CHAPTER 54

GUARDIANSHIPS AND CONSERVATORSHIPS

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 50, 51, 54, 55, and 58.

SUBCHAPTER I

DEFINITIONS

54.01 Definitions. In subchs. I to VI:

(1) "Activities of daily living" means activities relating to the performance of self care, work, and leisure activities, including dressing, eating, grooming, mobility, and object manipulation.

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

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

(4) "Court" means the circuit court or judge assigned to exercise probate jurisdiction or the assignee of the judge under s. 757.68 (4m) or 851.73 (1) (g) who is assigned relevant authority.

(5) "Decedent" means the deceased individual whose estate is subject to administration.

(6) "Degenerative brain disorder" means the loss or dysfunction of an individual's brain cells to the extent that he or she is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.

(7) "Depository account" has the meaning given in s. 815.18 (2) (e).

(8) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely, substantially impairs an individual from adequately providing for his or her own care or cus-

tody, and constitutes a substantial handicap to the afflicted individual. The term does not include dementia that is primarily caused by degenerative brain disorder.

(9) "Durable power of attorney" has the meaning given in s. 244.02 (3).

(9g) "Foreign court" means a court of a foreign state having competent jurisdiction of a foreign ward.

(9i) "Foreign guardian" means a guardian appointed by a foreign court for a foreign ward.

(9k) "Foreign guardianship" means a guardianship issued by a foreign court.

(9m) "Foreign state" means a state other than this state.

(9p) "Foreign ward" means an individual who has been found by a foreign court to be incompetent or a spendthrift and who is subject to a guardianship order or related order in a foreign state.

(10) "Guardian" means a person appointed by a court under s. 54.10 to manage the income and assets, which may include, by court order, digital property, as defined in s. 711.03 (10), and provide for the essential requirements for health and safety and the personal needs of a minor, an individual found incompetent, or a spendthrift.

(11) "Guardian of the estate" means a guardian appointed to comply with the duties specified in s. 54.19 and to exercise any of the powers specified in s. 54.20.

(12) "Guardian of the person" means a guardian appointed to comply with the duties specified in s. 54.25 (1) and to exercise any of the powers specified in s. 54.25 (2).

(13) "Heir" means any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent. The state is an heir of the decedent and a person interested under s. 45.37 (10) and (11) [s. 45.51 (10) and (11)] when the decedent was a member of the Wisconsin Veterans Home at King or at the facilities operated by the department of veterans affairs under s. 45.50 at the time of the decedent's death.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(14) "Impairment" means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities.

(15) "Incapacity" means the inability of an individual effectively to receive and evaluate information or to make or communicate a decision with respect to the exercise of a right or power.

(16) "Individual found incompetent" means an individual who has been adjudicated by a court as meeting the requirements of s. 54.10 (3).

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

(a) For purposes of a petition for guardianship, 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, an heir, as defined in s. 851.09, of the proposed ward that may be reasonably ascertained with due diligence.

4. Any individual who is nominated as guardian, any individual who is appointed to act as guardian or fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, any person appointed as agent under a power of attorney for health care, as defined in s. 155.01 (4), or any person appointed as agent under a durable power of attorney under ch. 244.

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 subsequent to an order for guardianship, any of the following:

1. The guardian.

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

3. The county of venue, through the county's corporation counsel, if the county has an interest.

4. Any person appointed as agent under a durable power of attorney under ch. 244, unless the agency is revoked or terminated by a court.

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

(18) "Least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

(19) "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.

(20) "Minor" means an individual who has not attained the age of 18 years.

(21) "Mortgage" means any agreement or arrangement in which property is used as security.

(22) "Other like incapacities" means those conditions incurred at any age that are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, and that produce a condition that substantially impairs an individual from providing for his or her own care or custody.

(23) "Personal representative" means any individual to whom letters to administer a decedent's estate have been granted by the court or by the probate registrar under ch. 865, but does not include a special administrator.

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

(25) "Property" means any interest, legal or equitable, in real or personal property, without distinction as to kind, including money, rights of a beneficiary under a contractual arrangement, digital property, as defined in s. 711.03 (10), choses in action, and anything else that may be the subject of ownership.

(26) "Proposed ward" means a minor, an individual alleged to be incompetent, or an alleged spendthrift, for whom a petition for guardianship is filed.

(27) "Psychologist" means a licensed psychologist, as defined in s. 455.01 (4).

(28) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

(29) "Sale" includes an option or agreement to transfer whether the consideration is cash or credit. It includes exchange, partition, and settlement of title disputes. The intent of this subsection is to extend and not to limit the meaning of "sale."

(30) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long−term treatment and support and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

(31) "Spendthrift" means a person who, because of the use of alcohol or other drugs or because of gambling or other wasteful course of conduct, is unable to manage effectively his or her financial affairs or is likely to affect the health, life, or property of himself, herself, or others so as to endanger his or her support and the support of his or her dependents, if any, or expose the public to responsibility for his or her support.

(32) "Standby conservator" means an individual designated by the court under s. 54.76 (2) whose appointment as conservator becomes effective immediately upon the death, resignation, or court's removal of the initially appointed conservator, or if the initially appointed conservator is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(33) "Standby guardian" means an individual designated by the court under s. 54.52 (2) whose appointment as guardian becomes effective immediately upon the death, resignation, or court's removal of the initially appointed guardian, or if the initially appointed guardian is temporarily or permanently unable, unavailable, or unwilling to fulfill his or her duties.

(34) "Successor conservator" means an individual appointed under s. 54.76 (9).

(35) "Successor guardian" means an individual appointed under s. 54.54.

(36) "Surviving spouse" means an individual who was married to the decedent at the time of the decedent's death. "Surviving spouse" does not include any of the following:

(a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, if the decree or judgment is not recognized as valid in this state, unless the 2 subsequently participated in a marriage ceremony purporting to marry each other or they subsequently held themselves out as husband and wife.

(b) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a 3rd individual.

(c) An individual who was party to a valid proceeding concluded by an order purporting to terminate all property rights based on the marriage with the decedent.

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

(38) "Will" includes a codicil and any document incorporated by reference in a testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy, unless the copy has been proven as a will under s. 856.17, but "will" does include a properly executed duplicate original.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268; 2005 a. 264; 2005 a. 387 ss. 100, 295 to 297, 301, 303 to 305; Stats. 2005 s. 54.01; 2005 a. 388; 2007 a. 45; 2007 a. 97 s. 231; 2009 a. 319; 2011 a. 126; 2015 a. 300.

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

Landmark Reforms Signed Into Law: Guardianship and Adult Protective Services. Abramson & Raymond. Wis. Law. Aug. 2006.

SUBCHAPTER II

APPOINTMENT OF GUARDIAN

54.10 Appointment of guardian. (1) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual if the court determines that the individual is a minor.

(2) (a) A court may appoint a guardian of the estate for an individual if the court finds by clear and convincing evidence that the individual is aged at least 18 years and is a spendthrift.

(b) In appointing a guardian of the estate under this subsection or determining what powers are appropriate for the guardian of the estate to exercise under s. 54.18 or 54.20, the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4).

2. The medical or psychological report provided under s. 54.36 (1) and any additional medical, psychological, or other evaluation ordered by the court under s. 54.40 (4) (e) or offered by a party and received by the court.

3. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian of the estate is the least restrictive means to provide for the individual's need for a substitute decision maker.

4. The preferences, desires, and values of the individual with regard to personal needs or property management.

5. The nature and extent of the individual's care and treatment needs and property and financial affairs.

6. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.

7. 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.

8. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

9. Whether the effect on the individual's evaluative capacity is likely to be temporary or long term, and whether the effect may be ameliorated by appropriate treatment.

10. Other relevant evidence.

(c) Before appointing a guardian of the estate under this subsection or determining what powers are appropriate for the guardian of the estate to exercise under s. 54.18 or 54.20, the court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision respecting the individual.

(d) In appointing a guardian of the estate under this subsection, the court shall authorize the guardian of the estate to exercise only those powers under ss. 54.18 and 54.20 that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(3) (a) A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is aged at least 17 years and 9 months.

2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate deci-

sions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

a. The individual has property that will be dissipated in whole or in part.

b. The individual is unable to provide for his or her support.

c. The individual is unable to prevent financial exploitation.

4. The individual's need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept.

(b) Unless the proposed ward is unable to communicate decisions effectively in any way, the determination under par. (a) may not be based on mere old age, eccentricity, poor judgment, or physical disability.

(c) In appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers are appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the court shall consider all of the following:

1. The report of the guardian ad litem, as required in s. 54.40 (4).

2. The medical or psychological report provided under s. 54.36 (1) and any additional medical, psychological, or other evaluation ordered by the court under s. 54.40 (4) (e) or offered by a party and received by the court.

3. Whether the proposed ward has engaged in any advance planning for financial and health care decision making that would avoid guardianship, including by executing a durable power of attorney under ch. 244, a power of attorney for health care, as defined in s. 155.01 (10), a trust, or a jointly held account.

4. Whether other reliable resources are available to provide for the individual's personal needs or property management, and whether appointment of a guardian is the least restrictive means to provide for the individual's need for a substitute decision maker.

5. The preferences, desires, and values of the individual with regard to personal needs or property management.

6. The nature and extent of the individual's care and treatment needs and property and financial affairs.

7. Whether the individual's situation places him or her at risk of abuse, exploitation, neglect, or violation of rights.

8. Whether the individual can adequately understand and appreciate the nature and consequences of his or her impairment.

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

10. The individual's understanding and appreciation of the nature and consequences of any inability he or she may have with regard to personal needs or property management.

11. 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.

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

13. Any mental disability, alcoholism, or other drug dependence of the individual and the prognosis of the mental disability, alcoholism, or other drug dependence.

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

15. Whether the effect on the individual's evaluative capacity is likely to be temporary or long term, and whether the effect may be ameliorated by appropriate treatment.

16. Other relevant evidence.

(d) Before appointing a guardian under this subsection, declaring incompetence to exercise a right under s. 54.25 (2) (c), or determining what powers are appropriate for the guardian to exercise under s. 54.18, 54.20, or 54.25 (2) (d), the court shall determine if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision respecting the individual's competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.11 (1) whether or not protective placement is made.

(e) In appointing a guardian under this subsection, the court shall authorize the guardian to exercise only those powers under ss. 54.18, 54.20, and 54.25 (2) (d) that are necessary to provide for the individual's personal needs and property management and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention.

(f) 1. If the court appoints a guardian of the person under this subsection, the court shall determine if, under 18 USC 922 (g) (4), the individual is prohibited from possessing a firearm. If the individual is prohibited, the court shall order the individual not to possess a firearm, order the seizure of any firearm owned by the individual, and inform the individual of the requirements and penalties under s. 941.29.

2. a. If a court orders under subd. 1. an individual not to possess a firearm, the individual may petition that court or the court in the county where the individual resides to cancel the order.

b. The court considering the petition under subd. 2. a. shall grant the petition if the court determines that the circumstances regarding the appointment of a guardian under this subsection and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

c. If the court grants the petition under subd. 2. b., the court shall cancel the order under subd. 1. and order the return of any firearm ordered seized under subd. 1.

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the order under subd. 1. is canceled under subd. 2. c.

4. If the court orders under subd. 1. an individual not to possess a firearm or cancels under subd. 2. c. an order issued under subd. 1., the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c), a background check under s. 175.60 (9g) (a), or an accurate response under s. 165.63. No other information from the individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only to respond to a request under s. 165.63, as part of a firearms restrictions record search under s. 175.35 (2g) (c), under rules the department of justice promulgates under s. 175.35 (2g) (d), or as part of a background check under s. 175.60 (9g) (a).

(4) If the court appoints both a guardian of the person and a guardian of the estate for an individual other than an individual found to be a spendthrift, the court may appoint separate persons to be guardian of the person and of the estate, or may appoint one person to act as both.

(5) The court may appoint coguardians of the person or coguardians of the estate, subject to any conditions that the court imposes.

History: 2005 a. 387; 2007 a. 45; 2009 a. 258, 319; 2013 a. 223.

Under former s. 880.03, in evaluating a petition for a permanent guardianship on behalf of a minor filed by a non−parent when a parent objects, a court must first deter-

mine whether the party bringing the guardianship petition has shown that the child is in need of a guardian because there exist extraordinary circumstances requiring medical aid or the prevention of harm. Absent a showing of such extraordinary circumstances or need for a guardian, the court cannot appoint a guardian. Robin K. v. Lamanda M. 2006 WI 68, 291 Wis. 2d 333, 718 N.W.2d 38, 04−0767.

