

For service and return of subpoena, upon each person served, besides mileage, one dollar and fifty cents;

For summoning each juror, besides mileage, one dollar and fifty cents;

For serving an arrest warrant in any action or proceeding, besides mileage, ~~((four))~~ six dollars;

For serving or executing any other writ or process in a civil action or proceeding, besides mileage, ~~((two))~~ three dollars and fifty cents;

For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds, ~~((two))~~ three dollars and fifty cents;

For each mile actually and necessarily traveled by him in going to or returning from any place of service, or attempted service, ~~((ten))~~ fifteen cents;

For making a deed to lands sold upon execution or order of sale or other decree of court, to be paid by the purchaser, ~~((six))~~ nine dollars;

For making copies of papers when sufficient copies are not furnished, ~~((two))~~ one dollar~~((s))~~ for first page and ~~((one dollar))~~ fifty cents per each additional page;

For the service of any process for which no other fee is provided for herein, ~~((two))~~ three dollars and fifty cents;

For the making of any return for which no other fee is provided herein, ~~((two))~~ three dollars and fifty cents;

For the execution of any process for which no other fee is provided herein, ~~((four))~~ six dollars;

For the service of affidavit and bond in replevin, ~~((two))~~ three dollars and fifty cents for each defendant; approval of bond, ~~((two))~~ three dollars and fifty cents; taking property, ~~((two))~~ three dollars and fifty cents;

For posting notices of sale, or postponement, ~~((two))~~ three dollars and fifty cents besides mileage;

For certificate of sale of real property, ~~((five))~~ seven dollars and fifty cents;

For serving notice of redemption, ~~((two))~~ three dollars and fifty cents; certificate of redemption, ~~((five))~~ seven dollars and fifty cents;

For making a return of no property found, two dollars;

For estray sales, crying sale, ~~((two))~~ three dollars and fifty cents, besides mileage;

For conducting sale of personal property pursuant to exemption or order of sale, five dollars.

Passed the Senate May 20, 1975.

Passed the House May 19, 1975.

Approved by the Governor May 28, 1975.

Filed in Office of Secretary of State May 28, 1975.

CHAPTER 95

[Substitute Senate Bill No. 2086]

GUARDIANSHIP

AN ACT Relating to guardianship; amending section 11.88.010, chapter 145, Laws of 1965 and RCW 11.88.010; amending section 11.88.020, chapter 145, Laws of 1965 as amended by section 4, chapter 28, Laws of 1971 and RCW 11.88.020; amending section 11.88.030, chapter 145, Laws of 1965

and RCW 11.88.030; amending section 11.88.040, chapter 145, Laws of 1965 as amended by section 1, chapter 70, Laws of 1969 and RCW 11.88.040; amending section 11.88.090, chapter 145, Laws of 1965 and RCW 11.88.090; amending section 11.88.100, chapter 145, Laws of 1965 and RCW 11.88.100; amending section 11.88.105, chapter 145, Laws of 1965 and RCW 11.88.105; amending section 11.88.107, chapter 145, Laws of 1965 and RCW 11.88.107; amending section 11.88.110, chapter 145, Laws of 1965 and RCW 11.88.110; amending section 11.88.120, chapter 145, Laws of 1965 and RCW 11.88.120; amending section 11.88.130, chapter 145, Laws of 1965 and RCW 11.88.130; amending section 11.88.140, chapter 145, Laws of 1965 and RCW 11.88.140; amending section 11.88.150, chapter 145, Laws of 1965 and RCW 11.88.150; amending section 11.92.010, chapter 145, Laws of 1965 as amended by section 5, chapter 28, Laws of 1971 and RCW 11.92.010; amending section 11.92.035, chapter 145, Laws of 1965 and RCW 11.92.035; amending section 11.92.040, chapter 145, Laws of 1965 and RCW 11.92.040; amending section 11.92.050, chapter 145, Laws of 1965 and RCW 11.92.050; amending section 11.92.056, chapter 145, Laws of 1965 and RCW 11.92.056; amending section 11.92.060, chapter 145, Laws of 1965 and RCW 11.92.060; amending section 11.92.090, chapter 145, Laws of 1965 and RCW 11.92.090; amending section 11.92.100, chapter 145, Laws of 1965 and RCW 11.92.100; amending section 11.92.110, chapter 145, Laws of 1965 and RCW 11.92.110; amending section 11.92.115, chapter 145, Laws of 1965 and RCW 11.92.115; amending section 11.92.120, chapter 145, Laws of 1965 and RCW 11.92.120; amending section 11.92.130, chapter 145, Laws of 1965 and RCW 11.92.130; amending section 11.92.150, chapter 145, Laws of 1965 as amended by section 1, chapter 18, Laws of 1969 and RCW 11.92.150; amending section 11.92.160, chapter 145, Laws of 1965 and RCW 11.92.160; amending section 11.92.170, chapter 145, Laws of 1965 and RCW 11.92.170; amending section 11.92.180, chapter 145, Laws of 1965 and RCW 11.92.180; amending section 11.92.185, chapter 145, Laws of 1965 and RCW 11.92.185; and adding new sections to chapter 11.88 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 11.88 RCW a new section to read as follows:

