

CHAPTER 786

DISPOSITION OF LANDS OF WARDS; SPECIFIC PERFORMANCE;
CHANGE OF NAMES; ESTABLISH HEIRSHIPS

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786.01 Conveyance of lands held in trust by persons under disability. Whenever any minor or person incompetent to manage his or her affairs is seized or possessed of any lands or interest in any lands by way of mortgage or in trust only for others, the circuit court of the proper county may, upon the petition of the guardian of the minor or incompetent person or of any person in any way interested in the real estate, make an order authorizing or compelling the minor or incompetent person to convey and assure the lands or interest in the lands to any person entitled thereto, in such manner as the court directs.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.02 Specific performance of incompetent's contract. A circuit court may authorize or compel the specific performance of any contract made by any person who becomes incompetent before the performance thereof, on the complaint or petition of the guardian of the incompetent person or of any other person interested in the contract.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.03 Specific performance; order; appeal. No order authorizing or directing any such conveyance or the performance of any such contract shall be made until after hearing the parties and being satisfied that such conveyance ought to be made or such contract ought to be performed. The court may, by such order, direct the guardian of such incompetent person, or a special guardian appointed in such proceeding, to do any act which is necessary to carry such order into effect. The court may further direct that the reasonable expenses of the proceedings be paid out of the proceeds of the sale. No appeal shall lie from such order unless notice of intention to appeal shall be filed with the court within 10 days after date of the order. The court may enforce such order by any proper proceedings.

History: 1979 c. 32 s. 63.

786.04 Specific performance; conveyance; warranties. The court may require the guardian to convey the real estate which such incompetent person might or ought to have conveyed if still competent. Where such incompetent person contracted before incompetency to convey real estate by warranty deed, the guardian shall convey by warranty deed

subject to any exceptions set forth in the incompetent's contract to convey. The guardian shall not be personally liable because of any breach of such warranty, but such warranty deed shall have the same effect for all purposes as if the incompetent had executed it at such time while competent. This section is applicable where an incompetent before incompetency made an assignment of a contract to convey real estate but did not deed to the assignee the title to the premises covered by the contract.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.05 Specific performance; recording order; effect. A certified copy of such judgment directing such conveyance, which is recorded in the office of the register of deeds in the county where the lands lie, shall be prima facie evidence of the correctness of the proceedings and of the authority of the guardian to convey. Every such conveyance shall be as effectual in passing the estate as if the incompetent were then competent and executed the conveyance.

History: 1979 c. 32 s. 63.

786.06 Realty of wards; grounds for mortgage, sale, lease. Any real estate, or interest therein belonging to a minor or to a person incompetent to manage personal affairs may be sold, mortgaged or leased:

(1) When the personal property and the income of the real estate of such minor or incompetent person are together insufficient for the payment of his or her debts or for the maintenance and education of himself or herself and family;

(2) When the interests of such minor or incompetent person require or will be substantially promoted by such disposition on account of such real estate or interest therein being exposed to waste or dilapidation, or being unproductive, or for other peculiar reasons or circumstances.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.07 Realty of wards or incompetents; application for sale or encumbrance. The application for the disposition must be made to the circuit court of the county in which the real estate or some part thereof is situated or to the circuit court of the county in which the general guardian for the minor or incompetent person has been appointed, by petition of the general guardian of the minor or of the incompetent

person or by any relative or other person in behalf of either. The petition must be verified and must set forth the facts which would authorize the selling, mortgaging or leasing of the real estate or some part of the real estate for one or more of the reasons set forth in s. 786.06. If the real estate sold or some part of the real estate is situated in a county other than that in which the proceeding is taken, a certified copy of the order confirming the sale containing the name of the purchaser, the selling price and a description of the property sold shall be recorded in the office of the register of deeds of the county in which the real estate or any part of the real estate is situated. When the minor or incompetent person has a general guardian and the application is to any court other than the court in which the general guardian was appointed, notice of hearing of the application shall be given by mailing a copy of the notice to the judge of the court that appointed the general guardian, and also to the general guardian, unless he or she is the petitioner, at least 10 days before the date of the hearing.

