

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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CHAPTER LIX.

GUARDIANS AND WARDS.

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§ 1. **Judge of probate may appoint guardians.** The judge of probate in each county, when it appears to him necessary or convenient, may appoint guardians to minors and others, being inhabitants or residents in the same county, and also to such as reside out of the state, and have any estate within the same.

OF MINORS.

§ 2. **Who are minors.** Males of the age of twenty-one years, and females of the age of eighteen years, shall be considered of full age for all purposes; before those ages, they shall be considered minors.

§ 3. **Guardian of minor, by whom appointed.** If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian; if he is above that age, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly. If not so approved, or if the minor resides out of this state, or if, after being cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint his guardian, in the same manner as if he was under the age of fourteen years.

§ 4. **Minor may nominate before justice of the peace, when.** A minor above the age of fourteen years may nominate his guardian before a justice of the peace, or the city or town clerk, who shall certify the fact to the probate court.

§ 5. **Powers of guardians—custody of person—married women as guardians.** The guardian of a minor shall have the custody and tuition of his ward, and the care and management of all his estate; and, unless sooner discharged according to law, shall continue in office until the minor arrives at full age. But the father of the minor, if living, and in case of his death, the mother, they being respectively competent to transact their own business, and not otherwise unsuitable, shall be entitled to the custody of the person of the minor, and the care of his education. A married woman, by reason of such marriage, shall not be disqualified from holding the position of guardian, either of the person or estate of a minor, the same as if she were unmarried. (*As amended 1873, c. 59, § 1.*)

§ 6. **Testamentary guardian—powers and duties.** A father may, by his last will in writing, appoint guardians for his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or a less time. Such testamentary guardian shall have the same powers, and perform the same duties, with regard to the person and estate of the ward, as a guardian appointed by the probate court.

§ 7. **Such guardian to give bond—exception.** The guardian so appointed shall give the bond prescribed in section seventeen, except that when the testator has ordered or requested in his will that a bond be not given, it shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the probate court deems it proper to require it.

OF INSANE PERSONS AND SPENDTHRIFTS.

§ 8. **Appointment of guardian—petition.** The probate court may appoint a guardian or guardians of any person who, by reason of old age, or loss or imperfection of mental faculties, is incompetent to have the charge or management of his property, or person who, by excessive drinking, gaming, idleness or debauchery, so spends, wastes or lessens his estate as to be likely to expose himself or his family to want or suffering, either upon the application of the county commissioners of the county where such person resides, or upon the petition of any relation or friend of such person, which petition shall set forth the facts, and be verified by the affidavit of the petitioner to the effect that he believes the facts so stated are true. (*As amended 1878, c. 20, § 1.*)

§ 9. **Order for hearing on petition—notice.** Upon the presentation of such application or petition, the probate court shall fix the time and place for the hearing of the same, and shall cause notice of such hearing, and of the time and place thereof, to be given to the person proposed to be put under guardianship, at least fourteen days prior to the time fixed for such hearing. (*As amended 1877, c. 23, § 2.*)

§ 10. **Hearing and appointment.** At the hearing, the court shall consider all competent evidence that may be produced in support of and against the application or petition; and if, after a full hearing, it appears that the person so proposed to be put under guardianship comes within the description of persons mentioned in section eight of this chapter, the court shall appoint a guardian or guardians, not exceeding in number, of his person and estate. (*As amended 1877, c. 23, § 3.*)

*§ 11. **Filing of copy of proceedings in registry of deeds—subsequent contracts, etc., of ward.** The county commissioners or petitioners may, as soon as the notice mentioned in section nine of this chapter shall have been given to the person proposed to be put under guardianship, cause a copy of the application or petition, and of the notice, and proof of the service of such notice on the person to be served therewith, to be filed in the office of the register of deeds of the county and recorded therein; and if a guardian or guardians shall be appointed on such application or petition, all contracts, except for necessities, and all gifts, sales or transfers of real or personal estate, made by the person put under guardianship, after the filing of such papers in the office of the register of deeds, and before the termination of the guardianship, shall be void. (*1877, c. 23, § 4.*)

*§ 12. **Powers of guardian—bond.** The guardian or guardians of such insane or other person so put under guardianship shall have the care and custody of the person of his ward, and management of all his estate, and shall give the bond prescribed in section seventeen of this chapter, except that the provisions relating to the education of the ward shall be omitted. (*Id.* § 5.)

