

## CHAPTER 319.

## GUARDIANS AND WARDS.

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**319.01 Jurisdiction of county court; who subject to guardianship.** (1) All persons under the age of twenty-one years are minors, and the county court in each county may appoint guardians of persons subject to guardianship residing in the county, and of such as reside without the state and have property within the county.

(2) The court may in every case appoint separate guardians of the person and of the property of a ward. The guardian of the person shall have the custody of the ward and the care of his education; and the guardian of the property shall have the care and management thereof.

(3) Persons belonging to either of the following classes shall be subject to guardianship:

- (a) Minors.
- (b) Persons who are insane, idiotic or feeble-minded or who by reason of age or other cause are mentally incompetent to care for themselves or their property.
- (c) Persons who because of the use of intoxicants or drugs or of gambling, idleness or debauchery of any kind are unable to attend to business or thereby endanger their health, life or property or that of others, or waste their property so as to endanger their or their families' support or expose their town, municipality or county to such support. Such persons are denominated spendthrifts. [1935 c. 176 s. 10, 11]

**Note:** Emancipation does not affect a minor's incapacity to contract for things which are not necessities; hence on an issue of whether he may rescind such a contract, the fact of emancipation is immaterial. *Schoenung v. Gallet*, 206 W 52, 238 NW 852.

In determining custody of fourteen-year-old child, some consideration and weight should be given child's wishes. *Jones v. State*, 211 W 9, 247 NW 445.

Only with great hesitation should courts, by the appointment of a guardian, interfere with the discretion of elderly people, owing no legal duty to support any one, in devoting the property accumulated by them to their comfort according to their own tastes. *Guardianship of Warner*, 232 W 467, 287 NW 803.

The provision in 102.07 (4), that minors shall have the same powers of contracting for their services as adult employees, does not operate generally to enable minors to enter into enforceable contracts, but oper-

ates only to enable them to enter into such contracts for the purposes of the compensation act. *Eckhardt v. Judevine*, 233 W 168, 288 NW 756.

In determining the question of the appointment of a guardian of the estate of an alleged incompetent, the court should take into account the status of the estate. The proof for the appointment of a guardian must show that the alleged incompetent is incapable of taking care of himself and managing his property; the proof, to establish mental incompetency, must be clear, convincing and satisfactory; and the mental incompetency must exist at the time of the hearing or else the petition should be denied. *Guardianship of Olson*, 236 W 301, 295 NW 24.

A guardian represents his ward in the same way that an executor or administrator represents the decedent or his estate and the legatees or heirs. *Will of Hughes*, 241 W 257, 5 NW (2d) 791.

**319.02 Appointment of guardian of minor.** (1) **NOMINATION BY MINOR.** If a minor be over the age of 14 years he may nominate his own guardian; if the nominee is approved by the court he shall be appointed. Such nomination by the minor shall be made in the

county court, or if because of illness he cannot appear in person, or if he does not reside within 10 miles of the place of holding the court, he may sign the nomination in the presence of a justice of the peace or a judge of the county or the clerk of the town, city or village in which he resides. Such officer shall certify that the nomination was signed by the minor in his presence and that he is satisfied that the nominee is the deliberate choice of such minor. If the minor be in the military service of the United States such nomination by the minor, in the discretion of the court, may be dispensed with and the guardian appointed immediately. Notice of such appointment of a guardian for a minor in the military service of the United States shall be given by mail to said minor at his last known post-office address by the guardian and an affidavit of such mailing shall be filed with the court within 10 days after the appointment of such guardian.

(2) **NOMINATION BY COURT.** If the guardian nominated by the minor shall not be approved by the court, or if the minor shall reside out of this state, or shall be absent therefrom, or if, after being required by the court, he shall neglect for 10 days to nominate a suitable person, the court may nominate and appoint the guardian.

(3) **PETITION.** The petition shall state the minor's age and residence and the location and character of his property and the names and residences of his nearest of kin.

(4) **NOTICE.** When a petition is filed for the appointment of a guardian of a minor under fourteen by any other person than a parent, at least ten days' personal notice shall be given to the parents living in this state of the time and place the court will hear such petition, but the appointment may be made without notice if it shall appear that the interests of the minor may require the appointment of a guardian without delay, or the parents shall appear and consent, or shall file their consent to such appointment. If the appointment be made without such previous notice to, or appearance by, such parents, notice of such appointment shall be immediately given to them by mail or otherwise, if their residence or post-office address is known.

