~~ of a
5 guardian, ~~such resigns, is removed, or dies,~~ the guardian or the guardian's personal
6 representative shall ~~forthwith~~ promptly render ~~the guardian's~~ a final account to the
7 court and to the ~~former ward,~~ ward or the successor guardian, or the deceased ward's
8 personal representative as the case may be. ~~Upon approval of the account and filing~~
9 ~~proper receipts the guardian shall be discharged and the guardian's bond released~~
10 or special administrator, as appropriate. If the ward dies and the guardian and the
11 deceased ward's personal representative or special administrator are the same
12 person, the deceased ward's personal representative or special administrator shall
13 give notice of the termination and rendering of the final account to all interested
14 persons of the ward's estate.

15 SECTION 176. 880.28 of the statutes is renumbered 54.66 (4) and amended to
16 read:

17 54.66 (4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving
18 an estate ~~which~~ that can be settled summarily under s. 867.01, the court may
19 approve ~~such~~ the settlement and distribution by the guardian, ~~without the necessity~~
20 of appointing a personal representative.

21 SECTION 177. 880.31 (title) of the statutes is repealed.

22 SECTION 178. 880.31 (1) and (7) of the statutes are consolidated, renumbered
23 54.76 (1) and amended to read:

24 54.76 (1) Any adult resident who is unwilling or believes that he or she is
25 unable properly to manage his or her ~~property~~ or income may voluntarily apply to

or special administrator

ward or

under the procedures of
s. 867.01

INSERT
87-20

assets

1 the circuit court of the county of his or her residence for appointment of a conservator
 2 of the estate. Upon receipt of the application, the court shall fix a time and place for
 3 hearing the application and may direct to whom, including presumptive heirs, and
 4 in what manner notice of the hearing shall be given. ~~(7) If an application for~~
 5 ~~conservatorship is filed, the~~ to a potential recipient of the notice, unless the potential
 6 recipient has waived receipt. The fee prescribed in s. 814.66 (1) (b) shall be paid at
 7 the time of the filing of the inventory or other documents setting forth the value of
 8 the estate. assets and income

****NOTE: Should anyone in addition to presumptive heirs be specified in s. 54.76 (1)? (See distribution of notice under s. 54.76 (4)). Should any of this be in s. 54.38? Note that I did not draft "adult" — shouldn't all heirs receive notice (see, for example, s. 54.76 (4))?

9 **SECTION 179.** 880.31 (2) of the statutes is renumbered 54.76 (2) and amended
 10 to read: nominee and any proposed standby conservator are
 11 54.76 (2) At the time of such hearing for appointment of a conservator, the
 12 applicant shall be personally examined by the court and if the court is satisfied that
 13 the applicant desires a conservator and that the fiduciary nominated is suitable, the
 14 court may appoint the nominee as conservator and issue letters of conservatorship
 15 to the nominee upon the filing of a bond in the amount fixed by the court. after he or she files

16 **SECTION 180.** 880.31 (3) of the statutes is renumbered 54.76 (3) and amended
 17 to read: Except as provided in sub. (3g), a and, if applicable, designate the proposed standby conservator as standby conservator
 18 54.76 (3) A conservator shall have has all the powers and duties of a guardian
 19 of the property of an incompetent person. ~~The conservator's powers shall cease upon~~
 20 ~~being removed by the court or upon death of the person whose estate is being~~
 21 conserved estate. An individual whose estate is under conservatorship may make
 22 gifts of his or her estate, subject to approval of the conservator. income and assets are

income and assets

~~***NOTE: Please review the gifting language carefully, in light of the actual factual situation and holding of Zobel v. Fenendael.~~

SECTION 181. 880.31 (4) and (5) of the statutes are consolidated, renumbered

54.76 (4) and amended to read:

54.76 (4) Any person, including an individual whose ~~estate is~~ ^{income and assets are} under conservatorship, may apply to the court at any time for termination ~~thereof of the conservatorship~~. Upon ~~such receipt of the~~ application, the court shall fix a time and place for hearing and may direct that 10 days' notice by mail be given to the person's individual's guardian, if any, of the person or agent under a power of attorney for health care, ^{adult} the conservator, and the presumptive heirs of the applicant. Upon such individual whose ~~estate is~~ ^{adult} under conservatorship. A potential recipient of the notice may waive its receipt. At the hearing, the court shall, unless it is clearly shown that the applicant individual whose estate is under conservatorship is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant ~~so desires and the nominee is suitable~~, the court may appoint a successor conservator. ^{keep stricken} ~~any~~ ^{keep scored} individual. ^{however} If the court shall upon such hearing determine determines at the hearing that the person individual whose ~~estate is~~ administered by a conservator ~~may be is~~ incapable of handling his or her ~~estate~~, the court shall order the conservatorship continued, or, if the applicant so desires and ~~the~~ a nominee is suitable, the court may appoint a successor conservator. A conservatorship may only be terminated under a hearing under this subsection.

SECTION 182. 880.31 (6) of the statutes is renumbered 54.76 (5) and amended

to read:

income and assets

RESTORE TO PLAIN TEXT

any standby conservator

SECTION 182

report stating the physician's or psychologist's professional opinion regarding the presence and likely duration of any medical or other condition causing

1 54.76 (5) Appointment of a conservator ~~shall not be~~ does not constitute
2 evidence of the competency or incompetency of the individual ~~person~~ whose ~~estate is~~ being
3 administered.

income and assets are

INSERT 90-3

4 SECTION 183. 880.33 (1) of the statutes is renumbered 54.36 and amended to
5 read:

examine the proposed ward and

6 **54.36 Examination of proposed ward.** Whenever it is proposed to appoint
7 a guardian on the ground of a proposed ward's alleged incompetency, a licensed
8 physician or licensed psychologist, or both, shall furnish a written statement
9 concerning the mental condition ~~any~~ incapacity of the proposed ward, ~~based upon~~
10 examination. The privilege under s. 905.04 ~~shall~~ does not apply to this the
11 statement. ~~A~~ The petitioner shall provide a copy of the ~~statement shall be provided~~

physician or psychologist,

12 to the proposed ward, or his or her counsel, the guardian ad litem, and the
13 petitioner's attorney, if any. Prior to the examination, under this subsection, of a