*§ 13. **Guardian to file inventory.** That when a person has been or hereafter is appointed guardian of an insane person, said guardian shall, within three months after the passage of this act, if already appointed, and within three months after his appointment, if hereafter appointed, make, and file in the probate court by

which the appointment is made, a schedule of all the property, real and personal, belonging to the estate of such insane person. (1876, c. 77, § 1.)*

*§ 14. **Order for hearing of claims—notice—service.** Upon the filing of such inventory, the probate judge shall make an order appointing a time and place when and where he will hear, examine and allow claims against the estate of such insane person, which have vested at and prior to the appointment of such guardian, which time shall be not less than six nor more than twelve months in the first instance; and shall cause a copy of said order to be served upon the next of kin of said insane person, by posting it in four public places in said county, and a publication thereof for a period of four weeks in some newspaper printed and published in the county where said insane person resides, or by personal service of the said order upon them at least ten days before the day appointed for such examination, as the said judge shall determine. (*Id.* § 2.)

*§ 15. **Proceedings on hearing—effect of order.** The performance of the several acts hereinbefore required shall vest in the probate court aforesaid full power and jurisdiction to hear, determine and allow all claims, as aforesaid; and at the time and place so as aforesaid appointed for the examination of such claims, or any time to which the hearing shall have been adjourned, the said probate court shall hear and determine upon all claims presented, and, upon the termination of such hearing, shall make an order allowing or disallowing the several claims in whole or in part, and direct what claims and the amount of each which the guardian shall pay, after crediting the estate with any offset or counterclaim thereto. Such order shall be conclusive, in the absence of fraud in the guardian or claimants, upon all parties interested in the allowance or disallowance of the several claims, unless appealed from as hereinafter stated. (*Id.* § 3.)

*§ 16. **Rules of evidence at hearing.** Upon the hearing of the several claims presented, the court shall be governed by the same rules of evidence as provided in the allowance of claims against the estate of a deceased person, under the laws of the state. (*Id.* § 4.)

*§ 17. **Claims to be barred, unless presented to court.** Every person having a claim against an insane person, proper to be allowed, as hereinbefore provided, who shall not, after the publication of notice as hereinbefore required, present his claim to the court within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from settling of the same in any action whatever. (*Id.* § 5.)

*§ 18. **Right of action against guardians suspended until, etc.** No action shall be instituted against the guardian of such insane person, except for the recovery of real estate or the possession of personal property, nor any attachment or execution be issued against the estate of such insane person, until after the expiration of the time allowed for the payment, by the guardian, of claims allowed by the court, as aforesaid. (*Id.* § 6.)

*§ 19. **Application of law relating to estate of deceased persons.** The right of appeal, the time for the payment of claims allowed by the court, and contingent claims, and the distribution of assets among the creditors of the insane person, shall be governed by the same rules applicable in proceedings for the payment of debts of a deceased person, substituting the probate court for the commissioners, and the guardian for the executor or administrator. (*Id.* § 7.)

*§ 20. **Guardians of incurable patients in insane hospital.** That whenever any person now is, or hereafter may be, a patient in the hospital for the insane in this state, and it shall appear to the satisfaction of the superintendent of such hospital that such patient is incurable, that he has property within this state, that he has no wife or children who would be dependent upon him for support, if sane, and that he has no guardian, it shall be the duty of such superintendent to

*An act to provide for the payment of debts of insane persons. Approved March 3, 1876, (Laws 1876, c. 77.)

apply to the probate court of the county in which such hospital is situated, for the appointment of a guardian of the person and estate of such insane person; and the court, upon such application, shall proceed to the appointment of a guardian of such insane person, in the same manner as is or may be provided for the appointment of guardians of the person and estate of minors. Such guardian, when appointed, shall have and exercise the same powers and duties as are or may be by law conferred upon guardians of minors, and may sell any real or personal estate, the property of such insane person, in the same manner, and for the same purposes, as is or may be provided for the sale, by guardians of minors, of the real or personal estate of their wards, except that such sale shall be made in the county where such estate is situated, and the proceeds of such sale shall be paid into the treasury of the state, for the use and benefit of such insane person, and shall be applied to his use and support in such hospital; and, upon his discharge therefrom, the residue, if any, of such proceeds, shall be paid to him or his guardian; and if such insane person dies in such hospital, then such residue shall be paid to his legal representatives. (1876, c. 78, § 1.)

