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CHAPTER 54

GUARDIANS AND WARDS

SUBCHAPTER I

DEFINITIONS

54.01 Definitions. In this chapter:

(1) "Activities of daily living" means bathing; dressing; eating; mobility; transferring from a surface, including a bed, to another surface, including a chair; and toileting.

(2) "Agency" means any public or private board, corporation, or association ~~which~~, including a county department under s. 51.42 or 51.437, that 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~~ individuals with mental retardation, developmental disability, mental illness, alcoholism, or drug dependency and of aging individuals.

(3) "Conservator" means a person who is appointed or qualified by a court at an individual's request under s. 54.76 (2) to manage the estate of the individual.

(3m) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).

(4) "Guardian" means ~~one~~ a person appointed by a court to ~~have care, custody and control of the person~~ act on behalf of a minor or an incompetent or ~~the management of~~ to provide for the personal needs or manage the estate of a minor, an incompetent, or a spendthrift.

(5) "Incapacity" has the meaning given in s. 155.01 (8).

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(6) (intro.) "Incompetent" means ~~a person adjudged by a court of record to be substantially incapable of managing~~ an individual who is unable to meet the essential requirements for his or her physical health or safety or to be unable adequately to manage 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.~~ financial affairs so as to meet the essential requirements for his or her physical health or safety, because of all of the following:

(a) The inability to receive and evaluate information effectively or to communicate decisions.

(b) Mental deficiency, physical illness, physical disability, chronic mental illness, chronic alcohol abuse, chronic use of prescription drugs, as defined in s. 450.01 (20), or controlled substances, as defined in s. 961.01 (4), or any other physical or mental reason.

(7) "~~Developmentally disabled person~~ Individual with developmental disability" 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~~ an individual affected by senility which is primarily caused by the process of aging or the infirmities of aging.

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

(9) "Interested person" means any of the following:

(a) For purposes of a petition for guardianship or protective placement, any of the following:

1. The proposed ward, if he or she has attained 14 years of age.

2. The spouse or adult child of the proposed ward, or the parent of a proposed ward who is a minor.

3. For a proposed ward who has no spouse, child, or parent, any heir at law of the proposed ward.

4. Any individual who is nominated as fiduciary or appointed to act as fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, or any person appointed as agent under a power of attorney for health care or as attorney–in–fact under a durable power of attorney.

5. If the proposed ward is a minor, the individual who has exercised principal responsibility for the care and custody of the proposed ward during the period of 60 consecutive days immediately before the filing of the petition.

6. If the proposed ward is a minor and has no living parent, any individual nominated to act as fiduciary for the minor in a will or other written instrument that was executed by a parent of the minor.

7. If the proposed ward is receiving moneys paid, or if moneys are payable, by the federal department of veterans affairs, a representative of the federal department of veterans affairs, or, if the proposed ward is receiving moneys paid, or if moneys are payable, by the state department of veterans affairs, a representative of the state department of veterans affairs.

8. If the proposed ward is receiving long–term support services or similar public benefits, the county department of human services or social services that is providing the services or benefits.

9. The corporation counsel of the county in which the petition is filed and, if the petition is filed in a county other than the county of the proposed ward's residence, the corporation counsel of the county of the proposed ward's residence.

10. Any other person required by the court.

(b) For purposes of proceedings following the hearing on the petition for guardianship or protective placement, any of the following:

1. The guardian.

2. The spouse or adult child of the ward or the parent of a minor ward.

3. Any other individual that the court may require, including any fiduciary that the court may designate.

4. The county of venue, if the county has an interest.

(10) "Meet the essential requirements for physical health or safety" means perform those actions necessary to provide the health care, food, shelter, clothes, personal hygiene, and other care without which serious physical injury or illness will likely occur.

(11) "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.

(12) "Physician" has the meaning given in s. 448.01 (5).

(13) "Psychologist" has the means a licensed psychologist, as defined given in s. 455.01 (4).

(14) "Spendthrift" means an individual who, because of the use of intoxicants or drugs or because of gambling, idleness, debauchery, or other wasteful course of conduct, is unable to attend to business or is likely to affect the health, life, or property of himself or herself or others so as to endanger his or her support and dependents or expose the public to the support.

(15) "Standby guardian" means any individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the

death, incapacity, or resignation of the initially–appointed guardian, or if the initially appointed guardian is unable or unavailable to fulfill his or her duties.

(16) "Ward" means an individual for whom a guardian has been appointed.

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian; determination of incompetence. (1) STANDARD. A court of appropriate jurisdiction may appoint a guardian, or separate guardians of the person and of the estate, for an individual who is a proposed ward if the court determines that any of the following applies:

(a) The individual is a minor.

(b) The individual is an incompetent and the appointment is necessary for at least one of the following reasons:

1. To provide for the personal needs of the individual, including food, clothing, shelter, health care, or safety.

2. To manage the property and financial affairs of the individual.

(2) NECESSITY OF APPOINTMENT. In determining whether the appointment of a guardian is necessary under sub. (1) (b), the court shall consider all of the following:

(a) The report of the guardian ad litem, as required under s. 54.40 (4) (b).

(b) The sufficiency and reliability of available resources to provide for the individual's personal needs or property management without the appointment of a guardian.

(3) DETERMINATION OF INCOMPETENCE. All of the following apply to the determination under sub. (1) (b) that an individual is an incompetent:

(a) The determination shall be based on clear and convincing evidence; may not, unless the proposed ward has a severe inability to communicate, be based on

mere old age, eccentricity, poor judgment, or physical disability; and shall require a finding that the individual is likely to suffer harm because of all of the following:

1. The individual is unable to provide for personal needs or property management.

2. The individual cannot adequately understand and appreciate the nature and consequences of the inability under subd. 1.

(b) In reaching its determination, the court shall give primary consideration to the functional level and functional limitations of the individual, including an assessment of all of the following:

1. The individual's management of the activities of daily living.

2. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have to manage the activities of daily living.

3. The individual's preferences, desires, and values with regard to management of the activities of daily living.

4. The nature and extent of the individual's property and financial affairs and his or her ability to manage them.

5. The extent of the demands placed on the individual by his or her personal needs and by the nature and extent of his or her property and financial affairs.

6. Any physical illness of the individual and the prognosis of the illness.

7. Any mental disability, alcoholism, or substance dependence of the individual and the prognosis of the mental disability, alcoholism, or substance dependence.

8. Any medication with which the individual is being treated and the medication's effect on the individual's behavior, cognition, and judgment.

