880.34(6)(a)1.
1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

880.34(6)(a)2.
2. (intro.) Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

880.34(6)(a)2.a.
a. The person's right to representation by full legal counsel under par. (b).

880.34(6)(a)2.b.
b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

880.34(6)(a)2.c.
c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

880.34(6)(b)
(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

880.34(6)(c)
(c) (intro.) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

880.34(6)(c)1.
1. Whether an independent evaluation should be conducted under par. (d).

880.34(6)(c)2.
2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

880.34(6)(c)3.
3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

880.34(6)(c)4.
4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

880.34(6)(c)5.
5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

880.34(6)(d)
(d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

880.34(6)(e)
(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

880.34(6)(f)
(f) (intro.) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

880.34(6)(f)1.
1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

880.34(6)(f)2.
2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

880.34(6)(f)3.
3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

880.37
880.37 Application for limited guardianship of property.
880.37(1)

(1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

880.37(2)
(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

880.37(3)
(3) (intro.) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

880.37(3)(a)
(a) Receive and expend any and all wages or other earnings from the person's employment; and

880.37(3)(b)
(b) Contract and legally bind himself or herself for any sum of money not exceeding $300 or one month's wages or earnings, whichever is greater.

880.37(4)
(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

880.37(5)
(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

PROCEDURES

SUBCHAPTER V

POST–APPOINTMENT MATTERS

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

SECTION 20. 757.48 (1) (a) of the statutes is amended to read:

SECTION 21. 880.01 (1) of the statutes is renumbered 54.01 (2) and amended to read:

SECTION 22. 880.01 (2) of the statutes is renumbered 54.01 (7) and amended to read:

SECTION 23. 880.01 (3) of the statutes is renumbered 54.01 (4) and amended to read:

SECTION 24. 880.01 (4) of the statutes is renumbered 54.01 (6) (intro.) and amended to read:

SECTION 25. 880.01 (5) of the statutes is renumbered 54.01 (8) and amended to read:

SECTION 26. 880.01 (6) and (7) of the statutes are repealed.

SECTION 27. 880.01 (7m) of the statutes is renumbered 54.01 (11).

SECTION 28. 880.01 (8) of the statutes is repealed.

SECTION 29. 880.02 of the statutes is renumbered 54.30 (1) and amended to read:

SECTION 30. 880.03 of the statutes is repealed.

SECTION 31. 880.04 (title) of the statutes is renumbered 54.12 (title) and amended to read:

SECTION 32. 880.04 (1) of the statutes is renumbered 54.12 (1) and amended to read:

SECTION 33. 880.04 (2) of the statutes is renumbered 54.12 (2) and amended to read:

SECTION 34. 880.04 (2m) of the statutes is renumbered 54.12 (3) and amended to read:

SECTION 35. 880.04 (3) of the statutes is renumbered 54.12 (4) and amended to read:

SECTION 36. 880.05 of the statutes is renumbered 54.30 (2) and amended to read:

SECTION 37. 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

SECTION 38. 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and amended to read:

SECTION 39. 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and amended to read:

SECTION 40. 880.07 (title) of the statutes is renumbered 54.34 (title) and amended to read:

SECTION 41. 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.) and amended to read:

SECTION 42. 880.07 (1) (a) of the statutes is renumbered 54.34 (1) (a).

SECTION 43. 880.07 (1) (b) of the statutes is renumbered 54.34 (1) (b) and amended to read:

SECTION 44. 880.07 (1) (c) of the statutes is renumbered 54.34 (1) (c).

SECTION 45. 880.07 (1) (d) of the statutes is renumbered 54.34 (1) (d) and amended to read:

SECTION 46. 880.07 (1) (e) of the statutes is renumbered 54.34 (1) (e).

SECTION 47. 880.07 (1) (f) of the statutes is renumbered 54.34 (1) (f).

SECTION 48. 880.07 (1) (g) of the statutes is renumbered 54.34 (1) (g).

SECTION 49. 880.07 (1) (h) of the statutes is renumbered 54.34 (1) (h) and amended to read:

SECTION 50. 880.07 (1) (i) of the statutes is renumbered 54.34 (1) (i) and amended to read:

SECTION 51. 880.07 (1) (j) of the statutes is renumbered 54.34 (1) (j) and is amended to read:

SECTION 52. 880.07 (2) of the statutes is renumbered 54.34 (2) and amended to read:

SECTION 53. 880.07 (4) of the statutes is renumbered 54.34 (3) and amended to read:

SECTION 54. 880.08 (intro.) of the statutes is renumbered 54.38 (2) (intro.) and amended to read:

SECTION 55. 880.08 (1) (title) of the statutes is repealed.

SECTION 56. 880.08 (1) of the statutes is renumbered 54.38 (2) (a) and amended to read:

SECTION 57. 880.08 (3) (title) of the statutes is repealed.

SECTION 58. 880.08 (3) (am) (intro.) of the statutes is renumbered 54.38 (3) (intro.) and amended to read:

SECTION 59. 880.08 (3) (am) 1. of the statutes is renumbered 54.38 (3) (a) and amended to read:

SECTION 60. 880.08 (3) (am) 2. of the statutes is renumbered 54.38 (3) (b) and amended to read:

SECTION 61. 880.08 (3) (am) 3. of the statutes is renumbered 54.38 (3) (c) and amended to read:

SECTION 62. 880.08 (3) (am) 4. of the statutes is renumbered 54.38 (3) (d) and amended to read:

SECTION 63. 880.08 (3) (e) of the statutes is repealed.

SECTION 64. 880.08 (4) of the statutes is renumbered 54.38 (4) and amended to read:

SECTION 65. 880.09 (intro.) of the statutes is renumbered 54.15 (intro.) and amended to read:

SECTION 66. 880.09 (1) of the statutes is repealed.

SECTION 67. 880.09 (2) of the statutes is renumbered 54.15 (3) and amended to read:

SECTION 68. 880.09 (3) of the statutes is repealed.

SECTION 69. 880.09 (4) of the statutes is repealed.

SECTION 70. 880.09 (5) of the statutes is repealed.

SECTION 71. 880.09 (6) of the statutes is renumbered 54.15 (4) and amended to read:

SECTION 72. 880.09 (7) of the statutes is renumbered 54.15 (2) and amended to read:

SECTION 73. 880.10 of the statutes is renumbered 54.38 (5) and amended to read:

SECTION 74. 880.12 of the statutes is repealed.

SECTION 75. 880.125 of the statutes is repealed.

SECTION 76. 880.13 (title) of the statutes is renumbered 54.46 (5) (title).

SECTION 77. 880.13 (1) of the statutes is renumbered 54.46 (5) (a) and amended to read:

SECTION 78. 880.13 (2) (title) of the statutes is renumbered 54.46 (5) (b) (title).

SECTION 79. 880.13 (2) (a) of the statutes is renumbered 54.46 (5) (b) (intro.) and amended to read:

SECTION 80. 880.13 (2) (b) of the statutes is renumbered 54.46 (5) (b) 3. and amended to read:

SECTION 81. 880.13 (3) of the statutes is renumbered 54.46 (5) (c) and amended to read:

SECTION 82. 880.14 of the statutes is renumbered 54.46 (6) and amended to read:

SECTION 83. 880.15 (title) of the statutes is renumbered 54.50 (1) (title).

SECTION 84. 880.15 (1) of the statutes is renumbered 54.50 (1) (b) and amended to read:

SECTION 85. 880.15 (1m) of the statutes is repealed.

SECTION 86. 880.15 (1s) of the statutes is repealed.

SECTION 87. 880.15 (2) of the statutes is repealed.

SECTION 88. 880.15 (3) of the statutes is repealed.

SECTION 89. 880.17 of the statutes is renumbered 54.54.

SECTION 90. 880.173 (title) of the statutes is repealed.

SECTION 91. 880.173 (1) of the statutes is renumbered 54.20 (2) (g) and amended to read:

SECTION 92. 880.173 (2) of the statutes is repealed.

SECTION 93. 880.175 (title) of the statutes is repealed.

SECTION 94. 880.175 of the statutes is renumbered 54.20 (2) (b) and amended to read:

SECTION 95. 880.18 (title) of the statutes is renumbered 54.60 (title).

SECTION 96. 880.18 of the statutes is renumbered 54.60 (1) and amended to read:

SECTION 97. 880.19 (title) of the statutes is repealed.

