

MAINE STATE LEGISLATURE

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CHAPTER 80.

Appointment, Powers, and Duties of Guardians. Adoption of Children. Change of Name.

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Appointment of Guardians for Minors.

Sec. 1. Appointment of guardians; proceedings when judge is interested. R. S. c. 72, § 1. The judge of probate may appoint guardians to minors resident in his county, or out of the state and having estate in his county; but no executor or administrator on an estate shall be guardian to a minor interested therein, unless he is the parent of such minor or is nominated as such guardian in the will of which he is an executor; but when any judge is interested, either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, such appointment shall be made by a judge in any adjoining county, and the record of said appointment shall show why it was so made.

33 Me. 210; 39 Me. 394; 53 Me. 403; 61 Me. 213; *79 Me. 37.

Sec. 2. Guardians, how nominated and appointed. R. S. c. 72, § 2. If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; but a guardian for such minor, named by the deceased father in his last will, or, if the father has died without making such nomination, named by the deceased mother in her last will, shall be appointed, if suitable. If the minor is over that age, he may nominate his own guardian in the presence of the judge or register of probate, or in writing certified by a justice of the peace; and if approved by the judge, such nominee shall be appointed, although the minor has a guardian, appointed before he was fourteen years of age; but if not thus approved, or if the minor resides out of the state, or being cited by the judge, neglects to nominate a suitable person, who will accept the trust, the judge may nominate and appoint, as if he were under fourteen.

39 Me. 394; 53 Me. 403; 61 Me. 213; *76 Me. 304; 85 Me. 360.

Sec. 3. Power over minor's person and property. R. S. c. 72, § 3. Such guardian shall have the care and management of all his ward's estate, and continue in office until the ward is twenty-one years of age, unless sooner lawfully discharged; but the care of the person, and the education of the minor, shall be jointly with the father and mother, if competent, or if one has deceased, with the survivor, if competent; otherwise these duties devolve on the guardian; and in any case, the judge may decree them to him, if he deems it for the welfare of the minor, until his further order.

See c. 72, § 46; 31 Me. 197; *53 Me. 550; 61 Me. 214; *93 Me. 248; 124 Me. 38.

Appointment of Guardians and Conservators for Adults.

Sec. 4. Appointment of guardians for adults. R. S. c. 72, § 4. 1917, c. 161. 1925, c. 23, § 1. The judge of probate may appoint guardians to the following persons belonging to his county, although over twenty-one years of age, on written application of any of their friends, relatives, or creditors, or of the municipal officers or overseers of the poor of the town where they reside; but when the judge is interested, either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, said application shall be made to and such appointment shall be made by the judge in any adjoining county and the record of said appointment shall show why it was so made:

I. All persons, including those insane or of unsound mind, and married women, who, by reason of infirmity or mental incapacity, are incompetent to manage their own estates, or to protect their rights.

II. Persons, who, by excessive drinking, gambling, idleness, or debauchery of any kind, have become incapable of managing their own affairs, or who so spend, or waste their estate, as to expose themselves or families to want or suffering, or their towns to expense.

III. Convicts, committed to the state prison for a term less than for life.

³¹ Me. 553; *49 Me. 273, 361; 87 Me. 49; 107 Me. 339, *491; 110 Me. 233; 123 Me. 152.

Sec. 5. Hearing, time and place; adjudication. R. S. c. 72, § 6. 1929, c. 178, § 2. The judge shall appoint a time and place for hearing and shall order that notice of the proceedings be given by serving the person for whom a guardian is requested with a copy of the application and order of the court, at least fourteen days before the day of hearing. If upon such hearing, he adjudges that such person is insane, a spendthrift, or incapable as aforesaid, he shall appoint a guardian.