In a custody dispute triggered by a petition for guardianship between a birth parent and a non−parent, the threshold inquiry is whether the parent is unfit, unable to care for the child, or there are compelling reasons for awarding custody to the non−parent. Consideration of a minor's nomination of a guardian presupposes that the need for a guardian has been established. If it is determined that the birth parent is fit and able to care for the child and no compelling reasons exist to appoint a non−parent guardian, the minor's nomination of a guardian becomes moot. Nicholas C. L. v. Julie R. L. 2006 WI App 119, 293 Wis. 2d 819, 719 N.W.2d 508, 05−1754.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

Section 752.31 (2) (d) and (3) provide that appeals in protective placement cases under ch. 55 are heard by a single court of appeals judge while the general rule under s. 752.31 (1) is that cases disposed of on the merits, including guardianship orders under ch. 54, are heard by a 3−judge panel. When an appeal is taken from a single action granting both a guardianship and protective placement petition, the appeal is to be decided by a 3−judge panel. Waukesha County v. Genevieve M. 2009 WI App 173, 322 Wis. 2d 131, 776 N.W.2d 640, 09−1755.

Barstad, 118 Wis. 2d 549, rejected the "best interests" standard in custody disputes between parents and third parties. *Barstad* has not been quashed by the enactment of ch. 54. A best interests standard that does not consider a parent's constitutional rights is incomplete. To conclude otherwise, parents would routinely have parental rights stripped from them simply because a 3rd party might be better situated to tend to the needs of the child. Cynthia H. v. Joshua O. 2009 WI App 176, 322 Wis. 2d 615, 777 N.W.2d 664, 08−2456.

An Intro to Minor Guardianship Actions. Viney. Wis. Law. Sept. 2014.

54.12 Exceptions to appointment of guardian. **(1)** SMALL ESTATES. If a minor or an individual found incompetent, except for his or her incapacity, is entitled to possess assets valued at the amount specified in s. 867.03 (1g) or less, any court in which an action or proceeding involving the assets is pending may, without requiring the appointment of a guardian, order that the register in probate do one of the following:

(a) Deposit the property in an interest−bearing account in a bank or other financial institution insured by an agency of the federal government or invest the property in interest−bearing obligations of the United States. The fee for services of the register in probate in depositing and disbursing the funds under this paragraph is prescribed in s. 814.66 (1) (n).

(b) Make payment to the parent of the minor or to the person having actual custody of the minor.

(c) Make payment to the minor.

(d) Make payment to the person having actual or legal custody of the incompetent or to the person providing for the care and maintenance of the individual found incompetent for the benefit of the individual found incompetent.

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

(f) Make payment to the trustee of any trust created for the benefit of the ward.

(2) INFORMAL ADMINISTRATION. If an individual found incompetent, except for his or her incapacity, a minor, or a spendthrift is entitled to possession of assets of a value of the amount specified in s. 867.03 (1g) (intro.) 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 specified in sub. (1) (a) to (f).

(b) With the approval of the guardian ad litem of the minor or individual found incompetent, take one of the actions specified in sub. (1) (a) to (f) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court 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. 54.854 to 54.898 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486; 2005 a. 134; 2005 a. 387 ss. 100, 308, 310 to 312; Stats. 2005 s. 54.12; 2007 a. 96.

SUBCHAPTER III

NOMINATION OF GUARDIAN; POWERS AND DUTIES; LIMITATIONS

54.15 Selection of guardian; nominations; preferences; other criteria. The court shall consider all of the following in determining who is appointed as guardian:

(1) OPINIONS OF PROPOSED WARD AND FAMILY. The court shall take into consideration the opinions of the proposed ward and of the members of his or her family as to what is in the best interests of the proposed ward. However, the best interests of the proposed ward shall control in making the determination when the opinions of the family are in conflict with those best interests.

(1m) POTENTIAL CONFLICTS OF INTEREST. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest.

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

(3) AGENT UNDER A POWER OF ATTORNEY FOR HEALTH CARE. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.

(4) PERSON NOMINATED BY PROPOSED WARD. (a) Any individual other than a minor aged 14 years or younger may, if the individual does not have incapacity to such an extent that he or she is unable to form a reasonable and informed preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating another to be appointed as guardian of his or her person or estate or both if a guardian is in the future appointed for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment is not in the best interests of the proposed ward.

(b) A minor who is 14 years or older may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination.

(c) If neither parent of a minor who is 14 years or older is suitable and willing to be appointed guardian, the court may appoint the nominee of the minor.

(5) PARENT OF A PROPOSED WARD. If one or both of the parents of a minor or an individual with developmental disability or with serious and persistent mental illness are suitable and willing, the court shall appoint one or both as guardian unless the court finds that the appointment is not in the proposed ward's best interest. The court shall consider a proposed ward's objection to the appointment of his or her parent.

(6) TESTAMENTARY 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 for any of his or her minor children who is in need of guardianship, unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests. For an individual who is aged 18 or older and is found to be in need of guardianship by reason of a developmental disability or serious and persistent mental illness, 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 a will.

(7) PRIVATE NONPROFIT CORPORATION OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188 or an unincorporated association that is approved by the court may be appointed as guardian of the person or of the estate or both, of a proposed ward, if no suitable individual is available as guardian and the department, under rules promulgated under this chapter, finds the corporation or association to be a suitable agency to perform such duties.

Cross−reference: See also ch. DHS 85, Wis. adm. code.

(8) 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 is currently charged with or 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. 89, 202, or 440 to 480 or by the laws of another state for the practice of a profession or occupation has been suspended or revoked.

4. The proposed guardian is listed under s. 146.40 (4g) (a) 2.

(b) If par. (a) 1., 2., 3., or 4. 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., 3., or 4.

(9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No individual may have guardianship of the person of more than 5 adult wards who are unrelated to the individual, except that a court may, under circumstances that the court determines are appropriate, waive this limitation to authorize appointment of the individual as guardian of the person of additional adult wards who are unrelated to the individual. A corporation or association that is approved by the department under sub. (7) is not limited in the number of adult wards for which the corporation or association may accept appointment by a court as guardian.

History: 2005 a. 387 ss. 100, 346, 348, 349, 351, 354, 356, 469, 470, 506; 2007 a. 45; 2013 a. 20; 2015 a. 55.

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

A parent's fundamental liberty interest in the care, custody, and control of a child is not violated if his or her nomination of a guardian is not presumed to be in the child's best interests when the parent is unable to have custody and provide care. The preference in sub. (2) [now sub. (5)] does not address a parent's wishes for another to act as guardian when the parent is not suitable to act as guardian. The circuit court is to only give the nomination of a surviving parent who is not suitable to be a guardian the weight that the circuit court considers appropriate in light of all the evidence. Anna S. v. Diana M. 2004 WI App 45, 270 Wis. 2d 411, 678 N.W.2d 285, 02−2640.

In a custody dispute triggered by a petition for guardianship between a birth parent and a non−parent, the threshold inquiry is whether the parent is unfit, unable to care for the child, or there are compelling reasons for awarding custody to the non−parent. Consideration of a minor's nomination of a guardian presupposes that the need for a guardian has been established. If it is determined that the birth parent is fit and able to care for the child and no compelling reasons exist to appoint a non−parent guardian, the minor's nomination of a guardian becomes moot. Nicholas C. L. v. Julie R. L. 2006 WI App 119, 293 Wis. 2d 819, 719 N.W.2d 508, 05−1754.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

Barstad, 118 Wis. 2d 549, rejected the "best interests" standard in custody disputes between parents and third parties. *Barstad* has not been quashed by the enactment of ch. 54. A best interests standard that does not consider a parent's constitutional rights is incomplete. To conclude otherwise, parents would routinely have parental rights stripped from them simply because a 3rd party might be better situated to tend to the needs of the child. Cynthia H. v. Joshua O. 2009 WI App 176, 322 Wis. 2d 615, 777 N.W.2d 664, 08−2456.

"Parent" as defined in s. 48.02 (13) as "either a biological parent . . . or a parent by adoption," applies to an action for guardianship of a minor. The action is a proceeding under ch. 48 as s. 48.14 provides that the juvenile court has exclusive jurisdiction over the appointment and removal of a guardian of the person for a child under ch. 54. Application of a definition of "parent" that might include persons who are not biological or adoptive parents also runs afoul of *Barstad*. Under *Barstad*, a person who is not a biological or adoptive parent of a child is a 3rd party who cannot become the child's guardian over the biological or adoptive parent's objection absent compelling reasons, such as the unfitness of the biological or adoptive parent. Wendy M. v. Helen K., 2010 WI App 90, 327 Wis. 2d 749; 787 N.W.2d 848, 09−0720.

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) Advocate for the ward's best interests, 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.

(d) Notify the court of any change of address of the guardian or ward.

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

(a) Lend funds of the ward to himself or herself.

(b) Lend funds of the ward to another individual or to an entity, unless the court first approves the terms, rate of interest, and any requirement for security.

(c) Purchase property of the ward, except at fair market value, subject to ch. 786, and with the approval of the court.

(4) 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.

History: 2005 a. 387 ss. 100, 397, 401, 516.

54.19 Duties of guardian of the estate.

Subject to s. 54.18 (1) and except as specifically limited in the order of appointment, the guardian of the estate shall, following any applicable procedures of s. 54.22, 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) Take possession of the ward's real and personal property, of any rents, income, and benefits accruing from the property, and of any proceeds arising from the sale, mortgage, lease, or exchange of the property, and prepare an inventory of these. Subject to this possession, the title of all the income and assets of the ward and the increment and proceeds of the income and assets of the ward remains vested in the ward and is not vested in the guardian.

(2) Retain, expend, distribute, sell, or invest the ward's property, rents, income, benefits, and proceeds and account for all of them, subject to chs. 786 and 881.

(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.

(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, pay the legally enforceable debts of the ward, including by filing tax returns and paying any taxes owed, from the ward's estate and income and assets.

(8) File, with the register of deeds of any county in which the ward possesses real property of which the guardian has actual

knowledge, a sworn and notarized statement that specifies the legal description of the property, the date that the ward is determined to be incompetent, and the name, address, and telephone number of the ward's guardian and any surety on the guardian's bond.

(9) For a ward who receives governmental benefits for which a representative payee is appropriate, if no representative payee is appointed, apply to be appointed the ward's representative payee, or ensure that a representative payee is appointed.

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

History: 2005 a. 387 ss. 100, 388, 413; 2007 a. 45.

54.20 Powers of guardian of the estate. (1) STANDARD. In exercising the powers under this section, the guardian of the estate shall use the judgment and care that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, including the permanent, rather than speculative, disposition of their funds and consideration of the probable income and safety of their capital. In addition, in exercising powers and duties under this section, the guardian of the estate shall consider, consistent with the functional limitations of the ward, all of the following:

(a) The ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs.

(b) The ward's personal preferences and desires with regard to managing his or her activities of daily living.

(c) The least restrictive form of intervention for the ward.

(2) POWERS REQUIRING COURT APPROVAL. The guardian of the estate may do any of the following with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires:

(a) Make gifts, under the terms, including the frequency, amount, and donees specified by the court in approval of a petition under s. 54.21.

(b) Transfer assets of the ward to the trustee of any existing revocable living trust that the ward has created for himself or herself and any dependents, or, if the ward is a minor, to the trustee of any trust created for the exclusive benefit of the 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 the ward has appointed by a written instrument that is executed after the ward attains age 14.

(c) Establish a trust as specified under 42 USC 1396p (d) (4) 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) Ascertain, establish, and exercise any rights available to the ward under a retirement plan or account.

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

(g) Release or disclaim, under s. 854.13, any interest of the ward that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.

(h) If appointed for a married ward, exercise any management and control right over the marital property or property other than marital property and any right in the business affairs that the married ward could exercise under ch. 766 if the ward were not an individual found incompetent, consent to act together in or join in any transaction for which consent or joinder of both spouses is required, or execute under s. 766.58 a marital property agreement with the ward's spouse or, if appointed for a ward who intends to marry, with the ward's intended spouse, but may not make, amend or revoke a will.

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

(j) 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.

(k) In all cases in which the court determines that it is advantageous to continue the business of a ward, continue the business on any terms and conditions specified in the order of the court.

(L) Apply to the court for adjustment of any claims against the ward incurred before entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 54.47. The court shall by order fix the time and place it will adjust claims and the time within which all claims shall be presented. Notice of these times and the place shall be given by publication as provided in s. 879.05 (4), and ch. 859 generally shall apply. 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 over which the circuit court has jurisdiction.

(m) Access the ward's digital property in accordance with s. 711.08.

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

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

(b) Enter into a contract, other than a contract under 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 financial records.

(e) Apply for public and private benefits.

(f) Retain any real or personal property that the ward possesses when the guardian is appointed or that the ward acquires by gift or inheritance during the guardian's appointment.

(g) Subject to ch. 786, sell, mortgage, pledge, lease, or exchange any asset of the ward at fair market value.

(h) Invest and reinvest the proceeds of sale of any assets of the ward and any of the ward's other moneys in the guardian's possession in accordance with ch. 881.

