

## CHAPTER 880

## GUARDIANS AND WARDS

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## SUBCHAPTER I

## GENERAL PROVISIONS

**880.01 Definitions.** For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his property or caring for himself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physi-

cal disability without mental incapacity is not sufficient to establish incompetence.

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

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(7) "Minor" means a person who has not attained the age of 18 years.

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

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

(10) "Ward" means a subject for whom a guardian has been appointed.

**History:** 1971 c. 41; 1971 c. 228 s. 36; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176.

**880.02 Jurisdiction in circuit court.** The circuit court shall have jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

**History:** 1971 c. 41; 1977 c. 449; 1979 c. 32 s. 92 (14)

**880.03 Persons and estates subject to guardianship.** All minors, incompetents and spendthrifts are subject to guardianship. The court may appoint a guardian of the person of anyone subject to guardianship who is also a resident of the county, or of a nonresident found in the county, under extraordinary circumstances requiring medical aid or the prevention of harm to his person or property found in the county. The court may appoint a guardian of the estate of anyone subject to guardianship, whether a resident of the state or not, if any of the estate is located within the county. Separate guardians of the person and of the estate of a ward may be appointed.

**History:** 1971 c. 41.

**880.04 Exceptions. (1) EMANCIPATION OF MARRIED MINORS.** Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to him upon his marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

**(2) SMALL ESTATES.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; or invest in the stock of a savings and loan association, payment of whose stock by substitution of stock in another and similar savings and loan association is insured by the federal savings and loan insurance corporation, in case of default in payment; or deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m). The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

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

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for his care and maintenance for the benefit of the incompetent.

**(3) UNIFORM GIFTS TO MINORS.** If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor under ss. 880.61 to 880.71 or to a custodian under the uniform gifts to minors act of any other state.

**History:** 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142.

**880.05 Venue.** All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence or the county of legal settlement of the person subject to guardianship. A petition for guardianship of the

person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found.

**History:** 1971 c. 41; 1975 c. 393, 421; 1977 c. 449 s. 497.

**880.06 Change of venue. (1) ORIGINAL PROCEEDING.** The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition.

**(2) CHANGE OF RESIDENCE OF WARD OR GUARDIAN.** If a guardian removes from the county where appointed to another county within the state or a ward removes from the county in which he or she has resided to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian (unless he or she is the same person), and to 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.

**History:** 1971 c. 41; 1977 c. 449.

**880.07 Petition; fees. (1)** Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

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

(b) The nature of his incapacity with specification of the incompetency or spendthrift habits.

(c) The approximate value of his property and a general description of its nature.

(d) Any assets previously derived from or benefits now due and payable from the veterans administration.

(e) Any other claim, income, compensation, pension, insurance or allowance to which he may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post-office address of any person nominated as guardian by the petitioner.

(h) The names and post-office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.

(i) The name and post-office address of the person or institution having the care and custody of the proposed ward.

(j) The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.

**(2)** A petition for guardianship may also include an application for protective placement pursuant to ch. 55.

**(3)** In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment

of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

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

**History:** 1971 c. 41; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317.

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

**880.08 Notice of hearing for appointments and rehearings.** Upon the filing of a petition for guardianship, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

(1) **INCOMPETENTS.** A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship and specific allegations of the grounds of incompetency. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

(2) **SPENDTHRIFTS.** Notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing but the proposed ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

(3) **MINORS.** When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to the following persons:

- (a) To his spouse;
- (b) To parents;
- (c) To a minor over 14 years of age unless the minor appears at the hearing;
- (d) To any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.
- (e) No notice need be given to parents whose rights have been judicially terminated.

(4) **REHEARINGS.** Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

**History:** 1971 c. 41 ss. 8, 12; 1973 c. 284; Sup. Ct. Order, 67 W (2d) 768; 1975 c. 218, 393, 421; 1977 c. 449 s. 497; 1981 c. 379.

