

## CHAPTER 525

## PROBATE PROCEEDINGS

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**525.04** [Repealed, 1Sp1981 c 4 art 3 s 8]

#### **525.05 JUDGE OR REFEREE; GROUNDS FOR DISQUALIFICATION.**

The following shall be grounds for disqualification of any judge or referee from acting in any matter: (1) That the judge or the judge's spouse or any of either of their kin nearer than first cousin is interested as representative, heir, devisee, legatee, ward, or creditor in the estate involved therein; (2) that it involves the validity or interpretation of a will drawn or witnessed by the judge; (3) that the judge may be a necessary witness in the matter; (4) that it involves a property right in respect to which the judge has been engaged or is engaged as an attorney; or (5) that the judge was engaged in a joint enterprise for profit with the decedent at the time of death or that the judge is then engaged in a joint enterprise for profit with any person interested in the matter as representative, heir, devisee, legatee, ward, or creditor. When grounds for disqualification exist, the judge may, and upon proper petition of any person interested in the estate must, request the probate judge of another county or a probate judge who has retired as provided in section 490.12, subdivision 2, to act in his stead in the matter.

**History:** 1981 c 31 s 12

#### **525.082 JUDICIAL OFFICERS, INCREASE IN COMPENSATION.**

Notwithstanding any law to the contrary, or any provision of Laws 1971, Chapter 951, the salaries of all judges of probate as provided under section 525.081, subdivisions 1 and 2, who do not become county court judges, but who are eligible to serve out the balance of their term as judicial officers of the county district court as provided in Laws 1971, Chapter 951, shall be increased by 10 percent of the amount provided for and received by the judge under the provisions of section 525.081, subdivisions 1 and 2, which salary shall be the salary for the balance of the term for which they are elected, and which salary shall determine any retirement and spouse's survivorship to which the judge and the judge's spouse may be entitled to under the laws pertaining thereto.

**History:** 1981 c 31 s 13

**525.10 REFEREE; APPOINTMENT; BOND; OFFICE ABOLISHED.**

Subdivision 1. **Office abolished.** The office of referee is abolished. No vacancy in the office of referee shall be filled, nor new office created.

Subd. 2. **Incumbents.** Persons holding the office of referee on June 30, 1980, in the second and August 15, 1980, in the fourth judicial district may continue to serve at the pleasure of the chief judge of the district under the terms and conditions of their appointment. All referees are subject to the administrative authority and assignment power of the chief judge of the district as provided in section 484.69, subdivision 3, and are not limited to assignment to probate court. All referees are subject to the provisions of section 484.70. Part time referees holding office in the second judicial district pursuant to this subdivision shall cease to hold office on July 31, 1984.

Subd. 3. **Referees.** Each referee in probate court shall be an attorney at law duly admitted in this state. The appointment shall be in writing and filed in the court. The referee has the power to take acknowledgments and administer oaths.

**History:** 1981 c 272 s 6

**525.14 DESCENT OF CEMETERY LOT.**

Subject to the right of interment of the decedent therein, a cemetery lot or burial plot, unless disposed of as provided in section 306.29, shall descend free of all debts as follows:

(1) To the decedent's surviving spouse, a life estate with right of interment of the spouse therein, and remainder over to the person who would be entitled to the fee if there were no spouse, provided, however, if no person entitled to the remainder of the fee survives, then the entire fee to the surviving spouse with right of interment therein;

(2) If there is no surviving spouse, then to the decedent's eldest surviving child;

(3) If there is no surviving child, then to the decedent's youngest surviving sibling;

(4) If there is no surviving spouse, child or sibling of the decedent, then, if not sold during administration of decedent's estate, to the cemetery association or private cemetery in trust as a burial lot for the decedent and such of the decedent's relatives as the governing body thereof shall deem proper.

The cemetery association or private cemetery, or, with its consent, any person to whom the lot shall descend may grant and convey the lot to any of the decedent's parents, siblings or descendants.

A crypt or group of crypts or burial vaults owned by one person in a public or community mausoleum shall be deemed a cemetery lot.

Grave markers, monuments, memorials and all structures lawfully installed or erected on any cemetery lot or burial plot shall be deemed to be a part of and shall descend with the lot or plot.