History: 1977 c. 449; 1979 c. 32 ss. 63, 92 (14).

786.08 Realty of wards; guardian; bond; prosecution of breach. (1) (a) When the application is made on behalf of a minor or incompetent, who has no general guardian, the court shall appoint some suitable person special guardian of the minor or incompetent in the proceeding; the special guardian shall give a bond to the judge of the court, to be filed with the clerk of the circuit court, in such sum, with such sureties, and in such form as the circuit court or judge directs, conditioned for the faithful performance of the trust reposed, for paying over, investing or accounting for all moneys that shall be received by the guardian, according to law and for observance of the directions of the court in relation to the trust.

(b) When the minor shall have a general guardian, such general guardian may be appointed special guardian in said matter; or, such general guardian, as such, may be authorized and empowered to act in and conduct such proceedings in the same manner, and with the same provisions as to an additional general guardian's bond, as is provided in said proceedings for the conduct thereof by the general guardian of incompetent persons.

(2) When the application is made on behalf of an incompetent person, the guardian of the incompetent person shall, in the discretion of the court, give a bond to the judge of the court to be filed with the clerk of the circuit court, in such sum, additional to the guardian's original bond, as the court deems necessary, with such sureties and such conditions for the faithful performance of trust reposed as prescribed by this section.

(3) In case of the breach of the conditions of such bond, it may be prosecuted for the benefit of the party injured without any direction therefor.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.09 Inquiry relative to sale or encumbrance. Upon the presentation of such petition and the filing of such bond the court or the presiding judge may proceed in a summary manner to inquire into the merits of such application or make an order referring it to some suitable person as referee to inquire into and report upon the matters contained in such petition, whose duty it shall be to examine into the truth of the representations made, to hear the parties interested in the property or otherwise interested in the application and report thereupon with all convenient speed.

History: 1979 c. 32 s. 63.

786.10 Order for lease, mortgage, sale. If, after an examination of the matter by the court or judge to which application is made, without a reference, or on the coming in of the report of the referee, and on examination of the matter, it shall satisfactorily appear that a disposition of any part of the real estate of such minor or incompetent person or any interest therein is necessary and proper, for any of the causes mentioned in s. 786.06 such court or judge shall make an order directing and authorizing the guardian to contract for the leasing, mortgaging or sale of such real estate or interest therein or of such part thereof as the court or judge shall deem proper in such manner and with such restrictions as shall be deemed expedient.

History: 1979 c. 32 ss. 63, 92 (14).

786.11 Contract for lease, mortgage, sale; approval. No lease, mortgage or sale shall be made until an agreement therefor shall have been entered into by such guardian subject to the approval of the proper court or judge. Upon the confirmation of such agreement by such court or judge the guardian must execute a lease, mortgage or deed as directed by the order of confirmation. The guardian, general or special, may expend usual and customary brokers' fees, as well as necessary expenditures for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection with the sale, all subject to review and approval by the court.

History: 1979 c. 32 s. 63.

786.12 Wards; other disposal of real estate; acquisition of real estate. The courts and judges mentioned in this chapter are further empowered and authorized to make any other disposition of the real estate of any minor or other ward mentioned herein when it shall be made to appear to such court or judge that such proposed disposition will substantially promote the interests of any such ward. The court or judge of the court in which the general guardian has been appointed is empowered to authorize the purchase in the name of such ward of any real estate within the state of Wisconsin when it shall be made to appear to such court or judge that such proposed purchase will substantially promote the interests of such ward, provided that no debt shall be incurred or assumed by such ward for purchase of any such real estate. The provisions of this chapter are applicable to all proceedings under this section.

History: 1979 c. 32 s. 63.