(i) Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786, invest the proceeds of sale of any assets of the ward and any of the ward's other moneys in the guardian's possession in the real or personal property that is determined by the court to be in the best interests of the estate of the ward.

(j) Settle all claims and accounts of the ward and appear for and represent the ward in all actions and proceedings except those for which another person is appointed.

(k) 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.

History: 2005 a. 387 ss. 100, 380, 383, 390, 391, 393, 395, 396, 399, 415, 417; 2015 a. 300.

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

A guardian is not authorized to make gifts from the guardianship estate to effectuate an estate plan that would avoid future death taxes. Michael S.B. v. Berns, 196 Wis. 2d 920, 540 N.W.2d 11 (Ct. App. 1995), 95−0580.

A guardian may not sue for the loss of society and companionship of a ward, nor bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999), 98−3285.

An interested party without a direct financial stake in the action had standing to appeal an order order permitting the termination of the ward's life lease in real estate. Carla S. v. Frank B. 2001 WI App 97, 242 Wis. 2d 605, 626 N.W.2d 330, 99−3012.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.21 Petition to transfer ward's assets to another. (1) In this section:

(a) "Disabled" has the meaning given in s. 49.468 (1) (a) 1.

(b) "Other individual" means any of the following:

1. The ward's spouse, if any.

2. The ward's close friend, if any, and if the close friend meets the requirements of s. 50.94 (3) (e) 1. and 2.

3. The guardian ad litem of the ward's minor child, if any.

4. The ward's disabled child, if any.

5. Any of the ward's siblings who has an ownership interest in property that is co−owned with the ward.

6. Any of the ward's children who provides care for the ward as specified in 42 USC 1396p (c) (2) (A) iv.

(c) "Will, trust, or other instrument" includes a revocable or irrevocable trust, a durable power of attorney, or a marital property agreement.

(2) A guardian or other individual who seeks an order authorizing and directing the guardian of the estate to transfer any of a ward's income or 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 income and assets 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 income and assets of the ward that is the subject of the petition, the proposed disposition of the property, and the reasons for the disposition.

(d) The wishes, if ascertainable, 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 current and likely future effect of the proposed transfer of assets on the ward's eligibility for public benefits, including medical assistance or a benefit under s. 46.27.

(h) Whether the guardian of the person and the guardian of the estate, if not the petitioner, agree with or object to the transfer.

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

1. Any presumptive adult heirs of the ward who can be ascertained with reasonable diligence.

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

(3) (a) If a ward has previously executed a will, trust, or other instrument for nontestamentary transfer 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, trust, or other instrument for nontestamentary transfer became known to the petitioner for nontestamentary transfer.

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

(b) If the petitioner is unable to obtain a copy of the most recently executed will or other dispositive estate planning document or is unable to determine if the ward has previously executed a will or other dispositive estate planning document, 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 other dispositive estate planning document is not otherwise available, the court may order the person who has the original will or other dispositive estate planning document 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.

(d) The petitioner and the court shall keep confidential the information in a will or other dispositive estate planning document, or a copy of the will or other dispositive estate planning document, under this subsection, and may not, unless otherwise authorized, disclose that information.

(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) If not the same as the petitioner, the guardian of the person and the guardian of the estate.

(b) Unless the court dispenses with notice under this subsection, the persons specified in sub. (2) (i), 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 impairment 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 the proposed transfer will benefit the ward, the ward's income and assets, or members of the ward's immediate family.

(d) 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) The factors specified in sub. (2) (a) to (i) and any statements or other evidence under sub. (3).

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

(6) The court may grant the petition under sub. (2) and enter an order authorizing and directing the guardian of the estate to take action requested in the petition, if the court finds and records all of the following:

(a) That the ward has incapacity to perform the act for which approval is sought and the incapacity is not likely to change positively 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, before the ward had incapacity to perform the act for which approval is sought, he or she did not manifest intent that is inconsistent with the act.

(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.

History: 2005 a. 387.

54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property. Notwithstanding s. 54.20 (3) (g), (h), and (i), a person interested in the estate of a ward may petition the court to require the guardian to sell, mortgage, pledge, lease, or exchange any asset of the estate of the ward. Following the petition and upon any notice and hearing that the court

requires, the court may so 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 that is in the best interest of the ward.

History: 2005 a. 387 s. 400.

Transfer of a disabled ward's property to a newly−established "Medicaid Payback Trust" was in his best interest and authorized by ss. 49.454 (4) and 880.19 (5) (b) [now this section]. Marjorie A. G. v. Dodge County Department of Human Services, 2003 WI App 52, 261 Wis. 2d 679, 659 N.W.2d 438, 02−1121.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.25 Duties and powers of guardian of the person.

(1) DUTIES. A guardian of the person shall do all of the following:

(a) 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 (2). That county department shall develop reporting requirements for the guardian of the person. The report shall include the location of the ward, the health condition of the ward, any recommendations regarding the ward, and a statement as to whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

(b) Endeavor to secure any necessary care or services 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 and authorization for redisclosure as appropriate.

3. Attendance 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.

5. Specific consultation with providers of health care and social services in making all necessary treatment decisions.

(2) POWERS. (a) *Rights and powers of a guardian of the person.* A guardian of the person has only those rights and powers that the guardian is specifically authorized to exercise by statute, rule, or court order. Any other right or power is retained by the ward, unless the ward has been declared incompetent to exercise the right under par. (c) or the power has been transferred to the guardian under par. (d).

(b) *Rights retained by individuals determined incompetent.* An individual determined incompetent retains the power to exercise all of the following rights, without consent of the guardian:

1. To have access to and communicate privately with the court and with governmental representatives, including the right to have input into plans for support services, the right to initiate grievances, including under state and federal law regarding resident or patient rights, and the right to participate in administrative hearings and court proceedings.

2. To have access to, communicate privately with, and retain legal counsel. Fees are to be paid from the income and assets of the ward, subject to court approval.

3. To have access to and communicate privately with representatives of the protection and advocacy agency under s. 51.62 and the board on aging and long−term care.

4. To protest a residential placement made under s. 55.055, and to be discharged from a residential placement unless the individual is protectively placed under ch. 55 or the requirements of s. 55.135 (1) are met.

5. To petition for court review of guardianship, protective services, protective placement, or commitment orders.

6. To give or withhold a consent reserved to the individual under ch. 51.

7. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.

(c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as part of a proceeding under s. 54.44 in which an individual is found incompetent and a guardian is appointed, declare that the individual has incapacity to exercise one or more of the following rights:

a. The right to consent to marriage.

b. The right to execute a will.

c. The right to serve on a jury.

d. The right to apply for an operator's license, a license issued under ch. 29, a license, certification, or permit issued under s. 89.06, 89.072, or 89.073, or a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is incapable of understanding the nature and risks of the licensed or credentialed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that an individual is incapable of applying for a license or credential is not a finding that the individual qualifies for the license or credential under applicable laws and rules.

e. The right to consent to sterilization, if the court finds that the individual is incapable of understanding the nature, risk, and benefits of sterilization, after the nature, risk, and benefits have been presented in a form that the individual is most likely to understand.

f. The right to consent to organ, tissue, or bone marrow donation.

g. The right to register to vote or to vote in an election, if the court finds that the individual is incapable of understanding the objective of the elective process. Also, in accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that an individual residing in the municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures specified in this paragraph. If a petition is filed under this subd. 1. g., the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian is not required for an individual whose sole limitation is ineligibility to vote. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, 6.93, or 7.52 (5) with the responsibility for determining challenges to registration and voting that may be directed against that elector. The determination may be reviewed as provided in s. 54.64 (2) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

2. Any finding under subd. 1. that an individual lacks evaluative capacity to exercise a right must be based on clear and convincing evidence. In the absence of such a finding, the right is retained by the individual.

3. If an individual is declared not competent to exercise a right under subd. 1. or 4., a guardian may not exercise the right or provide consent for exercise of the right on behalf of the individual. If the court finds with respect to a right listed under subd. 1. a., d., e., or f. that the individual is competent to exercise the right under some but not all circumstances, the court may order that the individual retains the right to exercise the right only with consent of the guardian of the person.

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to register to vote or to vote in an election if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of incompetence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship. The determination of the court shall be

communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. The determination may be reviewed as provided in s. 54.64 (2) (a) and (c) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

(d) *Guardian authority to exercise certain powers.* 1. A court may authorize a guardian of the person to exercise all or part of any of the powers specified in subd. 2. only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The court shall authorize the guardian of the person to exercise only those powers that are necessary to provide for the individual's personal needs, safety, and rights and to exercise the powers in a manner that is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian of the person with respect to any power to allow the individual to retain power to make decisions about which the individual is able effectively to receive and evaluate information and communicate decisions. When a court appoints a guardian for a minor, the guardian shall be granted care, custody, and control of the person of the minor.

2. All of the following are powers subject to subd. 1.:

ab. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, and subject to any limitation under s. 54.46 (2) (b), the power to give an informed consent to the voluntary receipt by the guardian's ward of a medical examination, medication, including any appropriate psychotropic medication, and medical treatment that is in the ward's best interest, if the guardian has first made a good−faith attempt to discuss with the ward the voluntary receipt of the examination, medication, or treatment and if the ward does not protest. For purposes of this subd. 2. ab., "protest" means, with respect to the voluntary receipt of a medical examination, medication, including appropriate psychotropic medication, or medical treatment, make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of the medical examination, medication, or medical treatment. "Protest" does not mean a discernible negative response to a proposed method of administration of the medical examination, medication, or medical treatment. In determining whether a medical examination, medication, or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medical examination, medication, or treatment and the likely benefits and side effects of the medical examination, medication, or treatment.

ac. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, and subject to any limitation under s. 54.46 (2) (b), the power to give informed consent, if in the ward's best interests, to the involuntary administration of a medical examination, medication other than psychotropic medication, and medical treatment that is in the ward's best interest. A guardian may consent to the involuntary administration of psychotropic medication only under a court order under s. 55.14. In determining whether involuntary administration of a medical examination, medication other than psychotropic medication, or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medical examination, medication, or treatment and the likely benefits and side effects of the medical examination, medication, or treatment.

b. Unless it can be shown by clear and convincing evidence that the ward would never have consented to research participation, the power to authorize the ward's participation in an accredited or certified research project if the research might help the ward; or if the research might not help the ward but might help others, and the research involves no more than minimal risk of harm to the ward.

c. The power to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that the ward would have elected to participate in such research; and the proposed research was reviewed and approved by the research and human rights committee of the institution conducting the research. The committee shall have determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the federal regulations for research involving human subjects for federally supported projects.

d. Unless it can be shown by clear and convincing evidence that the ward would never have consented to any experimental treatment, the power to consent to experimental treatment if the court finds that the ward's mental or physical status presents a life−threatening condition; the proposed experimental treatment may be a life saving remedy; all other reasonable traditional alternatives have been exhausted; 2 examining physicians have recommended the treatment; and, in the court's judgment, the proposed experimental treatment is in the ward's best interests.

e. The power to give informed consent to receipt by the ward of social and supported living services.

f. The power to give informed consent to release of confidential records other than court, treatment, and patient health care records and to redisclosure as appropriate.

g. The power to make decisions related to mobility and travel.

i. The power to choose providers of medical, social, and supported living services.

j. The power to make decisions regarding educational and vocational placement and support services or employment.

k. The power to make decisions regarding initiating a petition for the termination of marriage.

L. The power to receive all notices on behalf of the ward.

m. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds 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 estate.

n. The power to apply for protective placement under s. 55.075 or for commitment under s. 51.20 or 51.45 (13) for the ward.

o. The power to have custody of the ward, if an adult, and the power to have care, custody, and control of the ward, if a minor.

p. Any other power the court may specifically identify.

3. In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:

a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision−making skills, and the need of the individual for wider experience.

c. Consider whether the ward's estate is sufficient to pay for the needed services.

History: 2005 a. 264 s. 221; 2005 a. 387 ss. 100, 476, 511, 513, 514; 2005 a. 451 s. 177; 2007 a. 45, 96; 2015 a. 55, 179.

The guardian of an incompetent person in a persistent vegetative state may consent to the withdrawal or withholding of life−sustaining medical treatment without prior court approval if the guardian determines that the withdrawal or withholding is in the

ward's best interests. In Matter of Guardianship of L.W. 167 Wis. 2d 53, 482 N.W.2d 60 (1992).

The guardian of a person who became incompetent after voluntarily entering a nursing home with 16 or more beds may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995). See also s. 54.34 (2m).

A guardian may not sue for the loss of society and companionship of a ward, nor bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999), 98−3285.