**History:** 1981 c 25 s 1

**525.145 DESCENT OF HOMESTEAD.**

(1) Where there is a surviving spouse the homestead, including a mobile home which is the family residence, shall descend free from any testamentary or other disposition thereof to which the spouse has not consented in writing or by election to take under the will as provided by law, as follows:

(a) If there be no surviving child or issue of any deceased child, to the spouse;  
 (b) If there be children or issue of deceased children surviving, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the children and the issue of deceased children by right of representation.

(2) Where there is no surviving spouse and the homestead has not been disposed of by will it shall descend as other real estate.

(3) Where the homestead passes by descent or will to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; in all other cases it shall be subject to the payment of the items mentioned in section 525.16. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce the lien or charge by an appropriate action in the district court.

**History:** 1981 c 105 s 1

### 525.15 ALLOWANCES TO SPOUSE.

When any person dies, testate or intestate,

(1) The surviving spouse shall be allowed from the personal property of which the decedent was possessed or to which he was entitled at the time of his death, the wearing apparel, and, as selected by him, furniture and household goods not exceeding \$6,000 in value, and other personal property not exceeding \$3,000 in value;

(2) When, except for one automobile, all of the personal estate of the decedent is allowed to the surviving spouse by clause (1), the surviving spouse shall also be allowed such automobile;

(3) If there be no surviving spouse, the minor children shall receive the property specified in clause (1) as selected in their behalf;

(4) During administration, but not exceeding 18 months, unless an extension shall have been granted by the court, or, if the estate be insolvent, not exceeding 12 months, the spouse or children, or both, constituting the family of the decedent shall be allowed reasonable maintenance;

(5) In the administration of an estate of a nonresident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section.

**History:** 1981 c 103 s 1

**525.504** [Repealed, 1981 c 313 s 26]

### 525.539 DEFINITIONS.

[For text of subs 1 to 5, see M.S.1980]

Subd. 6. **Visitor.** "Visitor" means a person who is trained in law, health care, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

**History:** 1981 c 313 s 1

### 525.54 ADULTS SUBJECT TO GUARDIANSHIP AND CONSERVATORSHIP.

Subdivision 1. **Adults subject to guardianship and conservatorship.** Upon petition as provided in this chapter, the court, if satisfied of the need therefor, may

appoint one or two persons suitable and competent to discharge the trust as guardians of the person or estate or of both or as conservators of the person or the estate or of both, of any incapacitated person.

Subd. 2. **Guardianship or conservatorship of the person.** "Incapacitated person" means, in the case of guardianship or conservatorship of the person, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, and who has demonstrated deficits in behavior which evidence his inability to meet his needs for medical care, nutrition, clothing, shelter, or safety.

Subd. 3. **Guardianship or conservatorship of the estate.** Appointment of a guardian or conservator may be made in relation to the estate and financial affairs of an adult person: (a) voluntarily, upon the person's petition or consent in writing if the court is satisfied of the need thereof, or (b) involuntarily, upon the court's determination that (1) the person is unable to manage his property and affairs effectively because he is an incapacitated person, and (2) he has property which will be dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and (3) a guardian or conservator is necessary to adequately protect his estate or financial affairs. "Incapacitated person" means, in the case of guardianship or conservatorship of the estate of an adult, any adult person who is impaired to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his estate or financial affairs, and who has demonstrated deficits in behavior which evidence his inability to manage his estate, or who is unable to manage his estate or financial affairs effectively by reason of detention by a foreign power or disappearance.

Subd. 4. **Voting.** The appointment of a conservator shall not deprive the conservatee of the right to vote, unless the right is restricted by court order.

Subd. 5. **Competency.** Appointment of a guardian is evidence of the incompetency of the incapacitated person. Appointment of a conservator is not evidence of incompetency.

Subd. 6. **Authority to appoint guardian.** Nothing contained in this section shall diminish the power of the court to appoint a guardian to serve or protect the interest of any person under disability in any proceedings therein.

Subd. 7. **Certain protective arrangements.** If it is established in a proper proceeding under section 525.551 that a basis exists for the appointment of a guardian or conservator, the court, instead of appointing a guardian or conservator, may (a) authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to: payment, delivery, deposit or retention of funds or property; sale, mortgage, lease or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract or a contract for training and education; or addition to or establishment of a suitable trust; or (b) authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

Before approving a protective arrangement or other transaction under this subdivision, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a guardian or conservator. The court may appoint a special conservator with or without bond to assist in the accomplishment

of any protective arrangement or other transaction authorized under this subdivision, who shall have the authority conferred by the order and serve until discharged by order after making a report to the court of all matters done pursuant to the order of appointment.

