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PART 5
FIDUCIARY RELATIONS

Chap.		Sec.
501.	Guardian and Ward	3501
503.	Trusts and Trustees	3951
505.	Banks and Trust Companies	4101

CHAPTER 501

GUARDIAN AND WARD

Subch.		Sec.
I.	General Provisions	3501
II.	Guardians of Minors	3551
III.	Guardians of Adults	3601
IV.	Guardians Ad Litem	3651
V.	Conservators	3701
VI.	Nonresidents	3751
VII.	Bonds	3801
VIII.	Sale or Mortgage of Property	3851
IX.	Accounting	3901

SUBCHAPTER I

GENERAL PROVISIONS

Sec.	
3501.	Transfer to original jurisdiction when disability of judge removed.
3502.	Married woman as guardian.
3503.	Discovery of ward's estate.
3504.	Inventory of ward's estate.
3505.	General duties of guardian.
3506.	Power as to ward's real estate.
3507.	Reference of action by rule of court.
3508.	Adjustment by arbitration or compromise.
3509.	Dismissal or removal of guardians; marriage of female ward ends guardianship.
3510.	Special guardian for minor or adult.
3511.	Embezzlement by guardian or conservator.

§ 3501. Transfer to original jurisdiction when disability of judge removed

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 6th 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. 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.

R.S.1954, c. 158, § 10.

§ 3502. Married woman as guardian

A married woman who has attained the age of 21 years may be appointed guardian and perform all the duties of such trust without any act or assent on the part of her husband. When an unmarried woman who as 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.

R.S.1954, c. 158, § 11.

§ 3503. Discovery of ward's estate

Upon complaint made to the judge of probate by any county attorney, guardian, conservator, ward, creditor or other person interested in the estate or having claims thereto in expectancy as heir or otherwise against anyone 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.

R.S.1954, c. 158, § 34; 1963, c. 428, § 2.

§ 3504. Inventory of ward's estate

The judge or register shall appoint one or 3 disinterested persons to appraise the ward's estate. 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 3 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 to do so; otherwise 3 appraisers shall be appointed. The warrant for an inventory may be revoked for cause and a new one issued if deemed necessary.

R.S.1954, c. 158, § 14.

§ 3505. General duties of guardian

The guardian 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.

R.S.1954, c. 158, § 17.

§ 3506. Power as to ward's real estate

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.

R.S.1954, c. 158, § 18.

§ 3507. Reference of action by rule of court

Guardians of minors, mentally ill 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.

R.S.1954, c. 158, § 20; 1959, c. 242, § 8.

§ 3508. Adjustment by arbitration or compromise

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.

R.S.1954, c. 158, § 21.

§ 3509. Dismissal or removal of guardians; marriage of female ward ends guardianship

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. On the marriage of any female ward under 21 years of age, the authority of her guardian ceases.

R.S.1954, c. 158, § 23.

§ 3510. Special guardian for minor or adult

When a petition is pending for the appointment of a guardian for a minor or for an adult, the judge of probate authorized by law to make such appointment, in his discretion may, at any time and without notice, appoint a special guardian who shall have the same powers and perform the same duties with respect to the estate of the ward as a guardian appointed under this chapter.

R.S.1954, c. 158, § 30.

§ 3511. Embezzlement by guardian or conservator

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 \$5,000 or by imprisonment for not more than 10 years.

R.S.1954, c. 158, § 35.

SUBCHAPTER II

GUARDIANS OF MINORS

Sec.

3551. Appointment; interest of judge.

3552. Nomination and appointment.

3553. Power over minor's person and property.

3554. Application of property of minor children to their support.

§ 3551. Appointment; interest of judge

The judge of probate may appoint guardians to minors resident in his county, or out of the State and having estate in his county. No executor or administrator on an estate shall be guardian or special 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. When any judge is interested, either in his own right, in trust or in any other manner, or is within the 6th 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.

R.S.1954, c. 158, § 1.

§ 3552. Nomination and appointment

If the minor is under 14 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. If approved by the judge, such nominee shall be appointed, although the minor has a guardian appointed before he was 14 years of age. 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 14.

R.S.1954, c. 158, § 2.

§ 3553. Power over minor's person and property

Such guardian shall have the care and management of all his ward's estate and continue in office until the ward is 21 years

of age unless sooner lawfully discharged. 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. In any case, the judge may decree them to him, if he deems it for the welfare of the minor, until his further order.