The holding in *Guardianship of L.W.* does not extend to persons who are not in a persistent vegetative state. However, if the guardian of the person not in a persistent vegetative state demonstrates by a clear statement of the ward made while competent that withdrawal of medical treatment is desired, it is in the patient's best interest to honor those wishes. Spahn v. Eiseberg, 210 Wis. 2d 557, 563 N.W.2d 485 (1997), 95−2719.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

SUBCHAPTER IV

PROCEDURES

54.30 Jurisdiction and venue. (1) JURISDICTION. Except as provided in s. 54.38 (1), the circuit court has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any individual, once granted, shall extend to all of the ward's income and assets in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786. Jurisdiction under this subsection also extends to the petition by a foreign guardian for the receipt and acceptance of a foreign guardianship, except as provided in s. 54.38 (1m) and, if the petition is granted, to the accepted guardianship.

(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 proposed ward or of the county in which the 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 in which the nonresident or any assets of the nonresident may be found or of the county in which the petitioner proposes that the proposed ward resides. A petition for receipt and acceptance of a foreign guardianship shall be directed to the circuit court of the county in which the foreign ward resides or intends to reside.

(3) CHANGE OF VENUE. (a) *Original proceeding.* The court in which a petition is first filed shall determine venue. The court shall direct that proper notice be given to any potentially responsible or affected county. Proper notice is given to a potentially responsible or affected county if written notice of the proceeding is sent by certified mail to the county's clerk and corporation counsel. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, the court shall determine that venue lies in the county in which the petition is filed under sub. (2) or in another county, as appropriate. If the court determines that venue lies in another county, the court shall order the entire record certified to the proper court. A court in which a subsequent petition is filed shall, if it is satisfied that an earlier filing took place in another court, summarily dismiss the petition. If any potentially responsible or affected county or party objects to the court's finding of venue, the court may refer the issue to the department for a determination of the county of residence under s. 51.40 (2) (g) and may suspend ruling on the motion for change of venue until the determination under s. 51.40 (2) (g) is final.

(b) *Change of residence of ward.* If a ward changes residence from one county to another county within the state, venue may be transferred to the ward's new county of residence under the following procedure:

1. An interested 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 and corporation counsel 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.

History: 2005 a. 387 ss. 100, 306, 313 to 316.

Standards for courts to follow when confronted with the transfer of interstate guardianships based on principles of comity and the orderly administration of justice are set out. Grant County Department of Social Services v. Unified Board of Grant and Iowa Counties, 2005 WI 106, 283 Wis. 2d 258, 700 N.W.2d 863, 03−0634.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.34 Petition for guardianship or for receipt and acceptance of a foreign guardianship. (1) Any person may petition for the appointment of a guardian for an individual. The petition shall state all of the following, if known to the petitioner:

(a) The name, date of birth, residence, and post−office address of the proposed ward and, if the proposed ward is a minor, whether the minor has been adopted.

(b) The specific nature of the proposed ward's alleged incapacity 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 all interested parties.

(i) The name and post−office address of the person or institution, 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 is the petitioner, 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 and, if limited, the specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.

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

(p) Whether the petitioner is aware of any guardianship or conservatorship or related pending or ordered proceeding involving the proposed ward in another state or county and, if so, the details of the guardianship, conservationship, or related processings.

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

(2m) Whenever a petition for guardianship on the ground of incompetency is filed with respect to an individual who resides in

a facility licensed for 16 or more beds, a petition for protective placement of the individual shall also be filed.

(3) A petition for the receipt and acceptance by this state of a foreign guardianship of a foreign ward who resides in or intends to move to this state may include other petitions related to the foreign guardianship, such as a petition to modify the terms of the foreign guardianship, and shall include all of the following:

(a) A certified copy of the foreign guardianship order that includes all of the following:

1. All attachments that describe the duties and powers of the foreign guardian.

2. All amendments or modifications to the foreign guardianship order that were entered after issuance of the original foreign guardianship order, including any order to transfer the foreign guardianship.

(b) The address of the foreign court that issued the foreign guardianship order.

(c) A listing of any other guardianship petitions for the foreign ward that are pending or that have been filed in any jurisdiction at any time within 24 months before the filing of the petition under this subsection and the names and addresses of the courts in which the petitions have been filed.

(d) The petitioner's name, residence, current address, and any relationship of the petitioner to the foreign ward other than as foreign guardian.

(e) The name, age, principal residence, and current address of the foreign ward.

(f) The name and address of any spouse of the foreign ward and any adult children, parents, or adult siblings of the foreign ward. If the foreign ward has no spouse, adult child, parent, or adult sibling, the name and address of at least one adult who is next closest in degree of kinship, as specified in s. 990.001 (16), to the ward, if available.

(g) The name and address of any person other than the foreign guardian who is responsible for the care or custody of the foreign ward.

(h) The name and address of any legal counsel of the foreign ward, including any guardian ad litem appointed by the foreign court.

(i) The reason for the transfer of the foreign guardianship.

(j) A general statement of the foreign ward's property, its location, its estimated value, and the source and amount of any other anticipated income or receipts.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.07; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486; 2005 a. 264; 2005 a. 387 ss. 100, 317 to 328, 330; 2007 a. 97 s. 232; 2015 a. 381.

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

Sub. (1) (e) is broad enough to include a claim for support. By providing that a guardianship petition include such a potential claim, it follows that the legislature envisioned that the circuit court has the authority to adjudicate such a claim. As ch. 880 does not otherwise address support nor provide guidelines as to how to determine support, a circuit court conducting a ch. 880 [now ch. 54] proceeding may look to ch. 767 for guidance. Amy Z. v. Jon T. 2004 WI App 73, 272 Wis. 2d 662, 679 N.W.2d 903, 03−0606.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

Someone's Afoot: Wisconsin's Foreign Guardianship Transfer Law. Simatic. 95 MLR (No. 3 2012).

54.36 Examination of proposed ward. (1) Whenever it is proposed to appoint a guardian on the ground that a proposed ward allegedly has incompetency or is a spendthrift, a physician or psychologist, or both, shall examine the proposed ward and furnish a written report stating the physician's or psychologist's professional opinion regarding the presence and likely duration of any medical or other condition causing the proposed ward to have incapacity or to be a spendthrift. The privilege under s. 905.04 does not apply to the report. The petitioner shall provide a copy of the report to the proposed ward or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any. Prior to the examination on which the report is based, the guardian ad litem, physician, or psychologist shall inform the proposed ward that statements made by the proposed ward may be used as a basis for a finding of incompetency or a finding that he or she is a spendthrift, that he or she has a right to refuse to participate in the examination, absent a court order, or speak to the physician or psychologist, and that the physician or psychologist is required to report to the court even if the proposed ward does not speak to the physician or psychologist. The issuance of such a warning to the proposed ward prior to each examination establishes a presumption that the proposed ward understands that he or she need not speak to the physician or psychologist. 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.

(2) A petitioner or guardian ad litem may petition the court for an order requiring the proposed ward to submit to an examination by a licensed physician or psychologist pursuant to s. 804.10 (1).

(3) A physician or psychologist who examines a proposed ward under a court order requiring the examination may, without the informed consent of the proposed ward, obtain access to the patient health care records and treatment records of the proposed ward.

History: 2005 a. 264 s. 202; 2005 a. 387 ss. 100, 459; 2007 a. 45.

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

A proposed ward's rightful refusal to participate in a court−ordered evaluation will not obstruct a guardianship and protective placement proceeding. Due process requires that the examining professional, when confronted with an uncooperative individual, engage in an independent review of all records that are available. Due process prevents the examining professional from regurgitating the opinions of other physicians and psychologists, without independently confirming the facts those opinions are based upon. Walworth County v. Therese B. 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377, 03−0967.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing. A copy of the petition, motion, or other required document 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. Failure of the petitioner to provide notice to all interested persons shall deprive the court of jurisdiction unless receipt of notice is waived by the interested person or under sub. (2) (b) 4.

(1m) NOTICE OF PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP. (a) Notice of a petition for receipt and acceptance of a foreign guardianship, unless otherwise provided, shall 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. Notice shall be served by the petitioner on all of the following:

1. The foreign ward. The notice under this subdivision shall be delivered personally, shall be in plain language and large type, and shall include all of the following:

a. A statement that the foreign ward has the right to a hearing on the petition under s. 54.44 and that any request for a hearing must be made within 30 days after the date that the petition is delivered in person.

b. A description of the procedures by which the foreign ward may exercise his or her right to a hearing.

c. A description of the consequences to the foreign ward of a transfer of the foreign guardianship from the foreign jurisdiction to this state.

2. The foreign court from which the foreign guardianship is sought to be transferred. Notice under this subdivision shall include a request that the foreign court provide all of the following:

a. Certification that the foreign court has no knowledge that the foreign guardian has engaged in any acts specified in s. 54.68 (2) (a) to (i), failed to perform any duties of a guardian required by the foreign jurisdiction or the foreign court, or performed any acts prohibited to a guardian by the foreign jurisdiction or the foreign court.

b. Copies of all documents filed with the foreign court that are relevant to the foreign guardianship, including the initial petition for the foreign guardianship and other filed documents relevant to the appointment of the guardian; any reports and recommendations of any guardian ad litem or other individual appointed by the foreign court to evaluate the appropriateness of the foreign guardianship; any reports of health care or mental health care practitioners that describe the capacity of the foreign ward to care for himself or herself or to manage his or her affairs; any periodic status reports on the condition of the foreign ward and his or her assets; and any order to transfer the foreign guardianship.

3. All interested persons other than the foreign ward, including any foreign legal counsel appointed or retained for the foreign ward and any foreign guardian ad litem appointed for the foreign ward. Notice under this subdivision shall include a statement that informs persons receiving notice of the right to object to the receipt and acceptance of the foreign guardianship and that any request for a hearing must be made within 30 days after the date that the petition is delivered in person, mailed, or sent by facsimile transmission.

(b) Any of the following shall deprive the court of jurisdiction to hear the petition for receipt and acceptance of the foreign guardianship:

1. Failure by the petitioner to serve notice as specified in par. (a) 1., 2., or 3.

2. Failure by the foreign court to provide the certifications and copies within 30 days after receipt of the notice specified in par. (a) 2. or to give indication of compliance within a reasonable period of time.

(2) NOTICE OF HEARING, SERVICE, AND DELIVERY. Upon the filing of a petition for guardianship of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to compliance with s. 54.34, the court shall, except as provided in sub. (3), order the petitioner to serve notice on the proposed ward and guardian, if any, and to deliver notice to interested persons of the time and place of the hearing, as follows:

(a) On the proposed ward or ward by personal service and an existing guardian, if any, by personal service or by registered or certified mail at least 10 days before the time set for hearing. If the proposed ward or ward is in custody or confinement, the petitioner shall have notice served by registered or certified mail on the proposed ward's or ward's custodian, who shall immediately serve it on the proposed ward or ward. The process server or custodian shall inform the proposed ward or ward of the complete contents of the notice and petition, motion, or other required document; certify on the notice that the process server or custodian served and informed the proposed ward or ward; and return the certificate and notice to the 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, as specified in s. 851.09, 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. The proposed guardian for the proposed ward.

9. Any other person that the court requires.

(3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. If the proposed ward is a minor, the court shall order delivery of notice by the petitioner of the time and place of the hearing to all of the following:

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

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

(c) The proposed ward, if the proposed ward is over 14 years of age.

(d) Any other person that has the legal or physical 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 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 the mailing with the court within 10 days after the notice is given.

(6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The petitioner for appointment of a temporary guardian shall give notice of the petition to the proposed ward. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship at any time under s. 54.50 (3) (d) The petitioner shall serve notice of the order for hearing on the proposed ward before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing.

History: 2005 a. 264 s. 199; 2005 a. 387 ss. 100, 334, 336, 339 to 343, 345, 357, 370; 2007 a. 45.

54.40 Guardian ad litem; appointment; duties; termination. (1) APPOINTMENT. The court shall appoint a guardian ad litem when a petition for appointment of a guardian is brought under s. 54.34 (1), when a petition for receipt and acceptance of a foreign guardianship is brought under s. 54.34 (3), to review the scope of a guardianship, to provide protective placement to an individual or order protective services under ch. 55, to review any protective placement under s. 55.18, to terminate a protective placement under s. 55.17, to expand an order of guardianship under s. 54.63, to review incompetency and terminate a guardianship under s. 54.64, to review the conduct of a guardian under s. 54.68, 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 in compliance with SCR chapter 36. No one who is an interested person in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested person may be appointed guardian ad litem in that proceeding or in any other proceeding that involves the same proposed ward or ward.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or ward 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 is not bound by, the wishes of the proposed ward or ward or the positions of others as to the best interests of the proposed ward or ward. The guardian ad litem has none of the rights or duties of a guardian.

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

(a) Interview the proposed ward or ward 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) Advise the proposed ward or ward, 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.

(c) 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 suitability of each individual interviewed to serve as guardian and concerning the statement under s. 54.15 (8).

(d) 1. Review any power of attorney for health care under ch. 155, any durable power of attorney under ch. 244 executed by the proposed ward, and any other advance planning for financial and health care decision making in which the proposed ward had engaged.