**History:** 1981 c 313 s 2

#### 525.541 PETITIONERS.

Any person may petition for the appointment of a guardian or conservator or for a protective order for any person believed to be subject to guardianship or conservatorship. The petition of an adult person for the appointment of a guardian or conservator of his own person or estate shall have priority over the petition of any other person.

**History:** 1981 c 313 s 3

#### 525.542 CONTENTS OF PETITION.

Subdivision 1. **Information.** The petition shall show (1) the name and address of the person for whom a guardian or conservator, is sought, (2) the date of his birth, (3) the names and addresses of his living parents, children, brothers and sisters, or in the event that none of these persons are living, the names and addresses of his nearest kindred, (4) if he is married, the name and address of his spouse, (5) the grounds for the guardianship or conservatorship, with a statement that the proposed ward or conservatee may demand a written bill of particulars, (6) if conservatorship is requested, the powers the petitioner believes are necessary in order for a conservator to protect and supervise the proposed conservatee's person or property, (7) the probable value and general character of his real and personal property and the probable amount of his debts, (8) the names, ages, addresses, and occupations of the proposed guardians or conservators.

Subd. 2. **Bill of particulars.** A bill of particulars may be requested from the petitioner by the proposed ward or conservatee, and when so requested shall be delivered to the proposed ward or conservatee within ten days or prior to the hearing, whichever is sooner. The bill of particulars shall be in writing and shall include specific factual information which the petitioner believes supports the need for appointment of a guardian or conservator, such as mental and physical condition, financial transactions, personal actions, or actual occurrences which are claimed to demonstrate the proposed ward's or conservatee's inability to manage his estate, or to provide for personal needs for food, clothing, shelter or health care.

**History:** 1981 c 313 s 4

#### 525.543 LIS PENDENS.

After the filing of the petition, a certificate of the probate court certified to that fact may be filed for record in the office of the county recorder of any county in which any real estate owned by the proposed ward or conservatee is situated and if a resident of this state, in the county of his residence. The certificate shall state that a petition is pending and the name and address of the person for whom a guardian or conservator is sought. If a guardian or conservator is appointed on the petition, and, in the case of a conservatorship, if the conservatorship order removes or restricts the right of the conservatee to transfer property or to contract, then all contracts except for necessities, and all transfers of real or personal property made by the ward or conservatee after the filing and before the termination of the guardianship or conservatorship shall be void.

**History:** 1981 c 313 s 5

**525.55 NOTICE OF HEARING.**

Subdivision 1. **Time of notice; to whom given.** In all cases, upon the filing of the petition the court shall fix the time and place for the hearing and shall order that notice be given thereof. At least 14 days prior to the hearing, personal service of the notice shall be made upon the proposed ward or conservatee. Notice shall also be served on his spouse, parents, adult children, brothers and sisters, and, if none of those are alive or can be located, on his nearest kindred as determined by the court, and on any other persons the court may direct, by mail postmarked at least 14 days prior to the hearing. If he is a patient or resident of any hospital or other institution, notice by mail shall be given to the administrative head thereof and to the patient or resident. If he is a non-resident or if after diligent search he cannot be found in this state, notice shall be given in the manner and to such persons as the court may determine.

Subd. 2. **Form; service.** The notice shall be written in language which can be easily understood. Included with the notice shall be a copy of the petition. The notice shall contain information regarding the nature, purpose and legal effects of the guardianship or conservatorship proceedings on the proposed ward or conservatee. The notice shall state that he may be adjudged incapable of caring for his person or property, and by reason thereof, a guardian or conservator may be appointed for him, and that the adjudication may transfer to the appointed guardian or conservator certain rights, including his right to manage and control property, to enter into contracts and to determine his residence. The notice shall further contain information regarding the rights of the proposed ward or conservatee in the proceeding, including his right to attend the hearing, to be represented by an attorney, to oppose the proceeding, and to present evidence. The notice shall state that if the proposed ward or conservatee wishes to exercise the right to be represented by an attorney, he must either obtain counsel of his own choice, or ask the court to appoint an attorney to represent him, and that the county shall pay a reasonable attorney's fee if he is indigent. The procedure for requesting a court appointed attorney shall be described in the notice.