SECTION 98. 880.19 (1) (title) of the statutes is repealed.

SECTION 99. 880.19 (1) of the statutes is renumbered 54.19 (1) and amended to read:

SECTION 100. 880.19 (2) (title) of the statutes is repealed.

SECTION 101. 880.19 (2) (a) of the statutes is renumbered 54.20 (1) and amended to read:

SECTION 102. 880.19 (2) (b) of the statutes is renumbered 54.20 (3) (g) and amended to read:

SECTION 103. 880.19 (3) (title) of the statutes is repealed.

SECTION 104. 880.19 (3) of the statutes is renumbered 54.20 (2) (k) and amended to read:

SECTION 105. 880.19 (4) (title) of the statutes is repealed.

SECTION 106. 880.19 (4) (a) of the statutes is renumbered 54.20 (3) (h) and amended to read:

SECTION 107. 880.19 (4) (b) of the statutes is renumbered 54.20 (2) (L) and amended to read:

SECTION 108. 880.19 (4) (c) of the statutes is renumbered 54.18 (3) (h) and amended to read:

SECTION 109. 880.19 (5) (title) of the statutes is repealed.

SECTION 110. 880.19 (5) (a) of the statutes is renumbered 54.20 (3) (i) and amended to read:

SECTION 111. 880.19 (5) (b) of the statutes is renumbered 54.22 and amended to read:

SECTION 112. 880.19 (5) (c) of the statutes is renumbered 54.18 (3) (b) and amended to read:

SECTION 113. 880.19 (5) (d) of the statutes is repealed.

SECTION 114. 880.19 (6) of the statutes is renumbered 54.23 and amended to read:

SECTION 115. 880.191 (title) of the statutes is repealed.

SECTION 116. 880.191 (1) of the statutes is renumbered 54.60 (7) and amended to read:

SECTION 117. 880.21 of the statutes is repealed.

SECTION 118. 880.22 (title) of the statutes is repealed.

SECTION 119. 880.22 (1) (title) of the statutes is repealed.

SECTION 120. 880.22 (1) of the statutes is renumbered 54.19 (7) (a) and amended to read:

SECTION 121. 880.22 (2) (title) of the statutes is repealed.

SECTION 122. 880.22 (2) of the statutes is renumbered 54.19 (7) (b) and amended to read:

SECTION 123. 880.23 (title) of the statutes is repealed.

SECTION 124. 880.23 of the statutes is renumbered 54.19 (8) and amended to read:

SECTION 125. 880.24 (title) of the statutes is repealed.

SECTION 126. 880.24 (1) of the statutes is repealed.

SECTION 127. 880.24 (2) of the statutes is renumbered 54.42 (4) and amended to read:

SECTION 128. 880.24 (3) of the statutes is renumbered 54.46 (4).

SECTION 129. 880.245 of the statutes is renumbered 54.62 (6) and amended to read:

SECTION 130. 880.25 (title) of the statutes is repealed.

SECTION 131. 880.25 (1) of the statutes is renumbered 54.62 (1) and amended to read:

SECTION 132. 880.25 (2) of the statutes is renumbered 54.62 (2) and amended to read:

SECTION 133. 880.25 (3) of the statutes is renumbered 54.66 (2) and amended to read:

SECTION 134. 880.25 (4) of the statutes is renumbered 54.62 (5) and amended to read:

SECTION 135. 880.25 (5) of the statutes is renumbered 54.62 (7) and amended to read:

SECTION 136. 880.26 (title) of the statutes is repealed.

SECTION 137. 880.26 (1) (intro.) of the statutes is renumbered 54.64 (3) (intro.) and amended to read:

SECTION 138. 880.26 (1) (c) of the statutes is renumbered 54.64 (3) (a) and amended to read:

SECTION 139. 880.26 (2) (intro.) of the statutes is renumbered 54.64 (4) (intro.) and amended to read:

SECTION 140. 880.26 (2) (c) of the statutes is renumbered 54.64 (4) (a) and amended to read:

SECTION 141. 880.26 (2) (d) of the statutes is repealed.

SECTION 142. 880.26 (3) of the statutes is renumbered 54.64 (5) (intro.) and amended to read:

SECTION 143. 880.27 of the statutes is renumbered 54.66 (1) and amended to read:

SECTION 144. 880.28 of the statutes is renumbered 54.66 (4) and amended to read:

SECTION 145. 880.31 (title) of the statutes is repealed.

SECTION 146. 880.31 (1) and (7) of the statutes are consolidated, renumbered 54.76 (1) and amended to read:

SECTION 147. 880.31 (2) of the statutes is renumbered 54.76 (2) and amended to read:

SECTION 148. 880.31 (3) of the statutes is renumbered 54.76 (3) and amended to read:

SECTION 149. 880.31 (4) and (5) of the statutes are consolidated, renumbered 54.76 (4) and amended to read:

SECTION 150. 880.31 (6) of the statutes is renumbered 54.76 (5) and amended to read:

SECTION 151. 880.33 (title) of the statutes is repealed.

SECTION 152. 880.33 (1) of the statutes is renumbered 54.36 and amended to read:

SECTION 153. 880.33 (2) (a) 1. of the statutes is renumbered 54.42 (1) (a) (intro.) and amended to read:

SECTION 154. 880.33 (2) (a) 2. of the statutes is renumbered 54.42 (1) (c) and amended to read:

SECTION 155. 880.33 (2) (a) 3. of the statutes is renumbered 54.32 and amended to read:

SECTION 156. 880.33 (2) (b) of the statutes is renumbered 54.42 (3).

SECTION 157. 880.33 (2) (e) of the statutes is renumbered 54.44 (5) and amended to read:

SECTION 158. 880.33 (5) of the statutes is renumbered 54.15 (6) and amended to read:

SECTION 159. 880.33 (5m) of the statutes is renumbered 54.15 (8) and amended to read:

SECTION 160. 880.33 (7) of the statutes is renumbered 54.48 and amended to read:

SECTION 161. 880.33 (8) (b) of the statutes is renumbered 54.46 (3) (b) and amended to read:

SECTION 162. 880.331 (title) of the statutes is renumbered 54.40 (title) and amended to read:

SECTION 163. 880.331 (1) of the statutes is renumbered 54.40 (1) and amended to read:

SECTION 164. 880.331 (2) of the statutes is renumbered 54.40 (2) and amended to read:

SECTION 165. 880.331 (3) of the statutes is renumbered 54.40 (3) and amended to read:

SECTION 166. 880.331 (4) (intro.) of the statutes is renumbered 54.40 (4) (intro.).

SECTION 167. 880.331 (4) (a) of the statutes is renumbered 54.40 (4) (a) and amended to read:

SECTION 168. 880.331 (4) (b) of the statutes is renumbered 54.40 (4) (c) and amended to read:

SECTION 169. 880.331 (4) (c) of the statutes is renumbered 54.40 (4) (d) and amended to read:

SECTION 170. 880.331 (4) (d) of the statutes is renumbered 54.40 (4) (e) and amended to read:

SECTION 171. 880.331 (4) (e) of the statutes is renumbered 54.40 (4) (h) and amended to read:

SECTION 172. 880.331 (4) (f) of the statutes is renumbered 54.40 (4) (i) and amended to read:

SECTION 173. 880.331 (5) (intro.) of the statutes is renumbered 54.70 (intro.) and amended to read:

SECTION 174. 880.331 (5) (a) of the statutes is renumbered 54.70 (1) and amended to read:

SECTION 175. 880.331 (5) (b) of the statutes is renumbered 54.70 (2) and amended to read:

SECTION 176. 880.331 (5) (c) of the statutes is renumbered 54.70 (3) and amended to read:

SECTION 177. 880.331 (5) (d) of the statutes is renumbered 54.70 (4).