18 Me. 386; 97 Me. 134.

Sec. 6. Contracts made after notice and filing copy of application in registry of deeds void. R. S. c. 72, § 7. When such application is made, and notice issued thereon by the judge, the applicants may cause a copy of their application, and the order of the court thereon, to be filed in the registry of deeds for the county; and if a guardian is appointed thereupon, all contracts, except for necessities, and all gifts, sales, or transfers of real or personal estate made by such person after said filing and before the termination of the guardianship, are void; but this section does not add anything to the validity of any such act previous to said filing.

107 Me. 492.

Sec. 7. Allowance to ward to defend himself. R. S. c. 72, § 8. When a guardian is thus appointed, the judge shall make an allowance, to be paid by the guardian from the ward's estate, for all his reasonable expenses in defending himself against complaint.

107 Me. 491.

Sec. 8. Authority and duties. R. S. c. 72, § 9. 1917, c. 133, § 4. Such guardians shall have the custody of the persons of their wards, if resident in the state, except so far as the court of probate may from time to time otherwise order; and every guardian appointed over any person for gambling, idleness, drinking, or debauchery, shall inculcate upon him habits of sobriety and industry, and when of sufficient health and strength, with the approbation of the judge, may bind him out 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 receives therefor.

Sec. 9. Appointment of conservator. R. S. c. 72, § 10. 1917, c. 133, § 5. 1925, c. 23, § 2. Whenever any person shall deem himself unfitted, by reason of infirmities of age or physical disability, to manage his estate with prudence and understanding he may apply to the judge of probate for the county in which he resides, for the appointment of a conservator of his estate, and thereupon the judge of probate may upon hearing, after such notice as he may order, appoint some suitable person as conservator of his estate, and such appointment shall not disfranchise the person for whose estate such conservator is appointed. The person so appointed shall give bond to the judge of probate in such sum and with such sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as provided in section twelve, and all provisions of law relating to the management of estates of adult persons under guardianship shall apply to such conservator; but when any judge is interested, either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, said application shall be made to, and such appointment shall be made by, the judge in any adjoining county and the record of said appointment shall show why it was so made.

Sec. 10. Transfer of proceedings to county of original jurisdiction when disability of judge is removed. 1927, c. 72. 1929, c. 272, § 1. In all cases where the appointment of a guardian or conservator is made by a judge of probate in any adjoining county, or the administration of a ward's estate is transferred to any adjoining county by reason that the judge of probate of the county where the ward or wards reside is interested either in his own right, in trust, or in any other manner, or is within the sixth degree of kindred, whenever the disability of the judge of probate is removed before the proceedings have been fully completed the proceedings shall then be transferred to the probate court which otherwise would have had jurisdiction or to the probate court of original jurisdiction for the completion of the administration of such estate, and in all such cases the register in such adjoining county shall transmit copies of all records relating to such estate to the probate office of the county where such estate belongs to be there recorded.

Powers and Duties of Guardians.

Sec. 11. Married woman may act as guardian. R. S. c. 72, § 11. A married woman, who has attained the age of twenty-one years, may be appointed guardian and perform all the duties of such trust without any act or assent on the part of her husband; and when an unmarried woman who is guardian marries, her authority is not thereby extinguished, but she shall continue to perform all the duties of such trust without any act or assent on the part of her husband.

Sec. 12. Bond of guardian. R. S. c. 72, § 12. Every guardian, appointed for a minor or other person, shall give bond to the judge of probate in such sum and with such sureties, resident in the state, or with a surety company authorized to do business in the state, as surety, as the judge accepts, conditioned as follows:

- I. For the faithful discharge of his trust.
- II. To render a true and perfect inventory of the estate, property, and effects of his ward, within the time limited by law.
- III. To render a just and true account of his guardianship when by law required.
- IV. At the expiration of his trust, to deliver all moneys and property, which, on a final and just settlement of his accounts, appear to remain in his hands.

See c. 60, § 160; 31 Me. 254; 34 Me. 341; *38 Me. 51; 69 Me. 283; *112 Me. 120.

