

Section 1. ORS 126.111 is amended to read:

126.111. Venue for appointment of guardians. The venue for the appointment of a guardian shall be:

- (1) The county where the proposed ward resides; or
- (2) [If the proposed ward does not reside in this state,] Any county in which any property of the proposed ward is located, or any county in which the proposed ward is physically present.

Section 2. ORS 126.146 is amended to read:

126.146. Service of citation; appearance. (1) The citation issued under ORS 126.131 shall require the person or institution served to appear and show cause why a guardian should not be appointed for the proposed ward:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If

the proposed ward is a missing person, citation shall be served on the missing person by publication, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a written waiver of service of citation or makes a general appearance.

Section 3. ORS 126.171 is amended to read:

126.171. Bond of guardian. Except as otherwise provided by law, every guardian shall, before entering upon his duties as guardian, execute and file in the guardianship proceeding a bond, with [sufficient] a corporate surety [or sureties] authorized to transact surety business in the State of Oregon in such amount as the court determines necessary for the protection of the ward and the estate of the ward, [and] conditioned upon the faithful discharge by the guardian of his authority and duties according to law. [The bond shall be approved by the court.] The bond shall run to all interested persons and shall be for the security and benefit of such persons. [Sureties shall be jointly and severally liable with the guardian and with each other.]

Section 4. Effective term of bond; new or additional bond. (1) The bond of the guardian shall continue in effect until his final account is approved and an order of discharge is entered, but the surety may terminate its obligation upon notice in writing to the guardian and the court specifying a date, not less than 30 days after the date of such notice, when such termination is to become effective. Prior to the date so specified the guardian shall execute and file in the proceeding a new bond by a qualified surety in like amount and upon the same conditions. If he shall fail so to do, his authority as guardian shall cease at the effective date of termination of the obligation of the surety on his bond. The letters of guardianship shall thereupon be cancelled and the guardian shall make and file his final account.

(2) The court may at any time increase or reduce the amount of the bond required for the protection of the ward and the estate of the ward, either upon its own motion or on the motion of the guardian or any party in interest.

Section 5. ORS 126.230 is amended to read:

126.230. Inventory and appraisal of ward's property.

(1) Within 60 days after the date of his appointment, or, if necessary, such further time as the court may allow, a guardian of the estate shall make and file in the guardianship proceeding a verified inventory of all the property of the ward which comes to his possession or knowledge.

(2) Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, he shall either make and file in the guardianship proceeding a verified supplementary inventory within 30 days after the property comes to his possession or knowledge, or include the property in his next accounting, but the court may order which of the two methods the guardian shall follow.

(3) The court may order all or any part of the property of the ward appraised as provided in [ORS 116.420 to 116.435] ORS _____ to _____.

Section 6. ORS 126.245 is amended to read:

126.245. Discovery of debts or property. Upon the filing of a petition in the guardianship proceeding by the guardian, the ward or any other interested person, alleging that any person is indebted to the ward, or has, or is suspected of having, concealed, embezzled, converted or disposed of any property of the ward, or has possession or knowleged of any such property or of any writing relating to such property, the court may require such person to appear and answer under oath concerning the matter, and proceed as provided in [ORS 116.310 and 116.315] ORS _____ and _____.

Section 7. ORS 126.265 is amended to read:

126.265. Borrowing money for ward. A guardian of the estate, with prior approval of the court by order, may borrow money for the account of the ward and may mortgage or pledge any property of the ward as security therefor. If the court determines that the borrowing is necessary or proper, the court shall make an order approving the borrowing. The order approving the borrowing may authorize one or more separate loans thereunder. The order shall prescribe the maximum amount of, the maximum rate of interest on and the date of final maturity of the loan or loans, and shall describe the property, if any, to be mortgaged or pledged to secure the loan or loans. Any part of any such loan at any time not fully secured is a general charge upon the estate of the ward but one who acquires an interest in any of the assets of the ward's estate for value and without actual knowledge of such charge takes free from it. [This section does not affect the application of ORS 126.406 to 126.495, so far as they relate to mortgages; but, so far as possible, the proceedings with respect to the loan or loans may be combined with the proceedings, if any, with respect to mortgages as security therefor.]