SECTION 178. 880.331 (5) (e) of the statutes is renumbered 54.70 (5) and amended to read:

SECTION 179. 880.331 (5) (f) of the statutes is renumbered 54.70 (6) and amended to read:

SECTION 180. 880.331 (5) (g) of the statutes is renumbered 54.70 (7) and amended to read:

SECTION 181. 880.331 (6) of the statutes is renumbered 54.40 (5) and amended to read:

SECTION 182. 880.331 (7) of the statutes is renumbered 54.40 (6) and amended to read:

SECTION 183. 880.331 (8) of the statutes is renumbered 54.74 and amended to read:

SECTION 184. 880.34 (title) of the statutes is renumbered 54.64 (title) and amended to read:

SECTION 185. 880.34 (1) of the statutes is renumbered 54.64 (1) and amended to read:

SECTION 186. 880.34 (4) of the statutes is renumbered 54.64 (2) (a) (intro.) and amended to read:

SECTION 187. 880.34 (5) of the statutes is renumbered 54.64 (2) (c) and amended to read:

SECTION 188. 880.35 of the statutes is renumbered 54.15 (5) and amended to read:

SECTION 189. 880.36 (title) of the statutes is renumbered 54.52 (title).

SECTION 190. 880.36 (1) of the statutes is renumbered 54.52 (1) and amended to read:

SECTION 191. 880.36 (2) of the statutes is renumbered 54.52 (2) and amended to read:

SECTION 192. 880.38 (title) of the statutes is renumbered 54.25 (title) and amended to read:

SECTION 193. 880.38 (1) of the statutes is renumbered 54.25 (1) (c) and amended to read:

SECTION 194. 880.38 (2) of the statutes is renumbered 54.25 (1) (b) (intro.) and amended to read:

SECTION 195. 880.38 (3) of the statutes is renumbered 54.25 (1) (a) and amended to read:

SECTION 196. 880.39 (title) of the statutes is repealed.

SECTION 197. 880.39 of the statutes is renumbered 54.18 (4) and amended to read:

(END)

CHAPTER 880

GUARDIANS AND WARDS

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880.875 Expenses, compensation and bond of custodial trustee.
880.88 Reporting and accounting by custodial trustee; determination of liability of custodial trustee.
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Cross–reference: See definitions in ch. 851.

SUBCHAPTER I

GENERAL PROVISIONS

880.01 Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the welfare of the person who is to be protected.

(7) "Minor" means a person who has not attained the age of 18 years.

(7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

(9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

(10) "Ward" means a subject for whom a guardian has been appointed.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

880.02 Jurisdiction in circuit court. The circuit court shall have jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.02; 1977 c. 449; 1979 c. 32 s. 92 (14).

880.03 Persons and estates subject to guardianship. All minors, incompetents and spendthrifts are subject to guardianship. The court may appoint a guardian of the person of anyone subject to guardianship who is also a resident of the county, or of a nonresident found in the county, under extraordinary circumstances requiring medical aid or the prevention of harm to his or her person or property found in the county. The court may appoint a guardian of the estate of anyone subject to guardianship, whether a resident of the state or not, if any of the estate is located within the county. Separate guardians of the person and of the estate of a ward may be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.03; 1993 a. 486.

880.04 Exceptions. (1) EMANCIPATION OF MARRIED MINORS. Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

(2) SMALL ESTATES. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of $10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m); or invest in interest–bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

(b) Payment to the natural guardian of the minor or to the person having actual custody of the minor.

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

(2m) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of $5,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

(a) With the approval of the register in probate, take one of the actions under sub. (2) (a).

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) (a) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court under ss. 880.61 to 880.72 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

880.05 Venue. All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or of the county in which the person is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.05; 1975 c. 393, 421; 1977 c. 449 s. 497; 1987 a. 27.

880.06 Change of venue. (1) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition.

(2) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a guardian removes from the county where appointed to another county within the state or a ward removes from the county in which he or she has resided to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she is the same person, and to any other persons that the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.06; 1977 c. 449; 1999 a. 85.

880.07 Petition; fees. (1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

(a) The name, date of birth, residence and post–office address of the proposed ward.

(b) The nature of the proposed ward's incapacity with specification of the incompetency or spendthrift habits.

(c) The approximate value of the proposed ward's property and a general description of its nature.

(d) Any assets previously derived from or benefits now due and payable from the U.S. department of veterans affairs.

(e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post–office address of any person nominated as guardian by the petitioner.

(h) The names and post–office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.

(i) The name and post–office address of the person or institution having the care and custody of the proposed ward.

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

(1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

(a) That the person is likely to respond positively to psychotropic medication.

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

(c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

(d) That the person has attained the age of 18 years.

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

(3) In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

(4) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.07; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486.

Failure of a petitioner for a guardianship to name persons who obviously had an interest does not cancel the jurisdiction of the court, and when the interested persons had actual knowledge of the hearing and contested it, the court could appoint a guardian. Guardianship of Marak, 59 Wis. 2d 139, 207 N.W.2d 648 (1973).

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

880.075 Time of hearing for certain appointments. A petition for guardianship of a person who has been admitted to a nursing home or a community–based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60–day period.

History: 1993 a. 187.

880.08 Notice of hearing for appointments and rehearings. Upon the filing of a petition for guardianship, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

(1) INCOMPETENTS. A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompe-

tent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

(2) SPENDTHRIFTS. Notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing but the proposed ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

(3) MINORS. (am) When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to all of the following persons, if applicable:

1. The proposed ward's spouse.

2. The proposed ward's parents.

3. A minor proposed ward over 14 years of age unless the minor appears at the hearing.

4. Any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

(e) No notice under par. (am) need be given to parents whose rights have been judicially terminated.

(4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.08; 1973 c. 284; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); 1975 c. 218, 393, 421; 1977 c. 449 s. 497; 1981 c. 379; 1989 a. 141; 1993 a. 486; 1999 a. 85.

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) NOMINATION BY MINOR. A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) PREFERENCE. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) EFFECT OF NOMINATION BY MINOR. If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) GUARDIAN OF THE PERSON NOMINATED BY WILL. Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his or her minor child.

(5) GUARDIAN OF THE ESTATE NOMINATED BY WILL. A parent may by will nominate a guardian of the estate of the parent's minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) ANTICIPATORY NOMINATION; PREFERENCE. Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

An unfit parent's nomination of person to serve as guardian of his or her children should be weighed by the court. In re Guardianship of Schmidt, 71 Wis. 2d 317, 237 N.W.2d 919 (1976).

880.10 Notice of appointment. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last–known post–office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.10; 1993 a. 486.

880.12 Determination and order appointing guardian. **(1)** The court shall after hearing determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint one or more guardians but not more than one guardian of the person shall be appointed unless they be husband and wife. The order shall specify the amount of the bond, if any, to be given.

(2) In appointing a guardian for a person who has been admitted to a nursing home or a community–based residential facility under s. 50.06, the court shall make a finding as to whether the person's incompetence is potentially reversible.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.12; 1993 a. 187.

880.125 Sufficiency of bond. In any action or proceeding wherein funds are to be paid to a guardian, the trial court or court approving disbursement of such funds shall, prior to payment or approval, be satisfied as to the sufficiency of the penal sum of the guardian's bond.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.125.

880.13 Bond. (1) FORM OF BOND. Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345, conditioned upon the faithful performance of the duties of the guardian.

(2) WAIVER OF BOND. (a) Unless required under s. 880.60 (9), the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears.

(b) Whenever a guardian has or will have possession of funds with a total value of $40,000 or less, the court may direct 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.

(3) BLANKET BOND FOR EMPLOYEE GUARDIAN OR CONSERVATOR. The circuit court may designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than $1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term

of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

History: 1971 c. 35; 1971 c. 41 s. 8; 1971 c. 211 s. 114; Stats. 1971 s. 880.13; 1973 c. 284 s. 32; 1973 c. 336 s. 79; 1977 c. 74, 449; 1983 a. 369; 1991 a. 221.

880.14 When letters to be issued. When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.14; 1993 a. 486.

880.15 Temporary guardian. (1) APPOINTMENT. 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 may appoint a temporary guardian for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section.

(1m) ADOPTION BY TEMPORARY GUARDIAN. No person appointed temporary guardian of a child under this section may adopt the child without complying with the adoption procedures of ch. 48.

(1s) NOTICE OF PETITION. The person petitioning for appointment of a temporary guardian shall cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 within 30 days of receipt of the notice.

(2) BOND OF TEMPORARY GUARDIAN. Every temporary guardian appointed under sub. (1) shall before entering upon the duties of his or her trust give bond to the judge of the circuit court in such sum and with such sureties the court designates and approves.

(3) CESSATION OF POWERS. If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.15; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379; 1995 a. 77.

880.155 Visitation by grandparents and stepparents. (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor child, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor child are deceased and the child is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor child or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the child has notice of the hearing and if the court determines that visitation is in the best interest of the child.

