

No. 379

AN ACT

Reenacting and amending the act of February 28, 1956 (P. L. 1154), entitled "An act relating to the administration and distribution of incompetents' estates, (except in Philadelphia County) both as to real and personal property, and the procedure relating thereto; including the disposition of such estates or portions thereof and the determination of title thereto without the appointment of a guardian in certain cases; the appointment, bond, removal and discharge of guardians of such estates, their powers, duties and liabilities, the rights of persons dealing with such guardians, and the rights of persons claiming an interest in such estates or in property distributed therefrom whether as claimants or distributees, and containing provisions concerning the determination of incompetency and the powers, duties and liabilities of foreign guardians; and also generally dealing with the jurisdiction, powers and procedure of the orphans' court and the common pleas court relating to incompetents' estates," extending its provisions to Philadelphia County; increasing amount of estate where guardian is unnecessary; authorizing delegation of power over subscription rights and fractional shares; and providing for distribution by the fiduciary of a deceased or incompetent guardian.

Incompetents'
Estates Act
of 1956.

Title and act of
February 28,
1956, P. L. 1154,
reenacted and
amended.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title and the act of February 28, 1956 (P. L. 1154), known as the "Incompetents' Estates Act of 1955," are reenacted and amended to read:

An Act

Relating to the administration and distribution of incompetents' estate, [(except in Philadelphia County)] both as to real and personal property, and the procedure relating thereto; including the disposition of such estates or portions thereof and the determination of title thereto without the appointment of a guardian in certain cases; the appointment, bond, removal and discharge of guardians of such estates, their powers, duties and liabilities, the rights of persons dealing with such guardians, and the rights of persons claiming an interest in such estates or in property distributed therefrom whether as claimants or distributees, and containing provisions concerning the determination of incompetency and the powers, duties and liabilities of foreign guardians; and also generally dealing with the jurisdiction, powers and procedure of the orphans' court and the common pleas court relating to incompetents' estates.

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ARTICLE I.

PRELIMINARY PROVISIONS.

Section 101. Short Title.—This act shall be known and may be cited as the Incompetents' Estates Act of 1955.

Section 102. Definitions.—The following words when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

(1) "Clerk" means the clerk of the orphans' court having jurisdiction.

(2) "Court" means the orphans' court having jurisdiction of the appointment of the guardian.

(3) "Incompetent" means a person who, because of mental infirmities of old age, mental illness, mental deficiency, drug addiction or inebriety, is unable to manage his property, or is liable to dissipate it or become the victim of designing persons.

(4) "Guardian" means a fiduciary appointed by a court of competent jurisdiction to have the care and management of the estate of an incompetent.

(5) "Foreign guardian" means a guardian, or one performing the function of a guardian, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

Section 103. Title to Real and Personal Estate.—Legal title to all real estate and personal property of an incompetent shall remain in him, subject, however, to all the powers granted to his guardian by this act and to all orders of the court.

Section 104. Effective Date.—This act shall take effect April one, one thousand nine hundred fifty-six *in counties other than Philadelphia, and in Philadelphia County, September one, one thousand nine hundred fifty-seven*, except that as to the estate of any incompetent person of which a Pennsylvania court of common pleas has acquired jurisdiction before [that] *the ap-*

plicable date, the existing law on the topics included within this act shall remain in effect so long as that court retains jurisdiction.

Section 105. Severability.—If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end the provisions of this act are declared to be severable.

[Section 106. Applicability.—This act shall not apply to Philadelphia County.]

ARTICLE II.

SMALL ESTATES.

Section 201. When Guardian Unnecessary.—When the entire real and personal estate, wherever located, of a resident or nonresident incompetent, has a gross value of [one thousand five hundred dollars (\$1500)] *two thousand five hundred dollars* or less, all or any part of it may be received and held or disposed of by the person or institution maintaining the incompetent without the appointment of a guardian or the entry of security in any of the following circumstances:

(1) Award from Decedent's Estate or Trust. When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the incompetent shall so direct.

(2) Interest in Real Estate. When the court having jurisdiction to direct the sale or mortgage of real estate in which the incompetent has an interest shall so direct as to the incompetent's interest in the real estate.

(3) Other Circumstances. In all other circumstances when the court which would have had jurisdiction to appoint a guardian of the estate of the incompetent shall so direct.