786.13 Platting realty of wards before sale. Whenever an order shall have been made for the sale of any such real estate and it shall be made to appear to the court or judge that the interest of the minor or other ward would be promoted by platting such real estate the court or judge may, by order, authorize the guardian either alone or together with the cotenants, if any, or other owners, to make and acknowledge a plat of such real estate in the manner prescribed in ch. 236. A plat made pursuant to such order, certified and acknowledged in manner and form prescribed in ch. 236 and approved by the court or presiding judge, shall be as valid and effectual as if made by such minor when of full age or by such incompetent person when of sound memory and understanding. After such plat shall have been duly made and recorded such guardians may make separate sales of any lot or lots, according to such plat, or of such ward's interest therein in the manner above prescribed.

History: 1979 c. 32 s. 63.

786.14 Realty of wards; will or conveyance not disregarded. No real estate or interest therein shall be sold, mortgaged or leased under the provisions of this chapter

contrary to the provisions of any will by which the same was devised or of any conveyance by which the same was transferred to such minor or incompetent person.

History: 1979 c. 32 s. 63.

786.15 Realty of wards, validity of the conveyance. Every deed, mortgage, lease or other conveyance made in good faith by the guardian of a minor or incompetent person, pursuant to any order or judgment of a circuit court, made under the provisions of this chapter, shall be as valid and effectual as if made by the minor when of full age or by the incompetent person when of sound memory and understanding.

History: 1977 c. 449; 1979 c. 32 s. 63.

A conveyance of ward's real property by a guardian acting pursuant to court order is binding upon the ward beyond the time of the latter's majority. An option is a "conveyance" within the meaning of this section. *Clear View Estates, Inc. v. Veitch*, 67 W (2d) 372, 227 NW (2d) 84.

786.16 Realty of wards; effect of sale; proceeds realty. No sale of the real estate of any minor or incompetent person shall give to such minor or incompetent person any other or greater interest or estate in the proceeds of such sale than the minor or incompetent person had in the estate so sold; but the said proceeds shall be deemed real estate of the same nature as the property sold.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.17 Realty of wards, proceeds, how applied; accounts.

(1) The court shall make an order for the application and disposition of the proceeds of any such sale or mortgage, and of the income derived from the investment thereof and of the rent accruing upon any such lease, and direct the investment of any portion thereof belonging to the minor or incompetent person which is not needed for the payment of debts or the immediate support of the person and the person's family, so as to secure the same for the benefit of the minor or incompetent person, and shall direct a return of the investment to be made on oath as soon as possible, and shall require accounts to be rendered periodically by any guardian or other person who may be entrusted with the disposition of the proceeds or the income thereof.

(2) If a guardian or other person fails or neglects to make a proper return or to render such accounts as the order of the circuit court requires the court may find the guardian or other person in default.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.18 Ward's estate is subject to particular estates. (1) If the real estate or interest therein of any minor or any incompetent person which is directed to be sold is subject to an estate for life or for years in the whole or any part thereof the order for the sale may, in the discretion of the court or presiding judge, direct that such estate shall be sold, with the reversionary estate or interest of the minor or incompetent person.

(2) After a sale under sub. (1), the court or judge shall ascertain the present value of the estate and direct the payment of the sum in gross, or the investment of the proceeds or the proper portion of the proceeds and the payment of the interest to the person having the particular estate until the expiration of the estate.

History: 1979 c. 32 s. 63; 1985 a. 29.

786.19 Ward's particular estate, disposition. Where the interest of the minor or incompetent person in real estate consists of an estate for life or for years the court or presiding judge may, by order, authorize the guardian to join with the person holding the reversionary estate in a conveyance of the property to which such interest attaches, so as to fully convey the particular estate, on receiving from the proceeds of the

sale a gross sum in satisfaction of such estate or such proceeds or the proper portion thereof to be invested, and the interest thereon paid to the person having such estate until the termination thereof; in either case the amount to be ascertained as prescribed in s. 786.18. When the proceeds or a proportionate part of such proceeds is received by the guardian for investment, the order of the court or presiding judge must provide for the investment thereof until termination of the particular estate, and then for the payment thereof to the person entitled thereto.

History: 1979 c. 32 ss. 63, 92 (14); 1979 c. 176.