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child.

(3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify such visitation privileges or enforcement order upon a showing of good cause.

(4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a child under this section is convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a person having custody of the child, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(5) This section applies to every minor child in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

History: 1975 c. 122; 1995 a. 38; 1999 a. 9.

The adoption of a child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.155. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

Section 767.245 (5) sets an appropriate standard for determining the best interests of a child under this section. The court did not exceed its authority under this section or violate a parent's constitutional rights to raise a child by ordering grandparent visitation, nor did it violate this section by ordering a guardian ad litem, mediation, and psychological evaluations. The court was not authorized by this section to order psychotherapeutic treatment that was arguably in the child's best interests, but outside the scope of visitation. F.R. v. T.B. 225 Wis. 2d 628, 593 N.W.2d 840 (Ct. App. 1999).

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

880.157 Prohibiting visitation or physical placement if a parent kills other parent. (1) Except as provided in sub. (2), in an action under this chapter that affects a minor child, a court may not grant to a parent of the child visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physi-

cal placement would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

History: 1999 a. 9.

880.16 When a guardian may be removed. (1) NOMINATION BY MINOR. When a minor ward has attained the age of 14 years a guardian of the minor ward's person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

(2) REMOVAL FOR CAUSE. When any guardian fails or neglects to discharge the guardian's trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.

(3) CITATION TO GUARDIAN. (a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

(b) Upon filing proof of service and at the time fixed in the citation such court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited.

(4) FRAUD AS TO WARD'S ESTATE. Upon complaint made to the circuit court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine such suspected person and proceed with the person as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in s. 879.61.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.16; 1977 c. 449 ss. 458, 497; 1993 a. 486.

880.17 Successor guardian. (1) APPOINTMENT. When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.17; 1993 a. 486; 1995 a. 73.

880.173 Guardian of the estate of a married person. (1) A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make, amend or revoke a will.

(2) The powers under sub. (1) are in addition to powers otherwise provided for a guardian of the estate.

History: 1983 a. 186; 1985 a. 37.

The standard for a trial court's exercise of discretion is whether the proposed action will benefit the ward, the estate, or members of the ward's immediate family. In Matter of Guardianship of F.E.H. 154 Wis. 2d 576, 453 N.W.2d 882 (1990).

880.175 Petition for placement of assets in trust. Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred to the trustee or trustees of an existing revocable living trust created by the person for the benefit of himself or herself and those dependent upon the person for support, or to the trustee or trustees of a trust created for the exclusive benefit of the person, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.

History: 1971 c. 41 s. 8; 1971 c. 171; 1971 c. 228 ss. 36, 37; Stats. 1971 s. 880.175; 1977 c. 409.

880.18 Inventory. When a guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.18.

880.19 Management of ward's estate. (1) GENERAL DUTIES. The guardian of the estate shall take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(2) RETENTION OF ASSETS. (a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881.

(3) CONTINUATION OF BUSINESS. In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(4) INVESTMENTS. (a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

Unofficial text from 99–00 Wis. Stats. database. See printed 99–00 Statutes and 2001 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266–2011, FAX 264–6978, email bruce.munson@legis.state.wi.us

(c) No guardian shall lend guardianship funds to himself or herself.

(5) SALES AND OTHER DISPOSITIONS. (a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4).

(b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

(c) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.

(d) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

(6) TRUST COMPANIES, EXEMPTION FROM INVESTMENT RESTRAINTS. The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.19; 1973 c. 85; 1975 c. 94 s. 91 (9); 1979 c. 32 s. 92 (14); 1993 a. 486.

A guardian is not authorized to make gifts from the guardianship estate to effectuate an estate plan that would avoid future death taxes. Michael S.B. v. Berns, 196 Wis. 2d 920, 540 N.W.2d 11 (Ct. App. 1995).

An interested party without a direct financial stake in the action had standing to appeal an order order permitting the termination of the ward's life lease in real estate. Carla S. v. Frank B. 2001 WI App 97, 242 Wis. 2d 605, 626 N.W.2d 330.

880.191 Inventories, accounts. (1) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

(2) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.191; 1977 c. 449; 1993 a. 486.

880.192 Fraud, waste, mismanagement. If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.192; 1977 c. 449.

880.195 Transfer of Menominees guardianship funds to trust. The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.385 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P.L. 83–399, as amended, and the assets shall thereafter be held, administered and distributed in accordance with the terms and conditions of the trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.195; 1977 c. 449; 1995 a. 27.

880.21 Use of estate for benefit of wards. (1) APPLICATION OF PERSONAL PROPERTY AND INCOME. Every guardian shall apply the personal property or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of the ward's family, if there be any legally dependent upon the ward for support, and for the care and protection of the ward's real estate. The parents, brothers and sisters of incompetent veterans of all wars are declared members of the incompetent veteran's family, and all payments heretofore made pursuant to court order to any dependent member of the family of any such incompetent, as herein defined, are ratified and approved.

(2) FOR SUPPLEMENTING PARENT'S SUPPORT OF MINOR. If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the circuit court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.21; 1977 c. 449; 1993 a. 486.

880.215 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessaries at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a certified copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.215; 1973 c. 284; 1997 a. 304.

880.22 Claims. (1) PAYMENT. Every general guardian shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

(2) PROCEEDINGS TO ADJUST CLAIMS. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.22; 1977 c. 449; 1993 a. 486.

This section does not authorize payment of attorney fees from the guardianship estate that were incurred by those commencing and prosecuting the guardianship action. Community Care of Milwaukee County v. Evelyn O. 214 Wis. 2d 433, 571 N.W.2d 700 (Ct. App. 1997).

880.23 Actions. The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.23; 1977 c. 449.

A guardian may not sue for the loss of society and companionship of a ward, nor bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

880.24 Compensation allowed from estate. (1) FEES AND EXPENSES OF GUARDIAN. Every guardian shall be allowed the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. The guardian shall also have such compensation for the guardian's services as the court, in which the guardian's accounts are settled, deems to be just and reasonable.

(2) WARD'S EXPENSES IN PROCEEDINGS. When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

(3) FEES AND COSTS OF PETITIONER. (a) Except as provided in par. (b), when a guardian is appointed, the court shall award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those fees and costs, if any, related to protective placement of the ward, unless the court finds, after considering all of the following, that it would be inequitable to do so:

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. Any other factors that the court considers to be relevant.

(b) If the court finds that the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, the court may not make the award specified in par. (a).

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.24; 1993 a. 486; 1999 a. 183.

When a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. Yamat v. Verma L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997).

880.245 Accounting by agent. The circuit court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.245; 1977 c. 449.

880.25 Accounting. (1) ANNUAL REPORTS. Every guardian, except a corporate guardian, shall, prior to April 15 of each year, file an account under oath specifying the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered and the name of the school. The guardian shall also report any change in the status of the surety upon the guardian's bond.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account.

(3) SMALL ESTATES. When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed $1,000 in value, the guardian shall be required to render account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court.

(4) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

(5) NOTICE. No action by the court upon any account shall be final unless it is upon notice.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.25; 1987 a. 220, 403; 1993 a. 486.

880.251 Removal of guardian. If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.251; 1977 c. 449; 1981 c. 314.

880.252 Accounts; failure of guardian to file. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is willful or inexcusable, the guardian may be fined not to exceed $50 or imprisoned not to exceed 10 days or both.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.252; 1993 a. 486.

880.253 Formal accounting by guardians. The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3–year period petition the court for such a hearing.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.253.

880.26 Termination of guardianship. (1) GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate when any of the following occurs:

(a) A minor ward attains his or her majority, unless the minor is incompetent.

(b) A minor ward lawfully marries.

(c) The court adjudicates a former incompetent to be competent.

(2) GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate when any of the following occurs:

(a) A minor ward attains his or her majority.

(b) A minor ward lawfully marries and the court approves the termination.

(c) The court adjudicates a former incompetent or a spendthrift to be capable of handling his or her property.

(d) A ward dies, except when the estate can be settled as provided by s. 880.28.

(3) DEPLETED GUARDIANSHIPS. When the court determines that the estate of the ward is below $5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding $400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

New grounds for termination. 54 MLR 111.

