

# MAINE STATE LEGISLATURE

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THE  
**REVISED STATUTES**

OF THE  
STATE OF MAINE,

PASSED OCTOBER 22, 1840;

TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**

OF THE

*United States and of the State of Maine,*

AND TO WHICH ARE SUBJOINED THE OTHER

PUBLIC LAWS OF 1840 AND 1841,

WITH AN

**APPENDIX.**

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PRINTED AND PUBLISHED IN COMPLIANCE WITH A RESOLVE OF OCTOBER 22, 1840.

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**Augusta:**

PUBLISHED BY WILLIAM R. SMITH & Co., PRINTERS TO THE STATE.

.....  
1841.

*Secondly.* To the widow of the deceased, if any; and  
*Thirdly.* To the minor children of the deceased in equal proportions.

SECT. 36. The word, "administrator," in the preceding sections of this chapter, shall be construed as including in its signification the word, "executor." Provisions extended to executors.

SECT. 37. If any executor or administrator of an insolvent estate shall commit such waste or trespass upon any real estate, as is described in the fifteenth section of chapter, one hundred and twenty nine, whether he be an heir or devisee thereof, or not, or if he shall consent to any such waste or trespass by any other person, he shall be liable to account for treble the amount of the damage done to the real estate, as aforesaid; and such administrator or executor shall have power to prosecute actions of trespass against any persons committing such waste, whether they be heirs or devisees, or not, and the damages so recovered shall also be accounted for, as assets. Waste on real estate of persons deceased, insolvent. 1835, 191, § 4.

SECT. 38. Any executor, who may have given bond as a residuary legatee, pursuant to the provisions of section, nine, of chapter, one hundred and six, if the estate under his care, from some unexpected event, prove insufficient for the payment of debts, may represent the same, insolvent; and like proceedings and distribution shall be had, as is provided in this chapter for other cases; and the said executor, or his surety, in any suit brought upon his bond, may avail himself of such insolvency and distribution, in bar of such action. Of insolvency, when executor has given bonds, as residuary legatee. 1830, 470, § 7.

## CHAPTER 110.

### OF GUARDIANS.

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| <p>SECT. 1, 2, 3. How guardians to minors may be nominated and appointed.</p> <p>4. When minors' choice may be certified by a justice of the peace.</p> <p>5. Of the authority of a guardian over the minor's person and property.</p> <p>6. Executor, &amp;c. not to be guardian.</p> <p>7. Guardians of insane and other persons, not minors.</p> <p>8. Inquisition to be made by selectmen.</p> <p>9. Of their return and hearing thereon. Appointment of guardian.</p> <p>10. Proceedings, where the selectmen or overseers of the poor are applicants.</p> <p>11. Copy of application may be filed in the registry of deeds; the effect thereof.</p> <p>12. Respondent's expenses for his defence, a charge on his estate.</p> | <p>SECT. 13. Assessors of plantations authorized, as selectmen.</p> <p>14. Authority and duty of guardian.</p> <p>15. His bond.</p> <p>16. Estate of the ward, to be appraised.</p> <p>17. Proceedings on suspicion of embezzlement of the wards property.</p> <p>18. Punishment of guardian for embezzlement.</p> <p>19. Guardian's duty.</p> <p>20. From what funds debts may be paid.</p> <p>21. Settlement of the ward's accounts. Guardian to appear for him in suits.</p> <p>22. Guardian's powers in reference to real estate in special cases.</p> <p>23. Sales, and investments of funds, by order of the judge.</p> |
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- CHAP. 110. SECT. 24. Married women, not to be guardians, nor husbands, in right of wives.
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- SECT. 30. Accounts by two or more joint guardians.
31. Disabilities of persons over twenty one years of age, when under guardianship.
32. Guardianship of persons out of the state, granted in one county only, for the state.
33. Guardians appointed and next friends allowed by courts, in suits at law.

How guardians to minors may be nominated and appointed. 1821, 51, § 46, 52.

SECTION 1. The judge of probate, in each county, when it shall appear to him necessary and convenient, may appoint guardians to minors, being inhabitants of or residents in the same county, and also to such, as shall reside without this state, and have any estate within his county.

Same subject. 1821, 51, § 46, 52.

SECT. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and, if he is above the age of fourteen years, he may nominate his own guardian; who, if approved by the judge, shall be appointed accordingly, notwithstanding he may have had a guardian appointed, before he arrived at that age.