(c) In addition to the assessment under par. (b), the court shall consider all other relevant facts and circumstances regarding all of the following:

1. The individual's functional level.

2. The individual's understanding and appreciation of the nature and consequences of his or her functional limitations.

54.12 (title) **Exceptions to appointment of guardian. (1)** EMANCIPATION OF MARRIED MINORS. Except for minors found to be ~~incompetent~~ incompetents, upon marriage, a minor ~~shall~~ is no longer ~~be~~ a proper subject for guardianship of the person ~~and a~~ . 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~~ possess personal property ~~of a value of~~ valued at $10,000 or less, any court ~~wherein~~ in which an action or proceeding involving ~~said~~ the property is pending may~~, in its discretion~~, without requiring the appointment of a guardian, order that the clerk of court do one of the following:

(a) Deposit the property in a savings account in a bank~~, the payment of whose accounts in cash immediately upon default of the bank are~~ or other financial institution insured by an agency of 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);~~ government or invest the property in interest–bearing obligations of the

United States. The fee for ~~the clerk's~~ services of the clerk of court in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

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

(c) ~~Payment~~ Make payment to the minor.

(d) ~~Payment~~ Make 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.

(e) Make payment to the agent under a durable power of attorney of the ward.

(3) 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~~ $10,000 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~~ specified in sub. (2) (a) to (e).

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions ~~under~~ specified in sub. (2) (a) to (e) 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.

(4) 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~~ in which an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment, subject to any limitations the court may impose, to a custodian for the minor designated by the

court under ~~ss. 880.61 to 880.72~~ subch. III of ch. 880 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

SUBCHAPTER III

NOMINATION OF GUARDIAN;

POWERS AND DUTIES; LIMITATIONS

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

(1) AGENT UNDER DURABLE POWER OF ATTORNEY. The court shall appoint as guardian the agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(2) ~~ANTICIPATORY NOMINATION; PREFERENCE~~ PERSON NOMINATED BY PROPOSED WARD. Any ~~person~~ individual other than a minor may, ~~at such time as~~ if the ~~person~~ individual 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~~ another to be appointed as guardian of his or her person or property or both ~~in the event that~~ if a guardian is in the future appointed~~. Such nominee shall be appointed as guardian by the~~ for the individual. The court shall appoint this nominee as guardian 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~~ proposed ward.

(3) ~~PREFERENCE~~ PARENT OF A PROPOSED WARD. If one or both of the parents of a minor, ~~a developmentally disabled person~~ an individual with developmental disability, 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.~~

(4) TESTAMENTARY ~~GUARDIANSHIP OF CERTAIN PERSONS~~ NOMINATION BY PROPOSED WARD'S PARENTS. 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~~ for any of his or her minor children who ~~are~~ is in need of guardianship. For ~~a person~~ an individual who is over the age of 18 and is found to be in need of guardianship under s. ~~880.33~~ 54.10 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through the will.

(5) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188 ~~is qualified to act~~ or any other nonprofit or for profit entity that is approved by the court may be appointed 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~~ a proposed ward, if no suitable individual is available as guardian and the department of health and family services, under rules established under ch. 55, finds the corporation or entity to be a suitable agency to perform such duties.

(6) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~ The court shall take into consideration the opinions of the ~~alleged incompetent~~ proposed ward and of the members of ~~the~~ his or her family as to what is in the best interests

of the proposed ~~incompetent~~ ward. However, the best interests of the proposed ~~incompetent~~ ward shall control in making the determination when the opinions of the family are in conflict with ~~the clearly appropriate decision~~ those best interests. 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~~ ward 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~~ consider appointing the agent under that power of attorney as the individual's guardian.

(7) STATEMENT OF ACTS BY PROPOSED GUARDIAN. (a) At least 96 hours before the hearing under s. 54.44, the proposed guardian shall submit to the court a sworn and notarized statement as to whether any of the following is true:

1. The proposed guardian has been convicted of a crime, as defined in s. 939.12.

2. The proposed guardian has filed for or received protection under the federal bankruptcy laws.

3. Any license, certificate, permit, or registration of the proposed guardian that is required under chs. 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

(b) If par. (a) 1., 2., or 3. applies to the proposed guardian, he or she shall include in the sworn and notarized statement a description of the circumstances surrounding the applicable event under par. (a) 1., 2., or 3.

(8) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No ~~person~~ one, except a nonprofit corporation approved by the department of health and family services under s. ~~880.35~~ 54.15 (5), who has guardianship of the person of 5 or more adult wards who are unrelated to ~~the person~~ him or her may accept appointment as

guardian of the person of another unrelated adult ward ~~unrelated to the person~~, unless approved by the ~~department~~ court. No ~~such person~~ individual may accept appointment as guardian of more than 10 ~~such~~ adult wards who are unrelated to ~~the person~~ him or her, and no approved nonprofit corporation may accept appointment as guardian of more than 10 adult wards.

54.18 General duties and powers of guardian; limitations; immunity. **(1)** A ward retains all his or her rights that are not assigned to the guardian or otherwise limited by statute. A guardian acting on behalf of a ward may exercise only those powers that the guardian is authorized to exercise by statute or court order. A guardian may be granted only those powers necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention.

(2) A guardian shall do all of the following:

(a) Exercise the degree of care, diligence, and good faith when acting on behalf of a ward that an ordinarily prudent person exercises in his or her own affairs.

(b) Act in all proceedings of the ward as the ward's advocate, including, if the ward is protectively placed under ch. 55 and if applicable, advocating for the ward's applicable rights under ss. 50.09 and 51.61.

(c) Exhibit the utmost degree of trustworthiness, loyalty, and fidelity in relation to the ward.

(3) No guardian may do any of the following:

(b) ~~No guardian shall purchase~~ Purchase property of the ward, ~~unless sold at public sale~~ except at fair market value, subject to ch. 786, and 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.~~

(h) ~~No guardian shall lend guardianship~~ Lend funds of the ward to himself or herself.

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(i) ~~The guardian of the estate may, without approval of the court, sell~~ Subject to ch. 786, sell any property of the ~~guardianship~~ estate of the ward that is acquired by the guardian ~~pursuant to sub. (4)~~ under sub. (2) (L) or par. (h).

(4) ~~Any~~ A guardian of the person or of the estate 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.

54.19 Duties of guardian of the estate. Except as specifically limited in the order of appointment, the guardian of the estate shall do all of the following in order to provide a ward with the greatest amount of independence and self–determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and the ward's personal wishes and preferences with regard to managing the activities of daily living:

(1) ~~The guardian of the estate shall take~~ Take possession of ~~all of~~ the ward's real and personal property, ~~and~~ of any rents, income, issues, and benefits ~~therefrom, whether~~ accruing ~~before or after the guardian's appointment~~ from the property, and of ~~the~~ any proceeds arising from the sale, mortgage, lease, or exchange ~~thereof~~ of the property and prepare an inventory of these. Subject to ~~such~~ this possession, the title of all ~~such~~ the estate and ~~to~~ the increment and proceeds ~~thereof shall be~~ of the estate is 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) Retain, expend, distribute, sell, or invest the ward's property, rents, income, issues, benefits, and proceeds and account for all of them.