880.27 Settlement of accounts. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.27; 1993 a. 486.

880.28 Summary settlement of small estates. When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.28; 1975 c. 200.

880.29 Delivery of property to foreign guardian. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof shall be sent to the court which appointed such guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.29; 1975 c. 200.

880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident. (1) (a) When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and family services by its collection and deportation counsel, or the county corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or to the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court, upon the application, may appoint the guardian or conservator in the manner provided for the appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31.

(b) If application is made by a corporation counsel, a copy of the petition made to the court shall be filed with the department of health and family services.

(c) If application is made by a corporation counsel for appointment of a guardian of the estate of the patient or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (6) (a) in the case of the appointment of a trust company bank corporation.

(d) The court may place any limitations upon the guardianship or conservatorship as it considers to be in the best interest of the patient.

(e) Before any county employee administers the funds of a person's estate for which the county has been appointed guardian or conservator, the employee must be designated as securities agent in the classified service of the county, and the employee's designation as securities agent shall appear on all court papers that the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in the amount and with the sureties that the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original of the bond filed in the office of the county clerk.

(f) A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

(2) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his or her ward in his or her possession or control exceeding $200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the department of health and family services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.295; 1975 c. 393, 421; 1977 c. 449; 1989 a. 31; 1993 a. 486; 1995 a. 27 s. 9126 (19); 2001 a. 102.

880.31 Voluntary proceedings; conservators. (1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the

court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant 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.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.31; 1975 c. 393, 421; 1977 c. 449; 1981 c. 317, 391; 1993 a. 486.

A gift by a competent conservatee without the approval of the conservator was void. Zobel v. Fenendael, 127 Wis. 2d 382, 379 N.W.2d 887 (Ct. App. 1985).

A circuit court must hold some form of hearing on the record, either a full due process hearing or a summary hearing, to continue a protective placement. The circuit court must also make findings based on the factors enumerated in s. 55.06 (2) in support of the need for continuation. County of Dunn v. Goldie H. 2001 WI 102, 245 Wis. 2d 538, 629 N.W.2d 189.

880.32 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.32; 1989 a. 56; 1997 a. 188.

880.33 Incompetency; appointment of guardian. **(1)** Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

(2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross–examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

2. If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

3. If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's legal counsel. If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

(e) Every hearing on a petition under s. 880.07 (1m) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care

under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

(4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(5m) No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

(8) At the time of determination of incompetency under this section, the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property.

(b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determina-

tion of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 237.

Judicial Council Note, 1990: Sub. (3) is amended by striking reference to the right to testify in judicial or administrative proceedings. The statute conflicts with s. 906.01, as construed in State v. Hanson, 149 Wis. 2d 474 (1989) and State v. Dwyer, 149 Wis. 2d 850 (1989). [Re Order eff. 1–1–91]

A "common sense" finding of incompetency was insufficient for placement under s. 55.06. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

The written report of a physician or psychologist under (sub. 1) is hearsay and not admissible in a contested hearing without in–court testimony of the preparing expert. In Matter of Guardianship of R.S. 162 Wis. 2d 197, 470 N.W.2d 260 (1991).

A guardian may not be given authority to forcibly administer psychotropic drugs to a ward. An order for the forcible administration of psychotropic drugs may only be made in a ch. 51 proceeding. State ex rel. Roberta S. v. Waukesha DHS, 171 Wis. 2d 266, 491 N.W.2d 114 (Ct. App. 1992).

The expenses of a guardian ad litem in guardianship proceedings are correctly assessed to the ward under s. 757.48. Assessment of the costs of a medical expert are within the discretion of the court. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence, or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. APP. 1998).

Sub. (6) requires the closing only of documents filed with the register in probate with respect to ch. 880 proceedings. 67 Atty. Gen. 130.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

880.331 Guardian ad litem in incompetency cases. **(1)** APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(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 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.

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

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

(b) Advise the proposed ward or alleged incompetent, both orally and in writing, of that person's rights 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.

(c) Request that the court order additional medical, psychological or other evaluation, if necessary.

(d) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.

(e) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.

(f) Report to the court on any other relevant matter that the court requests.

(5) DUTIES IN REVIEWS. In any review of a protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

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

(b) Provide the information under par. (a) to the ward in writing.

(c) Secure an additional evaluation of the ward, if necessary.

(d) Review the annual report and relevant reports on the ward's condition and placement.

(e) Review the ward's condition, placement and rights with the guardian.

(f) 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.

(g) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(6) COMMUNICATION TO A JURY. In jury trials under ch. 55 or 880, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent.

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

(8) COMPENSATION. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8). If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b).

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

Judicial Council Note, 1990: This is a new section which more comprehensively identifies the situations in which a guardian ad litem should be appointed, the duration of such appointments and the guardian ad litem's duties. Sub. (1) requires such an appointment whenever it is proposed to appoint a guardian pursuant to s. 880.33, to protectively place a person, to provide protective services in lieu of placement under s. 55.06 (for instances in which a finding of incompetency is first required), to terminate a protective placement under s. 55.06 and upon the annual review required by State ex rel. Watts v. Combined Community Services Board of Milwaukee, 122 Wis. 2d 65 (1985).

Sub. (2) identifies the qualifications for a guardian ad litem.

Sub. (3) enumerates the general responsibilities of the guardian ad litem, consistent with the similar definition for other situations in which guardian ad litems are appointed.

Sub. (4) continues the specific duties in guardianship, protective placement and protective services situations which were previously enumerated in s. 880.33 (2) (c),

which is repealed. Sub. (4) refers to alleged incompetents. This is done recognizing that the term may sometimes apply to persons already adjudicated as incompetent.

Sub. (5) is new and enumerates the duties of the guardian ad litem in reviews, consistent with the Watts decision.

A particularly troublesome issue is addressed in subs. (4) (d) and (5) (f). The position of the committee is that the guardian ad litem is to notify the court if the proposed ward objects to the listed matters so that adversary counsel can be appointed. In practice, the proposed ward may not be clear about his or her view of these matters. In such situations, the guardian ad litem is required to notify the court so the court can decide whether there is an objection. If there is, adversary counsel is to be appointed.

Sub. (6) addresses the subject of jury communication and is new, as is sub. (8) on fees. Fees for indigent proposed wards are to be paid by the county. In other situations the court may direct such payment to be made by any other appropriate person.

Sub. (7) provides for the termination of the appointment upon the conclusion of the matter, unless the court extends the appointment or unless the guardian ad litem decides not to participate in an appeal. Even if adversary counsel is appointed, the guardian ad litem is to continue to represent the best interests as opposed to wishes of the ward. The subsection leaves to the court's discretion whether there are useful specific functions the guardian ad litem can perform after the final order which lead to reappointment or extension. Such an extension or reappointment may be until the annual review required by Watts, but the scope of the duties must be specified. The court may extend the guardian ad litem's responsibilities to include any review, but this does not occur unless the court expressly so orders. [Re Order effective Jan. 1, 1990]

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

A substantial relationship test applies for determining the need for attorney disqualification. Adversary counsel for the subject of an involuntary commitment may not be named guardian ad litem when the procedure is converted to a guardianship. Guardianship of Tamara L.P. 177 Wis. 2d 770, 503 N.W.2d 333 (Ct. App. 1993).

The court's power to appropriate compensation for court–appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Ct. 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

880.34 Duration of guardianship; review. (1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

(3) A ward of the age of 18 or over, any interested person on the ward's behalf, or the ward's guardian may petition the court which made such appointment or the court in the ward's county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of the ward's property designated as a limited guardian.

(4) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.

(5) After a hearing under sub. (4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

(6) (a) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following:

1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

2. Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

a. The person's right to representation by full legal counsel under par. (b).

b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

1. Whether an independent evaluation should be conducted under par. (d).

2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

(d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

History: 1973 c. 284; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486.

880.35 Nonprofit corporation as guardian. A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and family services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1995 a. 27 s. 9126 (19).
Cross Reference: See also ch. HFS 85, Wis. adm. code.

880.36 Standby guardianship. (1) A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

History: 1973 c. 284; 1993 a. 486; 1997 a. 334.

880.37 Application for limited guardianship of property. (1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from the person's employment; and

(b) Contract and legally bind himself or herself for any sum of money not exceeding $300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

History: 1973 c. 284; 1975 c. 393, 421; 1993 a. 486.