2. Interview any agent appointed by the proposed ward under any document specified in subd. 1.

3. Report to the court concerning whether or not the proposed ward's advance planning is adequate to preclude the need for guardianship.

(ds) Notify the guardian of the right to be present at and participate in the hearing, to present and cross−examine witnesses, to receive a copy of any evaluation under s. 55.11 (1) (intro.) or (2), and to secure and present a report on an independent evaluation under s. 54.42 (3).

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

(f) If applicable, inform the court and petitioner's attorney or, if none, the petitioner that the proposed ward or ward 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 ward's best interests or that the proposed ward's or ward'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.

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

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

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

(j) Report to the court on any matter that the court requests.

(5) COMMUNICATION TO A JURY. In jury trials under this chapter or ch. 55, the court or guardian ad litem may tell the jury that the guardian ad litem represents the best interests of the proposed ward or ward.

(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 ward. 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 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. 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.

History: 2005 a. 264 ss. 213 to 215; 2005 a. 387 ss. 100, 477 to 487, 496, 497; Stats. 2005 s. 54.40; 2007 a. 45; 2007 a. 96 ss. 155 to 159; 2009 a. 319.

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

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.42 Rights of proposed ward or ward.

(1) RIGHT TO COUNSEL. (a) The proposed ward or ward has the right to counsel, if any of the following occurs:

1. The proposed ward or ward requests counsel.

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

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

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

(c) If par. (a) 1., 2., or 3. applies but the proposed ward or ward is unable to obtain legal counsel, the court shall appoint legal counsel. If the proposed ward or ward is represented by counsel appointed under s. 977.08 in a proceeding under a petition for protective placement brought under s. 55.075, the court shall order the counsel appointed under s. 977.08 to represent the proposed ward or ward.

(2) RIGHT TO JURY TRIAL. The proposed ward or ward has the right to a trial by a jury if demanded by the proposed ward or 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 or ward, his or her attorney, or the guardian ad litem each 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 EXAMINATION. If requested by the proposed ward, ward, or anyone on the proposed ward's or ward's behalf, the proposed ward or ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is heard on the merits, 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) RIGHT TO PAYMENT OF EXPENSES IN CONTESTING PROCEEDINGS. If a guardian is appointed, the court shall, if the court determines it reasonable, allow payment from the ward's income or assets of expenses incurred by the ward in contesting the appointment. These expenses are payable before other attorney or guardian ad litem fees.

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

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

History: 2005 a. 264 s. 204; 2005 a. 387 ss. 100, 420, 460, 461, 463; 2007 a. 45.

The right to counsel guaranteed under sub. (1) (b) includes the ward's right to have counsel present during an interview with the guardian ad litem for the purpose of making a report to the court. Jennifer M. v. Mauer, 2010 WI App 8, 323 Wis. 2d 126, 779 N.W.2d 436, 08−1985.

54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS. (a) *Time of hearing for petition.* A petition for guardianship, other than a petition under par. (b) or (c) or s. 54.50 (1), shall be heard within 90 days after it is filed. The guardian ad litem and attorney for the proposed ward or ward shall be provided with a copy of the report of the examining physician or psychologist under s. 54.36 (1) at least 96 hours before the time of the hearing.

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

(c) *Time of hearing for petition for receipt and acceptance of a foreign guardianship.* 1. If a motion for a hearing on a petition for receipt and acceptance of a foreign guardianship is made by the foreign ward, by a person who has received notice under s. 54.38 (1m) (a) 3., or on the court's own motion, a hearing on the petition shall be heard within 90 days after the petition is filed.

2. If a petition for receipt and acceptance of a foreign guardianship includes a request to modify the provisions of the foreign guardianship, the petition shall be heard within 90 days after it is filed.

3. If a person receiving notice of the petition for receipt and acceptance of the foreign guardianship challenges the validity of the foreign guardianship or the authority of the foreign court to appoint the foreign guardian, the court may stay the proceeding under this subsection to afford the opportunity to the interested person to have the foreign court hear the challenge and determine its merits.

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

(3) PRESENCE OF PROPOSED GUARDIAN OR PETITIONER. (a) The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the court excuses the attendance of either or, for good cause shown, permits attendance by telephone.

(b) The petitioner, for a petition for receipt and acceptance of a foreign guardianship, shall be physically present at the hearing specified under sub. (1) (c) unless the court excuses the petitioner's attendance or, for good cause shown, permits attendance by telephone.

(4) PRESENCE OF PROPOSED WARD OR WARD. (a) *Adult proposed ward or ward.* The petitioner shall ensure that the proposed ward or ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the proposed ward or ward, the guardian ad litem shall consider the ability of the proposed ward or ward to understand and meaningfully participate, the effect of the attendance of the proposed ward or ward on his or her physical or psychological health in relation to the importance of the proceeding, and the expressed desires of the proposed ward or ward. If the proposed ward or 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 or 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 or ward may attend.

(b) *Minor proposed ward or ward.* A minor proposed ward or ward is not required to attend the hearing.

(c) *Foreign ward.* The petitioner for a petition for receipt and acceptance of a foreign guardianship shall ensure that the foreign ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the foreign ward, the guardian ad litem shall consider the ability of the foreign ward to understand and meaningfully participate, the effect of the foreign ward's attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the foreign ward's expressed desires. If the foreign 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 foreign ward, guardian ad litem, advocate counsel, or other interested person so requests, the court shall hold the hearing in a place where the foreign ward may attend.

(5) PRIVACY OF HEARING. Every hearing under this chapter shall be closed, unless the proposed ward or ward or his or her attorney acting with the proposed ward's or ward's consent or the attorney for a foreign ward moves that it be open. If the hearing is closed, only interested persons, their attorneys, and witnesses may be present.

(5m) PARTICIPATION BY INTERESTED PERSONS. An interested person may participate in the hearing on the petition at the court's discretion.

(6) PROPOSED GUARDIAN UNSUITABLE. If the court finds that the proposed guardian is unsuitable, 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.

History: 2005 a. 387 ss. 100, 333; 2007 a. 45; 2007 a. 97 ss. 78, 233.

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence, or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998), 97−1210.

Section 907.03 does not allow the proponent of an expert to use the expert solely as a conduit for the hearsay opinions of others. While in a civil proceeding there is no independent right to confront and cross−examine expert witnesses under the state and federal constitutions, procedures used to appoint a guardian and protectively place an individual must conform to the essentials of due process. Walworth County v. Therese B. 2003 WI App 223, 267 Wis. 2d 310, 671 N.W.2d 377, 03−0967.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

It would be unreasonable to not permit a forfeiture of the right to attend the hearing regardless of the respondent's conduct. The right may be forfeited if after having been warned by the judge that he or she will be removed if he or she continues the disruptive behavior, the respondent nevertheless insists on conducting himself or herself in a manner so disorderly, disruptive, and disrespectful of the court that the hearing cannot be carried on with him or her in the courtroom. Jefferson County v. Joseph S. 2010 WI App 160, 330 Wis. 2d 737, 795 N.W.2d 450, 09−804.

A party cannot waive a challenge to the competency of a court based on a statutory limitation period such as that in sub. (1) (a). Tina B. v. Richard H., 2014 WI App 123, 359 Wis. 2d 204, 857 N.W.2d 432, 13−2534.

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 FOR GUARDIANSHIP. (a) If the court finds any of the following, the court shall dismiss the petition:

1. Contrary to the allegations of the petition, the proposed ward is not any of the following:

a. Incompetent.

b. A spendthrift.

c. A minor.

2. Advance planning by the ward, as specified in s. 54.10 (3) (c) 3., renders guardianship unnecessary.

3. The elements of the petition are unproven.

(b) The court may also consider an application by the proposed ward for the appointment of a conservator under s. 54.76.

(1m) DISMISSAL OF THE PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP. If the court finds any of the following, the court shall dismiss the petition:

(a) The foreign guardian is not presently in good standing with the foreign court.

(b) The foreign guardian is moving or has moved the foreign ward or the property of the foreign ward from the foreign jurisdiction in order to avoid or circumvent the provisions of the foreign guardianship order.

(c) The transfer of the foreign guardianship from the foreign jurisdiction is not in the best interests of the foreign ward.

(1r) RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP. (a) The court shall grant a petition for receipt and acceptance of a foreign guardianship if the court finds all of the following:

1. That the foreign guardian is presently in good standing with the foreign court.

2. That the foreign guardian is not moving or has not moved the foreign ward or the property of the foreign ward from the foreign jurisdiction in order to avoid or circumvent the provisions of the foreign guardianship order.

3. That the transfer of the foreign guardianship from the foreign jurisdiction is in the best interests of the foreign ward.

(b) In granting a petition under par. (a), the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the foreign ward's incapacity. However, the court may modify the provisions of the foreign guardianship order with respect to all of the following:

1. Surety bond requirements.

2. The appointment of a guardian ad litem.

3. Periodic reporting requirements.

4. Any other provisions necessary to conform the foreign guardianship order to the requirements of this chapter and other requirements of this state.

(c) The court may require the foreign guardian to file an inventory of the foreign ward's property at the time of the transfer from the foreign jurisdiction.

(d) If granting the petition for receipt and acceptance of the foreign guardianship, the court shall coordinate with the foreign court the orderly transfer of the foreign guardianship and, in doing so, the court may do all of the following:

1. Delay the effective date of the receipt and acceptance of the foreign guardianship.

2. Make the receipt and acceptance of the foreign guardianship contingent upon the release or termination of the foreign guardianship and discharge of the foreign guardian under the foreign jurisdiction.

3. Recognize concurrent jurisdiction over the guardianship for a reasonable period of time to permit the foreign court to release or terminate the foreign guardianship and discharge the foreign guardian.

4. Make other arrangements that the court determines are necessary to effectuate the receipt and acceptance of the foreign guardianship.

(2) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be incompetent, a minor, or a spendthrift, 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) *Coguardians.* If the court appoints coguardians of the person or coguardians of the estate under s. 54.10 (5), and unless otherwise ordered by the court, each decision made by a coguardian with respect to the ward must be concurred in by any other coguardian, or the decision is void.

(b) *Power of attorney for health care.* If the ward executed a power of attorney for health care under ch. 155 before a finding of incompetency and appointment of a guardian is made for the ward under this chapter, the power of attorney for health care remains in effect, except that the court may, only for good cause shown, revoke the power of attorney for health care or limit the authority of the agent under the terms of the power of attorney for health care instrument. Unless the court makes this revocation or limitation, the ward's guardian may not make health care decisions for the ward that may be made by the health care agent, unless the guardian is the health care agent.

(c) *Durable power of attorney.* If the ward has executed a durable power of attorney before a finding of incompetency and appointment of a guardian is made for the ward under this chapter, the durable power of attorney remains in effect, except that the court may, only 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. Unless the court makes this revocation or limitation, the ward's guardian may not make decisions for the ward that may be made by the agent, unless the guardian is the agent.

(3) FEES AND COSTS. (a) *Petitioner's attorney fees and costs.* If a guardian is appointed, the court shall award from the ward's income and assets payment of the petitioner's reasonable attorney fees and costs 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. Whether the ward had executed a durable power of attorney under ch. 244 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning for financial and health care decision making.

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

(b) *Guardian ad litem and defense fees for indigents; liability.* If the proposed ward is indigent, the county 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 proposed ward's legal counsel.

(c) *Fees if guardian is not appointed.* If a guardian is not appointed under sub. (2), the petitioner is liable for any fees due the guardian ad litem and the proposed ward's legal counsel.

(4) BOND. (a) *Amount and sufficiency of bond.* The order under sub. (2) 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.* Unless required under s. 54.852 (9), the court may waive the requirement of a bond under any of the following circumstances:

1. At any time.

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

3. If a guardian has or will have possession of funds of the ward with a total value of $100,000 or less and the court 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.

(5) LETTERS OF GUARDIANSHIP. If a guardian of the estate has given bond, if required, and the bond has been approved by the court, letters under the seal of the court shall be issued to the guardian of the estate. If a court determination and order appointing a guardian of the person is entered, letters under the seal of the court shall be issued to the guardian of the person.

(6) EMANCIPATION OF MARRIED MINORS. Except for a minor found to be incompetent, upon marriage, a minor is no longer a proper subject for guardianship of the person and a guardianship

of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the income and assets of a minor ward to the ward upon the ward's marriage.

History: 2005 a. 264; 2005 a. 387 ss. 100, 309, 360 to 364, 366, 421 to 425, 462, 475; 2007 a. 45; 2009 a. 180, 319.

54.47 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 54.34 and 54.38 may be filed in the office of the register of deeds for the county. If a guardian is appointed after a hearing on the petition and if the court's order includes a finding that the ward may not make contracts, all contracts, except for necessaries at reasonable prices, and all gifts, sales, and transfers of property made by the ward after the filing of a certified copy of the order are void, unless notified by the guardian in writing.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.215; 1973 c. 284; 1997 a. 304; 2005 a. 387 s. 410; Stats. 2005 s. 54.47.