The process server shall inquire whether the proposed ward or conservatee desires the notice and petition to be read to him, and shall read the notice and petition if requested to do so. In place of a process server, the court may appoint a visitor to deliver the notice and petition and explain them to the proposed ward or conservatee.

Subd. 3. **Defective notice or service.** A defect in the service of notice or process shall not invalidate any guardianship or conservatorship proceedings.

**History:** 1981 c 313 s 6

**525.551 HEARING; APPOINTMENT; BOND; PROSECUTION; NOTICE.**

Subdivision 1. **Attendance at hearing.** If the proposed ward or conservatee is within the state, he shall be present at the hearing unless in a meeting with a visitor he specifically waives his right to appear in person or he is not able to attend by reason of medical condition as evidenced by a written statement from a licensed physician. The written statement shall be evidence only of the proposed ward's or conservatee's medical inability to attend the hearing, and shall not be considered in determining the issue of his incapacity. In any instance in which a proposed ward or conservatee is absent from the hearing, the court shall specify in its findings of fact the reason for nonattendance.

If a visitor delivered the notice and petition pursuant to section 525.55 and the proposed ward or conservatee has waived the right to attend the hearing, the

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visitor may testify as to the notice and any waiver of the right to appear in person, and as to other matters which may assist the court in determining the need for a guardian or conservator and the extent of the power to be granted.

Subd. 2. **Interchangeability of petition.** If the circumstances warrant, the court may treat a petition for guardianship as a petition for conservatorship.

Subd. 3. **Conduct of hearing; proof.** The proposed ward or conservatee has the right to summon and cross-examine witnesses. In the proceedings, there is a legal presumption of capacity and the burden of proof shall be on the petitioner. The standard of proof shall be that of clear and convincing evidence.

Subd. 4. **Record of proceedings.** In all proceedings the court shall take and preserve an accurate stenographic record or tape recording of the proceedings.

Subd. 5. **Findings.** In all cases the court shall find the facts specifically, state separately its conclusions of law thereon, and direct the entry of an appropriate judgment or order.

If upon completion of the hearing and consideration of the record the court finds: (a) that the requirements for the voluntary appointment of a conservator or guardian have been met, or (b) (1) that the proposed ward or conservatee is incapacitated as defined in section 525.54; and (2) in need of the supervision and protection of a guardian or conservator; and (3) that no appropriate alternatives to the guardianship or conservatorship exist which are less restrictive of the person's civil rights and liberties, such as those set forth in section 525.54, subdivision 6, it shall enter its order or judgment granting all of the powers set out in section 525.56, subdivision 3, in the case of a guardian of the person, and section 525.56, subdivision 4, in the case of a guardian of the estate, or specifying the powers of the conservator pursuant to section 525.56. Except as provided in section 525.544, the court shall make a finding that the person to be appointed as guardian or conservator is the most suitable and best qualified person among those who have indicated to the court that they are available and willing to discharge the trust before making the appointment.

The court may enumerate in its findings which legal rights the proposed ward or conservatee is incapable of exercising.

Subd. 6. **Bond.** Upon the filing of a bond by the guardian or conservator of an estate in an amount the court may direct and an oath according to law, or upon the filing of an acceptance of the trust pursuant to section 48.79, letters of guardianship or conservatorship shall issue. If there is no personal property, the court may waive the filing of a bond, but if the guardian or conservator receives or becomes entitled to any property of the ward or conservatee he shall immediately file a report thereof and a bond in an amount the court may direct. In case of breach of a condition of the bond an action thereon may be prosecuted by leave of the court by any interested person or by the court on its own motion.

Subd. 7. **Notification of commissioner of public welfare.** If the ward or conservatee is a patient of a state hospital for the mentally ill, or committed to the guardianship or conservatorship of the commissioner of public welfare as mentally retarded or dependent and neglected or is under the temporary custody of the commissioner of public welfare, the court shall notify the commissioner of public welfare of the appointment of a guardian, conservator or successor guardian or conservator of the estate of the ward or conservatee.

**History:** 1981 c 313 s 7

**525.5515 LETTERS OF GUARDIANSHIP OR CONSERVATORSHIP.**

Subdivision 1. **Copy of order to ward or conservatee.** A copy of the order appointing the guardian or conservator shall be served by mail upon the ward or conservatee and his counsel, if he was represented at the hearing. The order shall be accompanied by a notice which advises the ward or conservatee of his right to appeal the guardianship or conservatorship appointment within 30 days.