**880.09 Nomination; selection of guardians.** The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) **NOMINATION BY MINOR.** A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) **PREFERENCE.** If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) **EFFECT OF NOMINATION BY MINOR.** If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) **GUARDIAN OF THE PERSON NOMINATED BY WILL.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his minor child.

(5) **GUARDIAN OF THE ESTATE NOMINATED BY WILL.** A parent may by will nominate a guardian of the estate of his minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) **TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) **ANTICIPATORY NOMINATION; PREFERENCE.** Any person other than a minor may, at such time as he has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

**History:** 1971 c. 41; 1973 c. 284; 1975 c. 393; 1977 c. 449.

Nomination by person unfit for guardianship should be weighed by the court. *In re Guardianship of Schmidt*, 71 W (2d) 317, 237 NW (2d) 919.

**880.10 Notice of appointment.** If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of his appointment to the minor by certified mail addressed to his last-known post-office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

**History:** 1971 c. 41.

**880.12 Determination and order appointing guardian.** The court shall after hearing determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint one or more guardians but not more than one guardian of the person shall

be appointed unless they be husband and wife. The order shall specify the amount of the bond, if any, to be given.

History: 1971 c. 41.

**880.125 Sufficiency of bond.** In any action or proceeding wherein funds are to be paid to a guardian, the trial court or court approving disbursement of such funds shall, prior to payment or approval, be satisfied as to the sufficiency of the penal sum of the guardian's bond.

History: 1971 c. 41.

**880.13 Bond. (1) FORM OF BOND.** Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345, conditioned upon the faithful performance of the duties of the guardian.

**(2) WAIVER OF BOND.** (a) Unless required under s. 880.60 (9), the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears.

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

**(3) BLANKET BOND FOR EMPLOYE GUARDIAN OR CONSERVATOR.** The circuit court may designate one or more persons who are county institutional employes, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than \$1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

History: 1971 c. 35, 41; 1971 c. 211 s. 114; 1973 c. 284 s. 32; 1973 c. 336 s. 79; 1977 c. 74, 449; 1983 a. 369.

**880.14 When letters to be issued.** When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to him.

History: 1971 c. 41.

**880.15 Temporary guardian. (1) APPOINTMENT.** If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it may appoint a temporary guardian for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of

guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under ch. 48 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section.

**(1m) ADOPTION BY TEMPORARY GUARDIAN.** No person appointed temporary guardian of a child under this section may adopt the child without complying with the adoption procedures of ch. 48.

**(1s) NOTICE OF PETITION.** The person petitioning for appointment of a temporary guardian shall cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 within 30 days of receipt of the notice.

**(2) BOND OF TEMPORARY GUARDIAN.** Every temporary guardian appointed under sub. (1) shall before entering upon the duties of his or her trust give bond to the judge of the circuit court in such sum and with such sureties the court designates and approves.

**(3) CESSATION OF POWERS.** If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 1971 c. 41; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379.

**880.155 Visitation by grandparents.** If one or both parents of a minor child is deceased and the minor is in the custody of the surviving parent or any other person, any grandparent of the minor may petition for visitation privileges with respect to the minor, whether or not the person with custody is married. The court may grant reasonable visitation privileges to a grandparent if the court determines that it is in the best interests and welfare of the child, may issue any necessary order to enforce the same, and may from time to time modify such privileges or orders upon a showing of good cause.

History: 1975 c. 122.

**880.16 When a guardian may be removed. (1) NOMINATION BY MINOR.** When a minor ward has attained the age of 14 years a guardian of his person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

**(2) REMOVAL FOR CAUSE.** When any guardian fails or neglects to discharge his trust the court may remove him after

such notice as the court shall direct to such guardian and all others interested.

(3) **CITATION TO GUARDIAN.** (a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

(b) Upon filing proof of service and at the time fixed in the citation such 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.

(4) **FRAUD AS TO WARD'S ESTATE.** Upon complaint made to the circuit 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, stolen 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 stealing the effects of a deceased person in s. 879.61.

History: 1971 c. 41; 1977 c. 449 ss. 458, 497.