(3) Determine, if the ward has executed a will, the will's location, determine the appropriate persons to be notified in the event of the ward's death, and, if the death occurs, notify those persons.

(4) Use the ward's income and property to maintain and support the ward and any dependents of the ward and to provide for the postsecondary education expenses of any children of the ward.

(5) Prepare and file an annual account as specified in s. 54.62.

(6) At the termination of the guardianship, deliver the ward's assets to the persons entitled to them.

(7) With respect to claims, do all of the following:

(a) ~~Every general guardian shall pay~~ Pay the just debts of the ward ~~out of~~ from 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~~.

(b) ~~The guardian or a creditor of any ward may apply~~ Apply to the court for adjustment of any claims against the ward incurred ~~prior to~~ before 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~~ shall be presented ~~or be barred~~. Notice of ~~the time and place~~

~~so fixed and limited~~ these times and the place shall be given by publication as ~~in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall apply. ~~As in the settlement of estates of deceased persons, after~~ 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~~ over which the circuit court has jurisdiction.

(8) ~~The guardian shall settle~~ 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~~ the ward in all actions and proceedings except ~~where~~ those for which another person is appointed ~~for that purpose~~.

(9) File with the register of deeds of any county in which the ward possesses real property a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be an incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(10) Perform any other duty required by the court.

54.20 Powers of guardian of the estate. (1) STANDARD. ~~The~~ In exercising the powers under this section, 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~~ shall use the judgment and care ~~under the circumstances then prevailing, which~~ that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, ~~not in regard to speculation but in regard to~~

including the permanent, rather than speculative, disposition of their funds~~,~~ ~~considering~~ and consideration of the probable income ~~as well as the probable~~ and safety of their capital.

(2) POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any of the following with respect to the ward only with prior written approval of the court, including, if applicable, approval of a petition specified under s. 54.21:

(a) Make gifts, under the terms, including the frequency, amount, and specific donees, specified by the court.

(b) ~~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~~ Transfer assets of the ward to the trustee ~~or trustees~~ of ~~an~~ any existing revocable living trust ~~created by the person for the benefit of~~ that the ward has created for himself or herself and ~~those dependent upon the person for support~~ any dependents, or, if the ward is a minor, to the trustee ~~or trustees~~ of ~~a~~ any trust created for the exclusive benefit of the ~~person, if a minor, which~~ ward that distributes to him or her at age 18 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as ~~he or she appoints if he or she dies prior to age 18 or 21~~ the guardian appoints.

(c) Establish a trust as specified under 42 USC 1396p (d) (4) (A), (B), or (C) and transfer assets into the trust.

(d) Purchase an annuity or insurance contract and exercise rights to elect options or change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(e) Exercise any elective rights that accrue to the ward as the result of the death of the ward's spouse or parent.

(f) Release or disclaim any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or transfer.

(g) ~~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~~ Execute under s. 766.58 a marital property agreement with the ~~other~~ ward's spouse~~, but may not make, amend or revoke a will~~.

(h) Provide support for an individual whom the ward is not legally obligated to support.

(i) Convey or release a contingent or expectation interest in property, including a marital property right and any right of survivorship that is incidental to a joint tenancy or survivorship marital property.

(j) Compound and discharge all debts and claims for damage due the ward.

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

(L) ~~The guardian of the estate may, with the approval of the court, after~~ After such notice as the court directs and subject to ch. 786, invest the proceeds of sale of any ~~guardianship~~ assets of the ward and any of the ward's other moneys in the guardian's possession in ~~such~~ the real or personal property ~~as the court determines~~

that is determined by the court to be in the best interests of the ~~guardianship~~ estate~~,~~ ~~without regard to~~ of the ward, notwithstanding ch. 881.

(3) POWERS THAT DO NOT REQUIRE COURT APPROVAL. The guardian of the estate may do any of the following without first receiving the court's approval:

(a) Provide support from the ward's estate for an individual whom the ward is legally obligated to support.

(b) Enter into a contract, other than a contract that is specified in sub. (2) or that is otherwise prohibited under this chapter.

(c) Exercise options of the ward to purchase securities or other property.

(d) Authorize access to or release of the ward's confidential records.

(e) Apply for public and private benefits.

(f) Take any other action, except an action specified under sub. (2), that is reasonable or appropriate to the duties of the guardian of the estate.

(g) ~~The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain~~ Retain any real or personal property ~~possessed by~~ that the ward ~~at the time of the appointment of the~~ possesses when the guardian ~~or subsequently acquired by~~ is appointed or that the ward acquires 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~~ during the guardian's appointment.

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

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54.21 Petition for authority to transfer ward's assets to another. (1) In this section, "will or similar instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other person who seeks authority to exercise a power that includes the transfer of any of a ward's assets to or for the benefit of any person shall submit to the court a petition that specifies all of the following:

(a) Whether a proceeding by anyone seeking this authority with respect to the ward's property was previously commenced and, if so, a description of the nature of the proceeding and the disposition made of it.

(b) The amount and nature of the ward's financial obligations, including moneys currently and prospectively required to provide for the ward's maintenance, support, and well–being and to provide for others dependent upon the ward for support, regardless of whether the ward is legally obligated to provide the support. If the petitioner has access to a copy of a court order or written agreement that specifies support obligations of the ward, the petitioner shall attach the copy to the petition.

(c) The property of the ward that is the subject of the petition, the proposed disposition of the property, and the reasons for the disposition.

(d) If they may be ascertained, the wishes of the ward.

(e) As specified in sub. (3), whether the ward has previously executed a will or similar instrument.

(f) A description of any significant gifts or patterns of gifts that the ward has made.

(g) The names, post–office addresses, and relationships to the ward of all of the following:

1. Any presumptive adult heirs of the ward.

2. If the ward has previously executed a will or similar instrument, the named or described beneficiaries under the most recent will or similar instrument executed by the ward.

(3) (a) If a ward has previously executed a will or similar instrument and the petitioner is able, with reasonable diligence, to obtain a copy, the petitioner shall provide the copy to the court, together with a statement that specifies all of the following:

1. The manner in which the copy was secured.

2. The manner in which the terms of the will or similar instrument became known to the petitioner.

3. The basis for the petitioner's belief that the copy is of the ward's most recently executed will or similar instrument.

(b) If the petitioner is unable to obtain a copy of the most recently executed will or similar instrument or is unable to determine if the ward has previously executed a will or similar instrument, the petitioner shall provide a statement to the court that specifies the efforts that were made by the petitioner to obtain a copy or ascertain the information.