Subd. 2. **Contents of letters.** Letters of guardianship or conservatorship shall contain: (a) the name, address and telephone number of the guardian or conservator; (b) the name, address and telephone number of the ward or conservatee; (c) whether it is of the estate or of the person or both; and (d) the legal limitations, if any, imposed by the court on the guardian or conservator.

Subd. 3. **Issuance of letters.** Letters of guardianship or conservatorship shall issue to the guardian or conservator.

**History:** 1981 c 313 s 8

**525.56 GUARDIAN'S OR CONSERVATOR'S POWERS AND DUTIES.**

*[For text of subs 1 and 2, see M.S.1980]*

Subd. 3. The court may appoint a guardian of the person if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the person if it determines that a conservator is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator of the person include, but are not limited to:

(1) The power to have custody of the ward or conservatee and the power to establish his place of abode within or without the state, except as otherwise provided in this clause. The ward or conservatee or any person interested in his welfare may petition the court to prevent or to initiate a change in abode. A ward or conservatee may not be admitted to any state institution by his guardian or conservator except after a hearing pursuant to section 253A.07.

(2) The duty to provide for the ward's or conservatee's care, comfort and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education and rehabilitation. The guardian or conservator has no duty to pay for these requirements out of his own funds. Whenever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability.

(3) The duty to take reasonable care of the ward's or conservatee's clothing, furniture, vehicles and other personal effects, and, if other property requires protection, the power to seek appointment of a guardian or conservator of the estate. The guardian or conservator must give notice in the manner required and to those persons specified in section 525.55 prior to the disposition of the ward's or conservatee's clothing, furniture, vehicles or other personal effects. The notice must inform the person that he has the right to object to the disposition of the property within ten days and to petition the court for a review of the guardian's or conservator's proposed actions. Notice of the objection must be served by mail or

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personal service on the guardian or conservator and the ward or conservatee unless he be the objector. If the guardian or conservator is served with notice of an objection to the disposition of the property he may not dispose of the property unless the court approves the disposition after a hearing.

(4) (a) The power to give any necessary consent to enable the ward or conservatee to receive necessary medical or other professional care, counsel, treatment or service, except that no guardian or conservator may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by order of the court as provided in this clause. The guardian or conservator shall not consent to any medical care for the ward or conservatee which violates the known conscientious, religious, or moral belief of the ward or conservatee.

(b) A guardian or conservator who believes a procedure described in clause (4)(a) requiring prior court approval to be necessary for the proper care of the ward or conservatee shall petition the court for an order. The court shall fix the time and place for the hearing and shall give notice to the ward or conservatee and to the other persons specified in section 525.55, subdivision 1. The notice shall comply with the requirements of, and be served in the manner provided in section 525.55, subdivision 2. The court shall appoint an attorney to represent the ward or conservatee, unless he has counsel of his own choice. In every case the court shall determine if the procedure is in the best interests of the ward or conservatee. In making its determination the court shall consider a written medical report which specifically considers the medical risks of the procedure and whether alternative, less restrictive methods of treatment could be used to protect the best interests of the ward or conservatee.

(c) In the case of a petition for sterilization of a mentally retarded ward or conservatee, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's or conservatee's social history and adjustment to examine or evaluate the ward or conservatee and to provide written reports to the court. The reports shall indicate whether sterilization is necessary and whether it is in the best interests of the ward or conservatee. The medical report shall specifically consider the medical risks of sterilization and whether alternative methods of contraception could be used to protect the best interests of the ward or conservatee.

(5) The power to approve or withhold approval of any contract, except for necessities, which the ward or conservatee may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward or conservatee in a manner which limits his civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services.