14 person ~~alleged to be not competent to refuse psychotropic medication under s. 880.07~~

15 (1m), the person ~~the proposed ward~~ shall be informed that his or her statements
16 made by the proposed ward may be used as a basis for a finding of incompetency and
17 an order for protective services, including psychotropic medication. The person shall

18 also be informed that ² he or she has a right to remain silent refuse to participate in
19 the examination or speak to the examiner and that the examiner is required to report

absent a court order,

20 to the court even if the person remains silent does not speak to the examiner. The

proposed ward

21 issuance of such a warning to the person prior to each examination establishes a
22 presumption that the person understands that he or she need not speak to the

proposed ward

23 examiner. Nothing in this section prohibits the use of a report by a physician or
24 psychologist that is based on an examination of the proposed ward by the physician
25 or psychologist before filing the petition for appointment of a guardian, but the court

on which the report is based, the guardian ad litem, physician, or psychologist shall inform the proposed ward that

physician or psychologist

1 will consider the recency of the report in determining whether the report sufficiently
2 describes the proposed ward's current state and in determining the weight to be
3 given to the report.

PLAIN TEXT

****NOTE: Who informs the proposed ward that his or her statements may be used as a basis for a finding of incompetency? The petitioner? Other?

****NOTE: Please review this changed language to make sure I've now captured your intent.

4 **SECTION 184.** 880.33 (2) (a) 1. of the statutes is renumbered 54.42 (1) (a) (intro.)

5 and amended to read:

or ward

6 54.42 (1) (a) (intro.) The proposed ward has the right to counsel ~~whether or not~~
7 ~~present at the hearing on determination of competency. The court shall in all cases~~
8 ~~require the appointment of an attorney as guardian ad litem in accordance with s.~~
9 ~~757.48 (1) and shall in addition require representation by full legal counsel whenever~~
10 ~~the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours~~
11 ~~before the hearing, the alleged incompetent requests; the guardian ad litem or any~~
12 ~~other person states that the alleged incompetent is opposed to the guardianship~~
13 ~~petition; or the court determines that the interests of justice require it. The proposed~~
14 ~~ward has the right to a trial by a jury if demanded by the proposed ward, attorney~~
15 ~~or guardian ad litem, except that if the petition contains the allegations under s.~~
16 ~~880.07 (1m) and if notice of the time set for the hearing has previously been provided~~
17 ~~to the proposed ward and his or her counsel, a jury trial is deemed waived unless~~
18 ~~demanding at least 48 hours prior to the time set for the hearing. The number of~~
19 ~~jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or~~
20 ~~guardian ad litem shall have the right to present and cross-examine witnesses,~~
21 ~~including the physician or psychologist reporting to the court under sub. (1). The~~
22 ~~attorney or guardian ad litem for the proposed ward shall be provided with a copy~~

1 of the report of the physician or psychologist at least 96 hours in advance of the
2 hearing. Any final decision of the court is subject to the right of appeal. if any of the
3 following occurs:

4 SECTION 185. 880.33 (2) (a) 2. of the statutes is renumbered 54.42 (1) (c) and
5 amended to read: or ward

6 54.42 (1) (c) If the person requests but is par. (a) 1., 2., or 3. applies but the
7 proposed ward is unable to obtain legal counsel, the court shall appoint legal counsel.
8 If the person is represented by counsel appointed under s. 977.08 in a proceeding for
9 a protective placement under s. 55.06 or for the appointment of a guardian under s.
10 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent
11 the person.

12 SECTION 186. 880.33 (2) (a) 3. of the statutes is renumbered 54.46 (4) (b) and
13 amended to read: 3

14 54.46 (4) (b) Guardian ad litem and defense fees for indigents; liability. If the
15 person proposed ward is an adult who is indigent, the county of legal settlement shall
16 be in which venue lies for the guardianship proceeding is the county liable for any
17 fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for
18 any legal fees due the person's proposed ward's legal counsel. ~~If the person is a minor,~~
19 ~~the person's parents or the county of legal settlement shall be liable for any fees due~~
20 ~~the guardian ad litem as provided in s. 48.235 (8).~~

21 ~~SECTION 187. 880.33 (2) (b) of the statutes is renumbered 54.42 (3).~~

INSERT 92-21

22 SECTION 188. 880.33 (2) (d) of the statutes is repealed.

23 SECTION 189. 880.33 (2) (e) of the statutes is renumbered 54.44 (5) and
24 amended to read:

✓ 1 54.44 (5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m)~~
2 under this chapter shall be ~~open~~ closed, unless the proposed ward or his or her
3 attorney acting with the proposed ward's consent moves that it be ~~closed~~ open. If the
4 hearing is closed, only ~~persons in interest, including representatives of providers of~~
5 ~~service and interested persons,~~ their attorneys, and witnesses, may be present.

***NOTE: I deleted "representatives of providers of service" from this subsection because they are not included in the definition of "interested person" under s. 54.01 (12).

INSERT 93-5

6 **SECTION 190.** 880.33 (4m) and (4r) of the statutes are repealed.