Section 8. ORS 126.406 is amended to read:

126.406. Sale or lease of ward's property; purposes. A guardian of the estate, with prior approval of the court by order, may sell[, mortgage] or lease any of the property of the ward:

(1) For the purpose of paying claims against the ward, the guardianship estate or the guardian of the estate as such.

(2) For the purpose of providing for the proper care, maintenance, education and support of the ward and of any person to whom the ward owes a legal duty of support.

(3) For the purpose of investing the proceeds.

(4) For any other purpose that is in the best interests of the ward.

Section 9. ORS 126.411 is amended to read:

126.411. Petition for sale or lease. A guardian of the estate may file in the guardianship proceeding a petition for the sale[, mortgage] or lease of any property of the ward. The petition shall include the following information, so far as known by the petitioner:

(1) The name, age, residence and postoffice address of the ward.

(2) Whether the ward is an incompetent, minor, missing person or spendthrift.

(3) The name and address of any person or institution having the care, custody or control of a ward who is an incompetent or minor.

(4) A general description and the probable value of all the property of the ward that has come to the possession or knowledge of the guardian and not theretofore disposed of, and

of all the property to which the ward may be entitled upon any distribution of any estate or of any trust.

(5) The income being received from the property to be sold[, mortgaged,] or leased, from all other property of the ward and from all other sources, and the application of such income.

(6) Such other information concerning the guardianship estate and the condition of the ward as is necessary to enable the court to be fully informed.

(7) The purpose of the proposed sale[, mortgage] or lease, a general description of the requirements for such purpose and the aggregate amount needed therefor.

(8) A specific description of the property to be sold[, mortgaged] or leased.

Section 10. ORS 126.416 is amended to read:

126.416. Sale or lease of personal property. Except as provided in ORS 126.471, if the court, upon the filing of a petition under ORS 126.411 for the sale[, mortgage] or lease of personal property, determines that the sale[, mortgage] or lease is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale[, mortgage] or lease to be made subject to such terms and conditions as the court may consider necessary or proper. The Court may, in its discretion, order a hearing upon such petition and with such notice as the court may order or without notice. If the proceeds

of the sale [or mortgage] exceed \$1,000, the guardian, within 15 days after the date of the sale [or mortgage], shall make and file in the guardianship proceeding a return of his proceedings concerning the sale [or mortgage], but such sale [or mortgage] need not be confirmed by the court.

Section 11. ORS 126.426 is amended to read:

126.426. Sale or lease for more than five years of real property; issuance of citation. (1) Except as otherwise provided in ORS 126.431 and 126.471, the court, upon the filing of a petition under ORS 126.411 for the sale [or mortgage] of real property, or the lease of real property for a term exceeding five years, shall order the issuance of a citation requiring the persons or institutions referred to in subsection (2) of this section to appear and show cause why an order for the sale[, mortgage] or lease should not be made.

(2) Citation issued under subsection (1) of this section shall be served:

(a) If the ward is an incompetent, on any person or an officer of any institution having the care, custody or control of the incompetent, and on the incompetent.

(b) If the ward is a minor, on any person or an officer of any institution having the care, custody or control of the minor, and if the minor is 14 years of age or older, on the minor.

(c) If the ward is an incompetent or minor in the care,

custody or control of any institution, on any person paying or liable for the care and maintenance of the incompetent or minor at the institution.

(d) If the ward is a missing person, on the missing person and on such other persons as the court may direct.

[(d)] (e) If the ward is a spendthrift, on the spendthrift.

Section 12. ORS 126.431 is amended to read:

126.431. Service of citation; appearance. (1) The citation issued under ORS 126.426 shall require the person or institution served to appear and show cause why an order for the sale or lease should not be made:

(a) If served personally within the county in which the proceeding is pending, within 10 days after the date of service.

(b) If served personally within any other county in this state, within 20 days after the date of service.

(c) If served by publication or if served personally outside this state but within the United States, within four weeks after the date of first publication or after the date of personal service.

(d) If served personally outside the United States, within six weeks after the date of service.

(2) The citation shall be served and returned as summons is served on a defendant and returned in a civil action. If the ward is a missing person, citation shall be served on the

missing person by publication, by registered mail to his last-known address and by postage prepaid letter to be forwarded through the United States Social Security Administration to his last-known address available to that agency.