Same subject. 1821, 51, § 46, 52.

SECT. 3. If the guardian, nominated by such minor, shall not be approved by the judge, or if the minor shall reside without the state, or if after being cited by the judge, he shall neglect to nominate a suitable person, or one who will accept the trust, the judge may nominate and appoint the guardian, in the same manner, as if the minor were under the age of fourteen years.

When minor's choice may be certified by a justice of the peace. 1821, 51, § 46.

SECT. 4. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the next probate court, his nomination of a guardian may be certified to the judge of probate, by a justice of the peace; which shall have the same effect, as if made in the presence of the judge.

Of the authority of a guardian over the minor's person and property. 4 Mass. 675. 6 Mass. 273.

SECT. 5. Every guardian, appointed as aforesaid, shall have the custody and tuition of the minor, and the care and management of all his estate, and shall continue in office, until the minor shall arrive at the age of twenty one years, unless sooner discharged according to law; provided, however, that the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, being themselves, respectively, competent to transact their own business, shall be entitled to the care of his person and education.

Executor, &c. not to be guardian. 1821, 51, § 46.

SECT. 6. No executor or administrator on an estate, shall be appointed guardian to any minor, interested therein.

Guardians of insane and other persons, not minors. 1821, 51, § 49.

SECT. 7. The judge of probate in any county may appoint guardians to the following persons, though more than twenty one years of age, belonging to such county, on application in writing, of any of the friends, relations or creditors of such person, or of the selectmen or overseers of the poor of the town where he belongs:

Insane persons. 1823, 360, § 1, 2. 3 Mass. 129.

*First.* Insane persons, including insane married women, whose husbands have left them, without making provisions for their support;

*Secondly.* Spendthrifts, who, by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen their estate, as to expose themselves, or their families, to want or suffering, or their towns, to charge or expense;

*Thirdly.* Such persons, as, by excessive drinking, gaming or debauchery, shall render themselves incapable of managing their own affairs;

*Fourthly.* Convicts committed to the state prison, for a term, not less than one year, and not for life.

SECT. 8. Before appointing any such guardian, except in the last mentioned instance, the judge shall issue his warrant to the selectmen of the town where the person resides, concerning whom such application is made, requiring them to make inquiry into the facts, stated in the application; and the selectmen shall decide upon such evidence, as they may be able to obtain, whether the facts, so stated, are true; and, as soon as may be, they shall report the result to the judge.

SECT. 9. If, on the report of the said selectmen, and on due notice to the person, concerning whom the application is made, and a hearing thereon by the judge of probate, he shall adjudge such person to be insane, or a spendthrift, or incapacitated, as aforesaid, he shall appoint a guardian or guardians, with the powers hereinafter specified.

SECT. 10. But whenever the selectmen, or the overseers of the poor of such town, are the applicants, and it shall appear, that they have given, at least, fourteen days notice thereof to the person, concerning whom the application is made, by serving him with a copy of their application, the judge, if such person be present, or on such further notice as he may think reasonable, if any, may appoint such guardian, if he finds it proper, without any further inquiry.

SECT. 11. Whenever application shall have been made, as provided in section, seven, of this chapter, and notice shall have been issued thereon by the judge of probate, the applicants may cause a copy of their application, and the order of court thereon, to be filed in the registry of deeds for the county; and, if a guardian shall be appointed thereupon, all contracts, excepting for necessities; and all gifts, sales or transfers of real or personal estate, made by the person who is [the] subject of such application, after the filing of the same as aforesaid, and before the termination of the guardianship, shall be void; provided, that this section shall not be construed as adding, by implication, any thing to the validity of any such act by any such person, previously to the filing of such copy.

SECT. 12. When a guardian shall have been appointed under such application, the judge shall make an allowance, to be paid by the guardian from the ward's estate, for all reasonable expenses incurred by the ward in defending himself against the complaint.

SECT. 13. When such person shall reside on lands, not within any incorporated town, all acts authorized to be done by the selectmen, respecting the guardianship of such person, shall and may be done by the assessors of the district or tract, if it be an organized plantation in the same county.

SECT. 14. Guardians, appointed under the provisions of said

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Spendthrifts.  
1821, 51, § 53.  
12 Pick. 152.  
18 Pick. 496.

Intemperate persons.  
1832, 13, § 1.

Convicts.

Inquisition to be made by selectmen.  
1821, 51, § 49.  
1832, 13, § 1.

