

## 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.

**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 14 by any other person than a parent, at least 10 days' notice of the hearing on the petition shall be given to the parents as provided in s. 324.18. The appointment may be made without notice if it appears that the interests of the minor require the appointment of a guardian without delay, or the parents appear generally, or file consent to such appointment. If the appointment is made without such previous notice to, appearance by, or filed consent of such parents, notice of such appointment shall be given to them as provided in s. 324.36 and with like effect.

(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.

**History:** Sup. Ct. Order, 259 W vi.

**Comment of Judicial Council, 1951:** 319.02 324.18 would permit personal service, publication and mailing, or holding the hearing if they live in this state and requires that upon waiver. Nonresident parents would seem to be entitled to the same notice as person other than a parent makes application for appointment of a minor under 14 years of age. There seems no reason why made without notice, 324.36, the general county court provision for delayed notice, should be sufficient. [Re Order effective May 1, 1952]

**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.

**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.

**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:

(1) 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;

(2) 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;

(3) 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

(4) 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.

(5) In counties having a population of 500,000 or more, whenever the permanent care, control and custody of a minor shall be committed or transferred to the custody of the county home for dependent children and the rights of the parents or a parent with reference to such child are terminated, the superintendent of such home shall immediately become the guardian of the estate as well as of the person of such minor. Such superintendent shall give a guardian's bond as provided in section 48.28 (6).

**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.

**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.

**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.

**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.

**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.

(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.

**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.

**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.

**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.

**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.

**319.153 Foreign guardians may sue, convey property, etc.** When a guardian shall have been duly appointed in any other state, territory or country for any person a resident thereof at the time of such appointment and no guardian for such person shall have been appointed in this state, such foreign guardian, upon filing his original appointment or a copy thereof duly authenticated, so as to make the same receivable in evidence in any county court in the state, may thereafter exercise any powers over the estate of such ward, including sales and assignments of the same or any part thereof, and may prosecute or defend any action or proceeding relating thereto, and have all the rights, remedies and defenses in regard to the property, real and personal, and interests, legal and equitable, and to collect any demands of such estate or person which a guardian duly appointed by any county court of this state could have or exercise in relation thereto.

**History:** 1951 c. 247 s. 60.

**319.155 Guardian or ward removing from county.** When a guardian removes from the county where appointed to another county within the state, or a ward removes from the county in which he has resided to another county within the state, the county court in which the ward resides may appoint a new guardian in the manner provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of his appointment and bond if the appointment is in another county, and upon the notice prescribed by section 324.18 to the originally appointed guardian (unless he is the same person), and to such other persons as the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian.

**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.

**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.

**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.

**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.

This section did not make an incompetent mother while living in the home of the mother not under guardianship, nor her mother. Estate of Marotz, 260 W 155, 50 estate after her death, liable for services NW (2d) 472. rendered by a daughter in caring for the

**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.

**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.

**Cross Reference:** For right of foreign guardian to act for his ward in this state, see 331.32.

**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.

**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.

**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.

**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.

**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.

Where a ward has a personal privilege to elect between alternative or inconsistent rights or claims, the privilege of election does not pass to the guardian of the estate of the ward, and the guardian cannot make the election. In view of the joint tenancy of the incompetent husband and his wife in the joint savings account, with a corresponding right of survivorship, and the legal incapacity of the guardian to exercise any personal election over the account, it is for the county court to determine what is necessary for the best interests of either party, if incompetent, and to order withdrawals from the account if funds are necessary for support of either party; and the moneys in such account should be considered in custodia legis of the court with no right either in the wife or the guardian to make any withdrawals except on court order. *Boehmer v. Boehmer*, 264 W 15, 58 NW (2d) 411.

**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.

**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 ward, other than a minor, whose estate does not exceed \$300 in value, the court may, on petition of the guardian, authorize him to pay the funeral expenses (including a suitable grave marker) and the expenses of last sickness, in the order named. If notice to creditors has been given in accordance with the requirements of the law, and if the ward owned no real estate or interest therein at the time of his death and 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 \$1,000 in value, the court may, upon the application of the guardian and upon notice given to all interested parties in accordance with section 324.18, order the guardian to pay the funeral expenses (including a suitable grave marker), 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 ward according to their legal rights as such.

(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.

**History:** Sup. Ct. Order, 258 W viii.

**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.

**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.

**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 235.01 and 235.19 (7) (e), may be recorded in the court which appointed said guardian.

**History:** 1951 c. 703.

**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.

**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.

**319.47 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.

**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 or under the provisions of acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property or any interest therein, and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 21 because of the minority of either or both of them at the time of the execution thereof.



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

(a) "Veterans' administration" means the veteran's administration, its predecessors or successors.

(b) "Income" means moneys received from the veterans' administration and revenue or profit from any property wholly or partially acquired therewith.

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

(d) "Benefits" means all moneys paid or payable by the United States through the veterans' administration.

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

(f) "Ward" means a beneficiary of the veterans' administration.

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

(2) ADMINISTRATOR AS PARTY IN INTEREST. 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 veterans' administration. Not less than 15 days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans' administration having jurisdiction over the area in which any such suit or any such proceeding is pending.

(3) APPLICATION. Whenever, pursuant to any law of the United States or regulation of the veterans' administration, 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 other than a bank or trust company or the commandant of the Grand Army Home for Veterans at King shall be guardian of more than 5 wards at one time, unless all the wards are members of one family. The commandant shall act only for members of the Grand Army Home for Veterans and shall serve without fee. Upon presentation of a petition by an attorney of the veterans' administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than 5 wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianship in excess of 5 and forthwith 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 veterans' administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of the state.

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

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

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

(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 his authorized representative, setting forth the age of such minor as shown by the records of the veterans' administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans' administration 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 his duly authorized representative, that such person has been rated incompetent by the veterans' administration on examination in accordance with the laws and regulations governing such veterans' administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans' administration, 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 veterans' administration as provided by this section.

(9) BOND. (a) Upon the appointment of a guardian, he 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 his debts and liabilities and the aggregate of other bonds on which he 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 accounts as required by chapter 319 and shall be excused from filing accounts in the case as provided by section 319.11 (3).

(b) The guardian, at the time of filing any account, shall exhibit all securities or investments held by him 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 his 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 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 indorse 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 him and that those exhibited to him 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 his 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 veterans' administration 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 veterans' administration. Unless waived in writing, written notice of the time and place of any hearing shall be given the veterans' administration office concerned and 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 veterans' administration office 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 veterans' administration, he 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 veterans' administration, 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 veterans' administration 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 his removal.

(12) **COMPENSATION OF GUARDIANS.** Guardians shall be compensated as provided in section 319.37.

(13) **INVESTMENTS.** Every guardian shall invest the surplus funds of his 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 veterans' administration, 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 veterans' administration 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 his interest, or, if he is not a minor as a home for his 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 veterans' administration 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 his 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 veterans' administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans' administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans' administration 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 veterans' administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans' administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his 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 his 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 veterans' administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his 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 ACT.** 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 subsection (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:** 1953 c. 84.