(5) **WHEN GUARDIAN NOT NEEDED.** If the estate is of five hundred dollars or less, and the owner or beneficiary be a minor, the court may in its discretion, without the appointment of a guardian by the court, or the giving of bond, authorize the deposit thereof in a savings account in some reputable bank, payable to the legal guardian when appointed or to the ward upon his attaining the age of majority; or the court may authorize the payment or delivery thereof to the natural guardian of the minor, or to the person by whom the minor is maintained or to the minor himself. [*Court Rule II par. 2; Court Rule VIII s. 1; Supreme Court Order, effective Jan. 1, 1934; 1935 c. 176 s. 11; 1939 c. 504; 1943 c. 354*]

**Revisor's Note, 1935:** Subsection (3) is from County Court Rule II, Subsection (4) is from County Court Rule VIII, section 1. (Bill No. 51 S, s. 11)

A guardian or administrator is a "party in interest" when his ward or the estate which he represents has rights which may be seriously affected. Estate of Edwards, 234 W 40, 289 NW 605.

319.02 (4), relating to guardianship proceedings for minors under 14, is inoperative so far as its terms would deprive the father of his right to the custody and possession without notice. *Sass v. Sass*, 246 W 272, 16 NW (2d) 829.

**319.03 Parents as guardians.** The father and mother of the minor, if living together, and if living apart then either as the court may determine for the best interests of the minor, and in case of the death of either parent the survivor being competent and suitable, shall be entitled to the custody of the minor, and to the care of his education. If the minor has no father or mother living or he or she or both be incompetent or unsuitable, some other person shall be appointed guardian. [*1935 c. 176 s. 12*]

**Revisor's Note, 1935:** The matter of separate guardians and their duties is moved to new 319.01 (1). (Bill No. 51 S, s. 12)

That a grandmother had a deep affection for her grandchild, and that the child was entitled to a continuance of such affection, were insufficient to warrant a court in taking from the father, who was competent to transact his own business and was not otherwise unsuitable, the part-time custody of the child. Custody of Collentine, 214 W 619, 254 NW 118.

After the death of a divorced mother, to

whom the divorce judgment had awarded the custody of a minor child of the parties, the trial court, although it could not change such judgment so far as affecting the marriage status of the parties, had jurisdiction to adjudge the custody of the child. If the person having custody of a minor child refuses to give it to the father, any court of general jurisdiction has jurisdiction to determine the facts and award the custody according to the facts found. *Sass v. Sass*, 246 W 272, 16 NW (2d) 829.

**319.04 Testamentary guardian; bond, duties, liabilities.** Subject to the provisions of section 319.03, the parents of every legitimate minor child and the mother of every illegitimate minor child, may, by will, appoint a guardian of such child, whether born at the time of making the will or afterwards. Every testamentary guardian shall give bond in like manner and with like conditions as required of a guardian appointed by the court, and shall have the same power and perform the same duties and be subject to the same liabilities, but when such will shall so direct no bond need be taken unless the court shall be of opinion that it is required. [*1933 c. 190 s. 61*]

**319.05 Guardian's bond.** Before letters shall issue to a guardian he shall give a bond to the judge of the county court conditioned:

(a) To make a true inventory of all the property of his ward and to return the same into the court within such time as the court shall order;

(b) To dispose of and manage all such property according to law and for the best interests of the ward and faithfully to discharge his trust in relation thereto, and also, when guardian of the person, to report in relation to the care, custody and education of the ward;

(c) To render an account on oath of the property of the ward in his hands and all proceeds or interest derived therefrom and of the management and disposition of the same as required by section 319.11; and

(d) At the expiration of his trust to settle his accounts with the county court or with the ward if he be of full age, and competent or his legal representatives, and to pay over and deliver all the property in his hands or due from him on such settlement to the person lawfully entitled thereto. [1935 c. 176 s. 13]

**Revisor's Note, 1935:** The section is generalized to cover bonds of guardians of incompetents as well as of minors. The requirement as to incompetents was in 319.22 but that section was repealed (1933 c. 190 s. 69) in expectation that a compensating amendment would be made to 319.05 but it was not then made. The amendment restores the law as it was and should be. (Bill No. 51 S. s. 13)

For liability of surety on guardian's bond, see note to 296.08, citing *Luce v. Fidelity & Casualty Co.*, 222 W 50, 268 NW 131.

**319.06** [Renumbered section 321.015 by Supreme Court Order, effective Jan. 1, 1934]

**319.06 Guardian in armed service; temporary appointment.** Upon the petition of a ward or of a relative or friend in his behalf, or motion of the county court, and upon satisfactory proof that the guardian of said ward is in the armed services of the United States, the court, in its discretion, and without notice may make an order suspending the powers of said guardian in the said armed services of the United States for the period that said guardian remains in such service, and may make an interim appointment of a temporary guardian with all the powers and duties of a general guardian to act in the place and stead of said guardian. Any liability to the ward incurred, prior to the suspension of his powers by the guardian in military service, shall not be abated and his bond given to the county court shall continue in force and effect during the suspension of his powers. A temporary guardian shall act during the absence of the guardian and he shall furnish a suitable bond to the county court and his powers shall terminate upon the return of the guardian and the allowance and approval of his accounts and his discharge by the court. The guardian in military service and the temporary guardian shall each be responsible to the court only for his own acts in his conduct of the business of the ward and neither shall be liable nor responsible for the acts of the other. [1943 c. 235]