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

History: 2005 a. 264 s. 212; 2005 a. 387 s. 472; 2007 a. 45.

54.50 Temporary guardianships. (1) STANDARD. If it is demonstrated to the court that a proposed ward's particular situation, including the needs of the proposed ward's dependents, requires the immediate appointment of a temporary guardian of the person or estate, the court may appoint a temporary guardian under this section.

(2) DURATION AND EXTENT OF AUTHORITY. The court may appoint a temporary guardian for a ward for a period not to exceed 60 days, 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 is limited to the performance of those acts stated in the order of appointment. Unless the court first specifically approves and orders bond, the temporary guardian may not sell real estate or expend an amount in excess of $2,000.

(3) PROCEDURES FOR APPOINTMENT. All of the following procedures apply to the appointment of a temporary guardian:

(a) 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, including the power specified in s. 51.30 (5) (e), and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

(b) 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.

(c) The court shall hold a hearing on the temporary guardianship. The hearing may be held 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 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.

(d) If the court appoints a temporary guardian and 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, pending a rehearing, without approval by the court.

(4) CESSATION OF POWERS. The duties and powers of the temporary guardian cease upon the issuing of letters of permanent guardianship, the expiration of the time period specified in sub. (2), or if the court sooner determines that any situation of the ward that was the cause of the temporary guardianship has terminated. Upon the termination, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon the termination, account to the court and deliver to the person entitled the ward's estate over which the temporary guardian of the estate has had control. Any action that has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 2005 a. 387 ss. 100, 368, 372.

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 estate of an individual who is determined under s. 54.10 to be incompetent, a minor, or a spendthrift, except that, as specified in s. 48.978 a 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 may be brought under s. 48.978.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or estate whose appointment shall become effective immediately upon the death, unwillingness, or inability to act, or resignation or court's removal 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. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

History: 1973 c. 284; 1993 a. 486; 1997 a. 334; 2005 a. 387 ss. 507 to 509; Stats. 2005 s. 54.52; 2007 a. 45; 2015 a. 197, 380.

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

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

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.17; 1993 a. 486; 1995 a. 73; 2005 a. 387 s. 378; Stats. 2005 s. 54.54.

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

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

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

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

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

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

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

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

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

History: 1975 c. 122; 1995 a. 38; 1999 a. 9; 2005 a. 387 s. 373; Stats. 2005 s. 54.56.

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

Section 767.245 (5) [now s. 767.43 (5)] sets an appropriate standard for determining the best interests of a child under this section. The court did not exceed its authority under this section or violate a parent's constitutional rights to raise a child by ordering grandparent visitation, nor did it violate this section by ordering a guardian ad litem, mediation, and psychological evaluations. The court was not authorized by this section to order psychotherapeutic treatment that was arguably in the child's best interests, but outside the scope of visitation. F.R. v. T.B. 225 Wis. 2d 628, 593 N.W.2d 840 (Ct. App. 1999), 98−0819.

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

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

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

Under *Troxel v. Granville*, 530 U.S. 57, the due process clause prevents a court from starting with a clean slate when assessing whether grandparent visitation is in the best interests of the child. Within the best interests framework, the court must afford a parent's decision special weight by applying a rebuttable presumption that the fit parent's decision regarding grandparent visitation is in the best interest of the child. It is up to the party advocating for nonparental visitation to rebut the presumption by presenting evidence that the offer is not in the child's best interests. Martin L. v. Julie R. L. 2007 WI App 37, 299 Wis. 2d 768, 731 N.W.2d 288, 06−0199.

This section is constitutional and does not violate the equal protection clause. Rick v. Opichka, 2010 WI App 23, 2010 WI App 167, 780 N.W.2d 159, 09−0040.

The award of overnights and a week during the summer in a grandparent visitation order was not contrary to law for being akin to a physical placement award found in divorce cases. There is no difference between the quantity of "physical placement" as that term is used in s. 767.001 (5) and the quantity of "visitation" as that word is used in this section. The proper amount of that time is a decision made by the family court in the best interests of the children. The quantity of time ordered does not depend on whether it is a visitation order or a physical placement order. Rick v. Opichka, 2010 WI App 23, 323 Wis. 2d 510, 780 N.W.2d 159, 09−0040.

When children visit their grandparents and stay with them as a guest, the grandparents have the responsibility to make routine daily decisions regarding the child's care but may not make any decisions inconsistent with the major decisions made by a person having legal custody. The same is true of a parent who does not have joint legal custody, but does have a right to physical placement. In both instances, the same rules apply: routine daily decisions may be made, but nothing greater. Rick v. Opichka, 2010 WI App 23, 323 Wis. 2d 510, 780 N.W.2d 159, 09−0040.

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

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the minor. The court shall consider the wishes of the minor in making the determination.

History: 1999 a. 9; 2005 a. 387 ss. 374 to 376; Stats. 2005 s. 54.57.

SUBCHAPTER V

POST−APPOINTMENT MATTERS

54.60 Inventory. (1) INVENTORY REQUIRED. The guardian of the estate shall prepare an inventory that lists all of the ward's income and assets, including interests in property and 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 of the estate shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay from the ward's income and assets the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents concerning the value of the income and assets are filed.

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

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian of the estate shall verify by oath to the best of the guardian's information and belief that every inventory required of the guardian of the estate includes all income and assets of the ward. The court, at the request of any party or on its own motion may examine the guardian of the estate on oath as to the inventory or any supposed omission from the inventory.

(8) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects to file the inventory or account when required by law, the court shall call the attention of the guardian of the estate to the neglect. If the guardian of the estate continues to

neglect his or her duty, the court shall order the guardian of the estate to file the inventory, and the costs may be adjudged against the guardian of the estate.

History: 2005 a. 387 ss. 100, 384, 385, 405, 406.

54.62 Accounts. (1) ANNUAL ACCOUNTS. Except as provided in sub. (3) or unless waived by a court, every guardian, including a corporate guardian, shall, prior to April 15 of each year, file an account under oath that specifies the amount of the ward's assets or income 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. The court may order the guardian to render and file, within 30 days, a like account for 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 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. 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 by a person satisfactory to the court, evidence of all of the ward's securities, depository accounts, and other investments, which shall be described in the account in sufficient detail so that they may be readily identified. The court or person satisfactory to the court shall ascertain whether the evidence of securities, depository accounts, and other investments correspond with the account.

(3) SMALL ESTATES. (a) If a ward's income and assets do not exceed the amount specified in s. 867.03 (1g) (intro.), 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 income and assets 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 income and assets, as calculated under par. (a), increase above the amount specified in s. 867.03 (1g) (intro.), 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 marital property 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 examined as the court directs. If the account is not satisfactory, the court shall order action as justice requires and shall direct that notice be provided to the guardian personally or by certified mail. If notice is provided to the guardian under this subsection, the court may appoint a guardian ad litem for the ward.

(6) ACCOUNTING BY 3RD PARTIES TO GUARDIAN. If a guardian appointed by a court so requests, the court may order any person entrusted by the guardian with part of the estate of a ward to appear before the court and to render a full account, on oath, of the income or assets and of his or her action regarding the income or assets. 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 on an account is final unless the guardian first provides notice to all of the following, as applicable:

(a) The ward.

(b) Any guardian ad litem appointed by the court.

(c) Any personal representative or special administrator appointed by the court.

(8) ACCOUNTS; FAILURE OF A GUARDIAN TO FILE. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any interested party, order the guardian to show cause why the guardian should not immediately make and file the guardian's reports or accounts. The court shall direct that a copy of the order be served on the guardian at least 20 days before the date that the court has ordered the guardian to appear in court. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court to do so, or if the guardian fails to appear in court as directed by a citation issued by the court, the court may, on its own motion or on the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal, or neglect is willful or inexcusable, the guardian may be fined not to exceed $250 or imprisoned not to exceed 10 days or both.

(9) ACCOUNTING BY GUARDIANS AT ANY TIME. The court may at any time require an accounting by any guardian at a hearing, after providing notice to all interested persons, including sureties on the bond of a guardian.

History: 2005 a. 387 ss. 100, 426, 428, 429, 431, 432, 434, 435; 2007 a. 45.

54.625 Transfer of guardianship funds of a Menominee. The court that has appointed a guardian of the estate of any minor or individual found incompetent who is a legally enrolled member of the Menominee Indian tribe, as defined in s. 49.385, or a lawful distributee, as defined in s. 54.850 (3), of the member may direct the guardian to transfer the assets in the guardian's possession of the minor or individual found incompetent to the trustees of the trust created by the secretary of interior or his or her delegate that receives property of the minors or individuals found incompetent that is transferred from the United States or any agency thereof as provided by P.L. 83−399, as amended, and the assets shall thereafter be held, administered, and distributed in accordance with the terms and conditions of the trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.195; 1977 c. 449; 1995 a. 27; 2005 a. 387 s. 408; Stats. 2005 s. 54.625.

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) Order that notice, including notice concerning potential court action if circumstances are extraordinary, be given to all of the following:

1. 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. The ward.

3. The guardian.

4. The agent under the ward's power of attorney for health care under ch. 155, if any, and the agent under the ward's durable power of attorney under ch. 244, if any.

5. Any other persons determined by the court.

(2) (a) If, after 10 days after notice is provided 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 (2) and enter a determination and the amended order that specifies any change in the powers of the guardian.

(b) If, within 10 days after notice is provided under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), the court shall hold a hearing, unless the objector declines a hearing, under the procedure specified in s. 54.64 (2).

History: 2005 a. 387; 2009 a. 319.

54.64 Review of incompetency and termination of guardianship. (1) DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the ward, until terminated by the court, or as provided under sub. (3) or (4).

(2) REVIEW AND MODIFICATION. (a) A ward who is 18 years of age or older, any person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency, to have the guardian discharged and a new guardian appointed, or to have the guardianship limited and specific rights restored. The petition may be filed at any time after 180 days after any previous hearing under s. 54.44, or at any time if the court determines that exigent circumstances, including presentation of new evidence, require a review. If a petition is filed, the court shall 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 is present and has the right to a jury trial, if demanded.

(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, the selection of whom is subject to court approval, 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 par. (a) or on its own motion, a court may terminate or modify the guardianship, including restoring certain of the ward's rights.

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

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

(a) The court adjudicates a ward who was formerly found to be incompetent to be no longer incompetent or terminates the guardianship under sub. (2) (d).

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

(c) A formerly minor ward attains age 18, unless the guardianship was ordered on the grounds of incompetency.

(d) A minor ward whose guardianship was not ordered on the grounds of incompetency marries.

(e) The ward dies.

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

(a) The court adjudicates a ward who was formerly found to be incompetent to be no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her income and assets.

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

(c) A formerly minor ward attains age 18.

(d) A minor ward whose guardianship was not ordered on the grounds of incompetency marries and the court approves the termination.

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

(5) DEPLETED GUARDIANSHIP. If a court determines that the income and assets of a ward do not exceed the amount specified in s. 867.03 (1g) and are reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may do one of the following:

(a) Terminate the guardianship and order disposition of the remaining assets as provided by s. 54.12 (1). The court, as a part of the disposition, may order 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 waive or require an accounting by the guardian.

(6) DELIVERY OF PROPERTY TO GUARDIAN IN ANOTHER STATE. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order the property delivered to the guardian appointed in the state of the nonresident ward after a verified petition, accompanied by a copy of the nonresident guardian's appointment and bond, authenticated so as to be admissible in evidence, is filed with the court and after 10 days' notice is provided to the resident guardian or personal representative. The petition shall be denied if granting it appears to be against the interests of the ward. Any receipt obtained from the nonresident guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy of the receipt shall be sent to the court that appointed the nonresident guardian.

History: 2005 a. 387 ss. 100, 437 to 446, 449, 499, 500, 501, 503, 504; 2007 a. 45.

54.66 Final accounts. (1) RENDER FINAL ACCOUNT. If a court terminates a guardianship, or a guardian resigns, is removed, or dies, the guardian or the guardian's personal representative or special administrator shall promptly render a final account to the court and to the ward or former ward, the successor guardian, or the deceased ward's personal representative or special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the deceased ward's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the ward's estate.

(2) SMALL ESTATES. The guardian of a ward with a small estate, as specified in s. 54.62 (3) (a), need not file a final account, 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. If a ward dies leaving an estate that can be settled summarily under s. 867.01, the court may approve the settlement and distribution by the guardian under the procedures of s. 867.01 without appointing a personal representative.

History: 2005 a. 387 ss. 100, 430, 447, 448.

54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF COURT. The court that appointed the guardian or that granted a petition for acceptance and receipt of a foreign guardianship has continuing jurisdiction over the guardian. Within a reasonable period of time after granting a petition for receipt and acceptance of a foreign guardianship under s. 54.46 (1r), the court shall review the provisions of the guardianship and, as part of its review, shall inform the guardian and ward of services that may be available to the ward.