It is the intent and purpose of the legislature to recognize that mentally retarded, developmentally disabled, and other allegedly mentally incompetent persons have special and unique abilities and competencies with varying degrees of disability.

Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.

Sec. 2. Section 11.88.010, chapter 145, Laws of 1965 and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons resident of the county, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either

~~((1))~~ (a) Under the age of majority, as defined in RCW 11.92.010, or
~~((2) Incapable))~~ (b) Incompetent by reason of insanity, mental illness, ~~((imbecility, idiocy;))~~ mental retardation senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of disabled persons, who by reason of their disability have need for protection and assistance, but who cannot be found to be fully incompetent, upon investigation by the court or any agency jointly designated by the mental health board and mental retardation board (or county social service administrative board where applicable) of the county where such person resides. After considering all evidence presented as a

result of such investigation, the court shall impose, by order, only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" includes, but is not limited to, an individual who is mentally retarded, mentally ill, developmentally disabled, or is gravely disabled.

Sec. 3. Section 11.88.020, chapter 145, Laws of 1965 as amended by section 4, chapter 28, Laws of 1971 and RCW 11.88.020 are each amended to read as follows:

Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incompetent or disabled person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an incompetent or disabled person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an incompetent or disabled person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a domiciliary guardian who is

- (1) under eighteen years of age except as otherwise provided herein;
- (2) of unsound mind;
- (3) convicted of a felony or of a misdemeanor involving moral turpitude;
- (4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;
- (5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;
- (6) a person whom the court finds unsuitable.

Sec. 4. Section 11.88.030, chapter 145, Laws of 1965 and RCW 11.88.030 are each amended to read as follows:

Any interested person or entity may file a petition for the appointment of himself or some other qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an incompetent or disabled person. ~~((Such))~~ A petition for guardianship or limited guardianship shall state:

- (1) The name, age, residence and post office address of the incompetent or disabled person;
- (2) The nature of his ~~((incapacity))~~ alleged incompetency in accordance with RCW 11.88.010;
- (3) The approximate value and description of his property, including any compensation, pension, insurance or allowance to which he may be entitled;

(4) Whether there is, in any state, a guardian or limited guardian for the person or estate of the alleged incompetent or disabled person;

(5) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(6) The names and addresses, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incompetent or disabled person;

(7) The name and address of the person or institution having the care and custody of the alleged incompetent or disabled person;

(8) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(9) The nature and degree of the alleged disability and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(10) The requested term of the limited guardianship to be included in the court's order of appointment: PROVIDED, That no filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship unless the alleged incompetent or disabled person has an estate valued in excess of fifteen hundred dollars.

All petitions filed under the provisions of this section shall be heard within thirty days.

Sec. 5. Section 11.88.040, chapter 145, Laws of 1965 as amended by section 1, chapter 70, Laws of 1969 and RCW 11.88.040 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged incompetent or disabled person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee only, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incompetent, disabled person, or minor, if ((over)) under fourteen years of age;

(2) A parent, if the alleged incompetent or disabled person is a minor, and the spouse of the alleged incompetent or disabled person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person ((having the care and custody of the incompetent, if any)) with whom the alleged incompetent or disabled person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian or limited guardian asked for, or if the petition be by a nonresident

guardian of any minor or incompetent or disabled person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given. ~~((It shall not be necessary that the person for whom guardianship is sought shall be represented by a guardian ad litem in the proceedings.))~~

In all guardianship and limited guardianship hearings the alleged incompetent or disabled person shall be present in court at the final hearing on the petition. If the petition for guardianship or limited guardianship states that the alleged incompetent or disabled person is physically unable to be present, the guardian ad litem may request the court to waive the requirement of the presence of the alleged incompetent at the hearing or the court may remove itself to the place of residence of the alleged incompetent or disabled person and conduct the final hearing in the presence of the alleged incompetent or disabled person.