✓ 7 **SECTION 191.** 880.33 (5) of the statutes is renumbered 54.15 (1) and amended
8 to read:

✓ 9 54.15 (1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~
10 The court shall take into consideration the opinions of the alleged incompetent
11 proposed ward and of the members of the his or her family as to what is in the best
12 interests of the proposed ~~incompetent~~ ward. However, the best interests of the
13 proposed ~~incompetent~~ ward shall control in making the determination when the
14 opinions of the family are in conflict with ~~the clearly appropriate decision~~ those best
15 interests. The court shall also consider potential conflicts of interest resulting from
16 the prospective guardian's employment or other potential conflicts of interest. ~~If the~~
17 ~~proposed incompetent has executed a power of attorney for health care under ch. 155,~~
18 ~~the court shall give consideration to the appointment of the health care agent for the~~
19 ~~individual as the individual's guardian.~~

✓ 20 **SECTION 192.** 880.33 (5m) of the statutes is renumbered 54.15 (9) and amended
21 to read:

✓ 22 54.15 (9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No ~~person, except a~~
23 ~~nonprofit corporation approved by the department of health and family services~~

1 under s. 880.35, who has individual may have guardianship of the person of more
 2 than 5 or more adult wards who are unrelated to the person ~~may accept appointment~~
 3 individual, except that a court may, under circumstances that the court determines
 4 are appropriate, waive this limitation to authorize appointment of the individual as
 5 guardian of the person of ~~another adult ward unrelated to the person, unless~~
 6 ~~approved by the department. No such person may accept appointment as guardian~~
 7 of ~~no more than 10 such~~ additional ~~adult~~ wards who are unrelated to the person
 8 individual. A corporation or ~~entity~~ that is approved by the department under sub.
 9 (7) is not limited in the number of adult wards for which the corporation or ~~entity~~ may
 10 accept appointment by a court as guardian. *association*

INSERT 94-10

11 **SECTION 193.** 880.33 (7) of the statutes is renumbered 54.48 and amended to
 12 read:

13 **54.48 Protective placement and protective services.** A finding of
 14 incompetency and appointment of a guardian under this ~~subchapter~~ chapter is not
 15 grounds for involuntary protective placement. ~~Such~~ or the provision of protective
 16 services. Protective placement and the provision of protective services may be made
 17 only in accordance with s. 55.06 ch. 55.

INSERT 94-17

18 **SECTION 194.** 880.33 (8) (b) of the statutes is renumbered 54.46 (3) (b) and
 19 amended to read: *2* before a finding of incompetency and appointment of a guardian is made for the ward under this chapter

20 54.46 (3) (b) Power of attorney for health care. If the proposed incompetent
 21 ward has executed a power of attorney for health care under ch. 155, ~~find that the~~
 22 power of attorney for health care instrument ~~should remain~~ remains in effect. ~~If the~~
 23 ~~court so finds, the court shall so order and shall, except that the court may, only for~~
 24 good cause shown, revoke the power of attorney for health care or limit the power of
 25 the guardian to make those health care decisions for the ward that are not to be made

Unless the court makes this revocation or limitation, the ward's guardian may not make health care decisions for the ward that may be made by the health care agent

1 by the health care authority of the agent under the terms of the power of attorney
2 for health care instrument, unless the guardian is the health care agent under those
3 terms.

RESTORE TO PLAIN TEXT

***NOTE: This provision may require amending the health care power of attorney chapter, which will, if necessary, be done in a subsequent version.

INSERT 95-3

4 SECTION 195. 880.331 (title) of the statutes is renumbered 54.40 (title) and
5 amended to read:

6 54.40 (title) **Guardian ad litem in incompetency cases; appointment;**
7 **duties; termination.**

for appointment of a guardian

to review the scope of a Guardianship,

8 SECTION 196. 880.331 (1) of the statutes is renumbered 54.40 (1) and amended
9 to read:

INSERT 95-15

10 54.40 (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever
11 it is proposed that the court appoint a guardian on the ground of incompetency under
12 s. 880.33, when a petition is brought under s. 54.34 to protectively place a person or
13 order protective services under s. 55.06, to review any protective placement or
14 protective service order under s. 55.06, or to terminate a protective placement under
15 s. 55.06, or at any other time that the court determines it is necessary.

16 SECTION 197. 880.331 (2) of the statutes is renumbered 54.40 (2) and amended
17 to read:

and in compliance with SCR chapter 36

one person

18 54.40 (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted
19 to practice in this state. No person who is an interested party in a proceeding,
20 appears as counsel in a proceeding on behalf of any party, or is a relative or
21 representative of an interested party may be appointed guardian ad litem in that
22 proceeding or in any other proceeding that involves the same proposed ward.

***NOTE: Should "interested party" be changed to "interested person"?

or ward

RESTORE TO
PLAIN TEXT

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SECTION 198. 880.331 (3) of the statutes is renumbered 54.40 (3) and amended to read:

54.40 (3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward ~~or alleged incompetent~~ as to guardianship, protective placement, and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward ~~or alleged incompetent~~ or the positions of others as to the best interests of the proposed ward ~~or alleged incompetent~~. The guardian ad litem has none of the rights or duties of a ~~general~~ guardian.

ward

ward

SECTION 199. 880.331 (4) (intro.) of the statutes is renumbered 54.40 (4) (intro.).

SECTION 200. 880.331 (4) (a) of the statutes is renumbered 54.40 (4) (a) and amended to read:

RESTORE TO
PLAIN TEXT

54.40 (4) (a) Interview the proposed ward ~~or alleged incompetent~~ and explain the contents of the petition, the applicable hearing procedure, the right to counsel, and the right to request or continue a limited guardianship.

ward

SECTION 201. 880.331 (4) (b) of the statutes is renumbered 54.40 (4) (b) and amended to read:

54.40 (4) (b) Advise the proposed ward ~~or alleged incompetent~~, both orally and in writing, of that person's rights to be present at the hearing, to a jury trial, to an appeal, to counsel, and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

ward

SECTION 202. 880.331 (4) (c) of the statutes is renumbered 54.40 (4) (e) and amended to read:

✓ 1 54.40 (4) (e) Request that the court order additional medical, psychological, or
2 other evaluation, if necessary.