**880.17 Appointment of successor guardian.** When a guardian dies, is removed by order of the court, or resigns and such resignation is accepted by the court, the court may appoint another guardian in his place in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian.

History: 1971 c. 41.

**880.173 Guardian of the estate of a married person.** (1) A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make, amend or revoke a will.

(2) The powers under sub. (1) are in addition to powers otherwise provided for a guardian of the estate.

History: 1983 a. 186; 1985 a. 37.

**880.175 Petition for placement of assets in trust.** Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred to the trustee or trustees of an existing revocable living trust created by the person for the benefit of himself or herself and those dependent upon the person for support, or to the trustee or trustees of a trust created for the exclusive benefit of the person, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.

History: 1971 c. 41, 171; 1971 c. 228 ss. 36, 37; 1977 c. 409.

**880.18 Inventory.** When a guardian of the estate has been appointed an inventory shall be made in the same manner

and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

History: 1971 c. 41.

**880.19 Management of ward's estate. (1) GENERAL DUTIES.** The guardian of the estate shall take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of him by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(2) **RETENTION OF ASSETS.** (a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881.

(3) **CONTINUATION OF BUSINESS.** In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(4) **INVESTMENTS.** (a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in his possession in accordance with ch. 881.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in his possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

(c) No guardian shall lend guardianship funds to himself.

(5) **SALES AND OTHER DISPOSITIONS.** (a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4).

(b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for his care, maintenance and education and the care, maintenance and education of his

dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

(c) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.

(d) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

(6) **TRUST COMPANIES, EXEMPTION FROM INVESTMENT RESTRAINTS.** The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

**History:** 1971 c. 41 ss. 8, 12; 1973 c. 85; 1975 c. 94 s. 91 (9); 1979 c. 32 s. 92 (14).

**880.191 Inventories, accounts. (1) VERIFICATION, EXAMINATION IN COURT.** Every guardian shall verify by his oath every inventory required of him and verification shall be to the effect that the inventory is true of all property which belongs to his decedent's estate or his ward, which has come to his possession or knowledge, and that upon diligent inquiry he has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine him on oath in relation thereto, or in relation to any supposed omission.

(2) **CITATION TO FILE INVENTORY AND TO ACCOUNT.** If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

**History:** 1971 c. 41; 1977 c. 449.

**880.192 Fraud, waste, mismanagement.** If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

**History:** 1971 c. 41; 1977 c. 449.

**880.195 Transfer of Menominees guardianship funds to trust.** The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.085 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P. L. 83-399, as amended, and the assets shall thereafter be held, administered and

distributed in accordance with the terms and conditions of the trust.

**History:** 1971 c. 41; 1977 c. 449.

**880.21 Use of estate for benefit of wards. (1) APPLICATION OF PERSONAL PROPERTY AND INCOME.** Every guardian shall 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.

(2) **FOR SUPPLEMENTING PARENT'S SUPPORT OF MINOR.** If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the circuit court.

**History:** 1971 c. 41; 1977 c. 449.

**880.215 Lis pendens, void contracts.** A copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 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. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

**History:** 1971 c. 41 ss. 8, 12; 1973 c. 284.

**880.22 Claims. (1) PAYMENT.** Every general guardian shall pay the just debts of the ward out of the ward's 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. But a temporary guardian shall pay the debts of his ward only on order of the court.

(2) **PROCEEDINGS TO ADJUST CLAIMS.** The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

**History:** 1971 c. 41 ss. 8, 12; 1977 c. 449.

**880.23 Actions.** The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her ward in all

actions and proceedings except where another person is appointed for that purpose.

History: 1971 c. 41; 1977 c. 449.

**880.24 Compensation allowed from estate. (1) FEES AND EXPENSES OF GUARDIAN.** Every guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. He shall also have such compensation for his services as the court, in which his accounts are settled, deems to be just and reasonable.

**(2) WARD'S EXPENSES IN PROCEEDINGS.** When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

History: 1971 c. 41.

**880.245 Accounting by agent.** The circuit court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

History: 1971 c. 41; 1977 c. 449.