(c) If a copy of the most recently executed will or similar instrument is not otherwise available, the court may order the person who has the original will or similar instrument to provide a photocopy to the court for in camera examination. The court may provide the photocopy to the parties to the proceeding unless the court finds that doing so is contrary to the ward's best interests.

(4) The petitioner shall serve notice upon all of the following, together with a copy of the petition, stating that the petitioner will move the court, at a time and place named in the notice, for the order described in the petition:

(a) The persons entitled to notice under sub. ***.

(b) Unless the court dispenses with notice under this subsection, the persons specified in sub. (2) (g), if known to the petitioner.

(c) The county corporation counsel, if the county has an interest in the matter.

(5) The court shall consider all of the following in reviewing the petition:

(a) The wishes of the ward, if known.

(b) Whether the duration of the ward's disability is likely to be sufficiently brief so as to justify dismissal of the proceedings in anticipation of the ward's recovered ability to decide whether, and to whom, to transfer his or her assets.

(c) Whether, after the proposed transfer is made, the needs of the ward, his or her spouse, if any, and any other persons legally dependent upon the ward for support are able to be met from the remainder of the ward's assets without resort to public assistance and whether making the proposed transfer would render the ward ineligible under s. 49.453 (2).

(d) Except for gifting that is authorized under s. 54.20 (2) (a), whether the donees or beneficiaries under the proposed disposition are reasonably expected objects of the ward's generosity and whether the proposed disposition is consistent with any ascertained wishes of the ward or known estate plan or pattern of lifetime gifts that he or she has made.

(e) Whether the proposed disposition will produce tax savings that will significantly benefit the ward, his or her dependents, or other persons for whom the ward would be concerned.

(f) Any other factors that the court determines are relevant.

(6) The court may grant the petition under sub. (2) if the court finds and records all of the following:

(a) That the ward lacks the requisite mental capacity to perform the act for which approval is sought and is not likely to regain that capacity within a reasonable period of time.

(b) That a competent individual in the position of the ward would likely perform the act under the same circumstances.

(c) That either of the following applies to the ward:

1. Before the ward lacked the requisite mental capacity to perform the act for which approval is sought, he or she did not manifest intent that is inconsistent with the act.

2. If, before the ward lacked the requisite mental capacity to perform the act for which approval is sought he or she manifested intent that is inconsistent with the act, it is likely that the ward would have changed his or her intent under the circumstances that exist at the time of the filing of the petition.

(7) Nothing in this section requires a guardian to file a petition under this section and a guardian is not liable or accountable to any person for having failed to file a petition under this section.

54.22 **Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property.** The court, on the ~~application~~ petition of the guardian of the estate or of any other person interested in the estate of ~~any~~ a ward, after ~~such notice if any, as~~ any notice that the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease, or exchange any property of the ~~guardianship~~ estate of the ward upon such terms as the court may order, subject to

ch. 786, 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~~ that is in the best interest of the ward.

54.23 ~~Trust~~ Banks and trust companies,; exemption from investment restraints. The limitations of ~~this section~~ ss. 54.18 (3) (a) and (b), 54.19 (1), (2), and (6), and 54.20 (1), (2) (k) and (L), and (3) (g), (h), and (i) 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.

54.25 (title) **~~Guardian~~ Duties and powers of guardian of the person ~~of incompetent~~.** **(1)** DUTIES. A guardian of the person shall do all of the following:

(a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall make~~ 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~~ The county 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~~ as to 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).~~

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

1. Regular inspection in person of the ward's condition, surroundings, and treatment.

2. Examination of the ward's patient health care records and treatment records.

3. Attendance at and participation in staff meetings of any facility in which the ward resides or is a patient, if the meeting includes a discussion of the ward's treatment and care.

4. Inquiry into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed.

(c) 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) POWERS. Consistent with the functional limitations of the ward, the court may authorize the guardian of the estate to do all of the following:

(a) Make decisions concerning the ward's personal caregivers.

(b) Make decisions concerning the ward's social environment and other aspects of the ward's social life, including marriage.

(c) Restrict travel by the ward.

(d) Authorize the ward to obtain, retain, or renew a license, permit, registration, or certification for which the ward is determined to be qualified, or restrict the ward from obtaining, retaining, or renewing such a license, permit, registration, or certification.

(e) Authorize access to or release of the ward's confidential records.

(f) Make decisions concerning the ward's education.

(g) Apply for public and private benefits if a guardian of the estate has not been appointed and if no other person is authorized to so apply.

(h) Make decisions on consenting to health care for the ward.

(i) Select the ward's place of residence, including admitting the ward to a nursing home or to a community–based residential facility under s. 54.50 (2) (b). In making the selection, the guardian of the person may consider all of the following:

1. The existence and availability of social services and the ward's family and friends in the community of the proposed residence.

2. The ward's care, comfort, maintenance, and, if appropriate, rehabilitation.

3. The needs of any individuals with whom the ward resides.

(j) Revoke the ward's durable power of attorney or power of attorney for health care.

SUBCHAPTER IV

PROCEDURES

54.30 Jurisdiction and venue. (1) JURISDICTION ~~IN CIRCUIT COURT.~~ The circuit court ~~shall have~~ has 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.

CS Change of venue.

(2) 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~~ proposed ward or of the county in which the ~~person~~ proposed ward 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~~ in which the ~~person~~ nonresident or any property of the nonresident may be found.

(3) (a) *Original proceeding.* The court ~~wherein~~ in which a petition is first filed shall determine venue. If ~~it is determined~~ the court determines that venue lies in another county, the court shall order the entire record certified to the proper court. A court ~~wherein~~ in which a subsequent petition is filed shall, ~~upon being~~ if it is satisfied ~~of~~ that an earlier filing took place in another court, summarily dismiss ~~such~~ the petition.

(b) (intro.) *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~~ changes residence from one county 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.~~ venue may be transferred to the ward's new county of residence under the following procedure:

(3) (b) 1. A person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies and to the register in probate for the county to which change of venue is sought.

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

54.32 **Liability for fees.** If the ~~person~~ proposed ward is ~~an adult who is~~ indigent, the county ~~of legal settlement shall be~~ in which venue lies for the guardianship proceeding is 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).~~

54.34 (title) **Petition~~; fees~~ for guardianship.** **(1)** (intro.) Any ~~relative, public official or other~~ person~~,~~ may petition for the appointment of a guardian ~~of a~~

~~person subject to guardianship~~ for an individual. ~~Such~~ The petition shall state~~, so far as may be~~ all of the following, if known to the petitioner:

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

(b) The specific nature of the proposed ward's alleged 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 of the proposed ward previously derived from or benefits of the proposed ward 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 parties.