✓ 3 SECTION 203. 880.331 (4) (d) of the statutes is renumbered 54.40 (4) (f) and
4 amended to read:

RESTORE TO PLAIN
TEXT

ward

5 54.40 (4) (f) If applicable, inform the court and petitioner's attorney or, if none,
6 the petitioner that the proposed ward or alleged incompetent objects to a finding of
7 incompetency, the present or proposed placement, or the recommendation of the
8 guardian ad litem as to the proposed ward's or alleged incompetent's best interests
9 or that the proposed ward's or alleged incompetent's position on these matters is
10 ambiguous. If the guardian ad litem recommends that the hearing be held in a place
11 other than a courtroom, the guardian ad litem shall provide the information under
12 this paragraph as soon as possible.

ward's

✓ 13 SECTION 204. 880.331 (4) (e) of the statutes is renumbered 54.40 (4) (i) and
14 amended to read:

ward

15 ✓ 54.40 (4) (i) Present ~~nontestamentary~~ evidence concerning the best interests
16 of the proposed ward or alleged incompetent, if necessary.

****NOTE: Does the term "nontestamentary" clarify sufficiently for your purposes that the GAL may not testify in the proceedings?

✓ 17 SECTION 205. 880.331 (4) (f) of the statutes is renumbered 54.40 (4) (j) and
18 amended to read:

✓ 19 54.40 (4) (j) Report to the court on any ~~other relevant~~ matter that the court
20 requests.

21 SECTION 206. 880.331(5) (intro.) of the statutes is renumbered 54.70 (intro.)
22 and amended to read:

except as provided in s. 55.19(2)

55.195 B

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~~54.70~~ **Duties in of guardian ad litem for reviews.** (intro.) In any review of a protective placement under s. 55.06 or of a protective ~~service~~ services order under s. 55.05, the guardian ad litem shall do all of the following:

SECTION 207. 880.331 (5) (a) of the statutes is renumbered ~~54.70~~ (1) and amended to read:

~~54.70~~ (1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel, and the right to a hearing.

SECTION 208. 880.331 (5) (b) of the statutes is renumbered ~~54.70~~ (2) and amended to read:

~~54.70~~ (2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.

SECTION 209. 880.331 (5) (c) of the statutes is renumbered ~~54.70~~ (3) and amended to read:

~~54.70~~ (3) ~~Secure~~ Request that the court order an additional medical, psychological, or other evaluation of the ward, if necessary.

SECTION 210. 880.331 (5) (d) of the statutes is renumbered ~~54.70~~ (4).

SECTION 211. 880.331 (5) (e) of the statutes is renumbered ~~54.70~~ (5) and amended to read:

~~54.70~~ (5) Review the ward's condition, placement, and rights with the guardian.

SECTION 212. 880.331 (5) (f) of the statutes is renumbered ~~54.70~~ (6) and amended to read:

~~54.70~~ (6) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian, or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

55.195

55.195

54.70

54.70

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54.70

RESTORE TO
PLAIN TEXT

INSERT
99-1

1 ~~SECTION 213.~~ 880.331 (5) (g) of the statutes is renumbered 54.70 (8).

2 ✓ SECTION 214. 880.331 (6) of the statutes is renumbered 54.40 (5) and amended

3 to read:

best

this chapter or

4 54.40 (5) COMMUNICATION TO A JURY. In jury trials under ch. 55 ~~or 880~~, the court

5 or guardian ad litem may tell the jury that the guardian ad litem represents the

6 interests of the proposed ward ~~or alleged incompetent~~.

ward

7 ✓ SECTION 215. 880.331 (7) of the statutes is renumbered 54.40 (6) and amended

8 to read:

9 ✓ 54.40 (6) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a

10 guardian ad litem under sub. (1) terminates upon the entry of the court's final order

11 or upon the termination of any appeal in which the guardian ad litem participates,

12 even if counsel has been appointed for the proposed ward ~~or alleged incompetent~~.

ward

13 The court may extend that appointment, or reappoint a guardian ad litem whose

14 appointment under this section has terminated, by an order specifying the scope of

15 responsibilities of the guardian ad litem. At any time, the guardian ad litem, any

16 party, or the ~~person~~ individual for whom the appointment is made may request that

17 the court terminate any extension or reappointment. The guardian ad litem may

18 appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken by

19 any party and the guardian ad litem chooses not to participate in that appeal, he or

20 she shall file with the appellate court a statement of reasons for not participating.

21 Irrespective of the guardian ad litem's decision not to participate in an appeal, the

22 appellate court may order the guardian ad litem to participate in the appeal.

23 ✓ SECTION 216. 880.331 (8) of the statutes is renumbered 54.74 and amended to

24 read:

income or assets

1 ✓ **54.74 Compensation of guardian ad litem.** On order of the court, the
 2 ~~guardian ad litem appointed under this chapter shall be allowed reasonable~~
 3 ~~compensation to be paid by the county of venue, unless~~ Unless the court otherwise
 4 ~~directs or unless the guardian ad litem is appointed for a minor, in which case the~~
 5 ~~compensation of the guardian ad litem shall be paid by the minor's parents or the~~
 6 ~~county of venue as provided in s. 48.235 (8),~~ the court shall order reasonable
 7 compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the
 8 ward's ~~estate~~, if sufficient, or, if insufficient, by the county of venue. If the court
 9 orders a county to pay the compensation of the guardian ad litem, the amount
 10 ordered may not exceed the compensation paid to a private ~~attorneys~~ attorney under
 11 s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing
 12 all duties required under s. 54.40 (4) and for any other acts that are approved by the
 13 court and are reasonably necessary to promote the ward's best interests.