**880.25 Accounting. (1) ANNUAL REPORTS.** Every 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 30 days, render and file a like account for any shorter term. In lieu of the filing of such accounts before March of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file such annual accountings within 60 days after the anniversary date of the guardian's qualification as such guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. When any guardian of a minor has 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 any change in the status of the surety upon his bond.

**(2) DISPLAY OF ASSETS.** Upon rendering any such account the guardian shall produce for examination by the court, or some person satisfactory to the court, 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. It shall be ascertained 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 s. 223.02 from the requirements of this section, if such bank within 30 days after each examination by its proper supervisory banking authority files 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) SMALL ESTATES.** When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the guardian shall be required to render account only upon the termination of his guardianship, unless otherwise ordered by the court.

**(4) EXAMINATION OF ACCOUNTS.** The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

**(5) NOTICE.** No action by the court upon any account shall be final unless it is upon notice.

History: 1971 c. 41.

**880.251 Removal of guardian.** If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

History: 1971 c. 41; 1977 c. 449; 1981 c. 314.

**880.252 Accounts; failure of guardian to file.** If a guardian fails to file his account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why he should not immediately make and file his reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if he fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why he should not be punished for contempt. If the court finds that the failure, refusal or neglect is wilful or inexcusable, the guardian may be fined not to exceed \$50 or imprisoned not to exceed 10 days or both.

History: 1971 c. 41.

**880.253 Formal accounting by guardians.** The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.

History: 1971 c. 41.

**880.26 Termination of guardianship. (1) GUARDIANSHIP OF THE PERSON.** A guardianship of the person shall terminate:

(a) When a minor ward attains his majority, unless the minor is incompetent.

(b) When a minor ward lawfully marries.

(c) When the court adjudicates a former incompetent to be competent.

**(2) GUARDIANSHIP OF THE ESTATE.** A guardianship of the estate shall terminate:

(a) When a minor ward attains his majority.

(b) When a minor ward lawfully marries and the court approves such termination.

(c) When the court adjudicates a former incompetent or a spendthrift to be capable of handling his property.

(d) When a ward dies (unless the estate can be settled as provided by s. 880.28).

**(3) DEPLETED GUARDIANSHIPS.** When the court determines that the estate of the ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2); and the court as a part of the disposition may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker, and perpetual care for the grave; and in case of an insolvent guardianship the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial.

**History:** 1971 c. 41 ss. 8, 12; 1973 c. 284; 1983 a. 217.  
New grounds for termination. 54 MLR 111.

**880.27 Settlement of accounts.** Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or his personal representative shall forthwith render his final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and his bond released.

**History:** 1971 c. 41.

**880.28 Summary settlement of small estates.** When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

**History:** 1971 c. 41; 1975 c. 200.

**880.29 Delivery of property to foreign guardian.** When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. 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, and a certified copy thereof shall be sent to the court which appointed such guardian.

**History:** 1971 c. 41; 1975 c. 200.

**880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident. (1)** When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and social services by its collection and deportation counsel, or the county corporation counsel or district attorney if there is no corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court,

upon the application, may appoint the guardian or conservator in the manner provided for the appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31. If application is made by a district attorney or corporation counsel, a copy of the petition made to the court shall be filed with the department of health and social services. If application is made by a corporation counsel or district attorney for appointment of a guardian of the estate of the patient or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (8) in the case of the appointment of a trust company bank corporation. The court may place any limitations upon the guardianship or conservatorship as it deems to be in the best interest of the patient. Before any county employe administers the funds of a person's estate of which the county has been appointed guardian or conservator, the employe must be designated as securities agent in the classified service of the county, and the employe's designation as securities agent shall appear on all court papers which the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in such amount and with such sureties as the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original thereof filed in the office of the county clerk. A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

**(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 department of health and social services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

**History:** 1971 c. 41 ss. 8, 12; 1975 c. 393, 421; 1977 c. 449.

**880.31 Voluntary proceedings; conservators. (1)** Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

**(2)** At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint him as such and issue letters of conservatorship to him upon the filing of a bond in the amount fixed by the court.