(3) Service of citation is not necessary on a person or an officer of an institution who has signed the petition, has signed a written waiver of service of citation or makes a general appearance.

Section 13. ORS 126.436 is amended to read:

126.436. Order for sale or lease; terms and conditions.

If it appears to the court that the sale[, mortgage] or lease referred to in ORS 126.426 is necessary or proper for any purpose referred to in ORS 126.406, the court shall order the sale[, mortgage] or lease to be made. A [mortgage] sale or [surface] lease ordered shall be made subject to such terms and conditions as the court may consider necessary or proper. [An order authorizing the execution of a lease or other instrument for the purpose of exploring or prospecting for and extracting, removing and disposing of oil, gas and other hydrocarbons, and all other minerals or substances, similar or dissimilar, that may be produced from a well drilled by the lessee, shall require a minimum of one-eighth royalty and shall set forth the annual rental, if any rental is required to be paid, the period of the lease which shall be for a primary term of 10 years and so long thereafter as oil, gas, other hydrocarbons or other leased substances are produced in paying

quantities from the leased premises or lands pooled or unitized therewith, or mining or drilling operations are conducted on the leased premises or lands pooled or unitized therewith, and may authorize such other terms and conditions as the court may consider necessary or proper including, without limitation, a provision empowering the lessee to enter into any agreement authorized by ORS chapter 520 with respect to the land covered by the lease, including provisions for pooling or unitization by the lessee. A sale ordered shall be made as provided in ORS 126.441 to 126.466, and subject to such additional terms and conditions as the court may consider necessary or proper.]

Section 14. ORS 126.441 is amended to read:

126.441. Public or private sale of real property; sale on credit. (1) The order for the sale of real property under ORS 126.436 or 126.471 shall direct that the sale be public or, if the court determines that it is in the best interests of the ward, private. If public, the sale shall be made in the same manner as like property is sold on execution, or, if the court determines that it is in the best interests of the ward, the court may order the property to be sold on the premises or elsewhere.

[(2) Except as otherwise provided in this subsection, before proceeding to sell real property at private sale, the

guardian shall cause a notice of the sale to be published in a newspaper published in the county in which the property is situated, or if no newspaper is published in such county, then in a newspaper of general circulation therein, once a week for four successive weeks, or four publishings in all. The notice shall include a description of the property, the place where bids will be received, the terms and conditions of the sale and that on and after a designated day certain, which day shall be not less than one week after the date of last publication, the guardian will proceed to sell the property. When the court determines from the inventory or otherwise that the value of the property does not exceed \$1,000, the court may order the sale without the publication of notice of the sale.]

[(3)] (2) When the sale of real property is upon credit, the guardian may take the promissory note of the purchaser for the deferred balance of the purchase money, with a mortgage upon the property to secure the payment thereof, or the guardian may sell the property on contract of sale, with title reserved until the deferred balance of the purchase price and interest thereon, if any, are paid.

Section 15. ORS 126.456 is amended to read:

126.456. Confirming or vacating sale of real property.

(1) Upon the hearing under ORS 126.451 of objections to the

sale of real property or in the absence of objections, the court shall make an order confirming the sale and directing the execution of a proper conveyance to the proper person by the guardian, unless the court determines that:

- (a) There was substantial irregularity in the sale;
- (b) The sum bid for the property is unreasonably less than the value of the property; or
- (c) By reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned.

(2) If the court determines that there was substantial irregularity in the sale, the court shall make an order vacating the sale and directing that the property be resold as though no prior sale had been made.

(3) If the court determines that the sum bid for the property is unreasonably less than the value of the property, the court shall make an order vacating the sale and directing that the property be resold [without further notice of sale, but] subject to confirmation as provided in this section.

(4) If the court determines that, by reason of another bid, a net price can be obtained for the property which exceeds by at least 10 percent the net price to be obtained from the sale returned, the court shall make an order vacating the sale, and either directing that the property be resold to the

higher bidder without further order [or notice of sale], or directing that the property be resold [without further notice of sale, but] subject to confirmation as provided in this section.