14 ✓ **SECTION 217.** 880.34 (title) of the statutes is renumbered 54.64 (title) and
 15 amended to read:

16 **54.64 (title) Duration Review and termination of guardianship; review.**

17 ✓ **SECTION 218.** 880.34 (1) of the statutes is renumbered 54.64 (1) and amended
 18 to read:

19 ✓ **54.64 (1) DURATION.** Any guardianship of an individual found to be incompetent
 20 under this chapter shall continue during the life of the ~~incompetent, or ward,~~ until
 21 terminated by the court, or as provided under sub. (3) or (4). Upon reaching the age
 22 of majority, an incompetent subject to guardianship under this chapter shall be
 23 reviewed by the court for the purpose of determining whether the guardianship
 24 should be continued or modified. The court shall make a specific finding of any rights
 25 under s. 880.33 (3) which the individual is competent to exercise at the time.

of incompetency

INSERT 101-1

1 SECTION 219. 880.34 (4) of the statutes is renumbered 54.64 (2) (a) (intro.) and
2 amended to read:

INSERT 101-5

3 54.64 (2) (a) (intro.) A ward who is 18 years of age or older, any interested
4 person acting on the ward's behalf, or the ward's guardian may petition for a review
5 of incompetency. Upon such at any time after 180 days after any previous hearing
6 under s. 54.44, or at any time if the court determines that exigent circumstances,
7 including presentation of new evidence, require a review. If a petition for review is
8 filed, the court shall conduct do all of the following:

9 4. Conduct a hearing at which the ward shall be is present and shall have has
10 the right to a jury trial, if demanded. ~~The ward shall also have the right to counsel~~
11 ~~and the court shall appoint counsel if the ward is unable to obtain counsel. If the~~
12 ~~ward is indigent, counsel shall be provided at the expense of the ward's county of legal~~
13 ~~settlement.~~

14 SECTION 220. 880.34 (5) of the statutes is renumbered 54.64 (2) (c) and
15 amended to read:

16 54.64 (2) (c) After a hearing under sub. (4) par. (a) or on its own motion, a court
17 may terminate or modify ~~a the guardianship of an incompetent, including restoring~~
18 certain of the ward's rights.

19 SECTION 221. 880.34 (6) of the statutes is repealed.

20 SECTION 222. 880.35 of the statutes is renumbered 54.15 (7) and amended to
21 read:

an unincorporated association

22 54.15 (7) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION
23 OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188
24 is ~~qualified to act or any other nonprofit or for profit entity~~ that is approved by the
25 court may be appointed as guardian of the person or of the property or both, of an

estate

this chapter

1 individual found to be in need of guardianship under s. 880.33, if a proposed ward,
2 if no suitable individual is available as guardian and the department of health and
3 family services, under rules established under ch. 55, finds the corporation or ~~entity~~
4 to be a suitable agency to perform such duties. *promulgated*

****NOTE: In LRB-0039/P1, I asked for an example of a nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the person? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01 (26), stats.), instead?

****NOTE: Why does DHFS promulgate these rules under ch. 55, stats.? Why not under this chapter (formerly, ch. 880, stats.)?

association

5 SECTION 223. 880.36 (title) of the statutes is renumbered 54.52 (title).

6 SECTION 224. 880.36 (1) of the statutes is renumbered 54.52 (1) and amended

7 to read:

8 54.52 (1) *no score* A person may at any time bring a petition for the appointment of a
9 standby guardian of the person or property or both estate of a minor or person found
10 incompetent under s. 880.08 to assume the duty and authority of guardianship on
11 the death, incapacity or resignation of the initially appointed guardian may be
12 brought under this chapter at any time. A petition for the appointment of a standby
13 guardian of the person or property or both of a minor to assume the duty and
14 authority of guardianship on the incapacity, death, or debilitation and consent, of the
15 minor's parent may be brought under s. 48.978 an individual who is determined

an individual who is determined under s. 54.10 to be incompetent, a minor, or a spendthrift,

except that, as specified in s. 48.978, a

16 ~~under s. 54.10 to be incompetent, a minor, or a spendthrift.~~

17 SECTION 225. 880.36 (2) of the statutes is renumbered 54.52 (2) and amended

18 to read:

19 54.52 (2) At any hearing conducted under this section the court may designate
20 one or more standby guardians of the person or property estate whose appointment

RESTORE TO PLAIN TEXT

DO NOT RESTORE TO PLAIN TEXT

or court's removal

unwillingness, or

or the court

to act

1 shall become effective immediately upon the death, ~~incapacity~~ inability, or
 2 resignation of the initially appointed guardian or during a period, as determined by
 3 the initially appointed guardian, when the initially appointed guardian is
 4 temporarily unable to fulfill his or her duties, including during an extended vacation
 5 or illness. The powers and duties of the standby guardian shall be the same as those
 6 of the initially appointed guardian. The standby guardian shall receive a copy of the
 7 court order establishing or modifying the initial guardianship, and the order
 8 designating the standby guardian. Upon assuming office, the standby guardian
 9 shall so notify the court. Upon notification, the court shall issue new letters of
 10 guardianship that specify that the standby guardianship is permanent or that
 11 specify the time period for a limited standby guardianship.

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal. Your redraft instructions are for use to "add" this to s. 54.52; do you want me to renumber all of s. 48.978, stats., into ch. 54? There are substantial problems of reconciliation, including, in s. 48.978 (1) (c), stats., a definition of "incapacity" that differs from the definition in s. 54.01 (10).