**319.07** [Renumbered section 321.02 sub. (3) and (4) by 1933 c. 190 s. 80]

**319.08 Resignation and removal of guardian, accounts settled, vacancy filled.** When any guardian shall become incapable of discharging his trust, or evidently unsuitable therefor the court after notice to such guardian and all others interested, may remove him; and every guardian may be allowed to resign his trust when it shall appear to the court proper and upon every such resignation or removal and upon the death of any guardian the court may appoint another in his place and thereupon the court shall cite the new guardian and his predecessor or the latter's personal representative to appear at a stated time and place to settle the former guardian's account; upon such settlement the property of the ward shall be paid and delivered to the new guardian. [Supreme Court Order, effective Jan. 1, 1934]

**Note:** For notice necessary to give court jurisdiction for appointment or removal of guardian, see note to 319.16, citing *Guardianship of Deyereaux*, 237 W 375, 296 NW 91. Where the county court had no jurisdiction to appoint, its appointment of a special administrator to settle the account of a deceased guardian was void, and hence such appointee was not a "personal representative" within the provision in 319.08, authorizing the court to cite the personal representative of a deceased guardian to settle the latter's account. *Guardianship of Rundle*, 245 W 274, 13 NW (2d) 921.

**319.09 Citation to guardian; substituted service.** (1) A citation to a guardian to appear in county court may be served in the manner provided for substituted service for summons in circuit court when such guardian has absconded or keeps himself concealed so as to avoid personal service or when he is a nonresident of this state or has absented himself therefrom for a period of one year.

(4) Upon filing proof of service and at the time fixed in said citation said court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited. [Supreme Court Order, effective Jan. 1, 1934]

**319.10 Marriage of ward.** The marriage of a ward shall terminate the right of the guardian to the custody and education of the ward; and the county court may, upon the application of such ward, discharge such guardian and order him to account to said court and deliver to his ward all the property in his hands or due from him on such settlement. No order shall be made which is contrary to or inconsistent with the will under which such estate is held for or comes to such minor; but the court may, upon such application, discharge such guardian and appoint another in his place. [1933 c. 190 s. 62]

**319.11 Guardian's reports; contents, filing.** (1) Every general guardian shall prior to March of each year file an account under oath and specify therein the amount of property received by him and remaining in his hands or invested by him, and the nature and manner of such investment, and his receipts and expenditures during the preceding calendar year and whenever ordered by the court, he shall, within thirty days, render and file a like account for any shorter term. When any guardian of a minor shall have the custody of his ward and the care of his education he shall state in his report the time his ward attended school (naming the school) during the time for which the account is rendered, and shall also report whether any surety upon his bond has died or removed from the county. [Supreme Court Order, effective Jan. 1, 1934]

(2) Upon rendering any such account the guardian shall produce for examination by the court, or a duly authorized clerk thereof, all securities, evidences of deposit and investments reported by him, which shall be described in such account in sufficient detail so that the same may be readily identified, and the court or its duly authorized clerk shall ascertain whether such securities, evidences of deposit and investments correspond with such account. But such court may by a general or special order exempt any trust company bank, or any bank with trust powers, which has made the deposit required by section 223.02 from the requirements of this section, if such bank shall within 30 days after each examination by its proper supervisory banking authority file in such court a certificate of the examiner in charge, that at such examination the securities, evidences of deposits and investments of all trust accounts of such bank were examined and compared with the records of the several trusts and found to be correct. Notwithstanding any such order of exemption the court may at any time require the guardian to produce all securities, evidences of debt and investments for examination as provided in this section.

(3) When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed five hundred dollars in value, the guardian shall only be required to render account upon the termination of his guardianship or upon the order of the court made upon its own motion, or the motion of a person interested in the ward or wards, or in his, her or their property, for good cause shown, and set forth upon the records of the court. [1933 c. 281; 1939 c. 504; 1941 c. 269]

**Note:** Where a widow as guardian of her minor children accepted as an asset of the wards' estate her individual note and mortgage, executed on her purchase of the minors' interest in real estate left by the intestate husband and father, the widow as guardian was required to account for the note and mortgage as cash, regardless of the fact that such mortgage was a third mortgage, and that the minors' interests as well as the widow's homestead and dower interests in the property would have been lost in any event on foreclosure of the first mortgage, which did happen. As guardian of the minor children she was entitled to credit in her final account for funds she had contributed to apply on her husband's mortgage debt, and for taxes which she paid, to the extent that the wards' interests in the real estate were benefited thereby. The widow as guardian, surcharged in her final account with her individual note and mortgage as cash, was entitled to credit for items of board, clothing, medicine and medical attention furnished to the wards. Guardianship of Kueschel, 241 W 178, 5 NW (2d) 775.