(i) The name and post–office address of the person or institution~~ having the~~, if any, that has care and custody of the proposed ward or the facility, if any, that is providing care to 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~~ and the authority of the petitioner to act.

(k) Whether the proposed ward is a recipient of a public benefit, including medical assistance or a benefit under s. 46.27.

(L) The agent under any current, valid power of attorney for health care or durable power of attorney that the proposed ward has executed.

(m) Whether the petitioner is requesting a full or limited guardianship.

(n) Whether the proposed ward, if married, has children who are not children of the current marriage.

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

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

54.36 Examination of proposed ward. Whenever it is proposed to appoint a guardian on the ground of a proposed ward's alleged incompetency, ~~a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition~~ the court shall direct that a comprehensive evaluation, based on personal examination, be made of the functional incapacity of the proposed ward~~, based upon examination~~ and that a statement based on the evaluation be submitted to the court. The court may utilize available multidisciplinary resources in the community in determining the need for the guardianship. The privilege under s. 905.04 ~~shall~~ does not apply to ~~this~~ the statement based on the evaluation. A copy of the statement shall be provided to the proposed ward~~,~~ or his or her counsel, the guardian ad litem, and the petitioner's 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~~ the

proposed ward 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~~ or protective placement. The person shall also be informed that he or she has a right to ~~remain silent~~ refuse to participate in the examination or speak to the examiner and that the examiner is required to report to the court even if the person ~~remains silent~~ does not speak to the examiner. 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. Nothing in this section prohibits the use of a report by a physician or psychologist that is based on an examination of the proposed ward by the physician or psychologist before filing the petition for appointment of a guardian, but the court will consider the recency of the report in determining whether the report sufficiently describes the proposed ward's current state and in determining the weight to be given to the report.

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing and shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last–known address of the recipient or was sent by facsimile transmission to the last–known facsimile transmission number of the recipient.

(2) NOTICE OF HEARING FOR APPOINTMENTS ~~AND REHEARINGS~~. (intro.) Upon the filing of a petition for guardianship~~, and the court being~~ of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to

compliance with s. ~~880.07~~ 54.34, the court shall, except as provided in sub. (3), order delivery of notice by the petitioner of the time and place of the hearing as follows:

(a) ~~A petitioner shall have notice served of a petition for appointment or change of a guardian upon~~ On the proposed ~~incompetent~~ ward and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If ~~such proposed incompetent~~ the proposed ward is in custody or confinement, ~~a~~ the petitioner shall have notice served by registered or certified mail on the proposed ~~incompetent's~~ ward's custodian, who shall immediately serve it on the proposed ~~incompetent~~ ward. The custodian shall inform the proposed ~~incompetent~~ ward of the complete contents of the notice ~~and certify thereon~~ , certify on the notice that the custodian served and informed the proposed ~~incompetent~~ ward, and return ~~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 incompetent'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~~ court.

(b) Personally or by mail at least 10 days before the time set for hearing, to all of the following:

1. The proposed ward's counsel, if any.

2. The proposed ward's guardian ad litem.

3. Any presumptive adult heirs of the proposed ward.

4. Any other interested persons, unless specifically waived by the court.

5. The agent under any durable power of attorney or power of attorney for health care of the ward.

6. Any person who has legal or physical custody of the proposed ward.

7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.

8. Any person that the court requires.

(3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. (intro.) ~~When~~ If the proposed ward is a minor, ~~notice shall be given~~ the court shall order distribution of notice by the petitioner of the time and place of the hearing as provided in s. 879.05 to all of the following ~~persons, if applicable~~:

(a) The proposed ward's spouse, if any.

(b) The proposed ward's ~~parents~~ parent, unless the parent's parental rights have been judicially terminated.

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

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

(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~~ under subs. (1), (2), and (3).

(5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. 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 shall file an affidavit of ~~such~~ the mailing ~~shall be filed~~ with the court within 10 days after the ~~issuance of letters~~ notice is given.

54.40 (title) **Guardian ad litem ~~in incompetency cases;~~ appointment; duties; termination.** **(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~~ 54.15, 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, or at any other time that the court determines it is necessary.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state and shall meet the requirement under s. 757.48 (1) (a). 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~~ is not bound by, the wishes of the proposed ward ~~or alleged incompetent~~ or the positions of others as to the best interests of the proposed ward ~~or alleged incompetent~~. The guardian ad litem has none of the rights or duties of a general guardian.

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

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

(b) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed to serve as guardian and concerning the report under s. 54.15 (7).

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

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

(e) If applicable, inform the court and petitioner's attorney 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. If the guardian ad

litem recommends that the hearing be held in a place other than a courtroom, the guardian ad litem shall provide the information under this paragraph as soon as possible.

(f) If the proposed ward requests representation by counsel, inform the court and the petitioner or the petitioner's counsel, if any.

(g) Attend all court proceedings related to the guardianship.

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

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

(5) 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~~.

(6) 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~~ individual for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal~~,~~ or 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.

54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL. (a) (intro.) 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.~~ if any of the following occurs:

1. At least 72 hours before the hearing, the proposed ward requests counsel.

2. The guardian ad litem or another person states to the court that the proposed ward is opposed to the guardianship petition.

3. The court determines that the interests of justice require counsel for the proposed ward.

(b) Any attorney obtained under par. (a) or appointed under par. (c) shall be a zealous advocate for the expressed wishes of the proposed ward.

(c) If ~~the person requests but is~~ par. (a) 1., 2., or 3. applies but the proposed ward 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.~~

(2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney, or the guardian ad litem, except that the right is waived unless demanded at least 48 hours before the time set for the hearing. The number of jurors for such a trial is determined under s. 756.06 (2) (b). The proposed ward, his or her attorney, or the guardian ad litem has the right to present and cross–examine witnesses, including any physician or licensed psychologist who reports to the court concerning the proposed ward.

(3) RIGHT TO INDEPENDENT MEDICAL EXAMINATION. 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.

(4) ~~WARD'S~~ RIGHT TO PAYMENT OF EXPENSES ~~IN~~ TO CONTEST PROCEEDINGS. ~~When~~ If a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

(5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be present at any hearing regarding the guardianship.

(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right to have any hearing regarding the guardianship conducted in a location that is accessible to the proposed ward.

54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS. A petition for guardianship shall be heard within 90 days after it is filed. The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the report of the examining physician or psychologist under s. 54.36 at least 96 hours before the time of the hearing.

(2) STANDARD OF PROOF. Any determination by the court as to whether the proposed ward is an incompetent shall be by clear and convincing evidence.

(3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian shall be physically present at the hearing unless the court excuses the proposed guardian's attendance or, for good cause shown, permits attendance by telephone.