(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 income or assets, constitutes cause for a remedy of the court under sub. (4):

(a) Failing to file timely 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.

(cm) Knowingly isolating a ward from the ward's family members or violating a court order under s. 50.085 (2).

(d) Engaging in self−dealing.

(e) Failing to provide adequately for the personal needs of the ward from the ward's available assets and income, including any available 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 incapacities.

(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) Failing to disclose that the guardian is listed under s. 146.40 (4g) (a) 2.

(j) Other than as provided in pars. (a) to (i), 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) PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10, nor more than 60, days and shall order that the petitioner provide notice of the hearing to the ward, the guardian, and any other persons as determined by the court. The court may authorize use by the petitioner of any of the methods of discovery specified in ch. 804 in support of the petition to review conduct of the guardian.

(4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion 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 ward or, if deceased, the ward's estate for losses incurred as the result of the guardian's breach of a duty to the ward.

(c) Impose a forfeiture of up to $10,000 on the guardian, or deny compensation for the guardian or both.

(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.

(5) 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.

(6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), 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 legal counsel, 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).

History: 2005 a. 387; 2015 a. 343.

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.
2. The fair market value of the services rendered.
3. Any conflict of interest of the guardian.
4. The availability of another to provide the services.
5. The value and nature of the ward's assets and income, including the sources of the ward's income.
6. Whether the ward's basic needs are being met.
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.

History: 2005 a. 387.

When a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. Yamat v. Verma L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997), 96−2313.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.74 Compensation of guardian ad litem. Unless the court otherwise directs or unless a petition to the court under this chapter is dismissed, the court shall order reasonable compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the ward's income or assets, if sufficient, or, if insufficient, by the county of venue. If a petition to the court under this chapter is dismissed, the court shall order the petitioner to pay the compensation of the guardian ad litem. 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 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.

History: 2005 a. 387 s. 498.

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

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

54.75 Access to court records. All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 51.30 or 55.22 or under an order of a court under this chapter. The fact that an individual has been found incompetent and the name of and contact information for the guardian is accessible to any person who demonstrates to the custodian of the records a need for that information.

History: 2005 a. 264 s. 211; 2005 a. 387 s. 471; 2007 a. 45.

Sub. (6) [now this section] requires the closing only of documents filed with the register in probate with respect to ch. 880 [now ch. 54] proceedings. 67 Atty. Gen. 130.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS; CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination. (1) Any adult resident who is unwilling or believes that he or she is unable properly to manage his or her assets 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 may direct to whom, including presumptive heirs, and in what manner notice of the hearing shall be given to a potential recipient of the notice, unless the potential recipient has waived receipt. 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 assets and income.

(2) At the hearing for appointment of a conservator, the applicant shall be personally examined by the court and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated and any proposed standby conservator are suitable, the court may appoint the nominee as conservator and, if applicable, designate the proposed standby conservator as standby conservator and issue letters of conservatorship to the nominee after he or she files a bond in the amount fixed by the court.

(3) Except as provided in sub. (3g), a conservator has all the powers and duties of a guardian of the estate. An individual whose income and assets are under conservatorship may make gifts of his or her income and assets, subject to approval of the conservator.

(3g) If the individual has executed a durable power of attorney before the proceedings under this section, the durable power of attorney remains in effect, except that the court may, only 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. Unless the court makes this revocation or limitation, the individual's conservator may not make decisions for the individual that may be made by the agent, unless the conservator is the agent.

(3m) A person may at any time bring a petition for the appointment of a standby conservator for an individual for whom a conservator has been appointed under sub. (2).

(3n) At any hearing conducted under this section the court may designate one or more standby conservators for an individual for whom a conservator has been appointed under sub. (2) whose appointment shall become effective immediately upon the death, unwillingness, unavailability, or inability to act, resignation, or court's removal of the initially appointed conservator or during a period, as determined by the initially appointed conservator or the court, when the initially appointed conservator is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby conservator shall be the same as those of the initially appointed conservator. The standby conservator shall receive a copy of the court order establishing or modifying the initial conservatorship and the order designating the standby conservator. Upon assuming office, the standby conservator shall so notify the court. Upon notification, the court shall designate this conservator as permanent or shall specify the time period for a limited standby conservatorship.

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

(5) Appointment of a conservator does not constitute evidence of the competency or incompetency of the individual whose income and assets are being administered.

(6) The court that appointed the conservator shall have continuing jurisdiction over the conservator. Any of the following, if committed by a conservator with respect to a conservatee or the conservatee's income or assets, constitutes cause for removal of the conservator under sub. (7) (a) 5:

(a) Failing to file timely 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 conservatee or knowingly permitting others to do so.

(d) Engaging in self−dealing.

(e) Failing to provide adequately for the personal needs of the conservatee from the available income and assets and any available public benefits.

(f) Failing to act in the best interests of the conservatee.

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

(h) Failing to disclose that the conservator is listed under s. 146.40 (4g) (a) 2.

(7) (a) The powers of a conservator may not be terminated without a hearing and may not be terminated unless any of the following occurs:

1. The court removes the conservator on the court's own motion or under sub. (4).

2. The court appoints a guardian for the individual whose income and assets are conserved.

3. The individual whose income and assets are conserved dies.

4. The conservator or individual whose income and assets are conserved changes residence to another state.

5. The court finds cause, as specified in sub. (6), for removal of the conservator.

(b) If anyone objects to termination of the conservatorship and alleges that the individual whose income and assets are conserved is appropriate for appointment of a guardian, the court may stay the hearing under par. (a) for 14 days to permit any interested person to file a petition for guardianship. If no petition is filed, the court may terminate the conservatorship and may appoint a guardian ad litem for the individual.

(8) If a court terminates a conservatorship or a conservator resigns, is removed, or dies, the conservator or the conservator's personal representative or special administrator shall promptly render a final account of the former conservatee's income and assets to the court and to the former conservatee, any guardian of the former conservatee, or any deceased conservatee's personal representative or special administrator, as appropriate. If the conservator dies and the conservator and the deceased conservatee's personal representative or special administrator are the same person, the deceased conservatee's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the conservatee's estate.

(9) (a) If a conservator resigns, is removed, or dies, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor conservator. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor conservator be heard in the same manner and subject to the same requirements as provided under this section for an original appointment of a conservator.

(b) If the appointment under par. (a) is made without hearing, the successor conservator shall provide notice to the individual for whom a conservator has been appointed and all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the successor conservator. The notice shall be served personally or by mail not later than 10 days after the appointment.

History: 2005 a. 387 ss. 100, 452 to 456; Stats. 2005 s. 54.76.

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

A circuit court must hold some form of hearing on the record, either a full due process hearing or a summary hearing, to continue a protective placement. The circuit court must also make findings based on the factors enumerated in s. 55.06 (2) [now s. 55.08 (1)] in support of the need for continuation. County of Dunn v. Goldie H. 2001 WI 102, 245 Wis. 2d 538, 629 N.W.2d 189, 00−1137.

NOTE: The above annotations relate to guardianships under ch. 880, stats., prior to the revision of and renumbering of that chapter to ch. 54 by 2005 Wis. Act 387.

SUBCHAPTER VII

UNIFORM GUARDIANSHIP ACTS

54.850 Definitions. In this subchapter:

(1) "Administration" means any proceeding relating to a decedent's estate whether testate or intestate.

(2) "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

(3) "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under the decedent's will or under the statutes of intestate succession.

(4) "Person interested" has the meaning given in s. 851.21.

History: 2005 a. 387.

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

(a) "Administrator" means the secretary of the U.S. department of veterans affairs or his or her successor.

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

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

(d) Notwithstanding s. 54.01 (10), "guardian" means any fiduciary for the person or estate of a ward.

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

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

(g) Notwithstanding s. 54.01 (37), "ward" means an individual who receives benefits from the U.S. department of veterans affairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) PETITIONS AND ACCOUNTS, NOTICES AND HEARINGS. (a) Every guardian shall file his or her accounts as required by this chapter and shall be excused from filing accounts in the case as provided by s. 54.66 (2).

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

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

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

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

(12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided in s. 54.72.

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

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

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

of veterans affairs and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

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

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

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

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

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

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

(21) APPLICATION OF SECTION. The provisions of this section relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in sub. (1) whether the guardian shall have been appointed under this section or under any other law of this state, special or general, prior or subsequent to June 5, 1947.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85; 2005 a. 22; 2005 a. 387 ss. 518 to 525; Stats. 2005 s. 54.852.

54.854 Uniform transfers to minors act; definitions. In ss. 54.854 to 54.898:

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

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

(3) Notwithstanding s. 54.01 (3), "conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(4) Notwithstanding s. 54.01 (4), "court" means the circuit court.

(5) "Custodial property" means any interest in property transferred to a custodian under ss. 54.854 to 54.898 and the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under s. 54.870 or a successor or substitute custodian designated under s. 54.888.

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

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

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

(10) Notwithstanding s. 54.01 (20), "minor" means an individual who has not attained the age of 21 years.

(11) Notwithstanding s. 54.01 (23), "personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(11m) "Qualified minor's trust" means any trust, including a trust created by the custodian, that satisfies the requirements of section 2503 (c) of the Internal Revenue Code and the regulations implementing that section.

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

(13) "Transfer" means a transaction that creates custodial property under s. 54.870.

(14) "Transferor" means a person who makes a transfer under ss. 54.854 to 54.898.

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

History: 1987 a. 191; 1991 a. 221; 2005 a. 216; 2005 a. 387 s. 527; Stats. 2005 s. 54.854.

54.856 Scope and jurisdiction. (1) Sections 54.854 to 54.898 apply to a transfer that refers to ss. 54.854 to 54.898 in the designation under s. 54.870 (1) by which the transfer is made if at the time of the transfer the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to ss. 54.854 to 54.898 despite a subsequent change in residence of a transferor, the minor or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under s. 54.870 to 54.888 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

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

History: 1987 a. 191; 2005 a. 387 s. 528; Stats. 2005 s. 54.856.

54.858 Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian, followed in substance by the words: "as custodian for .... (name of minor) under the Wis-

consin Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under s. 54.870 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under s. 54.870. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property under s. 54.870.

History: 1987 a. 191; 2005 a. 387 s. 529; Stats. 2005 s. 54.858.

54.860 Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor under s. 54.870.

History: 1987 a. 191; 2005 a. 387 s. 530; Stats. 2005 s. 54.860.

54.862 Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer under s. 54.870 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under s. 54.858 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under s. 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under s. 54.870 (1).

History: 1987 a. 191; 2005 a. 387 s. 531; Stats. 2005 s. 54.862.

54.864 Other transfer by fiduciary. (1) Subject to sub. (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor under s. 54.870 in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to sub. (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor under s. 54.870.

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

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

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

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

History: 1987 a. 191; 2005 a. 387 s. 532; Stats. 2005 s. 54.864.

54.866 Transfer by obligor. (1) Subject to subs. (2) and (3), a person not subject to s. 54.862 or 54.864 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor under s. 54.870.

(2) If a person having the right to do so under s. 54.858 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under s. 54.858, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

History: 1987 a. 191; 2005 a. 387 s. 533; Stats. 2005 s. 54.866.

54.868 Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian under ss. 54.854 to 54.898.

History: 1987 a. 191; 2005 a. 387 s. 534; Stats. 2005 s. 54.868.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER UNDER THE WISCONSIN UNIFORM TRANSFERS TO MINORS ACT

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

Dated: ....

....

(Signature)

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

Dated: ....

....

(Signature of Custodian)

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

History: 1987 a. 191; 2005 a. 387 s. 535; Stats. 2005 s. 54.870.

54.872 Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under ss. 54.854 to 54.898 by the same custodian for the benefit of the same minor constitutes a single custodianship.

History: 1987 a. 191; 2005 a. 387 s. 536; Stats. 2005 s. 54.872.

54.874 Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in ss. 54.854 to 54.898 is not affected by:

(a) Failure of the transferor to comply with s. 54.870 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under s. 54.870 (1); or

(c) Death or incapacity of a person nominated under s. 54.858 or designated under s. 54.870 as custodian or the disclaimer of the office by that person.

(2) A transfer made under s. 54.870 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in ss. 54.854 to 54.898, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in ss. 54.854 to 54.898.

(3) By making a transfer, the transferor incorporates in the disposition all of the provisions of ss. 54.854 to 54.898 and grants to the custodian, and to any 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in ss. 54.854 to 54.898.

History: 1987 a. 191; 2005 a. 387 s. 537; Stats. 2005 s. 54.874.

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

(a) Take control of custodial property;

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

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

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

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

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

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

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

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

History: 1987 a. 191; 2005 a. 387 s. 538; Stats. 2005 s. 54.876.

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

(2) This section does not relieve a custodian from liability for breach of s. 54.876.

History: 1987 a. 191; 2005 a. 387 s. 539; Stats. 2005 s. 54.878.