**(3)** A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the



court or upon death of the person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

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

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

**History:** 1971 c. 41; 1975 c. 393, 421; 1977 c. 449; 1981 c. 317, 391.

Gift by competent conservatee without approval of conservator was void. *Zobel v. Fenendael*, 127 W (2d) 382; 379 NW (2d) 887 (Ct. App. 1985).

**880.32 Notes and mortgages of minor veterans.** Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the U.S. at any time after August 27, 1940, 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 veterans administration administrator or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any 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 18 because of the minority of either or both of them at the time of the execution thereof.

**History:** 1971 c. 41; 1971 c. 228 s. 36.

**880.33 Incompetency; appointment of guardian. (1)** Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. A copy of such statement shall be provided to the proposed ward, guardian ad litem and attorney.

(2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right

to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem. The number of jurors shall be determined under s. 756.096 (3) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

2. If the person requests but is unable to obtain counsel, the court shall refer the person to the authority for indigency determinations specified under s. 977.07 (1). If the person is indigent, the county of legal settlement shall be liable for guardian ad litem fees, if any.

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(c) The duties of a guardian ad litem shall include:

1. A personal interview with the proposed incompetent that shall include an explanation of the guardianship hearing procedure and information concerning the right to counsel.

2. Notification to the proposed incompetent both orally and in writing, of the rights to a jury trial and appeal and the rights to counsel and an independent medical or psychological examination, at county expense if the person is indigent. Such notification shall also include the right to introduce evidence as to retention of rights under a limited guardianship.

3. Recommendation of such additional medical, psychological or other evaluation and testimony to the court on behalf of any ward for whom a limited guardianship of the person or property may be appropriate.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetency. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to testify in any judicial or administrative proceeding, to hold or convey property and the right to contract. The findings of incompetency must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider

potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest.

(5m) No person, except a nonprofit corporation approved by the department of health and social services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

(8) At the time of determination of incompetency under this section, application for the appointment of a conservator or limited guardian of property may be heard by the court.

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

**History:** 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379.

See note to 55.06, citing Guardianship & Protective Placement of Shaw, 87 W (2d) 503, 275 NW (2d) 143 (Ct. App. 1979).

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

**880.34 Duration of guardianship; review.** (1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is incompetent to exercise at the time.

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

(3) A ward of the age of 18 or over, any interested person on his behalf, or his guardian may petition the court which made such appointment or the court in his county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of his property designated as a limited guardian.

(4) A ward who is 18 years of age or older, any interested person acting on his behalf, or his guardian may petition for a

review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if he is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of his county of legal settlement.

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

**History:** 1973 c. 284.

**880.35 Nonprofit corporation as guardian.** A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and social services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

**History:** 1973 c. 284; 1975 c. 393; 1981 c. 379.

**880.36 Standby guardianship.** (1) A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 may be brought at any time.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

(3) A standby guardianship of a minor is not applicable so long as a person has living one of his natural or adoptive parents who is willing and capable of exercising legal guardianship. Upon the death of the surviving parent, or upon a determination that the parents or surviving parent are incapable of exercising legal guardianship of the person, the standby guardian of the person or property or both shall automatically assume the duties of guardian, subject only to confirmation by the court within 60 days following assumption of his duties of office.

(4) A standby guardianship of a minor becomes inoperative at the age of 18 unless there is a further determination of incompetency at that time.

**History:** 1973 c. 284.

**880.37 Application for limited guardianship of property.**

(1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from his employment; and

(b) Contract and legally bind himself for any sum of money not exceeding \$300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

History: 1973 c. 284; 1975 c. 393, 421.

**880.38 Guardian of the person of incompetent.** (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

(3) A guardian of the person of an incompetent appointed under s. 880.33 shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06 (10).

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

See note to 55.06, citing *State ex rel. Watts v. Combined Community Services*, 122 W (2d) 65, 362 NW (2d) 104 (1985).