Section 16. ORS 126.471 is amended to read:

126.471. Sale or lease of property of spendthrift ward.

(1) If the court, upon the filing of a petition under ORS 126.411 for the sale[, mortgage] or lease of any of the property of a ward who is a spendthrift, determines that the ward is competent and consents to the sale[, mortgage] or lease and that the sale[, mortgage] or lease is necessary or proper for any purpose referred to in ORS 126.406, the court may order the sale[, mortgage] or lease to be made subject to such terms and conditions as the court may consider necessary, without the issuance of citation[, publication of notice of sale] or confirmation by the court. If the proceeds of the sale [of mortgage] exceed \$1,000, the guardian, within 15 days after the date of the sale [or mortgage,] shall make and file in the guardianship proceeding a return of his proceedings concerning the sale [or mortgage].

(2) In the absence of a determination by the court that the ward who is a spendthrift is competent and consents to the sale[, mortgage] or lease of his property, such sale[, mortgage] or lease may be made only as otherwise provided in ORS 126.406 to 126.495.

(3) A conveyance of real property executed by a guardian under subsection (1) of this section shall set forth the book and page of the journal of the court where the order for the sale is entered. The effect of the conveyance shall be the same as though made by the ward while not under legal disability.

(4) Within 60 days after the date of the order under subsection (1) of this section for the sale of real property of the ward situated in any county other than the county in which the order for the sale was made, the guardian shall cause to be recorded in the record of deeds of such other county a copy of the order for the sale certified by the clerk of the court.

Section 17. ORS 126.540 is amended to read:

126.540. Discharge of guardian; exoneration of sureties; vacating order. After hearing objections to the final account filed pursuant to ORS 126.338, the court, upon settlement of the final account [of a guardian of the estate] and determination that property of the ward has been delivered to the person lawfully entitled thereto, shall discharge the guardian and exonerate the [sureties] surety on his bond. [The discharge terminates the authority and duties of the guardian not previously terminated. The discharge and exoneration do not relieve the guardian or the sureties on his bond from liability

for previous acts or omissions of the guardian.] The court may, in its discretion, and upon such terms as may be just, within one year after notice thereof, vacate the order discharging the guardian and exonerating the surety when it appears that failure to object to the final account resulted from mistake, inadvertence, surprise or excusable neglect.

Section 18. ORS 126.636 is amended to read:

126.636. Conservatorship governed as guardianship of estate. Except as otherwise provided in ORS 126.606 to 126.675, a conservator shall:

(1) Have the same qualifications as a guardian of the estate;

(2) Unless otherwise provided in the petition for his appointment and by the order appointing him, be bonded as required of a guardian of the estate;

(3) Have the authority and perform the duties of a guardian of the estate; and

(4) Be subject to all other provisions of law relating to a guardian of the estate.

Section 19. ORS 126.646 is amended to read:

126.646. Sale, mortgage, lease and other disposition of ward's property. (1) Any property of the ward may be sold, exchanged, surrendered, partitioned, mortgaged, pledged or leased by a conservator in the same manner as provided by law

for the sale, exchange, surrender, partition, mortgage, pledge or lease of any property of a spendthrift for whom a guardian of the estate has been appointed.

(2) The court, by order, may authorize the conservator to continue any business of the ward solely or jointly with one or more of the ward's partners or joint venturers or as a corporation of which the ward is or becomes a shareholder. Such order may be made upon the petition for the appointment of the conservator and that he shall be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.

(3) The court, by order, may authorize the conservator to:

(a) Make reasonable gifts to charitable or religious institutions on behalf of the ward.

(b) Provide for or contribute to the care, maintenance, education or support of persons who are or have been related to the ward by blood or marriage, or

(c) Pay or contribute to the payment of reasonable expenses of remedial care and treatment for and reasonable funeral and burial expenses of persons who are or have been related to the ward by blood or marriage.

Such order may be made upon the petition for the

appointment of the conservator and that he be so authorized or upon the petition of the conservator and citation or consent as upon sale or lease of property of a spendthrift for whom a guardian of the estate has been appointed.

Section 20. Accounting by conservator. (1) A conservator shall make and file a written verified account of his administration at the times and of the kind required of guardians of the estates by ORS 126.336.

(2) Before filing an account other than his final account, the conservator shall cause a copy thereof to be mailed or delivered to the ward. If the ward is incompetent, the conservator shall cause a copy thereof to be mailed or delivered to the ward's spouse who is not under legal disability and to those of the ward's children, parents, brothers or sisters who are not under legal disability and have presented a written request for a copy to the conservator and filed a copy of the request in the conservatorship proceeding before the filing of the account. Proof by affidavit of such mailing or delivery shall be filed with the account.