Of their return and hearing thereon. Appointment of guardian.  
1832, 13, § 1.  
14 Mass. 222.  
5 Pick. 490.

Proceedings, where the selectmen or overseers of the poor are applicants.

Copy of application may be filed in the registry of deeds; the effect thereof.  
1821, 51, § 53.  
3 Pick. 229.

Respondents expenses of his defence, a charge on his estate.

Assessors of plantations authorized, as selectmen.

Authority and

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duty of guardian.  
1821, 51, § 49,  
53.  
5 Mass. 427.

seventh section, shall have the custody of the person of their wards, if such wards reside within the state, excepting so far as the court of probate, from time to time, may otherwise order. And it shall be the duty of every guardian appointed over any person for gaming, idleness, drinking or debauchery, to inculcate habits of sobriety and industry in his ward, and, when of sufficient health and strength, with the approbation of the judge of probate, he may bind out his ward to labor, not exceeding six months at any one time, or employ him in his own service; giving credit for his earnings, or such sum as he may receive therefor.

His bond.  
1821, 51, § 46,  
53.  
1830, 470, § 11.  
1832, 13, § 1.

SECT. 15. Every guardian, appointed for minors or other persons, under the provisions of this chapter, shall give bond to the judge of probate, in such sum, and with such surety or sureties, resident within this state, as the judge shall accept, conditioned as follows:

*First.* For the faithful discharge of his trust;

*Secondly.* To render a true and perfect inventory of the estate, property and effects of his ward, as appraised by three persons, under oath, to be appointed by the judge of probate, within the time limited by law;

*Thirdly.* To render a just and true account of his guardianship, as often as, and whenever, by law required;

*Fourthly.* At the expiration of his trust, to pay and deliver over all moneys and property, which, on a final and just settlement of his accounts, shall appear to be remaining in his hands.

Estate of the ward, to be appraised.  
1821, 51, § 47.  
1830, 470, § 3,  
11.  
1832, 13, § 1.

SECT. 16. On the appointment of every guardian, under any of the foregoing provisions, the judge of probate may appoint three suitable disinterested persons to appraise the estate of the ward, in like manner, as estates under administration, may be appraised, as is mentioned in chapter, one hundred and six, sections, twenty three and twenty four; and the guardian shall return the inventory, under oath, within such time as the judge, in his warrant to the appraisers, shall direct, if the ward be a minor, and in all other cases, within three months after the appointment of the guardian.

Proceedings on suspicion of embezzlement of the ward's property.  
1821, 51, § 50.  
1832, 13, § 2.

SECT. 17. Upon complaint made to the judge of probate, by any guardian, or by the ward, or by any creditor, or other person interested in his estate, or by any person having claims thereto in expectancy, as heir or otherwise, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person; and proceed with him as to such charge, in the same manner, as is provided respecting persons, suspected of concealing or embezzling the effects of a deceased testator or intestate.

Punishment of guardian for embezzlement.  
1825, 315, § 8.

SECT. 18. If any guardian, having the charge and custody of any money, bill, note, bond, evidence of debt, or any property, whatever, belonging to his ward, shall, in violation of his trust, embezzle the same, or fraudulently convert the same to his own use, he shall be punished by fine, not exceeding five thousand dollars, or confinement to hard labor for a term, not exceeding ten years, or both, according to the circumstances of the offence.

Guardian's duty.  
1821, 51, § 51.  
18 Pick. 1.

SECT. 19. The guardian, appointed under the provisions of this chapter, shall manage the estate of his ward, frugally and without waste, and apply the income and profits thereof, so far as may be

necessary, for the comfortable and suitable maintenance of the ward and his family, if there be any; and, if the income and profits be insufficient for that purpose, then from the principal; and, whenever any exigency, by law authorizing a sale of any real estate of the ward, shall occur, the guardian shall apply to some proper court for a license to sell the same, and shall apply the proceeds to the purposes contemplated by his license.

SECT. 20. Every such guardian shall pay all just debts, due from the ward, out of his personal estate, so far as it may prove sufficient; without disposing of effects, necessary for the use and comfort of the ward and his family, if any; and, in case of deficiency thereof, then out of the real estate, as provided in chapter, one hundred and twelve.

From what funds debts may be paid.  
1821, 51, § 51.  
14 Mass. 207.  
21 Pick. 36.

SECT. 21. Such guardian shall also settle all accounts of the ward, and demand, sue for, and receive all debts, due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor upon such terms, as the judge of probate may authorize; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

Settlement of the ward's accounts. Guardian to appear for him in suits.  
1821, 51, § 51.