NEW SECTION. Sec. 6. There is added to chapter 11.88 RCW a new section to read as follows:

The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incompetent or disabled person, shall file in writing with the court, a designated stand-by limited guardian or guardian to serve as limited guardian or guardian at the death of the court-appointed guardian or limited guardian. Such stand-by guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death of the regularly appointed guardian or limited guardian, file with the superior court in which the original guardianship or limited guardianship was filed, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the stand-by guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the stand-by guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

NEW SECTION. Sec. 7. There is added to chapter 11.88 RCW a new section to read as follows:

An alleged incompetent or disabled person is entitled to independent legal counsel at his own expense to represent him in the procedure: PROVIDED, That if the alleged incompetent or disabled person is unable to pay for such representation or should such payment result in substantial hardship upon such person the county shall be responsible for such costs. The alleged incompetent or disabled person is further entitled upon request to a jury trial on the issues of his alleged incompetency or disability, with the standard of proof to be applied being that of clear, cogent, and convincing evidence.

In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a sworn medical report pertaining to the alleged incompetent or disabled persons' degree of incompetency or disability: PROVIDED, That the court may waive the filing of a sworn medical report.

NEW SECTION. Sec. 8. There is added to chapter 11.88 RCW a new section to read as follows:

Every petition for guardianship or limited guardianship, the grounds for which allege incompetency or disability as a result of mental illness or mental retardation, shall be referred by the court to an agency to be designated and paid for by the local mental health board and the local mental retardation board (or county social service administrative board where applicable) for an impartial investigation and report relating to the degree of incompetency or disability, the appropriateness of the petitioned for guardian or limited guardian, and the limits to be placed upon the disabled person should a limited guardianship be ordered. The investigation and report shall be made and forwarded to the court, with copies to the alleged incompetent or disabled person and the petitioner, within twenty days after reference to the agency by the court.

Sec. 9. Section 11.88.090, chapter 145, Laws of 1965 and RCW 11.88.090 are each amended to read as follows:

Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian to defend the interests of any incompetent person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

Upon receipt of a petition for appointment of guardian or limited guardian, the court shall appoint a guardian ad litem, who may be a person recommended by either the local mental health board or mental retardation board (or county social service administrative board where applicable), to represent the interests of the alleged incompetent or disabled person in response to any petition for guardianship or limited guardianship. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incompetent or disabled person and such appointment shall not overcome the presumption of competency or full legal and civil rights of the alleged incompetent or disabled person.

The court appointed guardian ad litem shall have the authority, in the event that the alleged incompetent or disabled person is in need of emergency and life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency and life-saving medical services on behalf of the alleged incompetent or disabled person.

Sec. 10. Section 11.88.100, chapter 145, Laws of 1965 and RCW 11.88.100 are each amended to read as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of, from time to time as he shall

thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such incompetent or disabled person, or his or her property, and render and pay to such incompetent or disabled person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order or adjudge, then this obligation shall be void, otherwise to be and remain in full force and effect.

The bond shall be for the use of the incompetent or disabled person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the inventory filed with the court shows that the incompetent or disabled person has total accumulated assets of a value of less than fifteen hundred dollars, the court may dispense with the requirement of a bond: PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the accumulated assets of the incompetent or disabled person increasing their value to over fifteen hundred dollars: PROVIDED FURTHER, That said guardian or limited guardian shall file a yearly statement showing the monthly income of the incompetent or disabled person if said monthly income is over the sum of two hundred fifty dollars per month for any three consecutive months.

Sec. 11. Section 11.88.105, chapter 145, Laws of 1965 and RCW 11.88.105 are each amended to read as follows:

In cases where all or a portion of the estate consisting of cash or securities or both, has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and a receipt is filed by the guardian or limited guardian in court therefor stating that such corporations hold the same subject to order of court then in such case the court may in its discretion dispense with the giving of a bond or reduce the same by the amount of such deposits of cash or securities, and may order that no further reports by said guardian or limited guardian be required until such time as the guardian or limited guardian desires to withdraw such funds or change the investment thereof.