R.S.1954, c. 158, § 3.

§ 3554. Application of property of minor children to their support

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.

R.S.1954, c. 158, § 16.

SUBCHAPTER III

GUARDIANS OF ADULTS

Sec.

- 3601. Appointment.
- 3602. Hearing; adjudication.
- 3603. Contracts made after notice and filing void.
- 3604. Allowance to ward to defend himself.
- 3605. Authority and duties.
- 3606. Adjustment of claims.
- 3607. Disability of adults under guardianship; dismissal of guardian.

§ 3601. Appointment

The judge of probate may appoint guardians to the following persons resident in his county, or resident out of the State, and having estate in his county, although over 21 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 6th degree of kindred, said application shall be made to and such ap-

pointment shall be made by the judge in any adjoining county and the record of said appointment shall show why it was so made:

1. Incompetent. All persons, including those mentally ill 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;

2. Incapable; spendthrift. 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;

3. Convicts. Convicts committed to the State Prison for a term less than for life.

The judge may, on said application, appoint the husband or wife of such a person to be his or her guardian.

R.S.1954, c. 158, § 4; 1957, c. 216; 1959, c. 242, § 8.

§ 3602. Hearing; adjudication

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 14 days before the day of hearing. If, upon such hearing, he adjudges that such person is mentally ill, a spendthrift or incapable, he shall appoint a guardian.

R.S.1954, c. 158, § 5; 1959, c. 242, § 3.

§ 3603. Contracts made after notice and filing void

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. 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. This section does not add anything to the validity of any such act previous to said filing.

R.S.1954, c. 158, § 6.

§ 3604. Allowance to ward to defend himself

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.

R.S.1954, c. 158, § 7.

§ 3605. Authority and duties

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. 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 6 months at any one time, or employ him in his own service, giving credit for his earnings or such sum as he receives therefor.

R.S.1954, c. 158, § 8.

§ 3606. Adjustment of claims

The guardian of a mentally ill 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.

R.S.1954, c. 158, § 19; 1959, c. 242, § 8.

§ 3607. Disability of adults under guardianship; dismissal of guardian

When a person over 21 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.

R.S.1954, c. 158, § 29.

SUBCHAPTER IV

GUARDIANS AD LITEM

Sec.

3651. Guardian ad litem; next friend.

3652. Settlements to be approved by court.

3653. Special guardians for married women.

§ 3651. Guardian ad litem; next friend

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 action pending in such court, nor their power to allow or appoint anyone as next friend of such person to commence, prosecute or defend any action in his behalf.

R.S.1954, c. 158, § 31; 1961, c. 317, § 515.

§ 3652. Settlements to be approved by court

No settlement of any action brought in behalf of an infant by next friend or defended on his behalf by guardian or guardian ad litem 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. When the court in which such action is pending or to which it is returnable is in vacation, the judge of that court, or, if the action is pending in or returnable to the Superior Court, any Justice of the Superior Court, shall have the power to approve a settlement of said action and to make all necessary orders for protecting the interests of the infant and may require the giving of a bond as provided.

R.S.1954, c. 158, § 32; 1961, c. 317, § 516.

§ 3653. Special guardians for married women

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 necessary for the interests of his ward, and no

proceeding thus instituted shall be delayed or disposed of without the consent of such guardian.

R.S.1954, c. 158, § 33; 1961, c. 317, § 517.

SUBCHAPTER V

CONSERVATORS

Sec.

3701. Appointment.

3702. Dismissal.

§ 3701. Appointment

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 judge may, on said application, appoint the husband or wife of such a person to be his or her conservator. 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 3801, and all provisions of law relating to the management of estates of adult persons under guardianship shall apply to such conservator. When any judge is interested, either in his own right, in trust or in any other manner, or is within the 6th 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.

R.S.1954, c. 158, § 9.

§ 3702. Dismissal

The judge of probate may dismiss any conservator when it appears necessary, or at his own request, or when the judge shall find that the person under conservatorship has become capable of managing his own estate with prudence and understanding. If the case requires it, the judge may appoint another conservator in place of the former one. But previous to such removal,

except at his own request, personal notice shall be given to the conservator, or public notice if his residence is out of the State or unknown, to appear and show cause to the contrary.

R.S.1954, c. 158, § 9.