Sec. 13. Non-resident guardian or conservator to appoint an agent in state. R. S. c. 72, § 13. 1929, c. 272, § 2. No person residing out of the state shall be appointed a guardian or conservator unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the probate office for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such guardian or conservator, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such guardian or conservator shall, if made on such agent, have like effect as if made on himself personally within the state, and such service shall have such effect. A guardian or conservator who after his appointment removes from and resides without the state shall so appoint an agent within thirty days after such removal. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed, and recorded as above provided. The powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by a guardian or conservator to comply with any provision of this section shall be cause for removal. A guardian or conservator residing out of the state shall not appoint his co-guardian or co-conservator, residing in the state, as his agent.

Sec. 14. Inventory of ward's estate. R. S. c. 72, § 14. The judge or register shall appoint one or three disinterested persons to appraise the ward's estate; and the guardian shall return the inventory under oath, within such time as the judge in his warrant directs, if the ward is a minor, and in all other cases, within three months after his appointment, or within such further time as the judge allows. Only one appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable so to do; otherwise three appraisers shall be appointed. The warrant for an inventory may be revoked for cause, and a new one issued if deemed necessary.

Sec. 15. Management of ward's estate; may be licensed to mortgage real estate of ward. R. S. c. 72, § 15. The guardian shall manage the estate of his ward frugally and without waste; apply the income and profits thereof, so far as are needed, for the comfortable and suitable maintenance of the ward and his family, and if they are insufficient for that purpose, he may use the principal; and when an exigency occurs, the guardian may apply for a license to sell or mortgage the estate of his ward, and devote the proceeds to the purpose contemplated by his license; before a license to mortgage the real estate of a ward is granted, notice shall be given as prescribed in section five of chapter eighty-five, relating to sales of real estate, and the guardian shall give bond to the judge, with sureties to his satisfaction, conditioned to truly apply and account for the proceeds of the mortgage according to the license; but no mortgage shall be made except for such amount, time, and rate as the court shall determine in its decree granting license; such mortgage and the indebtedness secured thereby shall bind only the estate of the ward.

48 Me. 280.

Sec. 16. Application of property of minor children to their support. R. S. c. 72, § 16. If a minor, having a father alive, 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 his father's family and to all the circumstances of the case, the expenses of his maintenance and education may be defrayed out of his own property, in whole or in part, and the charges therefor allowed accordingly in the settlement of the guardian's account.

Sec. 17. Guardian to pay ward's debts, collect dues, appear for him in court, and may insure his estate. R. S. c. 72, § 17. He shall settle all accounts of his ward; pay all his just debts out of his personal estate, so far as it will go without disposing of effects necessary for the use and comfort of the ward and his family, and in case of deficiency thereof, then out of the real estate; demand, sue for, and receive all his dues, compound for the same, and give discharges thereof, on such terms as the judge authorizes; appear for and represent his ward in all legal proceedings, unless another is appointed for that purpose as guardian or next friend; and may insure any estate of his ward at the expense of the estate, and do all necessary acts relating to such insurance.

17 Me. 224; 26 Me. 78; 37 Me. 407; *48 Me. 281; 53 Me. 550; *68 Me. 432;
125 Me. 442.

Sec. 18. Power as to ward's real estate. R. S. c. 72, § 18. He may join in and assent to a partition of his ward's real estate on a petition or other legal process therefor; appoint an appraiser of real estate taken on execution against or in favor of his ward; and when his ward, prior to the guardianship, had lawfully contracted to convey real estate on conditions, and had failed to do so, he may convey it according to the terms of the contract, and shall be accountable therefor on his bond.

41 Me. 232.

Sec. 19. Adjustment of claims. R. S. c. 72, § 19. The guardian of an insane or incapacitated adult may apply for commissioners to be appointed to decide upon claims against his ward's estate, deemed exorbitant, unjust, or illegal; or may, if necessary, represent said estate insolvent, with like proceedings, rights, and liabilities, as in case of estates of deceased persons.

See c. 79, § 23; 68 Me. 431.