Sec. 12. Section 11.88.107, chapter 145, Laws of 1965 and RCW 11.88.107 are each amended to read as follows:

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required.

Sec. 13. Section 11.88.110, chapter 145, Laws of 1965 and RCW 11.88.110 are each amended to read as follows:

All the provisions of this title relative to bonds given by executors and administrators shall apply to bonds given by guardians or limited guardians.

Sec. 14. Section 11.88.120, chapter 145, Laws of 1965 and RCW 11.88.120 are each amended to read as follows:

The court in all cases shall have power to remove guardians or limited guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100 as now or hereafter amended; and when any guardian or limited guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian or limited guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent or disabled person, which may be in the possession of such guardian or limited guardian so removed, or of the personal representatives of a deceased guardian, or in the possession of any other person or persons, or in the possession of a stand-by guardian or limited guardian and upon failure, to commit the party offending to prison, until he complies with the order of the court.

Sec. 15. Section 11.88.130, chapter 145, Laws of 1965 and RCW 11.88.130 are each amended to read as follows:

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian or limited guardian and such notice to an alleged incompetent or disabled person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged incompetent or disabled person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

Sec. 16. Section 11.88.140, chapter 145, Laws of 1965 and RCW 11.88.140 are each amended to read as follows:

(1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated

(a) Upon the attainment of full and legal age, as defined in RCW 11.92.010 as now or hereafter amended, of any person defined as an incompetent or disabled person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding.

(b) By an adjudication of competency.

(c) By the death of the incompetent or disabled person.

(2) **TERMINATION ON COURT ORDER.** A guardianship or limited guardianship may be terminated by court order after such notice as the court may require

(a) If the guardianship or limited guardianship is of the estate and the estate is exhausted;

(b) If the guardianship or limited guardianship is no longer necessary for any other reason.

(3) **EFFECT OF TERMINATION.** When a guardianship or limited guardianship terminates otherwise than by the death of the incompetent or disabled person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incompetent or disabled person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incompetent or disabled person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incompetent's or disabled person's estate shall be determined by the law of decedents' estates.

Sec. 17. Section 11.88.150, chapter 145, Laws of 1965 and RCW 11.88.150 are each amended to read as follows:

Upon the death of an incompetent or disabled person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased incompetent or disabled person without further letters unless within forty days after death of the incompetent or disabled person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which is assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be published in the manner provided in RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication shall be barred against the estate. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased incompetent or disabled person with the consent of the surety. If letters of administration or letters testamentary are granted upon petition filed within forty days after the death of the incompetent or disabled person, the personal representative shall supersede

the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the publication of notice to creditors and other interested persons and the barring of creditors claims.

Sec. 18. Section 11.92.010, chapter 145, Laws of 1965 as amended by section 5, chapter 28, Laws of 1971 and RCW 11.92.010 are each amended to read as follows:

Guardians or limited guardians herein provided for shall at all times be under the general direction and control of the court making the appointment. For the purposes of chapters 11.88 and 11.92 RCW, all persons shall be of full and legal age when they shall be eighteen years old.

Sec. 19. Section 11.92.035, chapter 145, Laws of 1965 and RCW 11.92.035 are each amended to read as follows:

(1) **DUTY OF GUARDIAN TO PAY.** A guardian of the estate is under a duty to pay from the estate all just claims against the estate of his incompetent, whether they constitute liabilities of the incompetent which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the incompetent or his estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude his personal liability for his own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to prior claims for the care, maintenance and education of the incompetent and of his dependents and existing claims for expenses of administration over other claims.

(2) **CLAIMS MAY BE PRESENTED.** Any person having a claim against the estate of an incompetent, or against the guardian of his estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations, and, upon proof thereof, procure an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

(3) DUTY OF LIMITED GUARDIAN TO PAY. Claims against a limited guardianship estate shall be paid by the limited guardian only to the extent specified in the order appointing the limited guardian.