**319.12 Account examined.** (1) The court shall promptly examine the account and if it be not satisfactory it shall be examined on eight days' notice and the court shall make such order thereon as justice may require. Notice to the guardian may be served personally or by mail. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

(2) No action by the court upon any account shall be final unless it be upon notice. [Court Rule VIII s. 3; Supreme Court Order, effective Jan. 1, 1934]

**Note:** Guardian could not use moneys belonging entirely to one ward to pay more than one-fourth of taxes on homestead property in which ward had undivided one-fourth interest. Guardian could use moneys belonging entirely to one ward to pay interest on mortgage against homestead in which ward had undivided one-fourth interest, since it was duty of guardian not only to protect interest of ward in homestead, but also to provide home for the three other minors, who were also wards of guardian, and their mother. Guardianship of Dejanovich, 218 W 231, 260 NW 479.

The guardian, having actual, as well as imputed, knowledge of the precarious condition of both the old bank and the successor consolidated bank, was guilty of a lack of diligence in not withdrawing a deposit of his incompetent ward's funds in the consolidated bank before it went on a waiver basis, so that his account was properly surcharged with the amount of such deposit. The guardian's account was properly credited with an item representing a deposit of the ward's funds in a bank as to the financial condition of which the guardian had no personal knowledge at the time of making the deposit, which bank went on a waiver plan and issued a deferred certificate for the deposit. Matter of Filardo, 221 W 589, 267 NW 312.

**319.13 Minor may change guardian.** Any minor having a guardian, when under fourteen years of age, may, after attaining that age, have such guardian removed and another appointed in his place, to be nominated by himself and approved by the court, upon petitioning the court therefor. The provisions of this section shall not apply to testamentary guardians. [1935 c. 176 s. 14]

**Revisor's Note, 1935:** The matter of settlement between guardians is transferred to 14) 319.08 and made general. (Bill No. 51 S. s.

**319.14 Income of minor used for education.** If any minor has property which is sufficient for his maintenance and education in a manner more expensive than his parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of his education and maintenance may be defrayed out of his property in whole or in part, as shall be judged reasonable and be directed by the county court. [1933 c. 190 s. 63]

**319.15 Delivery of property to foreign guardian.** When property of a nonresident ward shall be in the possession of or due from a guardian, administrator or executor appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing his verified petition, accompanied by a copy of his appointment and bond, authenticated so as to be admissible in evidence, and upon ten days' notice to the resident guardian, administrator or executor. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding. [Supreme Court Order, effective Jan. 1, 1934]

**319.16 Guardian for incompetent person.** (1) **PETITION.** A relative or friend of an insane or incompetent person may apply, by verified petition, to the county court of the county in which the person resides or, if he is a nonresident, to the county court of any county in which he has property, for the appointment of a guardian.

(2) **NOTICE.** The court shall cause notice to be served personally upon the alleged insane or incompetent person of the time and place of hearing upon the petition at least 10 days before the hearing, and shall cause him, if able to attend, to be produced at the hearing; and if he is in custody or confinement, like service shall be made on his custodian.

(3) **NOTICE TO HEIRS.** The notice shall also be given by mail at least 10 days before the hearing to his presumptive or apparent adult heirs whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained. No guardian shall be appointed unless the court is satisfied that there has been good-faith compliance with this subsection and so finds. [Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective July 1, 1942]

**Note:** Unless the matters required by (1) to be stated in a petition for the appointment of a guardian for an alleged incompetent appear therein the court does not acquire jurisdiction. The fact that the alleged incompetent does not appear at the hearing on the petition for the appointment of a guardian does not deprive the court of jurisdiction, but in such case the duty of the court is to require that the alleged incompetent be brought before the court if possible. Guardianship of Simmons, 226 W 305, 294 NW 821. The procedure for the appointment and removal of guardians of incompetents is completely covered by statute, and in the case of appointment of a successor guardian on the resignation of a prior guardian, no hearing or notice is prescribed, and no notice is required to be given either to the incompetent or to his family in order to give the court jurisdiction. (Secs. 319.08, 319.16, 319.17, 319.34, 324.35, Stats. 1939.) Guardianship of Devereaux, 237 W 375, 296 NW 91.

**319.17 How appointed.** (1) If, after a hearing and examination upon such petition, it shall appear that the person in question is incapable of taking care of himself and managing his property the court shall appoint a guardian of his person or estate, or both.

(2) The court shall certify to the state department of public welfare, the name and address of every such guardian appointed for an incompetent and said guardian shall give such information to the state department of public welfare upon such blanks as said department may provide. [1933 c. 190 s. 64; 1935 c. 336; 1943 c. 93]

**319.18 Guardian for spendthrifts; ward sent to inebriate asylum.** (1) Any friend or relative of a spendthrift, or any officer of the town, village or city of which such person is a resident, may present a verified petition to the court, setting forth the facts and circumstances of the case and praying to have a guardian appointed for such person.