(4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the proposed ward, the guardian ad litem shall consider the effect of the proposed ward's attendance on his or her physical or psychological health in relation to the importance of the proceeding and the proposed ward's expressed desires. If the proposed ward is unable to attend the hearing because of residency in a nursing home or other facility, physical

inaccessibility, or a lack of transportation and if the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court shall hold the hearing in a place where the proposed ward may attend.

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

(6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed guardian is inappropriate, the court shall request that a petition proposing a suitable guardian be filed, shall set a date for a hearing to be held within 30 days, and shall require the guardian ad litem to investigate the suitability of a new proposed guardian.

54.46 Disposition of petition. After the hearing under s. 54.44, the court shall dispose of the case in one of the following ways:

(1) DISMISSAL OF THE PETITION. If the proposed ward is found not to be an incompetent, the court shall dismiss the petition. The court may also consider an application by the proposed ward for the appointment of a conservator under s. 54.76.

(2) PROTECTIVE ARRANGEMENT; TRANSACTIONS; APPOINTMENT OF SPECIAL GUARDIAN. (a) If a proposed ward is found to be a minor or to be an incompetent, the court may, without appointing a guardian, do any of the following if the court first considers the interests of dependents and creditors of the ward and whether a guardianship is necessary, given the ward's functional level:

1. Authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service, or care arrangement that meets the foreseeable needs of the ward.

2. Authorize, direct, or ratify a contract, trust, or other transaction related to the ward's property or financial affairs if necessary as a means of providing for the personal needs of or property management for the ward.

(b) The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or transaction under par. (a). The special guardian has any authority conferred by the order of appointment, shall report to the court on all actions taken under the order of appointment, and shall serve until discharged by order of the court. The court may approve a reasonable compensation for the special guardian, except that, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily, the court may deny or reduce the amount of compensation or remove the special guardian.

(3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be an incompetent or a minor, the court may enter a determination and order appointing a guardian that specifies any powers of the guardian that require court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

(a) *Co–guardians.* The court may appoint co–guardians of the person or co–guardians of the estate, subject to any conditions that the court imposes. A co–guardian's individual decision is binding unless otherwise ordered by the court.

(b) *Power of attorney for health care.* If the ~~proposed incompetent~~ ward 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~~ the court may, for good cause shown, revoke the power

of attorney for health care or 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~~ authority of the agent under the terms of the power of attorney for health care instrument~~, unless the guardian is the health care agent under those terms~~ . The ward's power of attorney for health care remains in effect unless so revoked or limited.

(c) *Durable power of attorney.* If the ward has executed a durable power of attorney, the court may, for good cause shown, revoke the durable power of attorney or limit the authority of the agent under the terms of the durable power of attorney. The ward's durable power of attorney remains in effect unless so revoked or limited.

(d) *County employee as guardian or conservator.* The court may designate an employee of a county home, county hospital, or county mental hospital to act, if appointed by the court, as guardian of the estate of one or more wards or as conservator for the estate of one or more individuals who so apply, if the ward or individual is a resident of the county home or a patient of the county hospital or county mental hospital. The term of such a guardian or conservator shall terminate, after approval of the employee's accounts by the court, if the employee resigns as guardian or conservator or is removed by the court.

(4) 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).

(5) BOND. (a) ~~*Form*~~ *Amount and sufficiency 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~~ The order under sub. (3) shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person.

(b) *Waiver of Bond.* (intro.) Unless required under s. 880.60 (9), the court may waive the requirement of a bond ~~at~~ under any of the following circumstances:

1. At any time ~~in its discretion or if.~~

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

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

(c) *Blanket bond for county 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~~ For a person who is appointed as a guardian of the estate or as conservator under sub. (3) (d), 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~~ an amount, approved by the court, that is 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~~ is appointed by the court. ~~Additional~~ The court may require 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.

plain. period

(6) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. When a guardian has given bond as required and the bond has been approved by the ~~judge~~ court, letters under the seal of the court shall be issued to the guardian.

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

54.50 Limited term guardianships. (1) TEMPORARY GUARDIAN. (a) *Standard.* If it is demonstrated to the court that a proposed ward's particular situation requires the immediate appointment of a temporary guardian of the person or estate, the court may appoint a temporary guardian under this section.

(b) ~~*Appointment*~~ *Duration and extent of authority.* ~~If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it~~ The court may appoint a temporary guardian for a ward 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.~~, except that the court may extend this period for good cause shown for one additional 60–day period. The court may impose no further temporary guardianship on the ward for at least 90 days after the expiration of the temporary guardianship and any extension. The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian and shall be limited to those acts that are reasonably related to the reasons for appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian ~~shall be~~ is limited to ~~the performance of duties respecting specific property, or to~~ the performance of ~~particular~~ those 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~~ Unless the court first specifically approves, the temporary guardian may not sell real estate or expend an amount in excess of $2,000.

(c) *Procedures for appointment.* All of the following procedures apply to the appointment of a temporary guardian:

1. Any person may petition for the appointment of a temporary guardian for an individual. The petition shall contain the information required under s. 54.34 (1), shall specify reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

2. The petitioner shall serve the petition and order for hearing on the proposed ward before the hearing or as soon as practicable after the hearing, but not later than 3 calendar days after the hearing.

3. The court shall appoint a guardian ad litem, who shall attempt to meet with the proposed ward before the hearing or as soon as is practicable after the hearing, but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing or not later than 10 calendar days after the hearing.

4. The court shall hold a hearing on the temporary guardianship no earlier than 48 hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the proposed ward is an incompetent. The guardian ad litem shall attend the hearing in person or by telephone or, instead, shall provide to the court a written report concerning the proposed ward for review at the hearing.

5. If the court appoints a temporary guardian, the court shall so notify the ward not later than 3 calendar days after the hearing. If the ward, his or her counsel, the guardian ad litem, or an interested party requests, the court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days after the request. If a rehearing is requested, the temporary guardian may take no action to expend the ward's assets without approval by the court.

54.50 **(2)** CERTAIN ADMISSIONS TO FACILITIES. (a) In this ~~section~~ subsection, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post–hospital care.

(b) (intro.) An individual under ~~sub. (3)~~ par. (c) may consent to admission~~,~~ ~~directly from a hospital~~ to a facility, as defined in s. 50.01 (1m), of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated an incompetent under ch. ~~880~~ 54, if all of the following apply:

1. No person who is listed under ~~sub. (3)~~ par. (c) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

2. a. Except as provided in subd. 2. b., no person who is listed under ~~sub. (3)~~ par. (c) and who resides with the incapacitated individual disagrees with the proposed admission.

b. Subdivision ~~1.~~ 2. a. does not apply if ~~any of the following applies:~~ the individual who is consenting to the proposed admission resides with or is the spouse of the incapacitated individual.