**Subd. 4. Duties of guardian or conservator of the estate.** The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to his station in life and the value of his estate. Nothing herein contained shall release parents from

obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of his own funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48.84 and 501.125, subdivision 1, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

**History:** 1981 c 313 s 9,10

#### **525.58 FILING OF ACCOUNTS; FILING OF AFFIDAVIT.**

Subdivision 1. **Annual account.** Except where expressly waived by the court, every guardian or conservator of the estate annually shall file with the court within 30 days of the anniversary date of the guardian's or conservator's appointment a verified account covering the period from the date of appointment or his last account. The guardian or conservator of the estate shall give a copy of the annual account to the ward or conservatee except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand the account or there is a serious likelihood of harm to the ward or conservatee. The court or its designee shall annually review the court file to insure that the account has been filed and that the account contains the information required by this section. If an account has not been filed or if the account does not contain the information required by this section the court shall order the guardian or conservator to file an appropriate account. The examination and acceptance shall not constitute an adjudication or determination of the merits of the account filed nor shall it constitute the court's approval of the account. At the termination of the guardianship or conservatorship, or upon the guardian's or conservator's removal or resignation, he or his surety, or in the event of his death or disability, his representative or surety shall file a verified final account with a petition for the settlement and allowance thereof. Every account shall show in detail all property received and disbursed, the property on hand, the

present address of the ward or conservatee and of the guardian or conservator, and unless the guardian or conservator be a corporation, the amount of the bond, the names and addresses of all sureties thereon, that each unincorporated surety is a resident of this state, is not under disability, and is worth the amount in which he justified.

Subd. 2. **Notice of right to petition for restoration of capacity.** Except where expressly waived by the court after a finding that the ward or conservatee is so incapacitated as to be unable to understand any notice, or there is a serious likelihood of harm to the ward or conservatee, every guardian or conservator shall annually give notice to the ward or conservatee of his right to petition for restoration to capacity, discharge of guardian or conservator, or modification of the orders of guardianship or conservatorship. A waiver shall not be effective for more than two years without a redetermination by the court. The notice shall describe the procedure for preparing and filing such a petition. Notice shall also inform the ward or conservatee that after a petition is filed the court will hold a hearing on the matter and that he has the right to be present and to be represented by counsel at the hearing. The form of the notice shall be approved or supplied by the court.

Subd. 3. **Affidavit.** Except where expressly waived by the court as provided in subdivision 2, every guardian or conservator shall file annually with the court an affidavit stating that he has given the notice required by subdivision 2 to the ward or conservatee and every guardian or conservator of an estate shall file an affidavit stating that a copy of the annual account has been given to the ward or conservatee.

**History:** 1981 c 313 s 11

#### 525.591 SPECIAL GUARDIAN OR CONSERVATOR.

*[For text of subd 1, see M.S.1980]*

Subd. 2. **Special guardian or conservator.** Upon a clear showing of necessity, the court with notice may appoint a special guardian or conservator of the person or estate or both of any adult person designated in section 525.54, whether a petition for general guardianship or conservatorship has been filed or not. Notice shall be given in language which can be easily understood at least 24 hours prior to the hearing, and shall contain the information required by section 525.55, subdivision 2, regarding the purpose of the hearing and the rights of the proposed ward or conservatee. A copy of the petition shall be served with the notice. The court may waive the 24 hour notice requirement upon a showing that immediate and reasonably foreseeable harm to the person or his estate will result from the 24 hour delay. Notice of the court's order shall be given to the proposed ward or conservatee.

Subd. 3. **No appeal.** There shall be no appeal from any order appointing or refusing to appoint a special guardian or conservator.

*[For text of subds 4 and 5, see M.S.1980]*

**History:** 1981 c 313 s 12,13

#### 525.618 COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE.

Subdivision 1. **Time of notice; to whom.** Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor shall be given by the petitioner in the following manner and to the following persons:

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(a) The minor, if he is 14 or more years of age, by personal service at least 14 days prior to the date of hearing;

(b) The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition by personal service, at least 14 days prior to the date of hearing;

(c) Any living parent of the minor residing in Minnesota by personal service, at least 14 days prior to the date of hearing;

(d) Any living parent of the minor residing outside of Minnesota, and any adult brothers and sisters of the minor, service by mail, at least 14 days prior to the date of hearing; and

(e) To any other persons that the court may direct.

*[For text of subs 2 to 4, see M.S.1980]*

**History:** 1981 c 313 s 14

## **525.6185 CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT; NOTICE.**

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be given by mail or personal service upon the guardian at least 14 days prior to the date of the hearing.

**History:** 1981 c 313 s 15

## **525.619 POWERS AND DUTIES OF GUARDIAN OF MINOR.**

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 525.6196. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment or advice. A ward may not be committed to any state institution except pursuant to sections 253A.01 to 253A.21 and no guardian may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the proce-

ture is first approved by the order of the court, after a hearing as prescribed by section 525.56, subdivision 2.