Sec. 20. May refer action by rule of court. R. S. c. 72, § 20. Guardians of minors, insane and incompetent persons, spendthrifts, and convicts, may, under agreement of parties, refer, by rule of court, any action pending in the superior court, in favor of or against their ward, on any claim or demand for money or other property in which said ward is interested, to any justice of such court, or any person appointed by said justice, whose decision, when accepted by said court, is final.

Sec. 21. Adjustment by arbitration or compromise. R. S. c. 72, § 21. The judge of probate may authorize any such guardian to adjust, by arbitration or compromise, any claim for money or other property, in favor of or against any ward represented by him.

Sec. 22. Sale of ward's stocks, chattels, and pews; investment of funds. R. S. c. 72, § 22. On petition of the guardian or any party interested, the judge, with or without notice to other persons interested, as he deems necessary, may authorize or require the guardian to sell or transfer any personal property held by him as guardian, or any pews or interest in pews, belonging to such estate, as goods and chattels, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner most for the interest of all concerned; and may make such further order, and give such directions, as the case requires, for managing, investing, and disposing of the effects in the hands of the guardian, or for buying in any particular estate, remainder, reversion, mortgage, or other incumbrance upon real estate belonging to the ward.

66 Me. 295.

Sec. 23. Dismissal or removal of guardian; marriage of female ward terminates guardianship. R. S. c. 72, § 23. The judge may dismiss any guardian, when it appears necessary, or at his own request, and if the case requires it, may appoint another in his place; but previous to such removal, except at his own request, personal notice shall be given to the guardian, or public notice if his residence is out of the state or unknown, to appear and show cause to the contrary; and on the marriage of any female ward under twenty-one years of age, the authority of her guardian ceases.

Sec. 24. Settlement of guardian's accounts. R. S. c. 72, § 24. Every guardian shall settle his account with the judge at least once in three years, and as much oftener as the judge cites him for that purpose; and neglect or refusal to do so, is a breach of his bond; he may be removed therefor, although the ward may be indebted to him, and if the judge is satisfied that such neglect or refusal is wilful or without reasonable cause, the guardian shall forfeit all allowance for his personal services.

1 Me. 190; 29 Me. 507; *31 Me. 260; *34 Me. 340; 54 Me. 343; *64 Me. 210; 69 Me. 283.

Sec. 25. Upon a settlement of account, judge to examine bond, and may require new bond. R. S. c. 72, § 25. Whenever a guardian settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond, and shall indorse thereon the fact that such examination has been made. If he then, or at any time, finds the bond insufficient in amount, or the sureties unsatisfactory, he shall require a new bond, in such amount and with such sureties as he may approve, and such guardian, failing to give such new bond, shall be removed and another appointed.

See c. 86, § 2; 112 Me. 120.

Sec. 26. Oath to the account. R. S. c. 72, § 26. When an account is rendered by two or more joint guardians, the judge may allow it upon the oath of either.

Sec. 27. Guardian of person out of the state. R. S. c. 72, § 27. The guardianship first lawfully granted, of any person residing without the state, extends to all his estate within the same, and excludes the jurisdiction of the probate court in every other county.

Sec. 28. Non-resident guardian and ward entitled to property in this state; proceedings. R. S. c. 72, § 28. If a guardian and his ward are both residents of any other state or territory of the United States, and such ward is entitled to personal property of any description in this state, and such guardian produces to the probate court, or other court of competent jurisdiction of the county in which such property or the principal part thereof is situated, a full and complete transcript from the records of a court of competent jurisdiction in the state or territory in which he and his ward reside, duly exemplified or authenticated, showing that he has been appointed guardian of such ward, and that he has given a bond and security in the state or territory in which he and his ward reside, in double the value of the property of such ward, and also showing to such court that a removal of the personal property of such ward will not conflict with the terms or limitations attending the right by which the ward owns the same, then such transcript may be recorded in such court, and such guardian shall be entitled to receive letters of guardianship of the estate of such ward from such court, which shall authorize him to demand, sue for, and recover any such property, and remove the same to the place of residence of himself and his ward. And such court may order any resident guardian, executor, or administrator, having any of the estate of such ward, to deliver the same to such non-resident guardian; provided, that all known debts of such estate have been paid.