## SUBCHAPTER II

### UNIFORM VETERANS' GUARDIANSHIP ACT

#### **880.60 United States uniform veterans' guardianship act.**

(1) DEFINITIONS. As used in this section:

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

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

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

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

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

(f) "Veterans' administration" means the veterans' administration, its predecessors or successors.

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

(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 or corporate entity other than a county having a population of 100,000 or more, a bank or trust company or the commandant of the Wisconsin veterans home at King shall be guardian of more than 5 wards at one time, unless all the wards are members of one family. Such county shall act only for patients in its county hospital or mental hospital and for residents of its county home or infirmary, and shall serve without fee. The commandant shall act only for members of the Wisconsin veterans home 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 this chapter and shall be excused from filing accounts in the case as provided by s. 880.25 (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 s. 880.24 (1).

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

**History:** 1971 c. 41 ss. 8, 12; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189.

### SUBCHAPTER III

#### UNIFORM GIFTS TO MINORS ACT

**880.61 Definitions.** In ss. 880.61 to 880.71 unless the context otherwise requires:

(1) An "adult" is a person who has attained the age of 18 years.

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

(4) "Court" means the circuit court.

(5) "Custodial property" includes:

(a) All securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of gifts or distributions made to the minor in a manner prescribed in s. 880.62.

(b) The income from the custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(6) A "custodian" is a person so designated in a manner prescribed in ss. 880.62 and 880.67; the term includes a successor custodian.

(6g) "Donor" means the natural person whose funds or property are the source of a gift or distribution to a minor under this chapter.

(6m) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation or by a deposit insurance fund approved by this state.

(7) A "guardian" of a minor means the guardian of his property appointed or qualified by a court of this state or another state.

(8) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or

other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(9) A "legal representative" of a person is the personal representative, guardian or conservator of the person's property or estate.

(9m) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift or distribution of the policy or contract is made in the manner prescribed in s. 880.62 or on the life of a member of the minor's family.

(10) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(11) A "minor" is a person who has not attained the age of 18 years.

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

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

(14) A "trust company" is an institution organized as such or is a bank authorized to exercise trust powers.

History: 1971 c. 41 ss. 8, 12; 1971 c. 228 s. 36; 1975 c. 200; 1977 c. 409; 1979 c. 32.

**880.62 Manner of making gift or distribution.** (1) (a) An adult person may, during his or her lifetime or by a testamentary disposition, make a gift of a security, money or life insurance policy or annuity contract to a person who is a minor on the date of the gift or the date of distribution in accordance with pars. (b) to (f). The trustees of an inter vivos or testamentary trust may, if specifically authorized or directed to do so by the terms of the trust instrument, make any distribution of a security, money or life insurance or annuity contract to a person who is a minor on the date of distribution under pars. (b) to (f). In addition, a court, acting pursuant to the discretion granted to it in s. 880.04 (3), may direct the personal representative of an estate or the trustee of an inter vivos or testamentary trust to distribute under pars. (b) to (f) securities, money or life insurance or annuity contracts to which a minor is entitled, except for his or her incapacity, to a custodian designated by the court.

(b) If the subject of the gift or distribution is a security in registered form, by registering it in the name of the donor, if living, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for (name of minor) .... under the Wisconsin Uniform Gifts to Minors Act".

(c) If the subject of the gift or distribution is a security not in registered form, by delivering it to an adult member, other than the donor, of the minor's family, a guardian of the minor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor or, if the gift or distribution is made under the terms of a will or trust, the fiduciary administering the will or trust, and the person designated as custodian:

"GIFT OR DISTRIBUTION UNDER THE  
WISCONSIN

UNIFORM GIFTS TO MINORS ACT

I, (name of donor or fiduciary) .... hereby deliver to (name of custodian) .... as custodian for (name of minor) .... under the Wisconsin Uniform Gift to Minors Act, the following security (ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

.....  
(Signature of donor or fiduciary)

(Name of custodian) .... hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Wisconsin Uniform Gifts to Minors Act.