INSERT 103-11

✓12 SECTION 226. 880.38 (title) of the statutes is renumbered 54.25 (title) and
 13 amended to read:

✓14 54.25 (title) **Guardian Duties and powers of guardian of the person of**
 15 **incompetent.**

16 SECTION 227. 880.38 (1) of the statutes is repealed.

✓17 SECTION 228. 880.38 (2) of the statutes is renumbered 54.25 (1) (b) (intro.) and
 18 amended to read:

✓19 54.25 (1) (b) (intro.) ~~A guardian of the person shall endeavor~~ Endeavor to
 20 secure any necessary care, or services ~~or appropriate protective placement on behalf~~
 21 ~~of for the ward.~~ that are in the ward's best interests, based on all of the following:

✓1 SECTION 229. 880.38 (3) of the statutes is renumbered 54.25 (1) (a) and
2 amended to read:

✓3 54.25 (1) (a) ~~A guardian of the person of an incompetent appointed under s.~~
4 ~~880.33 shall make~~ Make an annual report on the condition of the ward to the court
5 that ordered the guardianship and to the county department designated under s.
6 55.02. That county department shall develop reporting requirements for the
7 guardian of the person. The report shall include, ~~but not be limited to,~~ the location
8 of the ward, the health condition of the ward, any recommendations regarding the
9 ward, and a statement of as to whether or not the ward is living in the least restrictive
10 environment consistent with the needs of the ward. ~~The guardian may fulfill the~~
11 ~~requirement under this subsection by submitting the report required under s. 55.06~~
12 ~~(10).~~

✓13 SECTION 230. 880.39 (title) of the statutes is repealed.

✓14 SECTION 231. 880.39 of the statutes is renumbered 54.18 (4) and amended to
15 read:

✓16 54.18 (4) ~~Any~~ A guardian of the person or of the estate is immune from civil
17 liability for his or her acts or omissions in performing the duties of the guardianship
18 if he or she performs the duties in good faith, in the best interests of the ward, and
19 with the degree of diligence and prudence that an ordinarily prudent person
20 exercises in his or her own affairs.

INSERT 104-20A
21
INSERT 104-20B
INSERT 104-20C
INSERT 104-20D

(END)

INSERT ANAL

CURRENT GUARDIANSHIP LAW

Current guardianship law specifies standards and procedures for determinations by courts that certain individuals are proper subjects for guardianship or conservatorship because of incompetency, spendthriftiness, or minority. For such an individual, after presentation of evidence in a hearing, the court may approve a petition for guardianship and appoint a guardian of the person or guardian of the estate, or both, may dismiss the petition, or, for small estates, order that certain payments be made on behalf of the individual without appointment of a guardian. A court may consider a petition for appointment of a temporary guardian and, after presentation of evidence in a hearing, appoint a temporary guardian for a period not to exceed 60 days or may consider a petition for limited guardianship of property and, after presentation of evidence in a hearing, appoint such a limited guardian of property. As an alternative to guardianship, a court may after presentation of evidence in a hearing, appoint a conservator for an adult who feels unable to manage his or her own property and has applied for a conservatorship. No adult may be protectively placed or receive protective services unless he or she has been determined incompetent under the guardianship laws.

DETERMINATION OF INCOMPETENCE AND APPOINTMENT OF GUARDIAN

Jurisdiction and venue; county of residence

Currently, the circuit courts have jurisdiction over all petitions for guardianship; petitions must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For nonresidents, the petition may be directed to the circuit court of a county in which the nonresident or his or her property may be found. The court in which a petition is first filed must determine venue for a nonresident.

This bill also permits a petition for guardianship to be directed to the county in which the petitioner proposes that the proposed ward reside.

Under current law, for purposes of determining responsibility for funding the provision of social services, mental health and alcohol and other drug abuse services, and protective placements and protective services, the county of residence of individuals aged 18 or older with developmental disability or chronic mental illness in state facilities or nursing homes is determined under numerous criteria. As an exception to these criteria, the individual's county of residence is that of his or her guardian if the individual is incapable of indicating intent and has a parent or sibling who serves as his or her guardian or if the individual's guardian states that the individual is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in the guardian's county of residence. An individual, an interested person on his or her behalf, or a county may request that the Department of Health and Family Services (DHFS) make a determination of the county of responsibility of the individual. The decision is binding on the individual

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and on any county that received notice of the proceeding. Currently, under the laws relating to protective placements and protective services, a petition for appointment of a guardian and for protective services or protective placement for an individual must be filed in the county of residence of the individual to be protected. Currently, under the laws relating to guardianship, all petitions or guardianship must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For a nonresident, the petition may be directed to the circuit court of any county in which the nonresident or his or her property may be found. The court in which the petition is first filed must determine venue and must order the record certified to the proper court in another county if it is determined that venue lies in that county. If a guardian or a ward changes residence to another county, the circuit court for the county in which the ward resides may appoint a new guardian and may order the guardianship accounts settled and the property delivered to the new guardian.

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With respect to determining a county of residence, the bill clarifies that a determination may be made for adults with developmental disabilities, serious and persistent mental illnesses, degenerative brain disorders, or other like incapacities who reside in any place, other than a hospital that is licensed, registered, certified, or approved by DHFS or a county under certain laws. The bill also clarifies that a court that issues an order for involuntary commitment or protective placement or protective services may, after notice and an opportunity for affected counties and parties to be heard have been provided, make a specific finding of a county of residence. If an affected county or party objects, the county or party may request that DHFS make a determination and a transfer of venue may be suspended until the determination of DHFS is final. The bill modifies the criteria for determining a county of residence and authorizes a guardian to declare a county of residence under certain circumstances. The bill requires that the county that is determined to be the county of residence reimburse any other county, under specified time limits, for all social services, mental health, alcohol and other drug abuse, protective placement, and protective services care, treatment, and services. §

For laws relating to protective placement or protective services and to guardianship, the bill modifies requirements for filing a petition for protective placement or protective services or guardianship to require filing either in the county of residence or, under certain circumstances, where the individual to be protected is physically present. If a person has not previously received services or has established residence in a different county after receiving and terminating services, the court may determine the individual's county of residence. The bill also requires that the court in which a petition for protective placement or protective services is first filed determine venue, after notice to and an opportunity to be heard by potentially affected counties. If an affected county or party objects to the court's determination, the court may refer the issue to DHFS for determination and may suspend ruling on a motion for change of venue until the DHFS determination is final.