(2) Upon filing such petition the court shall cause ten days' notice to be given to such supposed spendthrift of the time and place fixed for hearing the case. If, after a hearing, it shall appear proper, the court shall appoint a guardian of his person or estate, or of both. The court may authorize or direct the guardian to commit such person to any inebriate asylum, in or out of the state, to be designated by such court, by order, for a term not exceeding two years, but he may be discharged at any time by order of the court. [1933 c. 190 s. 65]

**319.19 Lis pendens, void contracts.** A copy of the petition and order for hearing provided for in sections 319.16 and 319.18 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a copy of such petition and order as aforesaid, shall be void. [1933 c. 190 s. 66]

**319.20 Guardian for insane patient.** (1) When a patient in any state or county hospital or asylum for the insane or in any state institution for the mentally deficient, appears to have property in this state, and does not have a guardian, the state department of public welfare by its collection and deportation counsel and in counties having a population of 500,000 the district attorney, may apply to the county court of the county in which such patient resided at the time of his commitment for the appointment of a guardian of his person and estate, and the court, upon such application, shall appoint such guardian in the manner provided for the appointment of guardians of minors under 14 years of age.

(2) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his ward in his possession or control exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the state department of public welfare, shall upon application of the collection and deportation counsel of said department, forthwith be removed. [1933 c. 190 s. 67; 1935 c. 336; 1943 c. 93]

**Note:** 319.20 (2) furnishes no authority for to the exclusion of the state's claim under reserving \$250 of guardianship assets for the 46.10 (7). Guardianship of Henes, 236 W 635, payment of a living ward's burial expenses 296 NW 60.

**319.21 Guardian for nonresident.** When any person subject to guardianship shall reside out of this state and shall have property therein, any friend of such person or anyone interested in his estate, in expectancy or otherwise, may apply to the county court of any county in which there is any property of such person, and after notice given to all persons interested, in such manner as the court shall order, and after a hearing the court may appoint a guardian for such absent person. The guardianship first granted of any person residing out of this state shall extend to all his property in this state and shall exclude the jurisdiction of every other county court. [1933 c. 190 s. 68]

**Revisor's Note, 1933:** For right of foreign guardian to act for his ward in this state see 331.32. (Bill No. 123 S, s. 68)

**319.22 Expense of examination.** When a guardian shall be appointed for a person (other than a minor) the court shall make an allowance to be paid by the guardian out of the estate of his ward for all reasonable expenses incurred by the ward in opposing the petition. [1933 c. 190 s. 69]

**Revisor's Note, 1933:** Section 319.22 is a consolidation from sections 20, 21, 35 and 36 of chapter 112, R. S. 1858. The bond requirements are in 319.05. The duties generally of guardians are in 319.02 (as amended) and are well settled common law. Special provisions thereto are in 319.18, 319.23. (Bill No. 123 S, s. 69)

**319.23 Confinement for bad behavior.** Whenever a guardian or friend of any insane, incompetent or imbecile person shall present to the county court of the county wherein such person resides his verified petition setting forth that such person is addicted to lewd, or indecent behavior, or that any person of the opposite sex is accustomed to visit or is visited by such person for immoral purposes, and praying that he or she be confined in some suitable place, the court shall make an order appointing a time and place for hearing such petition, and commanding the sheriff to bring such person before the court at the time and place appointed. Before hearing such petition the court shall appoint a disinterested attorney guardian ad litem to represent such person. [1933 c. 190 s. 70]

**319.24 Commitment of insane, expense.** If upon the hearing it shall appear that the welfare of such insane, incompetent or imbecile person requires that he or she be kept in close custody the court shall make an order committing such person to the county asylum for the insane, and in case there is no such asylum in such county, then to the county asylum for the chronic insane, which is designated by the state department of public welfare. He shall be subject to the direction of the court and shall receive such care, attention and treatment as the court shall deem necessary. All expenses incurred in confining, taking care of and maintaining such person, when certified by the county judge, shall be paid out of his estate. But in case his estate is not sufficient for such purpose such expenses shall be charged and adjusted as provided in section 51.08. [1933 c. 190 s. 71; 1943 c. 93]

**319.25 Guardian's duties as to debts; appear for ward.** Every general guardian shall pay the just debts of the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate upon selling the same as provided

by law. Proceedings for the presentation, allowance and adjustment of claims and demands against persons under guardianship may be had and made as provided in section 319.41. Such guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due to him, or may, with the approbation of the county court, compound and discharge the same, and shall appear for and represent his ward in all actions and proceedings except where another person is appointed for that purpose. [1933 c. 190 s. 72; 1935 c. 176 s. 15]