OF PERSONS OUT OF THE STATE.

§ 21. (SEC. 13.) **Guardian of non-resident, how appointed.** When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this state, and has any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of probate of any county in which there is any estate of such absent person; and, after such notice to all persons interested as the judge shall order, and a full hearing and examination, a guardian may be appointed for such absent person.

§ 22. (SEC. 14.) **Powers and duties of such guardian.** Such guardian shall have the same powers and duties with respect to any estate of the ward found within this state, and also with respect to the person of the ward, if he comes to reside therein, as are prescribed with respect to other guardians appointed under this chapter.

§ 23. (SEC. 15.) **Bond of guardian.** He shall give the bond prescribed in section seventeen, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state, and that the provisions respecting the custody of the ward shall not be applicable, unless he comes to reside within the state.

§ 24. (SEC. 16.) **Extent of guardianship first granted.** The guardianship, first lawfully granted, of any person residing out of this state, shall extend to all the estate of the ward within the same, and exclude the jurisdiction of the probate court in every other county.

*§ 25. **Removal of property from state, when guardian and ward are non-residents.** That in all cases where the guardian and his ward may both be non-residents of this state, and such ward may be entitled to property of any description in this state, such guardian, on producing satisfactory proof to the probate court, by certificate according to the act of congress in such case provided, that he has given bond and security in the state in which he and his ward reside, in double the amount of the value of the property, as guardian, and is bound that a removal of the property will not conflict with the terms and limitations attending the right by which the ward owns the same, then any such guardian may demand, sue for and remove any such property to the place of residence of himself and ward. (1868, c. 67, § 1.)

*§ 26. **Same—order of removal—notice to resident guardian, etc.** When such non-resident guardian shall produce exemplification from under the seal of the office (if there be a seal) of the proper court in the state of his residence, containing all the

entries on record in relation to his appointment and giving bond, and authenticated as required by the act of congress as aforesaid, the probate court of the proper county in this state may cause suitable orders to be made discharging any resident guardian, executor or administrator, and authorizing the delivery and passing over such property, and also requiring receipts to be passed and recorded, if deemed advisable: *provided*, that in all cases thirty days' notice shall be given to the resident guardian, executor or administrator, of the intended application for the order of removal; and the court may reject the application, and refuse such order, whenever it is satisfied that it is for the interest of the ward that such removal should not take place. (*Id.* § 2.)

GENERAL PROVISIONS.

§ 27. (SEC. 17.) **Conditions of bond of guardian.** Before appointing any person guardian of a minor, the judge of probate shall require of such person a bond with sureties, to be approved by him, and in such sum as he shall order, conditioned as follows:

First. To make a true inventory of all the estate, real, personal, of his ward, that shall come to his possession or knowledge, and to return the same into the probate court, at such time as the judge shall order.

Second. To dispose of and manage all such estate according to law, and for the best interests of the ward; and faithfully to discharge his trust in relation thereto, and also in relation to the custody, education and maintenance of the ward.

Third. To render an account, on oath, of the property, estate and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within one year after his appointment, and at such other times as the probate court shall direct; and

Fourth. At the expiration of his trust, to settle his accounts with the judge of probate, or with the ward, if he is of full age, or his legal representatives, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement, to the persons lawfully entitled thereto.

^{23 M. 51.}
§ 28. (SEC. 18.) **Appraisal of estate—guardian to account for effects.** Upon the taking of an inventory, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn as is required with respect to the inventory of the estate of a deceased person; and every guardian shall account for and dispose of the personal estate of the ward, in like manner as is directed with respect to executors and administrators.

^{19 M. 221; 23 M. 51.}
§ 29. (SEC. 19.) **Payment of debts of ward—collection of debts due him—appearance in suits.** Every guardian shall pay all just debts due from his ward out of the personal estate, if sufficient, and if not, out of the real estate, upon obtaining license for the sale thereof, and disposing of the same, in the manner provided by law. He shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, on receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal proceedings, unless another person is appointed for that purpose, as guardian or next friend.