Petition for guardianship

Currently, any person may petition for the appointment of a guardian for an individual. Each petition must state certain information about the individual. If the petition alleges that the individual is not competent to refuse psychotropic medication, the petition must also allege certain matters concerning the necessity for involuntary administration of psychotropic medication.

The bill eliminates the petition requirements concerning the involuntary administration of psychotropic medication. The bill requires that certain additional information be included in a petition for guardianship, including whether the proposed ward is a recipient of a public benefit, the agent under any power of attorney for health care or financial power of attorney executed by the proposed ward, and whether a full or limited guardian is requested and, if limited, the specific guardian authority or limitation on the ward's rights that is sought.

Examination of proposed ward

Under current law, when a guardian is proposed to be appointed for a ward on the ground of alleged incompetency, a physician or psychologist, or both, must furnish a written statement, based on an examination, concerning the proposed ward's mental condition. The proposed ward must be informed that his or her statements may be used as a basis for a finding of incompetency and for an order for protective services, including the involuntary administration of psychotropic medication, and that he or she may remain silent. The statement must be provided to the proposed ward and his or her guardian ad litem and attorney.

The bill requires that the physician or psychologist examining the proposed ward furnish a report, instead of a statement, stating his or her professional opinion regarding the presence and likely duration of any medical or other condition causing the proposed ward's incapacity. The petitioner must provide a copy of the report to the petitioner's attorney, if any, as well as to the proposed ward and his or her counsel and guardian ad litem. Either the guardian ad litem or the physician or psychologist must inform the proposed ward that, absent a court order, he or she may refuse to participate in the examination. The court must consider the recency of any such report in determining its accuracy and the weight to be given to it. The bill also authorizes submitting a petition to the court to order the proposed ward to submit to an examination and permits access by the physician or psychologist to the proposed ward's patient health care records and mental health treatment records.

Notice

Current law specifies differing requirements for provision of notice, time limits for service of notice, and required recipients of notice for the appointment of a guardian for an individual on the basis of incompetency, spendthriftiness, and minority.

The bill requires that a notice be in writing and specifies requirements and standards for the giving of notice. The bill requires that, for all notices of proposed guardian appointment on the basis of incompetency or spendthriftiness, or for rehearings, the petitioner provide notice to the proposed ward and existing guardian, if any, and to the proposed ward's counsel, guardian ad litem, presumptive adult heirs, any agent under a financial power of attorney or power of attorney for health

care, custodian, and proposed guardian; any agency, charity, or foundation from which the proposed ward is receiving aid or assistance; and any other person required by the court. Special requirements apply for notice of hearing for the proposed guardianship of a minor and to a notice and hearing for temporary guardianships.

Appointment of guardian ad litem

ad litem

Currently, a court must appoint a guardian ad litem when appointment of a guardian on the ground of incompetency is proposed, to protectively place or provide protective services to an individual or review a protective placement or protective services order, or to terminate a protective placement. An interested party in a proceeding, who appears as counsel in a proceeding, or who is a relative or representative of an interested person, may not be appointed as guardian ad litem in that proceeding. A guardian has numerous duties, including interviewing the proposed ward and explaining the hearing procedure, right to counsel, and right to request or continue a limited guardianship; advising the proposed ward of his or her rights; and presenting evidence concerning the proposed ward's best interests.

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The bill expands the circumstances under which a court must appoint a guardian ad litem to include whenever a petition is brought for appointment of a guardian, to review the scope of guardianship, to expand an order of guardianship, to review incompetency and terminate a guardianship, and to review the conduct of a guardian, and any other time that a court determines it necessary. The bill expands the prohibition on appointment of an interested person, as defined in the bill, or a relative or representative of an interested person, from appointment as guardian ad litem in any proceeding that involves the same ward. The bill also expands duties of the guardian ad litem, including requiring that the guardian ad litem interview the proposed guardian, any proposed standby guardian, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed; review any power of attorney for health care or financial power of attorney executed by the proposed ward and any other advance planning for financial and health care decision making of the proposed ward; interview any agent under such a power of attorney; inform the court if the proposed ward or ward requests representation by counsel; and attend all court proceedings related to the guardianship.

Rights of the proposed ward

Currently, a proposed ward has the right to counsel, the right to a trial by jury if requested at least 72 hours before the hearing, the right to present and cross-examine witnesses, the right to receipt of the physician's or psychologist's report 96 hours in advance of the hearing, and the right to secure an independent medical or psychological evaluation. A court must appoint a guardian ad litem and require attorney representation if requested, if the involuntary administration of psychotropic medication is proposed, if the proposed ward is opposed to the guardianship, or if the interests of justice require it. If a guardian is appointed, a court may allow payment of reasonable expenses incurred by the ward in contesting the appointment.

The bill expands these rights to wards (for reviews of guardianships and other matters) and provides to the proposed ward or ward the rights to be present at any hearing regarding the guardianship and to have any such hearing conducted in a location and manner that is accessible to the proposed ward. The bill allows a request for a jury trial to be made at least 48 hours before a hearing. The bill clarifies that expenses ⁽ⁱⁿ⁾ incurred by the ward in contesting the appointment are payable from the ward's income or assets before other attorney or guardian ad litem fees.

Appointment of guardian; determination of incompetence

Under current law, a court may appoint a guardian to have care, custody, and control of, or to manage the estate of, an individual who is determined by the court to be incompetent, a spendthrift, or a minor. The standard for a finding of incompetency includes substantial incapability of managing one's property or caring for oneself by reason of infirmities of aging, developmental disabilities, or other like incapacities; physical disability without mental incapacity is insufficient to establish incompetence.