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

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

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

(1m) At any time a custodian may transfer part or all of the custodial property to a qualified minor's trust without a court order. Such a transfer terminates the custodianship to the extent of the transfer.

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

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

History: 1987 a. 191; 2005 a. 216; 2005 a. 387 s. 540; Stats. 2005 s. 54.880.

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

(2) Except for a person who is a transferor under s. 54.860, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in s. 54.888 (6), a custodian need not give a bond.

History: 1987 a. 191; 2005 a. 387 s. 541; Stats. 2005 s. 54.882.

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

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

(2) The propriety of, or the authority under ss. 54.854 to 54.898 for, any act of the purported custodian.

(3) The validity or propriety under ss. 54.854 to 54.898 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian.

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

History: 1987 a. 191; 2005 a. 387 s. 542; Stats. 2005 s. 54.884.

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

(2) A custodian is not personally liable:

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

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

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

History: 1987 a. 191; 2005 a. 387 s. 543; Stats. 2005 s. 54.886.

54.888 Renunciation, resignation, death or removal of custodian; designation of successor custodian. (1) A person nominated under s. 54.858 or designated under s. 54.870 as custodian may decline to serve by delivering a valid disclaimer under s. 854.13 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under s. 54.858, the person who made the nomination may nominate a substitute custodian under s. 54.858; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under s. 54.870 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under s. 54.860 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

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

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

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

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. 54.860 or to require the custodian to give appropriate bond.

History: 1987 a. 191; 1997 a. 188; 2005 a. 387 s. 544; Stats. 2005 s. 54.888.

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

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

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 54.886 to which the minor or the minor's legal representative was a party.

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

(3) The court, in a proceeding under ss. 54.854 to 54.898 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 54.888 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191; 2005 a. 387 s. 545; Stats. 2005 s. 54.890.

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

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 54.860 or 54.862;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 54.864 or 54.866; or

(3) The minor's death.

History: 1987 a. 191; 2005 a. 387 s. 546; Stats. 2005 s. 54.892.

54.894 Applicability. Sections 54.854 to 54.898 apply to a transfer within the scope of s. 54.856 made after April 8, 1988, if:

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

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. 54.854 to 54.898 is necessary to validate the transfer.

History: 1987 a. 191; 2005 a. 387 s. 547; Stats. 2005 s. 54.894.

54.896 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. 54.854 to 54.898

made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 54.854 to 54.898 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections 54.854 to 54.892 with respect to the age of a minor for whom custodial property is held under ss. 54.854 to 54.898 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. 54.854 to 54.898, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

History: 1987 a. 191; 2005 a. 387 s. 548; Stats. 2005 s. 54.896.

54.898 Uniformity of application and construction. Sections 54.854 to 54.898 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 54.854 to 54.898 among states enacting it.

History: 1987 a. 191; 2005 a. 387 s. 549; Stats. 2005 s. 54.898.

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

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

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

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

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

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

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

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

(2) SECURITY TRANSACTIONS INVOLVING MINORS; LIABILITY. A bank, broker, issuer, 3rd party, or transfer agent incurs no liability by reason of his or her treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, 3rd party, or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, 3rd party, or transfer agent had actual knowledge of the minority of the holder of the security. Except as otherwise provided in this section, such a bank, broker, issuer, 3rd party, or transfer agent may assume without inquiry that the holder of a security is not a minor.

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

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

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

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

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.75; 1987 a. 191; 1991 a. 221; 1993 a. 486; 1999 a. 185; 2005 a. 253; 2005 a. 387 s. 551; Stats. 2005 s. 54.92.

54.93 Securities ownership by incompetents and spendthrifts. (1) DEFINITIONS. (a) All definitions in s. 54.92 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires.

(b) In this section, "3rd party" means a person other than a bank, broker, transfer agent or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY. A bank, broker, issuer, 3rd party, or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, 3rd party, or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, 3rd party, or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 54.47. Except as otherwise provided in this section, such a bank, broker, issuer, 3rd party, or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or spendthrift, who has transferred a security,

received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, 3rd party, or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, 3rd party, or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, 3rd party, or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 54.47.

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

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.76; 1993 a. 486; 1999 a. 185; 2005 a. 253; 2005 a. 387 s. 552; Stats. 2005 s. 54.93; 2007 a. 45.

54.950 Definitions. In this subchapter:

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

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

(3) Notwithstanding s. 54.01 (3), "conservator" means a person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual, or a person legally authorized to perform substantially the same functions.

(4) Notwithstanding s. 54.01 (4), "court" means the circuit court of this state.

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

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

(7) Notwithstanding s. 54.01 (10), "guardian" means a person appointed or qualified by a court as a guardian of the person or estate, or both, of an individual, including a guardian with limited powers, but not a person who is only a guardian ad litem.

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

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

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

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

(12) Notwithstanding s. 54.01 (23), "personal representative" means an executor, administrator or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions or a successor to any of them.

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

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

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

History: 1991 a. 246; 2005 a. 387 s. 554; Stats. 2005 s. 54.950.

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

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

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

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

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

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

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

(8) Sections 54.950 to 54.988 do not displace or restrict other means of creating trusts. A trust whose terms do not conform to this subchapter may be enforceable according to its terms under other law.

History: 1991 a. 246; 2005 a. 387 s. 555; Stats. 2005 s. 54.952.

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

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

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

History: 1991 a. 246; 2005 a. 387 s. 556; Stats. 2005 s. 54.954.

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

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

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

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

Dated: ....

....
(Signature of Custodial Trustee)

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

History: 1991 a. 246; 1993 a. 213; 2005 a. 387 s. 557; Stats. 2005 s. 54.956.

54.958 Transfer to custodial trustee by fiduciary or obligor; facility of payment. (1) Unless otherwise directed by an instrument designating a custodial trustee pursuant to s. 54.954, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator or guardian of the estate may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $10,000, the transfer is not effective unless authorized by the court.

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

History: 1991 a. 246; 2005 a. 387 s. 558; Stats. 2005 s. 54.958.

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

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

(3) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to ss. 54.962 and 54.978 for the administration of the custodial trust.

History: 1991 a. 246; 2005 a. 387 s. 559; Stats. 2005 s. 54.960.

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

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

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

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

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

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

History: 1991 a. 246; 2005 a. 387 s. 560; Stats. 2005 s. 54.962.

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

(2) This section does not relieve a custodial trustee from liability for a violation of s. 54.962.

History: 1991 a. 246; 2005 a. 387 s. 561; Stats. 2005 s. 54.964.

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

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

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

History: 1991 a. 246; 2005 a. 387 s. 562; Stats. 2005 s. 54.966.

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

(a) The custodial trust was created under s. 54.958.

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

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

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

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

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

(c) Other persuasive evidence.

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

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

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

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

(a) The custodial trust.

(b) Any designation of a successor custodial trustee.

(c) Rights or powers of the custodial trustee.

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

History: 1991 a. 246; 2005 a. 387 s. 563; Stats. 2005 s. 54.968.

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

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

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

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

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

History: 1991 a. 246; 2005 a. 253; 2005 a. 387 s. 564; Stats. 2005 s. 54.970.

54.972 Liability to 3rd person. (1) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property or a tort committed in the course of administering the custodial trust may be asserted by a 3rd person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

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

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

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

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

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

History: 1991 a. 246; 2005 a. 253; 2005 a. 387 s. 565; Stats. 2005 s. 54.972.

54.974 Declination, resignation, incapacity, death or removal of custodial trustee, designation of successor custodial trustee. (1) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under s. 54.954 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to s. 54.954. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

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

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

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

(3) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies or becomes incapacitated, the successor designated under s. 54.952 (7) or 54.954 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated or fails to act within 90 days after the ineligibility, resignation, death or incapacity of the custodial trustee, the beneficiary's conservator or guardian of the estate becomes successor custodial trustee. If the beneficiary does not have a conservator or a guardian of the estate, or the conservator or guardian of the estate fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(4) If a successor custodial trustee is not designated pursuant to sub. (3), the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the person of the beneficiary, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

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

(6) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, the beneficiary's guardian, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties or for other appropriate relief.

History: 1991 a. 246; 2005 a. 387 s. 566; Stats. 2005 s. 54.974.

54.976 Expenses, compensation and bond of custodial trustee. Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary or by court order, all of the following apply to a custodial trustee:

(1) A custodial trustee is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services.

(2) A custodial trustee has a noncumulative election, to be made no later than 6 months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year.

(3) A custodial trustee need not furnish a bond or other security for the faithful performance of fiduciary duties.

History: 1991 a. 246; 2005 a. 387 s. 567; Stats. 2005 s. 54.976.

54.978 Reporting and accounting by custodial trustee; determination of liability of custodial trustee. **(1)** (a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property at all of the following times:

1. Once each year.

2. Upon request at reasonable times by the beneficiary or the beneficiary's legal representative.

3. Upon resignation or removal of the custodial trustee.

4. Upon termination of the custodial trust.

(b) The statements under par. (a) must be provided to the beneficiary or to the beneficiary's legal representative, if any.

(c) Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(2) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(3) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(4) In an action or proceeding under this subchapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(5) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(6) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

History: 1991 a. 246; 2005 a. 387 s. 568; Stats. 2005 s. 54.978.

54.980 Limitations of action against custodial trustee. **(1)** Except as provided in sub. (3), unless previously barred by adjudication, consent or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered or the legal representative of an incapacitated or deceased beneficiary or payee who meets one of the following conditions:

(a) Has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 2 years after receipt of the final account or statement.

(b) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 3 years after the termination of the custodial trust.

(2) Except as provided in sub. (3), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced within 5 years after the termination of the custodial trust.

(3) A claim for relief by the following claimants is not barred by this section except as follows:

(a) For a minor, until the earlier of 2 years after the claimant becomes an adult or dies.

(b) For an incapacitated adult, until the earliest of 2 years after the appointment of a conservator, the removal of the incapacity or the death of the claimant.

(c) For an adult, now deceased, who was not incapacitated, until 2 years after the claimant's death.

History: 1991 a. 246; 2005 a. 387 s. 569; Stats. 2005 s. 54.980.

54.982 Distribution on termination. **(1)** Upon termination of a custodial trust by the beneficiary or the beneficiary's conservator or guardian of the estate, the custodial trustee shall transfer the unexpended custodial trust property as follows:

(a) To the beneficiary, if not incapacitated or deceased.

(b) To the conservator, guardian of the estate or other recipient designated by the court for an incapacitated beneficiary.

(2) Upon termination of a custodial trust by the beneficiary's death, the custodial trustee shall distribute the unexpended custodial trust property in the following order:

(a) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary.

(b) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to s. 54.960.

(c) As designated in the instrument creating the custodial trust.

(d) To the estate of the deceased beneficiary.

(3) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(4) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

History: 1991 a. 246; 2005 a. 387 s. 570; Stats. 2005 s. 54.982.

54.984 Methods and forms for creating custodial trusts. **(1)** If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of s. 54.952 are satisfied by any of the following:

(a) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE WISCONSIN
UNIFORM CUSTODIAL TRUST ACT

I, ... (name of transferor or name and representative capacity if a fiduciary), transfer to .... (name of trustee other than transferor), as custodial trustee for .... (name of beneficiary) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Wisconsin Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: ....

....
(Signature)

(b) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER
THE WISCONSIN UNIFORM CUSTODIAL

TRUST ACT

I, ... (name of owner of property), declare that henceforth I hold as custodial trustee for .... (name of beneficiary other than transferor) as beneficiary and .... as distributee on termination of the trust in absence of direction by the beneficiary under the Wisconsin Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: ....

....

(Signature)

(2) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including, but not limited to, any of the following:

(a) Registration of a security in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(b) Delivery of a certificated security or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in sub. (1) (a).

(c) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(d) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(e) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(f) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(g) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(h) Execution, delivery and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(i) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property which meets any of the following conditions:

1. Is issued in the name of a trust company, an adult other than the transferor or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

2. Is delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

(j) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for .... (name of beneficiary) under the Wisconsin Uniform Custodial Trust Act".

History: 1991 a. 246; 2005 a. 387 s. 571; Stats. 2005 s. 54.984.

54.986 Applicable law. (1) Sections 54.950 to 54.988 apply to a transfer or declaration creating a custodial trust that refers to this subchapter if, at the time of the transfer or declaration, the transferor, beneficiary or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this subchapter despite a later change in residence or principal place of business of the transferor, beneficiary or custodial trustee, or removal of the custodial trust property from this state.

(2) A transfer made pursuant to a law of another state substantially similar to this subchapter is governed by the law of that state and may be enforced in this state.

History: 1991 a. 246; 2005 a. 387 s. 572; Stats. 2005 s. 54.986.

54.988 Uniformity of application and construction. Sections 54.950 to 54.988 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

History: 1991 a. 246; 2005 a. 387 s. 573; Stats. 2005 s. 54.988.