Sec. 20. Section 11.92.040, chapter 145, Laws of 1965 and RCW 11.92.040 are each amended to read as follows:

It shall be the duty of the guardian and limited guardian

(1) To make out and file within three months after his appointment a verified inventory of all the property of the incompetent or disabled person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(2) ~~((Unless otherwise directed by the court, to file with the court annually within thirty days after the anniversary date of his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration:))~~ To file annually, within thirty days after the anniversary date of

his appointment, and also within thirty days after termination of his appointment, a written verified account of his administration: PROVIDED, That the court in its discretion may allow such reports at intervals of up to thirty-six months, with instruction to the guardian or limited guardian that any substantial increase in income or assets or substantial change in the incompetent's or disabled person's condition shall be reported within thirty days of such substantial increase or change.

(3) If he is a guardian or limited guardian of the person, to care for and maintain the incompetent, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation or profession. The guardian or limited guardian of the person may be required to report the condition of his incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct.

(4) If he is a guardian or limited guardian of the estate, to protect and preserve it, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required of him by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incompetent or disabled person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 30.99.070 for periods not exceeding one year from the date of the order.

(5) To invest and reinvest the property of the incompetent or disabled person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 30.24 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than 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, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian during a period of not exceeding one year following the date of the order to invest and reinvest as provided in chapter 30.24 RCW without further order of the court.

(b) If it is for the best interests of the incompetent or disabled person that a specific property be used by the incompetent or disabled person rather than sold and the proceeds invested, the court may so order.

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent or disabled person; provided, however, that the guardian or limited guardian of the estate, or the person, department, bureau, agency or charitable organization having the care and custody of an incompetent or disabled person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency or charitable organization having the care and custody of an incompetent or disabled person, or if the guardian or limited guardian of the estate has the care and custody of the incompetent or disabled person, directing the guardian or limited

guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance and education of the incompetent or disabled person and of his dependents. In proper cases, the court may order payment of amounts directly to the incompetent or disabled person for his maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under such order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

Sec. 21. Section 11.92.050, chapter 145, Laws of 1965 and RCW 11.92.050 are each amended to read as follows:

Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the incompetent or disabled person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after said incompetent or disabled person attains his majority any such interim account may be challenged by said incompetent or disabled person on the ground of fraud.

Sec. 22. Section 11.92.056, chapter 145, Laws of 1965 and RCW 11.92.056 are each amended to read as follows:

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited,

shall have the right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the incompetent or disabled person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 23. Section 11.92.060, chapter 145, Laws of 1965 and RCW 11.92.060 are each amended to read as follows:

(1) **GUARDIAN MAY SUE AND BE SUED.** When there is a guardian of the estate, all actions between the incompetent or the guardian and third persons in which it is sought to charge or benefit the estate of the incompetent shall be prosecuted by or against the guardian of the estate as such. He shall represent the interests of the incompetent in the action and all process shall be served on him.

(2) **JOINDER, AMENDMENT AND SUBSTITUTION.** When the guardian of the estate is under personal liability for his own contracts and acts made and performed on behalf of the estate he may be sued both as guardian and in his personal capacity in the same action. Misnomer or the bringing of the action by or against the incompetent shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the incompetent before the appointment of a guardian of his estate, such guardian when appointed may be substituted as a party for the incompetent. If the appointment of the guardian of the estate is terminated, his successor may be substituted; if the incompetent dies, his personal representative may be substituted; if the incompetent becomes competent, he may be substituted.

(3) **GARNISHMENT, ATTACHMENT AND EXECUTION.** When there is a guardian of the estate, the property and rights of action of the incompetent shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the incompetent or the guardian of his estate as such.

(4) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the incompetent or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the incompetent, may enter an order authorizing the settlement or compromise be made.

(5) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the disabled person, but only to the extent provided for in the court order appointing a limited guardian.

Sec. 24. Section 11.92.090, chapter 145, Laws of 1965 and RCW 11.92.090 are each amended to read as follows:

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of such incompetent or disabled person for the

purpose of paying debts or for the care, support and education of such incompetent or disabled person, or to redeem any property of such incompetent's or disabled person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

Sec. 25. Section 11.92.100, chapter 145, Laws of 1965 and RCW 11.92.100 are each amended to read as follows:

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to such incompetent or disabled person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the incompetent's or disabled person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the incompetent or disabled person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof.

(8) The age of the incompetent or disabled person, where and with whom residing.