786.20 Minor, or incompetent, ward of the court. From the time of application on behalf of a minor or of an incompetent person having no guardian for the disposition of property the minor or incompetent person shall be considered the ward of the court in which the application is made, so far as it relates to property, its proceeds and income.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.21 Estate of incompetent, lease, etc., of. The real estate of an incompetent person shall not be leased for more than five years, or mortgaged or disposed of otherwise than is hereinbefore authorized and directed.

History: 1979 c. 32 s. 63.

786.25 Nonresident wards, foreign guardian to convey estate; special guardian. (1) If a minor or incompetent person residing outside this state owns any right, title or interest in or to any real estate in this state and has a guardian or conservator who has been appointed in the state, territory or district or country where he or she resides and no guardian appointed in this state, the foreign guardian or conservator may file a copy of the appointment, authenticated so as to make the same receivable in evidence, in the circuit court for the county in which the real estate of the minor or incompetent person is situated.

(2) Upon such filing and proper application such foreign guardian or conservator may be licensed by the court or presiding judge to lease, mortgage, or sell the real estate of his ward in said county, or any portion thereof, or interest therein, in the same manner and upon the same terms and conditions and for the same purposes as prescribed in this chapter in the case of a guardian appointed in this state. And such court, or the presiding judge thereof may, upon the petition of such foreign guardian or conservator, appoint some suitable person residing in this state, special guardian of such minor or incompetent person to make such lease, mortgage or sale in the manner provided by this chapter.

(3) In case a special guardian shall be appointed the moneys arising from such lease, mortgage or sale shall be paid out and disposed of or invested as may be directed by the court or judge appointing such special guardian. The duly authenticated copy of the appointment of any guardian or conservator appointed in any other state, district, territory or country together with a duly authenticated copy of the appointment of the special guardian of such minor or incompetent person, shall also be properly recorded and tract indexed at the ward's expense in the office of the register of deeds of the county in which such real estate is situated.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.26 Future estates may be sold. Any real estate or interest therein which may at any time in the future be owned or possessed by any after-born child or by any person, whether in being or not, known or unknown, who shall or may become interested therein under and by virtue of any deed or other instrument, or by any last will and testament,

may be sold, mortgaged, leased or otherwise disposed of as provided in ss. 786.26 to 786.35.

History: 1979 c. 32 ss. 63, 92 (14).

786.27 Future estates, application for sale. The application for the disposition may be made to the circuit court for the county in which the real estate or some part or interest therein is situated, by the verified petition of any one or more of the parties having any title to or interest in the land. If any petitioners are minors, the petition shall be signed by their general guardian. The petition must set forth facts which would authorize the selling, mortgaging, leasing or otherwise disposing of the real estate or some part thereof, or interest therein, for one or more of the reasons set forth in s. 786.06. The lands or interests therein shall be sold, mortgaged, leased or otherwise disposed of in such manner as will best promote the interests of those concerned, whether in being or not, and whether their interests are present or contingent. Notice of the application shall be given to all parties having any title to or interest in the lands, who are living at the time of the petition, except those who have joined in the petition at least 10 days prior to the date of the hearing of the application, by service of the same as provided in ch. 801 for the service of the summons in a civil action.

History: Sup. Ct. Order, 67 W (2d) 775; 1977 c. 449; 1979 c. 32 ss. 63, 92 (14).

786.28 Future estates, sale, referee bond. Upon the application being made, the circuit court must appoint some suitable person as referee, under whose direction the sale, mortgaging, leasing or other disposition of the lands or interest shall be made, which referee shall give a bond to the court in such amount, with such sureties and in such form as the court directs, conditioned as provided in s. 786.08. All proceedings had prior to June 7, 1913, under this chapter in county courts not having civil jurisdiction are hereby legalized.

History: 1977 c. 449; 1979 c. 32 ss. 63, 92 (14).