SUBCHAPTER VI

NONRESIDENTS

Sec.

3751. Extent of guardianship.

3752. Appointment of agent in State.

3753. Right to property in State.

§ 3751. Extent of guardianship

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.

R.S.1954, c. 158, § 27.

§ 3752. Appointment of agent in State

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 30 days after such removal. If an agent appointed under 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 provided. The powers of an agent appointed under this section shall not be revoked prior to the final settlement of the estate unless another appointment

shall be made as 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 coguardian or coconservator, residing in this State, as his agent.

R.S.1954, c. 158, § 13.

§ 3753. Right to property in State

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 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. Such court may order any resident guardian, executor or administrator, having any of the estate of such ward, to deliver the same to such nonresident guardian, provided all known debts of such estate have been paid.

R.S.1954, c. 158, § 28.

SUBCHAPTER VII

BONDS

Sec.

3801. Bond of guardian.

§ 3801. Bond of guardian

Every guardian or special 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:

1. **Faithful discharge.** For the faithful discharge of his trust;

2. **Inventory.** To render a true and perfect inventory of the estate, property and effects of his ward within the time limited by law;

3. **Account.** To render a just and true account of his guardianship when by law required;

4. **Balance.** 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.

R.S.1954, c. 158, § 12.

SUBCHAPTER VIII

SALE OR MORTGAGE OF PROPERTY

Sec.

3851. Management of ward's estate; license to mortgage real estate.

3852. Notice of sale of ward's estate.

3853. Wife of incapacitated ward may join in deed with guardian.

3854. Guardian may invest proceeds of wife's interest; trust enforced.

3855. Deeds executed under license valid.

3856. Sale of ward's stocks, chattels and pews; investment of funds.

§ 3851. Management of ward's estate; license to mortgage real estate

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 2052, 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.

R.S.1954, c. 158, § 15.

§ 3852. Notice of sale of ward's estate

All heirs apparent or presumptive of the ward shall be considered interested in the estate and may appear and answer to the petition of any guardian or other person for the sale of his estate; and when personal notice is required, they shall be notified.

R.S.1954, c. 163, § 24.

§ 3853. Wife of incapacitated ward may join in deed with guardian

When the guardian of an incapacitated person is duly licensed to sell the interest of his ward in any estate held by him in right of his wife, she may, for a sufficient consideration, join with the guardian in the deed thereof, and it shall be as effectual as if made with her husband when under no disability. When licensed to sell the real estate of his ward, she may release her right and interest by descent therein to the purchaser by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of such interest in the premises.

R.S.1954, c. 163, § 11.

§ 3854. Guardian may invest proceeds of wife's interest; trust enforced

The guardian, with consent of the judge to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the sale of the whole estate for her sole use, equivalent to her interest therein. The Superior Court may enforce such agreement, as a trust.

R.S.1954, c. 163, § 12; 1961, c. 317, § 525.

§ 3855. Deeds executed under license valid

Any deed executed and recorded in due form of law, for adequate consideration, in pursuance of a license granted under this Title is effectual to pass to the purchaser all the right, title and

interest in the granted premises which the ward or other person on whose account the license was granted might convey by a like deed if not incapacitated.

R.S.1954, c. 163, § 13.

§ 3856. Sale of ward's stocks, chattels and pews; investment of funds

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 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.

The judge, upon the application of the guardian, may authorize him to invest income or principal of the estate of the ward in policies of life or endowment insurance or annuity contracts, issued by a life insurance company authorized to do business in the State, on the life of the ward or on the life of a person in whose life the ward has an insurable interest. The judge may authorize the guardian to exercise for the benefit of the ward all rights and powers under such policies or contracts.

R.S.1954, c. 158, § 22.

SUBCHAPTER IX

ACCOUNTING

Sec.

3901. Required.

3902. Examination of bond; new bond.

3903. Oath to account.

§ 3901. Required

Every guardian shall settle his account with the judge at least once in 3 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 willful or without reasonable cause, the guardian shall forfeit all allowance for his personal services.

R.S.1954, c. 158, § 24.

§ 3902. Examination of bond; new bond

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.

R.S.1954, c. 158, § 25.

§ 3903. Oath to account

When an account is rendered by 2 or more joint guardians, the judge may allow it upon the oath of either.

R.S.1954, c. 158, § 26.