^{19 M. 221.}
§ 30. (SEC. 20.) **Powers and duties of guardian as to estate of ward.** He shall manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there is any; and if such income and profits are insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor, as provided by law, and

shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

§ 31. (SEC. 21.) **Partition of real estate of ward—plattng land—powers of non-resident guardian.** Whenever real property is owned by any ward or wards in this state jointly or in common with any other person or persons, the guardian of such ward or wards may have partition thereof, either by proceedings in court for that purpose, or, except when he has an adverse interest to that of the ward in the estate to be divided, by amicable agreement with the adult joint owner or owners; and upon such amicable agreement for partition, the guardian shall have the right to release and quitclaim, to such joint or common owner or owners, all the right, title and interest of such ward or wards in and to the portion of the property to be taken by such joint or common owner pursuant to such agreement, upon receiving from such joint or common owner a like release and quitclaim, to such ward or wards, of all his right, title and interest in and to the portion of the property to be taken by them; and may also assign and set out dower in his ward's estate to any widow entitled thereto. And whenever any guardian shall think it for the interest of his ward to lay out and plat the property of such ward, or any part thereof, as a part of an addition to any town or city, he may cause the same to be done pursuant to the chapter relating to town plats, but shall execute such plat as such guardian; and when so executed, and filed for record, it shall have the same force and effect as if executed and recorded by such ward, if under no disability. A guardian duly appointed in any other state, for a ward or wards owning property in this state, upon filing with the probate judge of any county in this state where such property is situated, a certified copy of his or her appointment as such guardian, shall have the same power and authority over the property of the ward in such county as if duly appointed in this state. (*As amended 1870, c. 61, § 1.*)

See *ante*, c. 57, §§20, 22, 29.

§ 32. (SEC. 22.) **Education of minor—when paid for out of his estate.** If a minor who has a father living has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of his own property, in whole or in part, as shall be deemed reasonable by the probate court; and, when necessary, his real estate may be sold for that purpose by the guardian, upon obtaining license therefor as provided in other cases of sales by guardians. The charges for such expenses may be allowed in the settlement of the accounts of the guardian.

§ 33. (SEC. 23.) **Personal estate of ward, how disposed of—investments.** The judges of probate, in their respective counties, on the application of a guardian, or any person interested in the estate of any ward, after such notice to all persons interested therein as the judges of probate shall direct, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank or other corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such sale, and also any other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the said judges may make such further order, and give such directions, as the case may require, for managing, investing and disposing of the estate and effects in the hands of the guardian.

*§ 34. **Regulation of investments of moneys of wards.** Guardians of minor children and insane persons, having moneys in their hands belonging to their wards, to be invested for the benefit of said wards, shall be allowed to invest the same only in good interest-bearing bonds or securities of the United States, or of the state of Minnesota, or upon first bond and mortgage upon real estate within said state; and all such investments shall be made under and in pursuance of

an order of the probate court of the county in which such minor children or insane persons shall reside. (1875, c. 39, § 1.)*

*§ 35. **Petition for leave to make investment.** To obtain an order for such investment, the guardian shall present to the probate court a petition, setting forth the estate of his ward, real and personal, and the amount of money in his hands which he may desire to invest as aforesaid, with the facts and circumstances on which the petition is founded, tending to show the necessity and expediency of such investment, which petition shall be verified by the oath of the petitioner. (*Id.* § 2.)

*§ 36. **Order to show cause on petition—service thereof.** If it appears to the court, from such petition, that it would be for the best interest of the ward to make such investment, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before said court, at a time and place therein to be specified, not less than two nor more than three weeks from the time of making such order, to show cause why such order for such investment should not be granted; and said order shall be served upon said parties in interest, either by publication thereof, or by personal service, as said court shall direct. (*Id.* § 3.)

*§ 37. **Hearing on order to show cause.** The judge of probate, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service of said order, shall hear and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons interested in the estate who may oppose the application. (*Id.* § 4.)

*§ 38. **Order for investment, after hearing.** If, after a full examination, it appears to the court that it is necessary, and would be for the best interests of the ward, to invest the money thereof as prayed for in said petition, said court shall make an order authorizing and directing such investment to be made by said guardian, as prayed for in said petition, and as hereinbefore provided. (*Id.* § 5.)

