

CHAPTER 2.**GUARDIANSHIP****ARRANGEMENT OF SECTIONS**

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An Act to provide for a procedure for and adequate protection in the administration of the property and personal rights of all incompetents. [Section numbering style modified to conform to new Code format (Rev.2003)]

Commencement: March 15, 1984
Source: P.L. 1984-11

§201. Short Title.

This Act may be cited as the "Marshall Islands Guardianship Act 1984". [P.L. 1984-11, §1.]

§202. Interpretation.

In this Act:

- (a) "foreign guardian" means one appointed in another country;
- (b) "guardian" means one to whom the law has entrusted the custody and control of the person or property, or both, of an incompetent;
- (c) "incompetent" means a person who, because of minority, mental illness, mental retardation, senility, excessive use of drugs or alcohol, or other physical or mental incapacity, is incapable of either managing his property or caring for himself, or both;
- (d) "infant" means a person under eighteen(18) years of age whose disabilities have not been removed by marriage or otherwise; property, or both, of an incompetent;
- (e) "property" means realty, personalty and choses in action or any interest in them, legal or equitable, and also claims or rights of action arising in tort;
- (f) "ward" means an incompetent for whom a guardian has been appointed. [P.L. 1984-11, §2.]

§203. Jurisdiction of High Court; powers of judge.

(1) Jurisdiction over all matters pertaining to guardians and wards and to the management and the administration of the property of wards, regardless of the origin or cause of the incompetency of the ward, is conferred upon the High Court, hereinafter “the Court”.

(2) A judge of the Court (hereinafter “the judge”) may appoint a guardian of the person or of the property, or of both, of an incompetent.

(3) The judge may hear and determine complaints of wards against their guardians, require of guardians security or additional security when necessary, discipline them, and make such orders as the judge may seem equitable and right relating to the estates of wards. In such cases, the judge may require such guardians to post bonds to protect the ward’s property and estate and, from time to time, to file inventories of the ward’s estates, and accounts of receipts and disbursements, all of which shall be kept under seal of the Court to protect the privacy of the individuals involved. The judge shall make such orders as to him shall seem just and may enforce his orders in a summary way by attachment for contempt and by imprisonment. [P.L. 1984-11, §3.]

§204. Removal of domicile of ward from the Republic.

A ward who has acquired a domicile in the Republic within the meaning of the Domicile Act 1984 shall for all purposes continue to have such domicile in the Republic during the period of guardianship unless the guardian of such ward obtains an order from the Court which authorizes, for good cause shown, the removal of the domicile of the ward from the Republic. [P.L. 1984-11, §4.]

§205. Foreign guardians.

(1) Foreign guardians who produce authenticated orders appointing them guardians, curators, conservators or committees, duly obtained in any state, territory or country, shall be authorized to maintain action in the courts of the Republic on behalf of their wards.

(2) Guardians appointed in any state, territory or country may be sued in the Republic concerning the property or person of the ward in the Republic and may defend any action or proceeding in the Republic. [P.L. 1984-11, §5.]

§206. Petition for appointment of guardian.

Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner’s knowledge and belief, showing the name, age, residence and address of the alleged incompetent, the nature of his incapacity, the type of guardianship desired, the approximate value and description of his property, the residence and address of the petitioner, and the names and addresses of the next of kin of the incompetent, if known to the petitioner. [P.L. 1984-11, §6.]

§207. Petition for appointment of guardian for a person mentally or physically incompetent.

No guardian of the person or of the property, or of both, of a person alleged to be mentally or physically incompetent can be appointed until after such person has been adjudicated to be incompetent by a court of the Republic. After such adjudication, a petition may be filed for the appointment of a guardian of either the person or of the property, or of both, of such person, and the

general guardianship laws of the Republic now existing or which may hereafter be enacted shall apply to such petition and to all subsequent proceedings thereon. Any guardian appointed as a result of the filing of such petition shall be subject to the general guardianship laws of the Republic. [P.L. 1984-11, §7.]

§208. Order of appointment.

(1) At the hearing on the petition for the appointment of a guardian, the Court shall hear the evidence on the question of the competency of the person who is the subject of the hearing.

(2) If such person has been adjudicated incompetent by a court of a foreign jurisdiction, then upon presentation to the court of an authenticated copy of such order, such person shall be presumed to be incompetent in the absence of clear and convincing evidence that such order should not be given effect in the Republic or that the competency of such person has been restored.

(3) The Court may hear testimony on the question of who is entitled to preference in the appointment of a guardian.

(4) Any person interested may intervene in the proceedings.

(5) If the Court finds that the person who is the subject of the hearing is incompetent, it shall appoint a guardian of the person or of the property, or both, as it may deem necessary, and the order shall state the specific nature of the incapacity found. [P.L. 1984-11, §8.]

§209. Preference in appointment.

In the appointment of a guardian the judge shall give due consideration to the appointment of one of the next of kin of said incompetent who is a fit and proper person and qualified to act, and likewise to any person designated as guardian in any will in which the incompetent is a beneficiary. The judge may in his discretion appoint any person who is qualified to act as guardian, whether related to the ward or not and whether a resident of the Republic, and shall designate some resident of the Republic as his agent or attorney for the service of process, whose name and address shall be recorded in the office of the judge. [P.L. 1984-11, §9.]

§210. Oath of guardian.

Before exercising his authority as guardian, every guardian shall take an oath that he will faithfully perform his duties as guardian. [P.L. 1984-11, §10.]

§211. Duties and powers of guardian of the person.

(1) It is the duty of the guardian of the person to take care of the person of the ward, to treat him humbly and, if he is a minor, to see that he is properly educated and that he has the opportunity to learn a trade, occupation or profession.

(2) The guardian of the person shall be entitled to the custody of the ward, but shall not have power to bind the ward or his property, or to represent him in any legal proceedings pertaining to his property. [P.L. 1984-11, §11.]

§212. Duties of guardian of the property.

It is the duty of the guardian of the property of the ward to protect and preserve it, to invest it prudently, to account for it faithfully, to perform all other duties required of him by law, and at the termination of the guardianship, to deliver the assets of the ward to the person or persons

lawfully entitled thereto. [P.L. 1984-11, §12.]

§213. Resignation of guardian.

A guardian may resign and be relieved of his guardianship after the notice that the Court may require. Before entering an order relieving the guardian, the Court shall require him to file a true and correct account of his guardianship and to deliver to the successor guardian all property of the ward, all records concerning the property of the ward or of the guardianship, and all money due to the ward from him. Before entering the order, the Court shall be satisfied that the interest of the ward will not be placed in jeopardy by the resignation. The acceptance of the resignation shall not exonerate the guardian from any liability previously incurred. [P.L. 1984-11, §13.]

§214. Appointment of successor.

A successor guardian must be appointed and duly qualified before a guardian shall be relieved of his duties and obligations as provided in the preceding Section. [P.L. 1984-11, §14.]

§215. Termination of guardianship of person or property.

When a ward becomes capable of managing his own affairs, or the property of a ward has been lawfully exhausted, or a ward dies, or is removed in accordance with Section 104 of this Act, his or her guardian shall file a final accounting with the Court. The Court may require proof of competency or the removal of the need for continuance of the guardianship before accepting a final accounting and granting a discharge. [P.L. 1984-11, §15.]