**Revisor's Note, 1933:** As to court appearances, compare 319.25 with 324.29. Subsection (2) is a repetition and paraphrase of part of (1). Section 319.41 relates to same subject and is consolidated with 319.25 (2). (Bill No. 123 S, s. 72)

**319.26 Management of ward's estate; sale; support of ward.** Every guardian shall manage the estate of his ward frugally and without waste and apply the personal property or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of his family, if there be any legally dependent upon him for support, and for the care and protection of his real estate. The parents, brothers and sisters of incompetent veterans of all wars are declared members of his family and all payments heretofore made pursuant to court order to any dependent member of the family of any such incompetent as herein defined are ratified and approved. If the personal property and income from the real estate shall be insufficient for those purposes, the guardian may sell or mortgage the real estate, upon obtaining a license therefor, as provided by chapter 296, and shall apply the proceeds as far as may be necessary for such maintenance and support. [1933 c. 190 s. 73; 1939 c. 206]

**Note:** Ward has choice between action for tort and an accounting against one assuming to act as guardian without valid authority. Where administrator of estate of deceased guardian of plaintiff and his brother, after appointment as guardian of brother, collected note and cashed certificates of deposit belonging to both minors, reissued certificates of deposit, and placed other money belonging to both minors in checking account, paid brother one-half the money when brother became of age and placed balance in bank, he was liable as one converting funds to his own use for loss to plaintiff resulting from insolvency of bank. *Rear v. Olson*, 219 W 322, 263 NW 357.

Where the circumstances were that the guardian was the chief executive officer of the bank, the bank was hard pressed to maintain the required cash reserve, and the investments were made by the guardian in frozen assets of the bank, the guardian's account was surchargeable with the losses from such investments under rules of strict

accountability. *Matter of Filardo*, 221 W 589, 267 NW 312.

This section does not justify an order which requires the estate of an incompetent son to support his mother in the absence of evidence that the mother was a member of the son's family. *Guardianship of Heck*, 225 W 636, 275 NW 520.

It is the duty of a guardian to invest a ward's funds in such interest-bearing securities as the statutes authorize, only when there are funds for which there is no immediate need in order to maintain the ward. *Guardianship of Kueschel*, 247 W 253, 19 NW (2d) 178.

After compensation payments are made to veteran or his guardian, compensation estate is administered in accordance with laws of state in which veteran resides. United States Veterans' Administration retains supervisory control over estate to extent only that it can object to use of compensation estate that is improper under laws of veteran's resident state. 27 Atty. Gen. 847.

**319.27 Partition and dower.** Every guardian may join in and assent to a partition of the real estate of his ward in the cases and in the manner provided by law; and he may also assign and set out dower in the said estate to any widow entitled thereto.

**319.28 Inventory; account.** Upon taking any inventory required by this chapter the estate and effects comprised therein shall be appraised by two or more disinterested persons, to be appointed and sworn in like manner as is required with respect to the inventory of the estate of a deceased person. Every guardian shall account for and dispose of the personal estate of the ward in like manner as is directed with respect to executors and administrators.

**319.29 Sale of personal property; investment of funds; burial expense.** The court, on the application of a guardian or of any person interested in the estate of any ward, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell any personal property held by him as guardian, and to invest the proceeds of such sale and any other moneys in his hands in real estate or in any other manner that shall be most for the interest of all concerned therein; and the court may make such further orders as the case may require for managing, investing, and disposing of the personal property in the hands of the guardian, and the court as a part of such disposition may order a suitable amount reserved in the guardianship to assure the ward a decent burial, and in case of an insolvent guardianship the court may order an amount not exceeding \$200 reserved in the guardianship or set aside under order of the court to assure such ward a decent burial. [1933 c. 190 s. 74; 1941 c. 191]

**Note:** For sale of ward's property and duty of guardian for investments in eligible securities, see note to 320.01, citing *In re*

*Paulsen's Guardianship*, 229 W 262, 282 NW 36.

**319.30 Discharge of guardian.** The guardian of any insane or incompetent person or spendthrift may be discharged by the county court when it shall appear to such court, on the application of the ward or otherwise, that such guardianship is no longer necessary, and his real and personal estate shall be restored to him.

**319.31 When an incompetent may be declared competent.** On a proper showing made to the county court, a person previously adjudged incompetent, may be adjudged competent.