3. The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

4. A petition for guardianship for the individual under s. ~~880.07~~ 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

(c) (intro.) The following individuals, in the following order of priority, may consent to an admission under ~~sub. (2)~~ par. (b):

1. The spouse of the incapacitated individual.

2. An adult son or daughter of the incapacitated individual.

3. A parent of the incapacitated individual.

4. An adult brother or sister of the incapacitated individual.

5. A grandparent of the incapacitated individual.

6. An adult grandchild of the incapacitated individual.

7. An adult close friend of the incapacitated individual.

(d) A determination that an individual is incapacitated for purposes of ~~sub. (2)~~ par. (b) shall be made by 2 physicians~~, as defined in s. 448.01 (5),~~ or by one physician and one ~~licensed~~ psychologist~~, as defined in s. 455.01 (4),~~ who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity, or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(e) 1. (intro.) Except as provided in ~~par. (b)~~ subd. 2., an individual who consents to an admission under this ~~section~~ subsection may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

a. Sixty days after the admission to the facility of the incapacitated individual.

b. Discharge of the incapacitated individual from the facility.

c. Appointment of a guardian for the incapacitated individual.

2. An individual who consents to an admission under this ~~section~~ subsection may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney~~, as defined in s. 243.07 (1) (a),~~ who may authorize expenditures related to health care.

(f) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(g) An individual who consents to an admission under this ~~section~~ subsection may request that an assessment be conducted for the incapacitated individual under the long–term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for

a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

(h) If the allegedly incapacitated individual, his or her guardian ad litem, or any interested person objects to the admission, the individual, guardian ad litem, or person may request the court in which the guardianship petition is pending to hold a hearing on whether the individual is incapacitated or whether the admission shall continue before the guardianship hearing. If requested, the court shall hold such a hearing within 7 calendar days after receipt of the request.

54.52 Standby guardianship. (1) A person may at any time bring a petition for the appointment of a standby guardian of the person or ~~property or both~~ estate 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~~ an individual who is determined to be an incompetent under s. 54.10 or a minor.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or ~~property~~ estate whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian or during a period, as determined by the initially appointed guardian, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. 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.

54.54 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.

Close up

SUBCHAPTER V

POST–APPOINTMENT MATTERS

54.60 Inventory. (1) INVENTORY REQUIRED. ~~When a~~ The 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~~ prepare an inventory that lists all of the ward's property and interests in property, including any marital property interest, regardless of how the asset is titled.

(2) CONTENTS OF INVENTORY. The inventory shall provide all of the following information with respect to each asset:

(a) How the asset is held or titled.

(b) The name and relationship to the ward of any co–owner.

(c) The marital property classification of the property and, for any property that is marital property, the spouse who has management and control rights with respect to the property.

(3) TIME FOR FILING. The guardian of the estate shall file the initial inventory within 60 days after appointment, unless the court extends or reduces the time.

(4) NOTICE OF INVENTORY. The court shall specify the persons to whom the guardian shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay the fee specified in s. 814.66 (1) (b) 2. at the time the inventory is filed.

(6) APPRAISAL. The court may order that the guardian of the estate appraise all or any part of the ward's estate.

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by ~~the guardian's~~ oath that every inventory required of the guardian ~~and verification shall be to the effect that the inventory~~ is true of all property ~~which~~ that belongs to ~~his or her decedent's estate or his or her ward, which has come to~~ the estate of the ward, in the guardian's possession or knowledge, and that upon diligent inquiry the guardian has ~~not~~ been ~~able~~ unable to discover any property belonging to the estate or ward ~~which is not included therein~~ that the inventory does not include. The court,

at the request of any party ~~interested,~~ or on its own motion~~,~~ may examine the guardian on oath ~~in relation thereto,~~ as to the inventory or ~~in relation to~~ any supposed omission from the inventory.

54.62 Accounts. **(1)** ANNUAL REPORTS. ~~Every~~ Except as provided in sub. (3) or unless waived by a court, every guardian, ~~except~~ including a corporate guardian, shall, prior to April 15 of each year, file an account under oath ~~specifying~~ that specifies 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 court may order the guardian ~~shall within 30 days~~ to render and file, within 30 days, a like account for ~~any shorter term~~ less than a year. 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. If the court determines it to be in the ward's best interests, the court may specify the persons to whom the guardian shall distribute copies of the account.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or ~~some~~ by a person satisfactory to the court, all reported 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~~ The court or person satisfactory to the court shall ascertain whether the securities, evidences of deposit, and investments correspond with the account.

(3) SMALL ESTATES. (a) If a ward's estate does not exceed $5,000 in value, the guardian need not file an account under sub. (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph, the value of the ward's estate does not include the ward's income, any burial trust possessed by the ward, or any term or other life insurance policy that is irrevocably assigned to pay for the disposition of the ward's remains at death.

(b) If the ward's estate, as calculated under par. (a), increases above $5,000 in value, the guardian shall so notify the court, which shall determine if an annual account under sub. (1) or a final account under s. 54.66 is required.

(4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may waive filing of an annual account under sub. (1) or permit the filing of a modified annual account, which shall be signed by the ward's guardian and spouse and shall consist of all of the following:

1. Total assets of the ward, as determined under ch. 766, on January 1 of the year in question.

2. Income in the name of the ward, without regard to ch. 766, and the ward's joint income.

3. Expenses incurred on behalf of the ward, including the ward's proportionate share of household expenses if the ward and the ward's spouse reside in the same household, without regard to ch. 766.

4. Total assets of the ward, as determined under ch. 766, on December 31 of the year in question.

(b) The court shall provide notice of the waiver under par. (a) to any adult child of the ward.

(5) EXAMINATION OF ACCOUNTS. The account shall be ~~promptly~~ examined ~~under the court's direction and if it~~ as the court directs. If the account is not satisfactory ~~it shall be examined on 8 days' notice and~~ , the court shall ~~make such order thereon~~ order action as justice requires. ~~Notice~~ and shall direct that notice be provided 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~~ . If notice is provided to the guardian under this subsection, the court may appoint a guardian ad litem ~~of~~ for the ward ~~may be appointed~~.

(6) ACCOUNTING BY ~~AGENT~~ THIRD PARTIES TO GUARDIAN. ~~The circuit court, upon the application of any~~ If a guardian appointed by ~~it~~ a court so requests, the court 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~~ of the estate ~~which~~ that have come to the person's possession and of his or her ~~proceedings thereon~~ action regarding the property or papers. If the person refuses to appear and render an account, the court may proceed against him or her as for contempt.