Section 202. Power of Person or Institution Maintaining Incompetent.—The court may authorize or direct the person or institution maintaining the incompetent to execute as natural guardian any receipt, deed, mortgage or other appropriate instrument, necessary to carry out a decree entered under section 201, and, in such event, may require the deposit of money in a savings account or the care of securities in any manner considered by the court to be for the best interests of the incompetent. The decree so made, except as the court shall expressly provide otherwise, shall constitute sufficient authority to all transfer agents, registrars and others dealing with property of the incompetent, to recognize the persons named therein as entitled to receive the property, and

shall in all respects have the same effect as an instrument executed by a duly appointed guardian under court decree.

ARTICLE III.

GUARDIAN: APPOINTMENT, BOND, REMOVAL AND DISCHARGE; EVIDENCE.

A. Appointment.

Section 301. Petition and Hearing. —

(a) Resident. The court, upon petition and a hearing at which good cause is shown, may find a person domiciled in the Commonwealth to be incompetent and appoint a guardian or guardians of his estate. The petitioner may be the alleged incompetent's spouse, a relative, a creditor, a debtor or any person interested in the alleged incompetent's welfare. Notice of the petition and hearing shall be given in such manner as the court shall direct to the alleged incompetent, to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incompetent if he died intestate at that time, and to such other parties as the court may direct. The alleged incompetent shall be present at the hearing unless (1) the court is satisfied, upon the presentation of positive testimony, that because of his physical or mental condition his welfare would not be promoted by his presence; or (2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary for the alleged incompetent to be represented by a guardian ad litem in the proceeding.

(b) Nonresident. The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incompetent and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incompetency in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident incompetent, unless it finds that such appointment will not be for the best interests of the incompetent.

Section 302. County of Appointment.—

(a) Resident Incompetent. A guardian of the estate of an incompetent may be appointed by the court of the county in which the incompetent is domiciled.

(b) Nonresident Incompetent. A guardian of the estate within the Commonwealth of an incompetent domiciled outside of the Commonwealth may be appointed by

the court of the county having jurisdiction of a decedent's estate or of a trust in which the incompetent has an interest. When the nonresident incompetent's estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the incompetent is located.

(c) **Exclusiveness of Appointment.** When a court has appointed a guardian of an incompetent's estate pursuant to subsections (a) or (b), no other court shall appoint a similar guardian for the incompetent within the Commonwealth.

Section 303. Nonresident Guardian.—When a guardian is or becomes a nonresident of the Commonwealth, the acceptance of his appointment or the act of becoming a nonresident, as the case may be, shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process and notices may be made as to all causes of action relating to the incompetent's estate.

B. Bond.

Section 311. Necessity, Form and Amount.—Except as hereinafter provided, every guardian of the estate of an incompetent shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary, having regard to the value of the personal estate which will come into the control of the guardian, and conditioned in the following form:

(1) **When One Guardian.** The condition of this obligation is that, if the said guardian shall well and truly administer the estate according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) **When Two or More Guardians.** The condition of this obligation is that, if the said guardians or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the guardian or guardians who shall so administer the estate; but otherwise it shall remain in force.

Section 312. Fiduciary Estate.—The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the incompetent's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the incompetent is a fiduciary and conditioned in the following form:

(1) **When One Guardian.** The condition of this obligation is that, if the said guardian shall well and truly

account for property held by the incompetent as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) When Two or More Guardians. The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the incompetent as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.

Section 313. When Bond Not Required.—

(a) Corporate Guardian. No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court for cause shown, deems it advisable.

(b) Nonresident Corporation. A nonresident corporation or a national bank having its principal office out of the Commonwealth, otherwise qualified to act as guardian, in the discretion of the court, may be excused from giving bond.

(c) Other Cases. In all other cases, the court may dispense with the requirement of a bond when, for cause shown, it finds that no bond is necessary.

Section 314. Requiring or Changing Amount of Bond.—The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

C. Removal and Discharge.

Section 321. Grounds for Removal.—The court shall have exclusive power to remove a guardian when—

(1) He is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

(2) He has been adjudged incompetent; or

(3) He has become unable to discharge the duties of his office because of sickness or physical or mental incapacity and his disability is likely to continue to the injury of the estate; or

(4) He has removed from the Commonwealth or has ceased to have a known place of residence therein without furnishing such security or additional security as the court shall direct, or

(5) For any other reason, the interests of the estate are likely to be jeopardized by his continuance in office; or

(6) The incompetent of whose estate he is guardian is adjudged competent.