§ 39. (SEC. 24.) **Removal of ward from this state—transfer by guardian.** When a person under guardianship removes out of this state, his guardian may pay over and transfer the whole or any part of his property to any guardian or trustee appointed by competent authority in the state to which the residence of the ward is removed, upon such terms and in such manner as the probate court, upon petition therefor, shall decree.

§ 40. (SEC. 25.) **Resignation or removal of guardian.** When a guardian appointed, either by the testator or by the judge of probate, becomes insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to him and all others interested, may remove him. Upon the request of a guardian, the probate court, in its discretion, may allow him to resign his trust. Upon such removal or resignation, and upon the death of a guardian, another may be appointed in his stead.

§ 41. (SEC. 26.) **Marriage of female guardian.** When a female guardian marries, her husband shall not be guardian in her right, but the marriage shall extinguish her authority, and the other guardian, if there is any, may proceed in discharging the trust. If there is no other guardian, the probate court may appoint one, or make such other order in the premises as the case requires. See *ante*, § 5.

§ 42. (SEC. 27.) **Marriage of female ward.** The marriage of a female under guardianship as a minor, shall terminate such guardianship; and the guardian of an insane person or spendthrift may be discharged by the judge of probate, when it appears, on the application of the ward, or otherwise, that such guardianship is no longer necessary.

§ 43. (SEC. 28.) **Guardian to give new bond, when.** The judge of probate may require a new bond to be given by a guardian, whenever he deems it necessary, and may discharge the existing sureties from future responsibility, after due notice given,

*An act providing for the investment, by guardians, of the moneys of their wards. Approved March 9, 1875. (Laws 1875, c. 39.)

as such court may direct, when it satisfactorily appears that no injury can result therefrom to those interested in the estate.

§ 44. (SEC. 29.) **Complaint for embezzlement—citation to suspected person.** Upon complaint to the judge of probate, by a guardian, ward, creditor, or other person interested in the estate of a ward, or by any person having any prospective interest therein, as heir or otherwise, against any one suspected of having fraudulently concealed, embezzled or conveyed away any of the money, goods or effects, or any instrument in writing, belonging to the ward, the judge may cite and examine such suspected person, although he is the guardian, and proceed with him as to such charge, in the same manner as is provided with respect to persons suspected of concealing or embezzling the effects of a deceased person.

§ 45. (SEC. 30.) **Expenses and compensation of guardians.** Every guardian shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the court in which his accounts are settled deems just and reasonable.

*§ 46. **Accounts, when to be rendered.** Guardians of minor children and insane persons shall be required to render an account on oath of the property, money and effects in their hands, and all proceeds and interest derived therefrom, and the management and disposition thereof, within one year after their appointment, and at such other times as the judge of probate of the county having jurisdiction of the person and estate of their said wards shall require. (1875, c. 38, § 1.)*

*§ 47. **Order for examination of account—service and publication.** Upon the delivery of said account into the probate court, the judge thereof shall make an order appointing a time and place when and where he will examine the said account, and shall cause a copy of the said notice to be served upon the next of kin of said wards, and all persons interested in the estate of said wards, by a publication thereof for the period of two weeks in some newspaper printed and published in the county wherein the said minors or insane persons reside, or by a personal service of the said order upon them, at least ten days before the day appointed for such examination, as the court may direct. (*Id.* § 2.)

*§ 48. **Examination of account and of guardian.** At the time and place so as aforesaid appointed for the examination of the said account, or any time to which the said hearing shall have been adjourned, the judge of probate shall examine the said account, and the said guardian, on oath, touching the same, and all persons who shall appear for the purpose of objecting to the said account, and to show cause why the same should not be allowed. (*Id.* § 3.)

*§ 49. **Order allowing account.** If, upon such examination, the judge of probate shall be satisfied that the said [account] is in all things correct, he shall make an order allowing the same; but no guardian's account shall be allowed as aforesaid until such notice of such hearing and examination shall have been given. (*Id.* § 4.)

**An act to provide for the rendering of accounts by guardians.* Approved March 9, 1875, (Laws 1875, c. 38.)