Dated

....."  
(Signature of custodian)

(d) If the subject of the gift or distribution is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, if living, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for ....(name of minor) under the Wisconsin Uniform Gifts to Minors Act."

(e) If the subject of the gift or distribution is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, if living, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for ....(name of minor) under the Wisconsin Uniform Gifts to Minors Act."

(f) If a gift is made under this section in satisfaction of a specific testamentary bequest or as a distribution from a trust, the donor may designate the custodian. If the donor fails to designate a custodian or if the designated custodian dies, is unable or unwilling to serve, is not an adult member of the minor's family or is not a guardian of the minor or a trust company, then the personal representative of the donor's estate or the trustee, whichever is applicable, shall designate the custodian from among those eligible to become successor custodian under s. 880.67. The receipt of the custodian named or selected under this paragraph shall constitute a sufficient release and discharge for the gift or distribution.

(2) Any gift or distribution made in a manner prescribed in sub. (1) may be made to only one minor and only one person may be the custodian.

(3) A donor, personal representative of a donor's estate or trustee who makes a gift or distribution to a minor in a manner prescribed in sub. (1) shall promptly do all things within his or her power to put the subject of the gift or distribution in the possession and control of the custodian, but neither the failure to comply with this subsection, nor the designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift or distribution.

History: 1971 c. 41; 1977 c. 409; 1985 a. 142.

**880.63 Effect of gift or distribution.** (1) A gift or distribution made in a manner prescribed in s. 880.62 is irrevocable and conveys to the minor indefeasibly vested legal title to the

security, money, life insurance or annuity contract given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in ss. 880.61 to 880.71.

(2) By making a gift or distribution in a manner prescribed in s. 880.62, the donor, personal representative of a donor's estate or trustee incorporates in the gift or distribution all the provisions of ss. 880.61 to 880.71 and grants to the custodian, and to any issuer, transfer agent, financial institution, life insurance company, broker or 3rd person dealing with a person designated as custodian, the respective powers, rights and immunities provided in those sections.

History: 1971 c. 41 ss. 8, 12; 1977 c. 409.

**880.64 Duties and powers of custodian.** (1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 14 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 18 years or, if the minor dies before attaining the age of 18 years, he shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence who is seeking a reasonable income and the preservation of the person's capital, except that the custodian may without liability to the minor or the minor's estate, retain a security given or distributed to the minor in a manner prescribed in ss. 880.61 to 880.71 or hold money so given or distributed in an account in the financial institution to which it was paid or delivered by the donor, personal representative of a donor's estate or trustee.

(6) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for ....(name of minor) under the Wisconsin Uniform

Gifts to Minors Act". If the custodian is a trust company it may hold and deposit money in the same manner as it does other trust funds held by it. All other custodians shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for ....(name of minor) under the Wisconsin Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 14 years.

(9) A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in subs. (1) to (8), all the rights and powers which a guardian has with respect to property not held as custodial property.

(10) If the subject of the gift or distribution is a life insurance policy or annuity contract, the custodian:

(a) In his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(b) May pay premiums on the policy or contract out of the custodial property.

History: 1971 c. 41; 1971 c. 228 s. 36; 1975 c. 94 s. 91 (12); 1975 c. 199; 1977 c. 409; 1979 c. 89.

Where the deceased taxpayer's custodianship of assets for his minor children permitted him to use the assets to discharge his own obligation of support, the assets are includible in his estate for federal tax purposes. Estate of Prudowsky v. Comm. of Internal Revenue, 465 F (2d) 62.

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

(2) A custodian may act without compensation for his services.

(3) Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:

(a) A direction by the donor, personal representative of a donor's estate or trustee when the gift or distribution is made;

(b) An order of the court.

(4) Except as otherwise provided in ss. 880.61 to 880.71 a custodian shall not be required to give a bond for the performance of his duties.

(5) A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in ss. 880.61 to 880.71.

History: 1971 c. 41 ss. 8, 12; 1977 c. 409.