Sec. 29. Disability of adults under guardianship; dismissal of guardian. R. S. c. 72, § 29. When a person over twenty-one years of age is under guardianship, he is incapable of disposing of his property otherwise than by his last will, or of making any contract, notwithstanding the death, resignation, or removal of the guardian. When on application of any such person or otherwise, the judge finds that a guardian is no longer necessary, he shall order the remaining property of the ward to be restored to him, except a legal compensation to the guardian for his services.

*56 Me. 310; 77 Me. 164; *102 Me. 101.

Guardians Ad Litem; Next Friend.

Sec. 30. Guardian ad litem; next friend. R. S. c. 72, § 30. Nothing in this chapter affects the power of any court 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 one, as next friend of such person, to commence, prosecute, or defend any suit in his behalf.

*33 Me. 122; *41 Me. 460; *91 Me. 361.

Sec. 31. Settlement of suit not to be valid unless approved by court; authority of court. R. S. c. 72, § 31. No settlement of any suit brought in behalf of an infant by next friend shall be valid unless approved by the court in which the action is pending, or to which the writ is returnable, or affirmed by an entry or judgment. The court may make all necessary orders for protecting the interests of the infant, and may require the guardian ad litem, or next friend, to give bond to truly account for all money received in behalf of the infant.

*125 Me. 441.

Sec. 32. Special guardians for married women in certain cases. R. S. c. 72, § 32. Pending any proceedings in the probate court in which any married woman is interested, when, after personal notice and a hearing, the judge is satisfied that, by reason of age or mental infirmity, she is incompetent to manage her affairs or protect her rights, he may appoint her husband or other suitable person her guardian for the special purpose, with power to institute or defend proceedings in law or equity necessary for the interests of his ward, and no proceeding thus instituted shall be delayed or disposed of without the consent of such guardian.

Discovery of the Ward's Estate.

Sec. 33. Persons may be cited and examined. R. S. c. 72, § 33. 1929, c. 272, § 3. Upon complaint made to the judge of probate by any guardian, conservator, ward, creditor, or other person interested in the estate, or 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 in the manner provided in relation to those suspected of embezzling the estates of deceased persons.

Sec. 34. Penalty for embezzlement by guardian or conservator. R. S. c. 72, § 34. 1929, c. 272, § 4. If a guardian, or conservator having the charge and custody of property, embezzles the same, or fraudulently converts it to his own use, he shall be punished by a fine of not more than five thousand dollars, or by imprisonment for not more than ten years.

Adoption of Children.

Sec. 35. Who may adopt a child. R. S. c. 72, § 35. 1921, c. 124. 1923, c. 184. Any unmarried inhabitant of the state, or any husband and wife jointly, may petition the judge of probate for their county for leave to adopt a minor child and for a change of his name. Any unmarried inhabitant of another state, or any non-resident husband and wife jointly, may present such petition in the probate court of the county where such child lives.

81 Me. 554; 101 Me. 366; 121 Me. 97; *126 Me. 112.

Sec. 36. Consent is required. R. S. c. 72, § 36. 1927, c. 189. Before such petition is granted, written consent to such adoption must be given by the child, if of the age of fourteen years, and by each of his living parents, if not hopelessly insane or intemperate; or, when a divorce has been decreed to either parent, written consent by the parent entitled to the custody of the child; or such consent by one parent, when, after such notice to the other parent as the judge deems proper and practicable, such other parent is considered by the judge unfit to have the custody of the child. If there are no such parents, or if the parents have abandoned the child and ceased to provide for its support, consent may be given by the legal guardian; if no such guardian, then by the next of kin in the state; if no such kin, then by some person appointed by the judge to act in the proceedings as the next friend of such child; if an illegitimate child, and under the age of fourteen years, such consent may be given by the mother of such child. Provided, however, if only one of such parents have abandoned the child and ceased to provide for its support, consent may be given by the parent who has not abandoned said child.