880.38 Guardian of the person of incompetent. (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

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

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

The guardian of an incompetent in a persistent vegetative state may consent to the withdrawal or withholding of life–sustaining medical treatment without prior court approval if the guardian determines that the withdrawal or withholding is in the ward's best interests. In Matter of Guardianship of L.W. 167 Wis. 2d 53, 482 N.W.2d 60 (1992).

The guardian of a person who became incompetent after voluntarily entering a nursing home with 16 or more beds may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

The holding in *Guardianship of L.W.* does not extend to persons who are not in a persistent vegetative state. However, if the guardian of the person not in a persistent vegetative state demonstrates by a clear statement of the ward made while competent that withdrawal of medical treatment is desired, it is in the patient's best interest to honor those wishes. Spahn v. Eiseberg, 210 Wis. 2d 558, 563 N.W.2d 485 (1997).

A circuit court must hold some form of hearing on the record, either a full due process hearing or a summary hearing, to continue a protective placement. The circuit court must also make findings based on the factors enumerated in s. 55.06 (2) in support of the need for continuation. County of Dunn v. Goldie H. 2001 WI 102, 245 Wis. 2d 538, 629 N.W.2d 189.

Guardianships and Protective Placements in Wisconsin After *Agnes T.* Fennell. Wis. Law. May 1995.

880.39 Guardianship of person; exemption from civil liability. Any guardian of the person is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

History: 1987 a. 366.

SUBCHAPTER II

UNIFORM VETERANS' GUARDIANSHIP ACT

880.60 United States uniform veterans' guardianship act. (1) DEFINITIONS. As used in this section:

(a) "Administrator" means the administrator of veterans' affairs of the United States or the administrator's successor.

(b) "Benefits" means all moneys paid or payable by the United States through the U.S. department of veterans affairs.

(c) "Estate" means income on hand and assets acquired partially or wholly with "income."

(d) "Guardian" means any fiduciary for the person or estate of a ward.

(e) "Income" means moneys received from the U.S. department of veterans affairs and revenue or profit from any property wholly or partially acquired therewith.

(f) "U.S. department of veterans affairs" means the U.S. department of veterans affairs, its predecessors or successors.

(g) "Ward" means a beneficiary of the U.S. department of veterans affairs.

(2) ADMINISTRATOR AS PARTY IN INTEREST. (a) The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the U.S. department of veterans affairs.

(b) Not less than 15 days prior to a hearing in a suit or proceeding described in par. (a), notice in writing of the time and place of the hearing shall be given by mail, unless notice is waived in writing, to the office of the U.S. department of veterans affairs having jurisdiction over the area in which the suit or proceeding is pending.

(3) APPLICATION. Whenever, pursuant to any law of the United States or regulation of the U.S. department of veterans affairs, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided.

(4) LIMITATION ON NUMBER OF WARDS. No person or corporate entity other than a county having a population of 100,000 or more or a bank or trust company shall be guardian of more than 5 wards at one time, unless all the wards are members of one family. A county shall act only for patients in its county hospital or mental hospital and for residents of its county home or infirmary, and shall serve without fee. Upon presentation of a petition by an attorney of the U.S. department of veterans affairs or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than 5 wards and requesting the guardian's discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting from the guardian and shall discharge the guardian from guardianship in excess of 5 and appoint a successor.

(5) APPOINTMENT OF GUARDIANS. (a) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the U.S. department of veterans affairs to the last–known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of the state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans' administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(d) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the U.S. department of veterans affairs on examination in accordance with the laws and regulations governing the U.S. department of veterans affairs.

(6) EVIDENCE OF NECESSITY FOR GUARDIAN OF INFANT. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or the administrator's authorized representative, setting forth the age of such minor as shown by the records of the U.S. department of veterans affairs and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the U.S. department of veterans affairs shall be prima facie evidence of the necessity for such appointment.

(7) EVIDENCE OF NECESSITY FOR GUARDIAN FOR INCOMPETENT. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or the administrator's duly authorized representative, that such person has been rated incompetent by the U.S. department of veterans affairs on examination in accordance with the laws and regulations governing such U.S. department of veterans affairs and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the U.S. department of veterans affairs, shall be prima facie evidence of the necessity for such appointment.

(8) NOTICE. Upon the filing of a petition for the appointment of a guardian under this section, notice shall be given to the ward, to such other persons, and in such manner as is provided by statute, and also to the U.S. department of veterans affairs as provided by this section.

(9) BOND. (a) Upon the appointment of a guardian, the guardian shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship law. The court may from time to time require the guardian to file an additional bond.

(b) Where a bond is tendered by a guardian with personal sureties, there shall be at least 2 such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all the surety's debts and liabilities and the aggregate of other bonds on which the surety is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

(10) PETITIONS AND ACCOUNTS, NOTICES AND HEARINGS. (a) Every guardian shall file his or her accounts as required by this chapter and shall be excused from filing accounts in the case as provided by s. 880.25 (3).

(b) The guardian, at the time of filing any account, shall exhibit all securities or investments held by the guardian to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on the guardian's bond, or to the

judge or clerk of a court of record, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he or she has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to the judge and that those exhibited to the judge were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each be filed by the guardian with the guardian's account.

(c) At the time of filing in the court any account, a certified copy thereof shall be sent by the guardian to the office of the U.S. department of veterans affairs having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceeding for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the person filing the same to the proper office of the U.S. department of veterans affairs. Unless waived in writing, written notice of the time and place of any hearing shall be given to the office of U.S. department of veterans affairs concerned and to the guardian and any others entitled to notice not less than 15 days prior to the date fixed for the hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than 15 days prior to said date. The court, or clerk thereof, shall mail to said office of the U.S. department of veterans affairs a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(d) If the guardian is accountable for property derived from sources other than the U.S. department of veterans affairs, the guardian shall be accountable as required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the U.S. department of veterans affairs, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

(11) PENALTY FOR FAILURE TO ACCOUNT. If any guardian shall fail to file with the court any account as required by this section, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or shall fail to furnish the U.S. department of veterans affairs a true copy of any account, petition or pleading as required by this section, such failure may in the discretion of the court be ground for removal.

(12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided in s. 880.24 (1).

(13) INVESTMENTS. Every guardian shall invest the surplus funds of the ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest–bearing obligations of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the U.S. department of veterans affairs, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(14) MAINTENANCE AND SUPPORT. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the U.S. department of veterans affairs and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading.

(15) PURCHASE OF HOME FOR WARD. (a) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect the ward's interest, or, if the ward is not a minor as a home for the ward's dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the U.S. department of veterans affairs and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(b) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This subsection does not limit the right of the guardian on behalf of the guardian's ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

(16) COPIES OF PUBLIC RECORDS TO BE FURNISHED. When a copy of any public record is required by the U.S. department of veterans affairs to be used in determining the eligibility of any person to participate in benefits made available by the U.S. department of veterans affairs, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the U.S. department of veterans affairs with a certified copy of such record.

(17) DISCHARGE OF GUARDIAN AND RELEASE OF SURETIES. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the U.S. department of veterans affairs showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the U.S. department of veterans affairs upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered competency. Upon hearing after notice as provided by this section and the determination by the court that the ward has attained majority or has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the U.S. department of veterans affairs as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due from the guardian, the guardian shall be discharged and the sureties released.

(18) LIBERAL CONSTRUCTION. This section shall be so construed to make uniform the law of those states which enact it.

(19) SHORT TITLE. This section may be cited as the "Uniform Veterans' Guardianship Act."

(20) MODIFICATION OF OTHER STATUTES. Except where inconsistent with this section, the statutes relating to guardian and ward and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to beneficiaries and their estates.

(21) APPLICATION OF SECTION. The provisions of this section relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in sub. (1) whether the guardian shall have been appointed under this section

or under any other law of this state, special or general, prior or subsequent to June 5, 1947.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

SUBCHAPTER III

UNIFORM TRANSFERS TO MINORS ACT

880.61 Definitions. In ss. 880.61 to 880.72:

(1) "Adult" means an individual who has attained the age of 21 years.

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

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

(4) "Court" means the circuit court.

(5) "Custodial property" means any interest in property transferred to a custodian under ss. 880.61 to 880.72 and the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under s. 880.65 or a successor or substitute custodian designated under s. 880.695.

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

(8) "Legal representative" means an individual's personal representative or conservator.