Section 322. Procedure for and Effect of Removal.—The court on its own motion may, and on the petition of any party in interest alleging adequate grounds for removal shall, order the guardian to appear and show cause why he should not be removed, or when necessary to protect the right of creditors or parties in interest, may summarily remove him. Upon removal the court may appoint a substituted guardian and may, by summary attachment of the person or other appropriate orders, provide for the security and delivery of the assets of the estate, together with all books, accounts and papers relating thereto. Any guardian summarily removed under the provisions of this section may apply, by petition, to have the decree of removal vacated and to be reinstated, and, if the court shall vacate the decree of removal and reinstate him, it shall thereupon make any orders which may be appropriate to accomplish the reinstatement.

Section 323. Adjudication of Competency.—The court, upon petition and after such notice as it shall direct, may find, after a hearing at which good cause is shown, that a person previously adjudged incompetent has become competent.

Section 324. Discharge of Guardian and Surety.—After confirmation of his final account and distribution to the parties entitled, a guardian and his surety may be discharged by the court from future liability.

D. Evidence.

Section 331. Evidence of Mental Condition.—In any hearing relating to the mental condition of a person whose competency is in question, the deposition of, or sworn statement by, a superintendent, manager, physician or psychiatrist of any State-owned mental hospital or veterans administration hospital shall be admissible in evidence as to the condition of an inmate of such hospital in lieu of his appearance and testimony, unless by special order, the court directs his appearance and testimony in person.

ARTICLE IV.

GUARDIAN: POWERS, DUTIES AND LIABILITIES.

A. In General.

Section 401. Possession of Real and Personal Property.—The guardian of the estate of an incompetent, until it is distributed or sold, shall have the right to,

and shall take possession of, maintain and administer each real and personal asset of the incompetent, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain or defend any action with respect to such real or personal property of the incompetent.

Section 402. Inventory.—Every guardian, within three months after real or personal estate of his ward comes into his possession, shall verify by oath and file with the clerk, (1) an inventory of such personal estate, (2) a statement of such real estate, and (3) a statement of any real or personal estate which he expects to acquire thereafter.

Section 403. Abandonment of Property.—When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the incompetent, the court may authorize the guardian to abandon it.

Section 404. Liability Insurance.—The guardian, at the expense of the estate, may protect himself, his employes, and the incompetent, by insurance from liability to third persons arising from the administration of the estate.

Section 405. Continuation of Business.—The court, aided by the report of a master, if necessary, may authorize the guardian to continue any business of the incompetent. The order may be with or without notice. If prior notice is not given to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the incompetent if he died intestate at that time and to any other persons directed by the court, it shall be given to all such persons within five days after the order or within such extended time as the court, for cause shown, shall allow. Any person to whom notice is required to be given may, at any time, petition the court to revoke or modify the order. The order may provide—

(1) For the conduct of the business, by the guardian alone or jointly with others, or as a corporation to be formed;

(2) The extent of the liability of the estate or any part thereof, or of the guardian, for obligations incurred in the continuation of the business;

(3) Whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole;

(4) The period of time the business may be conducted; and

(5) Such other regulations, including accountings, as the court shall deem advisable.

Section 406. Incorporation of Business.—After notice to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the incompetent if he died intestate at that time and to any other persons directed by the court, the court, aided by the report of a master, if necessary, may authorize the guardian alone or jointly with others, to organize a corporation to carry on a business held in the estate, whether the business is owned solely by the incompetent or with others, and may contribute for stock of the corporation, as capital, all or part of the property of the estate which was invested in the business.

Section 407. Claims Against Co-Guardian.—When one of two or more guardians shall be individually liable to the incompetent, the other or others shall take any legal action against him necessary to protect the incompetent.

Section 408. Proceeding Against Guardian.—Any proceeding may be brought against a guardian or the surety on his bond in the county of the court having jurisdiction of the incompetent's estate and, if the guardian or surety does not reside in that county, process may be served on either of them personally, or as follows:

(1) When Resident of Another County. By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found.

(2) When a Nonresident of the Commonwealth. By the sheriff of the county of the court having jurisdiction of the estate sending, by registered mail, return receipt requested, a true and attested copy of the process to the Secretary of the Commonwealth, accompanied by the fee prescribed by law, and to the guardian or surety at his last known address, with an endorsement thereon showing that service has been so made upon the Secretary of the Commonwealth.