SECT. 22. The guardian may join in, and assent to, a partition of the real estate of his ward, either upon a petition for partition or other legal process; and he may assign and set out dower in the said estate, to any widow entitled thereto, and may appoint an appraiser of real estate on any execution, either against, or in favor of his ward.

Guardian's powers, in reference to real estate, in special cases.  
2 Pick. 382.

SECT. 23. Any judge of probate, in his county, on the application of a guardian, or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian, to sell or transfer any stock in the public funds, or other personal property, held by him as guardian, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned; and the judge may make such further order, and give such directions, as the case may require, for managing, investing, and disposing of the effects in the hands of the guardian, or for buying in any particular estate, or remainder, or reversion, or mortgage or other incumbrance, upon any real estate belonging to the ward.

Sales, and investments of funds, by order of the judge.  
1821, 51, § 56.

SECT. 24. No married woman, during her coverture, shall be appointed guardian of any minor or other person; and, if any female guardian be married after any such appointment, her authority, as such, shall cease; neither shall her husband become guardian in her right.

Married women, not to be guardians, nor husbands, in right of wives.  
1821, 51, § 54.

SECT. 25. The judge of probate may dismiss any guardian of a minor or other person, whenever it shall appear necessary, or on the request of such guardian, and, if the case require it, appoint another guardian in his place; provided, that the judge, previously to any such removal, except by request of the guardian, shall give fourteen days notice to such guardian, to appear and shew cause to the contrary.

Of the removal of guardians.  
1821, 51, § 55.

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Guardianship over female minors ceases, on marriage of wards.

Guardians to settle with judge, at least once in three years.

1830, 470, § 10.  
7 Pick. 47.

Consequences of neglect of such duty.

1830, 470, § 10.  
4 Mass. 106.  
1 Greenl. 186.

On settlement, bond to be examined.

1830, 470, § 10.  
4 Mass. 106.

Accounts by two or more joint guardians.

Disabilities of persons over twenty one years of age, when under guardianship.

1821, 51, § 51.  
12 Mass. 488.  
18 Pick. 115.

Guardianship of persons out of the state, granted in one county only, for the state.

Guardians appointed, and next friends allowed by courts in suits at law.

3 Pick. 213,  
280.  
8 Pick. 552.

SECT. 26. On the marriage of any female ward; under the age of twenty one years, the authority of her guardian, as such, shall cease.

SECT. 27. Every guardian shall render and settle his account with the judge of probate, at least once in three years, and as much oftener, as the judge may cite him for that purpose.

SECT. 28. On neglect or refusal to settle his account, as afore-said, such guardian shall be deemed to have broken the condition of his bond, and shall be liable to be removed therefor, notwithstanding the ward may be indebted to him; and he shall also forfeit all allowance for his personal service, unless it appear to the judge, that such neglect arose from sickness or other unavoidable accident.

SECT. 29. On the settlement of every guardianship account, except when intended, as a final one, the judge shall examine the bond of the guardian, and if it be found insufficient, either in amount, or in the responsibility of the sureties, he shall require a new and sufficient one. Should such bond not be given, as required, the guardian shall be removed and a new one appointed in his place.

SECT. 30. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

SECT. 31. Whenever a person above the age of twenty one years, for any cause specified in this chapter, shall have had a guardian, appointed over him by any judge of probate, he shall be deemed incapable of disposing of his property otherwise than by his last will, or of making any contract, until otherwise adjudged by the court of probate, notwithstanding the death or resignation or removal of the guardian; and in such case a new guardian may be appointed, without further intervention from the selectmen. Whenever, on application of any such person or otherwise, the judge shall find, that such guardian is no longer necessary, he shall order the property of the ward, remaining undisposed of, to be restored to him, excepting such legal compensation, as the guardian is authorized by law to receive for his services.

SECT. 32. The guardianship, which shall be first lawfully granted of any person, residing without the state, shall extend to all the estate of the ward within the same; and shall exclude the jurisdiction of the probate court in every other county.

SECT. 33. Nothing, contained in this chapter, shall impair or affect the power of any court of common law, probate court, or justice of the peace, to appoint a guardian to defend the interests of any minor, or other incapacitated person, in any suit pending in such court, nor their power to allow or appoint any person, as next friend of such minor or incapacitated person, to commence, prosecute, or defend any suit in his behalf.