(3) A copy of the final account of the conservator shall be served on the ward, if living and competent, otherwise on the guardian of his estate or his personal representative and on each person to whom copies of other accounts are required to be mailed or delivered as provided in subsection (1) of

of this section. Objections thereto may be made within 30 days after service and shall be heard and disposed of by the court. When no objection is made or all just objections are satisfied, the court shall discharge the conservator and exonerate the surety on his bond. The court may, in its discretion and upon such terms as may be just, at any time within one year after entry of the order discharging the conservator, vacate such order to permit recovery against the conservator or his surety or either of them when it appears that the failure to object to the final account of the conservator resulted from mistake, inadvertence, surprise or excusable neglect.

Section 21. Repeal of existing statutes. ORS 126.011, 126.176 and 126.446 are repealed.

COMMENTS

It was the consensus of the committees that procedural amendments to the guardianship and conservatorship chapters should be enacted to bring these sections into harmony with the philosophy of the probate sections of the proposed code. Comments have been prepared discussing the amendments to have the chapter include guardianships of the estates of missing persons.

The chapter on Powers and Jurisdiction of the Probate Court provides that the Probate Commissioner may act upon uncontested petitions for appointment of guardians and conservators to the extent authorized by rule of court. The chapter also provides that jurisdiction in guardianships and conservatorships is vested in the circuit court.

The amendments, repeals and the new matter replacing the repealed sections are commented on as follows:

Section 1 amends the venue provision to simplify the initiation of guardianships. This amendment conforms to the simplified venue provisions in the proposed probate code.

Section 2 amends ORS 126.146 to supply an obvious omission in the present statute.

Section 3 requires that a guardian's bond shall be a corporate surety bond, conformable to the provisions in the probate code with respect to bonds of personal representatives. This would permit the deletion of the requirement that the bond be approved by the court.

Section 4 would replace ORS 126.176. The principal change is to enlarge the provision for termination of liability of the surety and to spell out the effect of failure to provide a substitute bond.

Section 7 amends ORS 126.265 to provide protection to a bona fide purchaser who acquires property or an interest therein which is subject to the general charge on the ward's assets provided by this section.

The amendment eliminates the reference to ORS 126.406 to 126.495 as affecting the procedure for approval of a mortgage of the ward's property. We do not see why there should be the present parallel provisions for authorizing mortgages of the ward's property. ORS 126.265 seems entirely adequate to cover the procedure for approval of mortgages of the ward's property. For this reason sections 8, 9, 10, 11, 13 and 16 are amendments to limit these sections to proceedings for sale or lease of the ward's property. The procedure for approval of mortgages is therefore covered solely by ORS 126.265.

Section 17 amends ORS 126.540 to grant finality to the discharge with a provision to protect parties who fail to object to the final account by reason of mistake, inadvertence, surprise or excusable neglect. The language is that used in ORS 18.160 concerning vacation of default judgments.

Section 18 gives the court the option of waiving the necessity of a bond in the appointment of a conservator.

Section 19 embodies in the conservatorship chapter provisions from the guardianship code authorizing the court to permit the conservator to continue the business of the ward and to apply the estate of the ward to charitable gifts and to support of relatives, as a guardian is authorized to do.

Section 20 would include in the conservatorship chapter provisions similar to those in the guardianship code covering the filing and mailing of copies of interim accounts and final account. It also includes a similar provision granting finality to the effect of the final account and relieving from a failure to object resulting from mistake, inadvertence, surprise or excusable neglect.

ORS 126.011 is repealed because this section is now outdated.

It is proposed to repeal ORS 126.446 covering the time limitation on the order for sale of real property. The present time limitation has probably caused more problems than most of the other provisions of the guardianship code. In view of the time consuming requirements for the petition, citation and order on sale of real property it seems an unnecessary burden to have to require recourse to the court for an extension of this authority.

The only other substantial amendment is that contained in section 14 which amends ORS 126.441 to delete the requirement

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for publication of notice of sale of real property. Since the proposed probate code does not require any publication of notice of sale it would seem advisable that the guardianship sale provisions conform.