The bill changes the standard for a finding of incompetence and appointment of a guardian of the person or a guardian of the estate, or both, for an individual, to authorize the finding and appointment only if the court finds, by clear and convincing evidence, that the individual is aged at least 17 years and nine months; that (for purposes of appointment of a guardian of the person) because of an impairment, as defined in the bill, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; ^{and} that (for purposes of appointment of a guardian of the estate) because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that the property will be dissipated, the individual is unable to provide for his or her support, or the individual is unable to prevent financial exploitation. Further, the individual's need for assistance in decision-making or communication must be unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept. Unless the proposed ward is unable to communicate decisions effectively in any way, this determination may not be based on mere old age, eccentricity, poor judgment, or physical disability. The bill requires that, in appointing a guardian, declaring incompetence of the individual to exercise certain rights, or in determining the powers that are appropriate for a guardian to exercise, the court consider numerous matters, including the guardian ad litem report; the medical or psychological report and any other evaluation; whether the proposed ward has engaged in any advance planning for financial and health care decision-making; whether appointment of a guardian is the least restrictive means, as defined in the bill, to provide for the individual's need; and the preferences of the individual with regard to personal needs or property management. The court also must determine if additional medical, psychological, social, vocational, or educational evaluation is necessary to make an informed decision concerning the individual's competency to

exercise legal rights. The court must authorize a guardian to exercise only necessary powers and to exercise them in a manner that is appropriate and that constitutes the least restrictive form of intervention.

Exceptions to appointment of guardian

Currently, if a minor or an individual who is found incompetent is, except for his or her incapacity, entitled to have personal property of \$10,000 or less, a court, without requiring the appointment of a guardian, may order the property be deposited in a bank or other financial institution or invested, make payment to the natural guardian or person having custody of the minor, make payment to the minor, or make payment to the person with actual or legal custody of the individual found incompetent or to the person providing for the care and maintenance of the individual found incompetent. Similar provisions for possession by a minor or individual found incompetent of \$5,000 or less from an estate. The bill increases to \$20,000 the dollar limitation on personal property for these types of disposition.

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Nomination of guardian

Currently, a court must consider nominations for guardian that are made by any interested person, by a minor over 14 years, by a parent in a will, and by an individual for himself or herself in an anticipatory document. The court must also consider the opinions of an individual who is alleged to be incompetent and of the members of the individual's family, potential conflicts of interest, the appointment of an individual's agent under a power of attorney for health care, and whether a nonprofit corporation is qualified to serve as guardian. The court must appoint one or both parents, if suitable and willing, of a minor or person with developmental disabilities or other like incapacity. No person, except a nonprofit corporation, may accept guardianship of the person of more than five adult wards who are unrelated to the person, unless, up to a limit of ten, the additional guardianships are approved by DHFS under rules promulgated by DHFS under the laws relating to protective placement.

The bill requires, unless the court finds that the appointment is not in the proposed ward's best interests, that the court appoint, as guardian of the estate, an agent under a proposed ward's financial power of attorney; as guardian of the person, the agent under a proposed ward's power of attorney for health care; and as guardian, one or both parents of a minor, or an individual with developmental disability or with serious and persistent mental illness, as defined in the bill. The bill limits the power of a parent to nominate by will a guardian of the person or guardian of the estate for the parent's minor child if the court finds that the appointment is not in the minor's best interests. A private nonprofit corporation or an unincorporated association that is approved by the court may be appointed as guardian if no suitable individual is available and if DHFS, under rules promulgated under the guardianship laws, finds the corporation or association suitable. The bill limits the number of adult wards for whom an individual may have guardianship to five adult wards who are unrelated to the individual, unless the limitation is waived by a court, and eliminates restrictions on the number of adult wards for which a nonprofit corporation or unincorporated association may accept guardianship. At least 96 hours before the

hearing the proposed guardian must submit to the court a sworn and notarized statement as to whether, among other things, the proposed guardian is currently charged with or has been convicted of a crime, has filed for or received protection under the federal bankruptcy laws, has had a professional license suspended or revoked, or is listed on the caregiver abuse registry.

Hearing

Under current law, a hearing on a petition for guardianship must be open unless the proposed ward or his or her counsel moves that it be closed. If closed, only certain persons may be present.

This bill requires that each hearing under the guardianship laws be closed unless the proposed ward or his or her counsel moves that it be open. The bill requires that petitions for guardianship, except for temporary guardianship and petitions for protectively placed individuals in certain facilities, be heard within 90 days after they are filed; that court determinations of incompetency or spendthriftiness be made by clear and convincing evidence; that the proposed guardian and any proposed standby guardian be physically present at the hearing unless excused by the court or unless the court permits their attendance by telephone; and that an adult proposed ward attend the hearing unless the guardian ad litem, under certain standards, waives attendance. If the proposed ward is unable to attend the hearing because he or she resides in a facility or because of physical inaccessibility or a lack of transportation, and the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court must hold the hearing in a place where the proposed ward may attend. A court that finds a proposed guardian to be inappropriate must require another petition proposing a suitable guardian, set a date for a subsequent hearing, and require the guardian ad litem to investigate the suitability of a new proposed guardian.

Disposition of petition

Currently, if a proposed ward has executed a power of attorney for health care, the court, in a determination of incompetency, may find that the power of attorney should remain in effect and, if so, must limit the power of the guardian from making health care decisions for the ward that the agent under the power of attorney may make, unless the guardian is also the agent. The bill requires that such a health care power of attorney remain in effect and permits a court to revoke it or limit the power of the agent only for good cause shown. Unless the court makes a revocation or limitation, the guardian is prohibited from making health care decisions for the ward that may be made by the agent.

Currently, when a guardian is appointed, the court must award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those related to protective placement, unless the court finds it inequitable to do so after considering the petitioner's interest in the matter, including a conflict of interest, the ability of the ward's estate to pay the fees and costs, whether the guardianship was contested, and any other relevant factor. This award may not be made if the ward had engaged in advance planning (by, among other things, executing a financial power of attorney) to avoid guardianship. The bill eliminates payment, from the ward's income and assets, of the costs of a protective placement and changes a finding