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

(10) "Minor" means an individual who has not attained the age of 21 years.

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

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

(13) "Transfer" means a transaction that creates custodial property under s. 880.65.

(14) "Transferor" means a person who makes a transfer under ss. 880.61 to 880.72.

(15) "Trust company" means a financial institution, corporation or other legal entity, authorized to exercise general trust powers.

History: 1987 a. 191; 1991 a. 221.

880.615 Scope and jurisdiction. (1) Sections 880.61 to 880.72 apply to a transfer that refers to ss. 880.61 to 880.72 in the designation under s. 880.65 (1) by which the transfer is made if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ss. 880.61 to 880.72 despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under s. 880.65 to 880.695 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History: 1987 a. 191.

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

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. 880.65 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 880.65. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under s. 880.65.

History: 1987 a. 191.

880.625 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under s. 880.65.

History: 1987 a. 191.

880.63 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer under s. 880.65 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under s. 880.62 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under s. 880.62, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under s. 880.65 (1).

History: 1987 a. 191.

880.635 Other transfer by fiduciary. (1) Subject to sub. (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under s. 880.65 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to sub. (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under s. 880.65.

(3) A transfer under sub. (1) or (2) may be made only if:

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

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

(c) The transfer is authorized by the court if it exceeds $10,000 in value.

History: 1987 a. 191.

880.64 Transfer by obligor. (1) Subject to subs. (2) and (3), a person not subject to s. 880.63 or 880.635 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under s. 880.65.

(2) If a person having the right to do so under s. 880.62 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 880.62, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

History: 1987 a. 191.

880.645 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under ss. 880.61 to 880.72.

History: 1987 a. 191.

880.65 Manner of creating custodial property and effecting transfer; designation of initial custodian; control. (1) Custodial property is created and a transfer is made whenever:

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

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

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

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for .... (name of minor) under the Wisconsin Uniform Transfers to Minors Act";

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

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

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

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

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

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

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

2. Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for .... (name of minor) under the Wisconsin Uniform Transfers to Minors Act"; or

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

(2) An instrument in the following form satisfies the requirements of sub. (1) (a) 2. and (g):

TRANSFER UNDER THE WISCONSIN UNIFORM TRANSFERS TO MINORS ACT

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

Dated: ....

....

(Signature)

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

Dated: ....

....

(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

History: 1987 a. 191.

880.655 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under ss. 880.61 to 880.72 by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: 1987 a. 191.

880.66 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in ss. 880.61 to 880.72 is not affected by:

(a) Failure of the transferor to comply with s. 880.65 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under s. 880.65 (1); or

(c) Death or incapacity of a person nominated under s. 880.62 or designated under s. 880.65 as custodian or the disclaimer of the office by that person.

(2) A transfer made under s. 880.65 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in ss. 880.61 to 880.72, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ss. 880.61 to 880.72.

(3) By making a transfer, the transferor incorporates in the disposition all of the provisions of ss. 880.61 to 880.72 and grants to the custodian, and to any 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ss. 880.61 to 880.72.

History: 1987 a. 191.

Unofficial text from 99–00 Wis. Stats. database. See printed 99–00 Statutes and 2001 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266–2011, FAX 264–6978, email bruce.munson@legis.state.wi.us

880.665 Care of custodial property. (1) A custodian shall:

(a) Take control of custodial property;

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

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

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

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

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

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

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for .... (name of minor) under the Wisconsin Uniform Transfers to Minors Act".

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

History: 1987 a. 191.

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

(2) This section does not relieve a custodian from liability for breach of s. 880.665.

History: 1987 a. 191.

880.675 Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

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

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

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

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

History: 1987 a. 191.

880.68 Custodian's expenses, compensation and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for a person who is a transferor under s. 880.625, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in s. 880.695 (6), a custodian need not give a bond.

History: 1987 a. 191.

880.685 Exemption of 3rd person from liability. A 3rd person, in good faith and without court order, may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining any of the following:

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

(2) The propriety of, or the authority under ss. 880.61 to 880.72 for, any act of the purported custodian.

(3) The validity or propriety under ss. 880.61 to 880.72 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

History: 1987 a. 191.

880.69 Liability to 3rd persons. (1) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

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

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

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

History: 1987 a. 191.

880.695 Renunciation, resignation, death or removal of custodian; designation of successor custodian. (1) A person nominated under s. 880.62 or designated under s. 880.65 as custodian may decline to serve by delivering a valid disclaimer under s. 854.13 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under s. 880.62, the person who made the nomination may nominate a substitute custodian under s. 880.62; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. 880.65 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under s. 880.625 as successor cus-

todian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

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

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

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

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. 880.625 or to require the custodian to give appropriate bond.

History: 1987 a. 191; 1997 a. 188.

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

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

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 880.69 to which the minor or the minor's legal representative was a party.

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

(3) The court, in a proceeding under ss. 880.61 to 880.72 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 880.695 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191.

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

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 880.625 or 880.63;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 880.635 or 880.64; or

(3) The minor's death.

History: 1987 a. 191.

880.71 Applicability. Sections 880.61 to 880.72 apply to a transfer within the scope of s. 880.615 made after April 8, 1988, if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. 880.61 to 880.72 is necessary to validate the transfer.

History: 1987 a. 191.

880.715 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. 880.61 to 880.72 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 880.61 to 880.72 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections 880.61 to 880.705 with respect to the age of a minor for whom custodial property is held under ss. 880.61 to 880.72 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. 880.61 to 880.72, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

History: 1987 a. 191.

880.72 Uniformity of application and construction. Sections 880.61 to 880.72 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 880.61 to 880.72 among states enacting it.

History: 1987 a. 191.

SUBCHAPTER IV

SECURITIES OWNERSHIP BY MINORS, INCOMPETENTS AND SPENDTHRIFTS

880.75 Uniform securities ownership by minors act. (1) DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Bank" is a bank, trust company, national banking association, industrial bank or any banking institution incorporated under the laws of this state.

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

(c) "Issuer" means a person who places or authorizes the placing of his or her name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(d) "Person" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(f) "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor.

(g) "Transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(2) SECURITY TRANSACTIONS INVOLVING MINORS; LIABILITY. A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge of the minority of the holder of the security. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not a minor.

(3) ACTS OF MINORS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. A minor, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge of the minority of the holder.

(4) CONSTRUCTION. This section shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

(5) INTERPRETATION. This section shall supersede any provision of law in conflict therewith.

(6) TITLE. This section may be cited as the "Uniform Securities Ownership by Minors Act".

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.75; 1987 a. 191; 1991 a. 221; 1993 a. 486; 1999 a. 185.

880.76 Securities ownership by incompetents and spendthrifts. (1) DEFINITIONS. All definitions in s. 880.75 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires. "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY. A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215.

(4) INTERPRETATION. This section shall supersede any provision of law in conflict therewith.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.76; 1993 a. 486; 1999 a. 185.

SUBCHAPTER V

UNIFORM CUSTODIAL TRUST ACT

880.81 Definitions. In this subchapter:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this subchapter.

(3) "Conservator" means a person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual, or a person legally authorized to perform substantially the same functions.

(4) "Court" means the circuit court of this state.

(5) "Custodial trustee" means a person designated as trustee of a custodial trust under this subchapter or a substitute or successor to the person designated.

(6) "Custodial trustee property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this subchapter and the income from and proceeds of that interest.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of the person or estate, or both, of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause.

(9) "Legal representative" means a personal representative, conservator or guardian of the estate.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association or any other legal or commercial entity.

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

(13) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation or other legal entity, authorized to exercise general trust powers.

History: 1991 a. 246.

880.815 Custodial trust; general. (1) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer executed in any lawful manner, naming as beneficiary an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the Wisconsin uniform custodial trust act.

(2) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property, naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under the Wisconsin uniform custodial trust act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this subchapter.

(3) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(4) Except as provided in subsection (5), a transferor may not terminate a custodial trust.

(5) The beneficiary, if not incapacitated, or the conservator or guardian of the estate of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary, conservator or guardian of the estate declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(6) Any person may augment existing custodial trust property by the addition of other property pursuant to this subchapter.

(7) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(8) This subchapter does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this subchapter may be enforceable according to its terms under other law.

History: 1991 a. 246.