101 Me. 366; 126 Me. 112; 127 Me. 418.

Sec. 37. Proceedings in the probate court. R. S. c. 72, § 37. Thereupon, if the judge is satisfied of the identity and relations of the parties; of the ability of the petitioners to bring up and educate the child properly, having reference to the degree and condition of his parents, and of the fitness and propriety of such adoption, he shall make a decree, setting forth the facts, and declaring that from that date such child is the child of the petitioners, and that his name is thereby changed, without requiring public notice thereof.

85 Me. 400; 97 Me. 85, 580; 127 Me. 418.

Sec. 38. Legal effect of adoption of child; descent of property. R. S. c. 72, § 38. 1917, c. 245. By such decree the natural parents are divested of all legal rights in respect to such child, and he is freed from all legal obligations of obedience and maintenance in respect to them; and he is, for the custody of the person and right of obedience and maintenance, to all intents and purposes, the child of his adopters, with right of inheritance when not otherwise expressly provided in the decree of adoption, the same as if born to them in lawful wedlock, except that he shall not inherit property expressly limited to the heirs of the body of the adopters, nor property from their lineal or collateral kindred by right of representation; but he shall not by reason of adoption lose his right to inherit from his natural parents or kindred; and the adoption of a child, made in any other state, according to the laws of that state, shall have the same force and effect in this state, as to inheritance and all other rights and duties as it had in the state where made, in case the person adopting thereafter dies domiciled in this state. If the person adopted died intestate his property acquired by himself or by devise, bequest, gift, or otherwise before or after such adoption, from his adopting parents or from the kindred of said adopting parents shall be distributed according to the provisions of chapter eighty-nine, the same as

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if born to said adopting parents in lawful wedlock; and property received by devise, bequest, gift, or otherwise from his natural parents or kindred shall be distributed according to the provisions of said chapter eighty-nine as if no act of adoption had taken place.

84 Me. 486; 87 Me. 213; 97 Me. 580; *116 Me. 389; *121 Me. 102; 124 Me. 122; 126 Me. 113.

Sec. 39. Appeal to the supreme court of probate. R. S. c. 72, § 39. Any petitioner, or any such child by his next friend, may appeal from such decree to the supreme court of probate, in the same manner and with the same effect, as in other cases, but no bond to prosecute his appeal shall be required of such child or next friend, nor costs be awarded against either.

81 Me. 558; 94 Me. 422; *126 Me. 111.

Sec. 40. Allowance to adopted child. R. S. c. 72, § 40. The judge of probate, on the death of either of said adopters, may make a reasonable allowance to such child from the personal estate of the deceased, if the circumstances of the case demand it.

Sec. 41. Decree of adoption may be annulled. R. S. c. 72, § 41. Any judge of probate may, on petition of two or more persons, after notice and hearing, and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under this chapter.

Change of Name.

Sec. 42. Petition to judge of probate. R. S. c. 72, § 42. If a person desires to have his name changed, he may petition the judge of probate in the county where he resides; or, if he is a minor, his legal custodian may petition in his behalf, and the judge, after due notice, may change the name of such person, and shall make and preserve a record thereof.

Liability of guardian for injury by minor to schoolhouse and school furnishings, c. 19, § 198.

Minors may hold shares in loan and building associations, c. 57, § 102.

Guardian may settle and give release of damages for land of ward taken by railroad corporation, c. 63, § 31.

Care and custody of the person of minor children, c. 72, §§ 43, 45, 46.

Payments by order of court may be made to minors in certain cases, c. 72, § 48.

Compensation of guardian, c. 75, § 43.

Guardians to pay stenographer's fees, c. 75, § 46.