**319.32 Effect of ward's death.** (1) Upon the death of any person, other than a minor, under guardianship, the guardian may petition the court for authority to pay the funeral expenses, including suitable marker for grave, and the expenses of last sickness of said ward, and if the total value of the property belonging to the deceased ward shall not exceed three hundred dollars, the court may in its discretion authorize said guardian to pay such expenses in the order named out of the ward's estate. In other such guardianship matters in which notice to creditors has been given in accordance with the requirements of the law, and if it shall satisfactorily appear to the court that the ward owned no real estate or interest therein at the time of his death and that he owned no real estate mortgage or interest therein that cannot be disposed of except by foreclosure; and if it shall also appear that the personal estate of said ward at such time, whether in the hands of the guardian or not, does not exceed the sum of one thousand dollars in value, the court may upon the application of the guardian and upon notice to be given to all interested parties in accordance with the provisions of section 324.19, order the said guardian to pay the funeral expenses, including suitable marker for grave, the expenses of the guardianship and all liabilities incurred by such guardian, including the expenses of last sickness, and if there be any balance left the court may order such balance paid to the widow, if any, otherwise to the heirs of said deceased ward according to their legal rights as such, and if there be no heirs, then to dispose of the balance in accordance with the provisions of law in such cases made and provided.

(2) In all cases not covered by subsection (1) of this section and in cases where the petition under said subsection (1) is denied, the power of the guardian shall cease upon the death of his ward and he shall settle his accounts with the court. [1933 c. 190 s. 75; 1939 c. 504]

**Note:** Upon the death of a ward the power of her guardian ceased, and the guardian could only account and turn over the funds representing a legacy to her to the representative of her estate, and it was error for the county court to order otherwise. Estate of Jacobus, 214 W 143, 252 NW 583.

**319.33 Fraud as to ward's property, etc.** Upon complaint made to the county court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, embezzled or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased person in sections 312.06 and 312.07.

**319.34 More than one guardian.** The county court, in its discretion, whenever the same shall appear necessary, may appoint more than one guardian of any person subject to guardianship, who shall give bond and be governed and liable in all respects as is provided respecting a sole guardian. An account rendered by two or more joint guardians may be allowed by the county court upon the oath of either.

**319.35 Land of ward, lease easement.** The guardian may make leases of and grant easements upon the lands of his ward in the same manner, for the same purpose, and with the same effect, as the ward might do if of full age and under no legal disability. But such lease or easement shall terminate with the guardianship or disability of the ward unless it was authorized as provided in chapter 296. [1933 c. 190 s. 76]

**Reviser's Note, 1933:** Leases authorized by 319.35 are valid without court approval. This section created an exception to 296.11. Haas v. Welch, 207 W 84, 240 NW 789. The addition is to harmonize 319.35 with 296.11 as in the Haas case. (Bill No. 123 S, s. 76)

The guardian of a minor is authorized to lease the minor's land for a period terminating during the guardianship without obtaining judicial license or approval. Haas v. Welch, 207 W 84, 240 NW 789.

**319.36** [Repealed by 1933 c. 190 s. 77]

**319.37 Compensation of guardian; cost of bond.** (1) Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust and he shall also have such compensation for his services as the court in which his accounts are settled shall deem to be just and reasonable. The court may allow the sum paid by the guardian for his bond, as provided in section 271.14. [1939 c. 331; 1943 c. 122; 1945 c. 177]



**Note:** The guardian having exposed the incompetent's estate to substantial loss under the circumstances stated, the trial court properly denied the guardian credit on accounting for fees claimed as compensation for his services. *Matter of Fillardo, 221 W 589, 267 NW 312.*

Under (1) the court must determine from all the facts and circumstances in each case what fees are just and reasonable, and the court cannot arbitrarily fix a fee schedule and, without permitting evidence of the reasonable value of the services rendered by the guardian determine a just and reasonable compensation. A guardian shall be allowed reasonable attorney fees in a proper

case as well as other expenses. Guardianship of Messer, 242 W 66, 7 NW (2d) 584.

In this case, charging interest at 3 per cent, rather than at the legal rate, on amounts surcharged to the guardian, representing the difference between the fees or compensation claimed by him and the amount allowed, was within the discretion of the county court, in view of the guardian's good faith and the reasonable character of the questions raised over his fees, as well as his understanding with the former county judge and the present prevailing low rates of interest. *Guardianship of Messer, 246 W 426, 17 NW (2d) 559.*

**319.38, 319.39** [*Repealed by 1933 c. 190*]

**319.40 Release of guardian by ward.** A writing signed by any adult person, who, when a minor was under guardianship, whereby he shall state that he is twenty-one years of age, and shall acknowledge that he has received money or property from his guardian in partial or full satisfaction of his demands against such guardian, and executed as provided by sections 235.19 and 235.22, may be recorded in the court which appointed said guardian. [*Supreme Court Order, effective Jan. 1, 1934*]

**319.41 Adjusting claims against ward.** The guardian or a creditor of any ward may apply to the court which appointed the guardian for an examination and adjustment of the claims of all persons against such ward. Such court shall by order, fix the time and place it will examine and adjust such claims, and shall fix the time within which all claims against such ward must be presented or be thereafter barred. Notice of the time and place so fixed and limited shall be given by publication as in the estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. After the court shall have made such order no suit shall be commenced or maintained in any court against such ward upon any such claim as the county court has exclusive jurisdiction of in the settlement of the estates of deceased persons. [*1935 c. 176 s. 15*]