880.82 Custodial trustee for future payment or transfer. (1) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for.... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(2) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(3) A designation under this section may be made in a will, a trust, a deed, a multiple–party account, an insurance policy, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer or obligor of the future right.

History: 1991 a. 246.

880.825 Form and effect of receipt and acceptance by custodial trustee, jurisdiction. (1) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this subchapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(2) The custodial trustee's acceptance may be evidenced by a writing stating in substantially the following form:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I,.... (name of custodial trustee), acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for.... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Wisconsin Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is or becomes, incapacitated. The custodial trust property consists of.....

Dated: ....

....
(Signature of Custodial Trustee)

(3) Upon accepting custodial trust property, a person designated as custodial trustee under this subchapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

History: 1991 a. 246; 1993 a. 213.

880.83 Transfer to custodial trustee by fiduciary or obligor; facility of payment. (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to s. 880.82, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator or guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $10,000, the transfer is not effective unless authorized by the court.

(2) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

History: 1991 a. 246.

880.835 Multiple beneficiaries; separate custodial trusts; survivorship. (1) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship or survivorship is required as to marital property.

(2) Custodial trust property held under this subchapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(3) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to ss. 880.84 and 880.88 for the administration of the custodial trust.

History: 1991 a. 246.

880.84 General duties of custodial trustee. (1) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(2) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(3) Subject to sub. (2), a custodial trustee shall take control of and collect, hold, manage, invest and reinvest custodial trust property.

(4) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered or held in an account in the name of the custodial trustee designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(5) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(6) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

History: 1991 a. 246.

880.845 General powers of custodial trustee. (1) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(2) This section does not relieve a custodial trustee from liability for a violation of s. 880.84.

History: 1991 a. 246.

880.85 Use of custodial trust property. (1) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income or property of the beneficiary.

(3) A custodial trustee may establish checking, savings or other similar accounts of reasonable amounts from or against which either the custodial trustee or the beneficiary may withdraw funds or write checks. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

History: 1991 a. 246.

880.855 Determination of incapacity; effect. (1) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if any of the following applies:

(a) The custodial trust was created under s. 880.83.

(b) The transferor has so directed in the instrument creating the custodial trust period.

(c) The custodial trustee has determined that the beneficiary is incapacitated.

(2) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon any of the following:

(a) Previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney.

(b) The certificate of the beneficiary's physician.

(c) Other persuasive evidence.

(3) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(4) On petition of the beneficiary, the custodial trustee or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(5) Absent determination of incapacity of the beneficiary under sub. (2) or (4), a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this subchapter applicable to an incapacitated beneficiary.

(6) Incapacity of a beneficiary does not terminate any of the following:

(a) The custodial trust.

(b) Any designation of a successor custodial trustee.

(c) Rights or powers of the custodial trustee.

(d) Any immunities of 3rd persons acting on instructions of the custodial trustee.

History: 1991 a. 246.

880.86 Exemption of third person from liability. A 3rd person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the 3rd person is not responsible for determining any of the following:

(1) The validity of the purported custodial trustee's designation.

(2) The propriety of, or the authority under this subchapter for, any action of the purported custodial trustee.

(3) The validity or propriety of an instrument executed or instruction given pursuant to this subchapter either by the person purporting to make a transfer or declaration or by the purported custodial trustee.

(4) The propriety of the application of property vested in the purported custodial trustee.

History: 1991 a. 246.

880.865 Liability to third person. (1) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of

custodial trust property or a tort committed in the course of administering the custodial trust may be asserted by a 3rd person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(2) A custodial trustee is not personally liable to a 3rd person in any of the following situations:

(a) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract.

(b) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(3) A beneficiary is not personally liable to a 3rd person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(4) Subsections (2) and (3) do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

History: 1991 a. 246.

880.87 Declination, resignation, incapacity, death or removal of custodial trustee, designation of successor custodial trustee. **(1)** Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under s. 880.82 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to s. 880.82. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(2) A custodial trustee who has accepted the custodial trust property may resign by doing all of the following:

(a) Delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator or guardian of the estate, if any.

(b) Transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under sub. (3).

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies or becomes incapacitated, the successor designated under s. 880.815 (7) or 880.82 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated or fails to act within 90 days after the ineligibility, resignation, death or incapacity of the custodial trustee, the beneficiary's conservator or guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a conservator or a guardian of the estate, or the conservator or guardian of the estate fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(4) If a successor custodial trustee is not designated pursuant to sub. (3), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the person of the beneficiary, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

(5) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(6) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, the beneficiary's guardian, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties or for other appropriate relief.

History: 1991 a. 246.

880.875 Expenses, compensation and bond of custodial trustee. Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary or by court order, all of the following apply to a custodial trustee:

(1) A custodial trustee is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services.

(2) A custodial trustee has a noncumulative election, to be made no later than 6 months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year.

(3) A custodial trustee need not furnish a bond or other security for the faithful performance of fiduciary duties.

History: 1991 a. 246.

880.88 Reporting and accounting by custodial trustee; determination of liability of custodial trustee. **(1)** (a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property at all of the following times:

1. Once each year.

2. Upon request at reasonable times by the beneficiary or the beneficiary's legal representative.

3. Upon resignation or removal of the custodial trustee.

4. Upon termination of the custodial trust.

(b) The statements under par. (a) must be provided to the beneficiary or to the beneficiary's legal representative, if any.

(c) Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(2) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(3) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(4) In an action or proceeding under this subchapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(5) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(6) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to inter-

ested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

History: 1991 a. 246.

880.885 Limitations of action against custodial trustee. (1) Except as provided in sub. (3), unless previously barred by adjudication, consent or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered or the legal representative of an incapacitated or deceased beneficiary or payee who meets one of the following conditions:

(a) Has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 2 years after receipt of the final account or statement.

(b) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 3 years after the termination of the custodial trust.

(2) Except as provided in sub. (3), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced within 5 years after the termination of the custodial trust.

(3) A claim for relief by the following claimants is not barred by this section except as follows:

(a) For a minor, until the earlier of 2 years after the claimant becomes an adult or dies.

(b) For an incapacitated adult, until the earliest of 2 years after the appointment of a conservator, the removal of the incapacity or the death of the claimant.

(c) For an adult, now deceased, who was not incapacitated, until 2 years after the claimant's death.

History: 1991 a. 246.

880.89 Distribution on termination. (1) Upon termination of a custodial trust by the beneficiary or the beneficiary's conservator or guardian of the estate, the custodial trustee shall transfer the unexpended custodial trust property as follows:

(a) To the beneficiary, if not incapacitated or deceased.

(b) To the conservator, guardian of the estate or other recipient designated by the court for an incapacitated beneficiary.

(2) Upon termination of a custodial trust by the beneficiary's death, the custodial trustee shall distribute the unexpended custodial trust property in the following order:

(a) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary.

(b) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to s. 880.835.

(c) As designated in the instrument creating the custodial trust.

(d) To the estate of the deceased beneficiary.

(3) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(4) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

History: 1991 a. 246.

880.895 Methods and forms for creating custodial trusts. (1) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of s. 880.815 are satisfied by any of the following:

(a) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE WISCONSIN
UNIFORM CUSTODIAL TRUST ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), transfer to .... (name of trustee other than transferor), as custodial trustee for .... (name of beneficiary) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Wisconsin Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: ....

....
(Signature)

(b) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER
THE WISCONSIN UNIFORM CUSTODIAL
TRUST ACT

I, ... (name of owner of property), declare that henceforth I hold as custodial trustee for .... (name of beneficiary other than transferor) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Wisconsin Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: ....

....
(Signature)

(2) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including, but not limited to, any of the following:

(a) Registration of a security in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(b) Delivery of a certificated security or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in sub. (1) (a).

(c) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(d) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(e) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(f) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power or the donee who holds the power if the benefi-

ciary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(g) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(h) Execution, delivery and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(i) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property which meets any of the following conditions:

1. Is issued in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

2. Is delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(j) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

History: 1991 a. 246.

880.90 Applicable law. (1) This subchapter applies to a transfer or declaration creating a custodial trust that refers to this subchapter if, at the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this subchapter despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee, or removal of the custodial trust property from this state.

(2) A transfer made pursuant to a law of another state substantially similar to this subchapter is governed by the law of that state and may be enforced in this state.

History: 1991 a. 246.

880.905 Uniformity of application and construction. This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

History: 1991 a. 246.