786.29 Future estates, sale, examination and report. Upon the filing of the bond, the circuit court may proceed in a summary manner to inquire into the merits of the application, or make an order directing the referee to inquire into and report upon the matters contained in the petition, and he or she shall examine the representations made, hear the parties interested in the property or otherwise interested in the application, and report thereupon with all convenient speed.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.30 Future estates, order for disposition. If, after the summary examination or on the coming in of the report of the referee, and on examination of the matter it shall satisfactorily appear that a sale, mortgage, lease or other disposition of the whole or any part of the real estate or interest therein is necessary or proper, the circuit court shall make an order directing the sale, mortgaging, leasing or other disposition of the real estate or interest therein or of such part thereof as the court deems proper to be made by the referee, in such manner and with such restrictions as deemed expedient.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.31 Future estates, approval of conveyance. No such sale, mortgage, lease or other disposition of the property may be made until an agreement therefor is entered into by the referee, subject to the approval of the circuit court. Upon the confirmation of such agreement by the court, the referee must execute a deed, mortgage, lease or other instrument of conveyance as directed by the said order of confirmation.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.32 Future estates, approved conveyance vests title.

Every deed, mortgage, lease or other conveyance made in good faith by the referee pursuant to any order or judgment of the circuit court, made under ss. 786.26 to 786.35, is valid and effectual to vest in the purchaser, mortgagee, lessee or other party under the conveyance, a good and sufficient title as against all persons having, or who may have, any title to or interest or estate in the lands, whether in being or not, under or by virtue of the terms of any deed or other instrument, or under and by virtue of any last will and testament, and the court may require any or all parties who are living having any interest in the lands to join the referee in the execution of the instrument of conveyance and release all their interests therein.

History: 1977 c. 449; 1979 c. 32 ss. 63, 92 (14).

786.33 Proceeds deemed real estate. No sale, mortgage, lease or other conveyance made as aforesaid of the real estate or any interest therein of any person, whether in being or not, shall give to such person any other or greater interest or estate in the proceeds of such sale, mortgaging or other disposition of said lands or interest therein than the person had in the estate so sold or disposed of but the said proceeds shall be deemed real estate of the same nature as the property sold.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.34 Future estates, proceeds placed in trust. The proceeds of the sale, mortgage, lease or other conveyance of the real estate, after payment under the direction of the circuit court of the costs and expenses of the proceedings, shall be paid to some designated trustee, and held, invested and disposed of in such manner and for such time as designated by the court for the benefit of such persons as may be or become interested in the lands or interests under and by virtue of the deed or other instrument or the will and testament, and the proceeds, as well as the interest and income thereof, shall at all times abide the order of the court.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.35 Future estates, disposal, proceeding in rem. The proceeding under ss. 786.26 to 786.35 shall be deemed to be a proceeding in rem against the land or interest therein, and the final order providing for the sale, mortgaging, leasing or other disposition of the same shall operate directly on said land and shall be as valid, effectual and binding as though the party to be affected thereby were then living or had a present vested interest in the same.

History: 1979 c. 32 ss. 63, 92 (14).

786.36 Changing names, court procedure. Any resident of this state, whether a minor or adult, may upon petition to the circuit court of the county where he or she resides and upon filing a copy of the notice, with proof of publication, as required by s. 786.37, if no sufficient cause is shown to the contrary, have his or her name changed or established by order of the court. If the person whose name is to be changed is a minor under the age of 14 years, the petition may be made by: both parents, if living, or the survivor of them; the guardian or person having legal custody of the minor if both parents are dead or if the parental rights have been terminated by judicial proceedings; or the mother, if the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, except that the father must also make the petition unless his rights have been legally terminated. The order shall be entered at length upon the records of the court and a duly certified copy of the record shall be filed in the office of the register of deeds of the county, who shall make an entry in a book to be kept by the register. The fee for filing a certified copy is the fee specified