(9) All other facts connected with the estate and condition of the incompetent or disabled person necessary to enable the court to fully understand the same. If there is no personal estate belonging to such incompetent or disabled person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

Sec. 26. Section 11.92.110, chapter 145, Laws of 1965 and RCW 11.92.110 are each amended to read as follows:

The order directing the sale of any of the real property of the estate of such incompetent or disabled person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

Sec. 27. Section 11.92.115, chapter 145, Laws of 1965 and RCW 11.92.115 are each amended to read as follows:

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being

duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the incompetent or disabled person and of his estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

Sec. 28. Section 11.92.120, chapter 145, Laws of 1965 and RCW 11.92.120 are each amended to read as follows:

No sale by any guardian or limited guardian of real or personal property shall be void or be set aside or be attacked because of any irregularities whatsoever, and none of the steps leading up to such sale or the confirmation thereof shall be jurisdictional, and the confirmation by the court of any such sale shall be conclusive as to the regularity and legality of such sale or sales, and the passing of title after confirmation by the court shall vest an absolute title in the purchaser, and such instrument of transfer may not be attacked for any purpose or any reason, except for fraud.

Sec. 29. Section 11.92.130, chapter 145, Laws of 1965 and RCW 11.92.130 are each amended to read as follows:

If any person who is bound by contract in writing to perform shall become incompetent or become a disabled person before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of such incompetent or disabled person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW.

Sec. 30. Section 11.92.150, chapter 145, Laws of 1965 as amended by section 1, chapter 18, Laws of 1969 and RCW 11.92.150 are each amended to read as follows:

At any time after the issuance of letters of guardianship in the estate of any incompetent or disabled person, any person interested in said estate, or in such incompetent or disabled person, or any relative of such incompetent or disabled person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon such guardian or limited guardian, or upon the attorney for such guardian or limited guardian, and file with the clerk of the court wherein the administration of such guardianship or limited guardianship estate is pending, a written request stating

that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of such estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.

Such request for special written notice shall designate the name, address and post office address of the person upon whom such notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with such designation unless and until a new designation shall have been made.

When any account, petition, or proceeding is filed in such estate of which special written notice is requested as herein provided, the court shall fix a time for hearing thereon which shall allow at least ten days for service of such notice before such hearing; and notice of such hearing shall be served upon the person designated in such written request at least ten days before the date fixed for such hearing. The service may be made by leaving a copy with the person designated, or his authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

Sec. 31. Section 11.92.160, chapter 145, Laws of 1965 and RCW 11.92.160 are each amended to read as follows:

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any incompetent or disabled person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

Sec. 32. Section 11.92.170, chapter 145, Laws of 1965 and RCW 11.92.170 are each amended to read as follows:

Whenever it is made to appear that it would be in the best interests of the incompetent or disabled person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the incompetent or disabled person appointed in another jurisdiction.

Sec. 33. Section 11.92.180, chapter 145, Laws of 1965 and RCW 11.92.180 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his services as guardian or limited guardian as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian or limited guardian. He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian or limited guardian and his expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Sec. 34. Section 11.92.185, chapter 145, Laws of 1965 and RCW 11.92.185 are each amended to read as follows:

The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of incompetents or disabled persons subject to administration under this title.

Passed the Senate March 20, 1975.

Passed the House May 21, 1975.

Approved by the Governor May 28, 1975.

Filed in Office of Secretary of State May 28, 1975.

CHAPTER 96

[Engrossed Senate Bill No. 2117] ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

AN ACT Relating to state government; amending section 47.12.060, chapter 13, Laws of 1961 and RCW 47.12.060; amending section 47.12.070, chapter 13, Laws of 1961 as amended by section 2, chapter 91, Laws of 1969 and RCW 47.12.070; amending section 47.12.080, chapter 13, Laws of 1961 and RCW 47.12.080; amending section 47.12.130, chapter 13, Laws of 1961 and RCW 47.12.130; amending section 47.12.150, chapter 13, Laws of 1961 and RCW 47.12.150; and amending section 2, chapter 177, Laws of 1973 1st ex. sess. and RCW 47.12.290.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 47.12.060, chapter 13, Laws of 1961 and RCW 47.12.060 are each amended to read as follows:

When a state highway is relocated and the old route is abandoned, and the new route crosses land owned by a person who owns land abutting on the old route, the Washington state highway commission may agree with the owner to convey to him title to the old route or a part thereof as all or part consideration for his land to be taken for the new route.