A guardian is not liable by reason of his consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented, or unless he fails to comply with the requirements of this section which provide that a court order is necessary for commitment and for certain types of medical procedures. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by the court on its own motion or on petition of any person interested in the minor's welfare and as required by court rule.

**History:** 1981 c 313 s 16

#### **525.6192 TERMINATION OF APPOINTMENT OF GUARDIAN; GENERAL.**

A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. A guardian may be discharged without notice or hearing on petition and acceptance of the guardian's accounts by the ward after the ward marries or attains majority, or, in the case of the ward's death, by the personal representative of the ward's estate. In other cases the court may discharge the guardian upon approval of his accounts after notice and a hearing. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

**History:** 1981 c 313 s 17

#### **525.6196 FACILITY OF PAYMENT OR DELIVERY.**

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000 per annum, by paying or delivering the money or property to, (1) the minor, if he has attained the age of 16 years or is married; (2) any person having the care and custody of the minor with whom the minor resides; (3) a guardian of the minor; or (4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

**History:** 1981 c 313 s 18

**525.6198 PROTECTIVE PROCEEDINGS; APPOINTMENT OF CONSERVATOR OF ESTATE OF MINOR.**

Upon petition and after notice and hearing in accordance with the provisions of section 525.618 the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) The court may grant to the conservator of the estate of a minor any or all of the powers and duties enumerated in section 525.56, subdivision 3, and the conservator shall be subject to the requirements of sections 525.58, subdivision 1, 525.581 and 525.582 regarding an inventory and accounting, except that the court may waive the requirement that the annual account be served on the ward. The conservator shall file a bond with the court in such amount as the court may direct.

**History:** 1981 c 313 s 19

**525.62 MORTGAGE AND LEASE.**

Sections 525.62 to 525.702 shall be applicable only to guardianships and conservatorships and not to decedents' estates. As used in sections 525.62 to 525.702, the word "mortgage" includes an extension of an existing mortgage, subject to the provisions of section 525.691, and the word "lease" means a lease for one or more years, unless the context indicates otherwise.

**History:** 1981 c 313 s 20

**525.67 AGREEMENT AND SALE FOR PUBLIC PURPOSE.**

When any real estate of a ward or conservatee is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the guardian or conservator may agree, in writing, upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the approval of the court. When the agreement has been made, the guardian or conservator shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court, with notice as provided in section 525.83, except that no publication is required unless it is ordered by the court, shall hear, determine, and act upon the petition. If the court approves the agreement, the guardian or conservator, upon payment of the agreed compensation, shall convey the real estate sought to be acquired and execute any release which may be authorized.

**History:** 1981 c 313 s 21

**525.69 CONVEYANCE OF VENDOR'S TITLE.**

When any ward or conservatee is legally bound to make a conveyance or lease, the court, without further notice, may direct the guardian or conservator to make the conveyance or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to the conveyance or lease, or by the guardian or conservator, or by any person interested in the estate or claiming an interest in the real estate or contract, and shall show the description of the land and the facts upon which the claim for conveyance or lease is based. Upon proof

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of the petition, the court may order the guardian or conservator to execute and deliver an instrument of conveyance or lease upon performance of the contract.

**History:** 1981 c 313 s 22

## **525.703 COSTS.**

In proceedings under sections 525.54 to 525.702 a lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the ward's or conservatee's estate or personal affairs or the restoration of his capacity, shall be entitled to reasonable compensation from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. When the court determines that other necessary services have been provided for the benefit of the ward or conservatee, the court may order reasonable fees to be paid from the estate of the ward or conservatee or from the county having jurisdiction over the proceedings if the ward or conservatee is indigent. If, however, the court determines that a petitioner, guardian or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by those not acting in good faith.

**History:** 1981 c 313 s 23

## **525.705 PRE-EXISTING GUARDIANSHIPS AND CONSERVATORSHIPS.**

All guardians and conservators serving prior to August 1, 1981, shall have all powers and duties of section 525.56, subdivision 3, as to the person and section 525.56, subdivision 4, as to the estate, unless restricted by any existing court order, until those powers or duties are restricted or changed by court order.

**History:** 1981 c 313 s 24