(7) NOTICE OF FINAL ACTION ON AN ACCOUNT. No action by the court ~~upon any~~ on an account ~~shall be~~ is final unless ~~it is upon~~ the court first directs that notice be provided to interested parties.

54.63 Expansion of order of guardianship; procedure. (1) If the guardian or another interested person submits to the court a written statement with

relevant accompanying support requesting the removal of rights from the ward and transfer to the guardian of powers in addition to those specified in the order of appointment of the guardian, based on an expansion of the ward's incapacity, the court shall do all of the following:

(a) Appoint a guardian ad litem for the ward.

(b) Provide notice to the county department of social services or human services if the ward is protectively placed or receives long–term support services as a public benefit.

(2) (a) If, after 10 days after the court has provided notice under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person submits to the court an objection to the request under sub. (1), the court may amend the order entered under s. 54.46 (3) and enter a determination and the amended order that specifies any change in the powers of the guardian.

(b) If, within 10 days after the court has provided notice under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), any person may request a hearing under the procedure specified in s. 54.64 (2).

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

(1) DURATION. Any guardianship of an individual found to be an incompetent under this chapter shall continue during the life of the ~~incompetent, or~~ ward, until terminated by the court, or as provided under sub (3) or (4). ~~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) REVIEW AND MODIFICATION. (a) (intro.) 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~~ at any time after 180 days after any previous hearing under s. 54.44, or at any time if the court determines that exigent circumstance, including presentation of new evidence, requires a review. If a petition ~~for review~~ is filed, the court shall ~~conduct~~ do all of the following:

1. Appoint a guardian ad litem.

2. Fix a time and place for hearing.

3. Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

4. Conduct a hearing at which the ward ~~shall be~~ is present and ~~shall have~~ has 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.~~

(b) The ward has the right to counsel for purposes of the hearing under par. (a). Notwithstanding any finding of incompetence for the ward, the ward may retain and contract for the payment of reasonable fees to an attorney in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence. The court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent the county of jurisdiction for the guardianship shall provide counsel at the county's expense.

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

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

(a) The court adjudicates a ~~former~~ ward who was formerly found to be an incompetent to be ~~competent~~ no longer an incompetent.

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

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

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

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

(5) (intro.) DEPLETED ~~GUARDIANSHIPS~~ GUARDIANSHIP. ~~When the~~ If a court determines that the estate of ~~the~~ a 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~~ do one of the following:

(a) Terminate the guardianship and ~~authorize~~ order disposition of the remaining assets as provided by s. ~~880.04~~ 54.12 (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~~ the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Continue the guardianship, but waive requirements for a bond for the guardian and for accounting by the guardian.

54.66 Final accounts. (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT. ~~Upon termination of~~ If a court terminates a guardianship, or ~~upon resignation, removal or death of~~ a guardian~~, such~~ resigns, is removed, or dies, the guardian or the guardian's personal representative shall ~~forthwith~~ promptly render ~~the guardian's~~ a 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~~, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative are the same person, the deceased ward's personal representative shall give notice of the termination and rendering of the final account to all interested persons of the ward's estate.

(2) 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~~ The guardian ~~shall be required to render~~ of a ward with a small estate, as specified in s. 54.62 (3) (a), need not file a final account ~~only upon the termination of the guardian's guardianship~~, unless otherwise ordered by the court. The guardian shall instead provide the court with a list of the ward's assets that remain at the time the guardianship terminates, including at the death of the ward.

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

(4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving an estate ~~which~~ that can be settled summarily under s. 867.01, the court may approve

~~such~~ the settlement and distribution by the guardian~~,~~ without ~~the necessity of~~ appointing a personal representative.

54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF COURT. The court that appointed the guardian shall have continuing jurisdiction over the guardian.

(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's estate, constitutes cause for a remedy of the court under sub. (3):

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the ward or knowingly permitting others to do so.

(d) Engaging in self–dealing.

(e) Failing to adequately provide for the personal needs of the ward from available estate assets and public benefits.

(f) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and functional capacities.

(g) Failing to act in the best interests of the ward.

(h) Failing to disclose conviction for a crime that would have prevented appointment of the person as guardian.

(i) Other than as provided in pars. (a) to (h), failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19, 54.20, 54.22, 54.25, and 54.62.

(3) REMEDIES OF THE COURT. If petitioned by any party and after finding cause as specified in sub. (2), a court may do any of the following:

(a) Order the guardian to file an inventory or other report or account required of the guardian.

(b) Require the guardian to reimburse the estate of the ward for losses incurred as the result of the guardian's breach of a duty to the ward.

(c) Impose a financial penalty on the guardian, including denial of compensation for the guardian.

(d) Remove the guardian.

(e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.

(4) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.

(5) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (4), all of the following apply:

(a) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

(b) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. (2) may retain an attorney, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2).

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

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

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

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

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

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

(6m) Provide a summary written report to the court.

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

(9m) Attend the hearing.

54.72 Guardian compensation and reimbursement. A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows:

(1) COMPENSATION. (a) Subject to the court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services.

(b) The court shall use all of the following factors in deciding whether compensation for a guardian is just and reasonable:

1. The reasonableness of the services rendered.

¶ (B) (4) Review the annual report and relevant reports on the ward's condition and placement.

2. The fair market value of the service rendered.

3. The necessity of the services.

4. Any conflict of interest of the guardian.

5. The availability of another to provide the services.

6. The value of the ward's estate.

7. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

54.74 Compensation <u>of guardian ad litem</u>. ~~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~~ <u>Unless</u> 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)~~, <u>the court shall order reasonable compensation to be paid by the county of venue to a guardian ad litem appointed under s. 54.40 (1)</u>. 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 a private ~~attorneys~~ attorney under s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing all duties required under s. 54.40 (4) and for any other acts that are approved by the court and are reasonably necessary to promote the ward's best interests.

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination. (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. ~~(7) If an application for conservatorship is filed, the~~ 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.

(2) At the ~~time of such~~ hearing for appointment of a conservator, 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~~ has all the powers and duties of a guardian of the ~~property~~ estate 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~~ individual who is appointed a guardian under s. 54.10.

(4) Any ~~person~~ individual whose estate is under conservatorship may apply to the court at any time for termination ~~thereof~~ of the conservatorship or for appointment of a successor conservator. Upon ~~such~~ receipt of the 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~~ At the hearing, the court shall, unless it is clearly shown that the applicant is an 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~~ determines at the hearing 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~~ a nominee is suitable, ~~the court may~~ appoint a successor conservator.

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

(6) The powers of a conservator cease upon removal by the court or upon appointment of a guardian for or the death of the individual whose estate is conserved.

757.48 **(1)** (a) Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an

attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.045, an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have completed 3 hours of approved continuing legal education relating to the functions and duties of a guardian ad litem under ch. 54.

(END)

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