under s. 59.57 (6a). If the person whose name is changed or established was born or married in this state, the clerk of the court shall send to the state registrar of vital statistics, on a form designed by the state registrar of vital statistics, an abstract of the record, duly certified, accompanied by the fee prescribed in s. 69.22, which fee the clerk of court shall charge to and collect from the petitioner. The state registrar of vital statistics shall then correct the birth record, marriage record or both, and direct the register of deeds and local registrar to make similar corrections on their records. No person engaged in the practice of any profession for which a license is required by the state may change his or her given name or his or her surname to any other given name or any other surname than that under which the person was originally licensed in the profession in this or any other state, in any instance in which the state board or commission for the particular profession, after a hearing, finds that practicing under the changed name operates to unfairly compete with another practitioner or misleads the public as to identity or otherwise results in detriment to the profession or the public. This prohibition against a change of name by a person engaged in the practice of any profession does not apply to any person legally qualified to teach in the public schools in this state, nor to a change of name resulting from marriage or divorce, nor to members of any profession for which there exists no state board or commission authorized to issue licenses or pass upon the qualifications of applicants or hear complaints respecting conduct of members of the profession. Any change of name other than as authorized by law is void.

History: 1973 c. 263; 1977 c. 449; 1979 c. 32 ss. 63, 92 (14); 1979 c. 221; 1981 c. 245; 1983 a. 447; 1985 a. 315 s. 22.

Although a woman may adopt the surname of her husband subsequent to marriage by customarily using that name, there is no common law, case law or statutory requirement in Wisconsin that she do so, and if the woman continues to use her antenuptial surname, her name is unchanged by the fact that marriage has occurred. *In re Petition of Kruzal*, 67 W (2d) 138, 226 NW (2d) 458.

See note to 452.05, citing 66 Atty. Gen. 7.

Women's names in Wisconsin: *In Re Petition of Kruzal*. MacDougall, 1975 WBB No. 4.

786.37 Change of name, notice of application. Before making an application to the court for changing or establishing a name the applicant must cause a notice thereof to be published, as a class 3 notice, under ch. 985, stating therein the nature of the application, the time and place when and where the same will be made. This section shall not apply to the name change of a minor if parental rights to the minor have been terminated and guardianship and legal custody transferred under subch. VIII of ch. 48, and the minor has been placed in a permanent foster home, where the guardian

and legal custodian have petitioned to change such minor's name to the name or names of the minor's foster parents.

History: 1975 c. 261; 1979 c. 32 s. 63; 1979 c. 330 s. 13.

786.50 Limitation of action to recover estate sold. An action for the recovery of any estate sold by a guardian on a cause of action which accrues prior to July 1, 1980 may not be maintained by the ward or by any person claiming under the ward unless it is commenced within 5 years after the termination of the guardianship. Minors and others under legal disability at the time when the cause of action subject to this section accrues may commence their action at any time within 5 years after the removal of the disability.

History: 1979 c. 32 s. 63; 1979 c. 176; 1979 c. 323 s. 24.

786.52 When sale not avoided. A sale of real estate by a guardian is not avoided by any irregularity in the proceedings if it appears that the guardian was licensed to make the sale by the circuit court having jurisdiction; that the guardian gave a bond which was approved by the court before the sale if a bond was required; that the guardian gave the notice of the time and place of sale as prescribed by law; that the premises were sold accordingly and the sale confirmed by the court, and that the premises are held by one who purchased them in good faith.

History: 1977 c. 449; 1979 c. 32 s. 63.

786.54 Liability for neglect. If there is any neglect or misconduct in the proceedings of the guardian in relation to a sale, by which any person interested in the estate is damaged, the aggrieved party may recover in an action on the bond of the guardian or otherwise.

History: 1979 c. 32 s. 63.

786.56 When sale valid. The validity of a sale made by a guardian may not be questioned by any person claiming under any title that is not derived from or through the deceased persons or the ward, on account of any irregularity in the proceedings if it appears that the guardian was licensed to make the sale by a court having jurisdiction and that the guardian did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

History: 1979 c. 32 s. 63; 1979 c. 176.

786.58 Liability for fraud. A guardian who fraudulently sells real estate of the ward, contrary to the provisions of law, is liable in double the value of the land sold as damages, to be recovered in an action by any person having an inheritance therein.

History: 1979 c. 32 s. 63; 1979 c. 176.