

MAINE STATE LEGISLATURE

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N I N E T Y - F O U R T H L E G I S L A T U R E

Legislative Document

No. 987

H. P. 1634

House of Representatives, February 23, 1949.

Referred to Committee on Judiciary, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Paine of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT Amending the Uniform Veterans' Guardianship Act.

Be it enacted by the People of the State of Maine, as follows :

R. S., c. 146, repealed and replaced. Chapter 146 of the revised statutes is hereby repealed, and the following enacted in place thereof :

'Sec. 1. Definitions. As used in this chapter, the following terms shall have the following meanings:

"Person" means an individual, a partnership, a corporation or an association.

"Veterans Administration" means the Veterans Administration, its predecessors or successors.

"Income" means moneys received from the Veterans Administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income."

"Benefits" means all moneys paid or payable by the United States through the Veterans Administration.

“Administrator” means the Administrator of Veterans Affairs of the United States or his successor.

“Ward” means a beneficiary of the Veterans Administration.

“Guardian” means any fiduciary for the person or estate of a ward.

Sec. 2. Administrator as party in interest. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the Veterans Administration. Not less than 15 days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the Veterans Administration having jurisdiction over the area in which any such suit or any such proceeding is pending.

Sec. 3. Application of chapter. Whenever, pursuant to any law of the United States or regulation of the Veterans Administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided.

Sec. 4. Limitation on number of wards. No person other than a bank or trust company shall be guardian of more than 5 wards at 1 time, unless all the wards are members of 1 family. Upon presentation of a petition by an attorney of the Veterans Administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than 5 wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of 5 and forthwith appoint a successor.

Sec. 5. Filing of petition; contents.

I. A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the Veterans Administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

II. The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest

relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

III. The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

IV. In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration.

Sec. 6. Evidence of necessity for guardian of infant. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the Veterans Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Veterans Administration shall be prima facie evidence of the necessity for such appointment.

Sec. 7. Evidence of necessity for guardian for incompetent. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing such Veterans Administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the Veterans Administration, shall be prima facie evidence of the necessity for such appointment.

Sec. 8. Notice. Upon the filing of a petition for the appointment of a guardian under the provisions of this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by law, and also to the Veterans Administration as provided by this chapter.

Sec. 9. Bond.

I. Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws. The court may from time to time require the guardian to file an additional bond.

II. Where a bond is tendered by a guardian with personal sureties, there shall be at least 2 such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds on which he is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

Sec. 10. Petitions and accounts, notices and hearings.

I. Every guardian, who has received or shall receive on account of his ward any moneys or other thing of value from the Veterans Administration shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by him, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested.

II. The guardian, at the time of filing any account, shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may ex-

hibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

III. At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the Veterans Administration having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of any petition, motion or other pleading, pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceeding for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the person filing the same to the proper office of the Veterans Administration. Unless hearing be waived in writing by the attorney of the Veterans Administration, and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading not less than 15 days nor more than 30 days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the Veterans Administration office concerned and the guardian and any others entitled to notice not less than 15 days prior to the date fixed for the hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than 15 days prior to said date. The court, or clerk thereof, shall mail to said Veterans Administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

IV. If the guardian is accountable for property derived from sources other than the Veterans Administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the Veterans Administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

Sec. 11. Penalty for failure to account. If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or shall fail to furnish the Veterans Administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal.

Sec. 12. Compensation of guardians. Compensation payable to guardians shall be based upon services rendered and shall not exceed 5% of the amount of moneys received during the period covered by the account. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the Veterans Administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.

Sec. 13. Investments. Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the Veterans Administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

Sec. 14. Maintenance and support. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the Veterans Administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading.

Sec. 15. Purchase of home for ward.

I. The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only

as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the Veterans Administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

II. Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with co-tenants of the ward for a partition in kind, or to purchase from co-tenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

Sec. 16. Copies of public records to be furnished. When a copy of any public record is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the Veterans Administration with a certified copy of such record.

Sec. 17. Discharge of guardian and release of sureties

I. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the Veterans Administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the Veterans Administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the Veterans Administration as in case of other

accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released.

Sec. 18. Commitment to Veterans Administration or other agency of United States Government.

I. Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the Veterans Administration or other agency of the United States Government, the court, upon receipt of a certificate from the Veterans Administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said Veterans Administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by law; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the Veterans Administration or other agency. The chief officer of any facility of the Veterans Administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

II. The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the Veterans Administration, or other agency of the United States Government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Co-

lumbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection I of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the Veterans Administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

III. Upon receipt of a certificate of the Veterans Administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the Veterans Administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the Veterans Administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the Veterans Administration or other agency of the United States pursuant to the original commitment.

Sec. 19. Liberal construction. This chapter shall be so construed to make uniform the law of those states which enact it.

Sec. 20. Short title. This chapter may be cited as the "Uniform Veterans' Guardianship Act."

Sec. 21. Modification of prior laws. Except where inconsistent with this chapter, the laws of this state relating to guardian and ward and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to such beneficiaries and their estates.