**880.66 Exemption of third persons from liability.** No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to make a gift or distribution in a manner authorized by s. 880.62 or purporting to act in the capacity of a custodian is responsible

for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by ss. 880.61 to 880.71, or is obliged to inquire into the validity or propriety under those sections of any instrument or instructions executed or given by a person purporting to make a gift or distribution in a manner authorized by s. 880.62 or purporting to act in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him or her. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in s. 880.67 (1) by a minor to whom a gift or distribution has been made in a manner prescribed in ss. 880.61 to 880.71 and who has attained the age of 14 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under ss. 880.61 to 880.71 of the instrument of designation.

**History:** 1971 c. 41 ss. 8, 12; 1977 c. 409.

**880.67 Resignation, death or removal of custodian; bond; designation of successor custodian.** (1) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by ss. 880.61 to 880.71.

(2) The designation of a successor custodian as provided in sub. (1) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(a) Causes the item, if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for ...(name of minor) under the Wisconsin Uniform Gifts to Minors Act"; and

(b) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in sub. (1) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in sub. (1) by the custodian or, if none, by the minor

if he has no guardian and has attained the age of 14 years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in sub. (1) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in sub. (1) is not eligible, dies or becomes legally incapacitated before the minor attains the age of 18 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in sub. (1), a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(6) Upon the filing of a petition as provided in this section, the court shall grant such relief as it finds to be in the best interests of the minor.

**History:** 1971 c. 41 ss. 8, 12; 1971 c. 228 s. 36.

**880.68 Accounting by custodian.** (1) The minor, if he has attained the age of 14 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

(2) The court, in a proceeding under ss. 880.61 to 880.71 or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

**History:** 1971 c. 41 ss. 8, 12.

**880.685 Trustees.** If a gift or distribution has been made by a trustee of a trust in a manner prescribed in s. 880.62 (1), the trustee who has made the gift or distribution, and any successor trustee, shall have the same authority, with respect to the gift or distribution, as a donor would have to petition the court under ss. 880.67 (4) and (5) and 880.68 (1).

**History:** 1977 c. 409.

**880.69 Construction.** (1) Sections 880.61 to 880.71 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(2) Sections 880.61 to 880.71 shall not be construed as providing an exclusive method for making gifts or distributions to minors.

**History:** 1971 c. 41 ss. 8, 12; 1977 c. 409.

**880.70 Short title.** Sections 880.61 to 880.71 may be cited as the "Wisconsin Uniform Gifts to Minors Act".

**History:** 1971 c. 41 ss. 8, 12.

**880.71 Repeal.** Section 319.60, 1955 stats., is hereby repealed, but the repeal does not affect gifts made in a manner prescribed therein nor the powers, duties and immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. Sections 880.61 to 880.70



henceforth apply, however, to all gifts made in a manner and form prescribed in s. 319.60, 1955 stats., except insofar as such application impairs constitutionally vested rights. Sections 880.61 to 880.70 shall be construed as a continuation of s. 319.60, 1955 stats., and not as a new enactment.

History: 1971 c. 41 ss. 8, 12.

#### SUBCHAPTER IV

### SECURITIES OWNERSHIP BY MINORS, INCOMPETENTS AND SPENDTHRIFTS

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

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

(b) "Broker" means the same as defined in s. 880.61.

(c) "Issuer" means the same as defined in s. 880.61.

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

(e) "Security" means the same as defined in s. 880.61.

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

(g) "Transfer agent" means the same as defined in s. 880.61.

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

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

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

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

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

History: 1971 c. 41 ss. 8, 12.

**880.76 Securities ownership by incompetents and spendthrifts. (1) DEFINITIONS.** All definitions in s. 880.75 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires. "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

**(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY.** A bank, broker, issuer, third-party or transfer agent incurs no liability by reason of his treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third-party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third-party or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215. Except as otherwise provided in this section, such a bank, broker, issuer, third-party or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

**(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE.** An incompetent or spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third-party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third-party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third-party or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215.

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

History: 1971 c. 41 ss. 8, 12.