**Note:** A transcript of a judgment properly entered by confession on the note of the incompetent could properly be entered in the court having jurisdiction of the guardianship proceedings notwithstanding the time limited by order of the court for presenting claims against the estate of the incompetent had expired prior to the entry of such judgment. *Guardianship of Kohl, 221 W 385, 266 NW 800.*

Section 319.41 is itself a statute of limitation, and is therefore a "special case" within the meaning of section 330.01, providing that civil actions can only be commenced within the periods prescribed in chapter 330, except when, in "special cases," a different limitation is provided by statute. Hence, after the entry of an order of court fixing the time within which claims against an incompetent might be filed, a claim based on a debt could be enforced in no other way and would be barred if not filed within the time fixed. *Guardianship of Thornton, 243 W 397, 10 NW (2d) 193.*

The provision in 319.41, that in the adjustment of claims against a ward all statutes relating to "claims" against estates of decedents shall apply, does not import into such section the provisions in 313.15 authorizing an allowance for the support of the family of a decedent out of the decedent's personal estate before application thereof to the payment of the decedent's debts; hence such provisions are not applicable so as to authorize an allowance for the support of the wife of the ward to be made and paid prior to the payment of a claim of the state for support furnished to the incompetent in a public institution. *Guardianship of Schneider, 244 W 323, 12 NW (2d) 138.*

Milwaukee county can recover from an inmate of its county hospital for the insane, or his estate, under 319.41, relating to the presentation and allowance of claims against wards under guardianship. *Guardianship of Brennan, 245 W 235, 14 NW (2d) 28.*

**319.42 Special guardians; appointment.** When there shall be delay in appointing a guardian of a minor, insane person or other person subject to guardianship, or in issuing letters of guardianship to such guardian, occasioned by any contest concerning a guardian appointed in any will, or from any other cause, or when it shall appear to the satisfaction of the court to be necessary, the county court may appoint a special guardian for such ward, to act until the matter causing the delay shall be disposed of or the necessity therefor cease to exist. No appeal shall be allowed from the appointment of such special guardian, and such special guardian may be appointed without notice. Such special guardian may be removed whenever the court may so order.

**319.43 Powers and duties.** Such special guardian shall have power to collect all the goods, chattels and credits of the ward and, with leave of the court, to lease for a term not exceeding one year the real estate of the ward, to care for, gather and secure crops, and do such other things as the court shall direct and as may be deemed for the interest of the ward, and preserve all the property of the ward, and may, for such purposes, demand, sue for, collect and receive all debts due to him, and sell such personal property of the ward as the court may direct. Such special guardian shall not be liable to any action by any creditor or be called upon in any way to pay the debts of the ward. Such special guardian may have the custody of the ward if the court shall so order upon a hearing to be had after notice of the time and place of such hearing, to be served on the ward, and, if he be under fourteen

years of age, also on his parent, if living in this state, at least five days before such hearing; but the ward and such parent may waive in writing the service of such notice; whereupon such order concerning the custody of the ward may be made immediately. Such special guardian may be required to appear before the county court in the same way that a guardian may be required to appear before such court.

**319.44 Bond.** Every such special guardian shall, before entering upon the duties of his trust, give a bond to the judge of the county court in such sum and with such sureties as the court may designate and approve, and conditioned as provided in section 319.05. Sections 321.015 and 321.02 (3), (4) shall be applicable in every case of an appointment of such a special guardian.

**319.45 Cessation of powers.** If such special guardian shall not be sooner removed, his power shall cease upon the issuing of letters of guardianship to the guardian of his ward, or, if the ward be a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the ward which was the cause of the guardianship has terminated; and such special guardian shall, upon his removal or other termination of his power, forthwith deliver to the person or persons entitled thereto, all the property and effects of the ward in his hands; and any action which may have been commenced by such special guardian may be prosecuted to final judgment by his successor or successors in interest. Section 319.37 shall apply to every such special guardian.

**319.46** [*Repealed by 1935 c. 336*]

**319.47 Order discharging guardian.** When a guardian shall file with the court proper receipts showing that he has delivered to the persons entitled thereto all property which he is accountable for as guardian, the court may make an order discharging him. [*1935 c. 176 s. 16*]

**319.48 Notes and mortgages of minor veterans.** Notwithstanding any provision of this chapter or any other provision of law to the contrary, any minor who served in the active armed forces of the United States at any time between August 27, 1940, and the termination of World War II as proclaimed by the President or the Congress and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the administrator of veterans' affairs or the federal housing administrator under the provisions of the Servicemen's Readjustment Act of 1944 or the National Housing Act. Such notes or mortgages when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 21 because of the minority of either or both of them at the time of the execution thereof. [*1945 c. 169*]