Section 409. Revival of Judgment Against Guardian.—When the incompetent holds a judgment which is a lien on real estate owned by the guardian individually, any party in interest may suggest his interest in the judgment upon the record thereof and bring an appropriate action to revive it and to continue its lien. Any judgment so revived shall remain for the use of all parties in interest.

Section 410. Liability of Guardian on Contracts.—Unless he expressly contracts otherwise, in writing, a guardian shall not be personally liable on any written contract hereafter entered into which is within his

authority as guardian and discloses that he is contracting as guardian of a named incompetent. Any action on such a contract shall be brought against the guardian in his fiduciary capacity only, or against his successor in such capacity, and execution upon any judgment obtained therein shall be had only against property of the incompetent.

Section 411. Investments. The powers and duties of guardians in making, retaining and managing investments shall be as prescribed by law generally for fiduciaries.

Section 412. Power of Attorney; *Delegation of Power over Subscription Rights and Fractional Shares.*—

(a) *Power of Attorney.* A guardian may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or attorneys-in-fact [Provided, That this provision shall not authorize him to delegate the exercise of any discretionary power]. *Nothing in this subsection authorizes the delegation of any discretionary power.*

(b) *Delegation of Power over Subscription Rights and Fractional Shares.* *Where there is more than one guardian, one or more may delegate to another the power to decide whether rights to subscribe to stock should be sold or should be exercised and also the power to decide whether a fractional share of stock should be sold or should be rounded out to a whole share through the purchase of an additional fraction and also the power to carry out any such decision. Any delegation may extend to all subscription rights and fractional shares from time to time received by the guardians on account of stock held by them or may be limited to any extent specified in the delegation. No exercise of any delegated power shall be valid unless—*

(1) *The stock on which the subscription rights or fractional shares are issued is listed or traded on the New York Stock Exchange or any other exchange approved by the Secretary of Banking, and*

(2) *The shares held by the guardians on which the subscription rights or fractional shares are issued constitute less than five per cent of the total outstanding shares of the same class of the same corporation.*

Section 413. Voting Stock by Proxy.—The guardians or a majority of them, either in person or by proxy, may vote stock owned by the incompetent.

Section 414. Nominee Registration; Corporate Fiduciary as Attorney-in-Fact.—

(a) *Corporate Guardian.* A bank and trust company or a trust company incorporated in the Commonwealth,

or a national bank with trust powers having its principal office in the Commonwealth, may keep investments or fractional interests in investments held by it, either as sole guardian or as co-guardian, in the name or names of the guardians or in the name of a nominee of the corporate guardian: Provided, That the consent thereto of the co-guardians, if any, is obtained: And provided further, That all such investments shall be so designated upon the records of the corporate guardian that the estate to which they belong shall appear clearly at all times.

(b) Individual Guardian. A guardian serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate guardian having exclusive custody of the assets of the incompetent and to the holding of such investments in the name of a nominee of such corporate guardian, to the same extent and subject to the same requirements that the corporate guardian, if it were the sole guardian, would be authorized to hold such investments in the name of its nominee.

(c) Corporate Fiduciary As Attorney-in-Fact. An individual guardian may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his attorney-in-fact in the performance of ministerial duties, including the safekeeping of estate assets. Such attorney-in-fact, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such attorney-in-fact, if it were the guardian, would be authorized to hold such investments in the name of its nominee.

Section 415. Acceptance of Deed in Lieu of Foreclosure.—The guardian may take for the incompetent from the owner of property encumbered by a mortgage owned by the incompetent, a deed in lieu of foreclosure, in which event the real estate shall be considered personalty to the same extent as though title had been acquired by foreclosure at sheriff's sale.

Section 416. Compromise of Controversies.—Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an incompetent, or to compromise or settle any question or dispute concerning property of the incompetent, the court, on petition of the guardian or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary

by the report of a master, may enter a decree authorizing the compromise or settlement to be made.

Section 417. When Guardian Dies or Becomes Incompetent.—The fiduciary of the estate of a deceased or incompetent guardian by reason of such position shall not succeed to the administration of, or have the right to possess, any asset of an incompetent which was being administered by the deceased or incompetent guardian, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incompetent guardian may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. *The court may direct the fiduciary of a deceased or incompetent guardian to make distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.*

Section 418. Surviving or Remaining Guardians.—Surviving or remaining guardians shall have all the powers of the original guardians.

Section 419. Disagreement Among Guardians.—

(a) Decision of Majority. If a dispute shall arise among guardians, the decision of the majority shall control. A dissenting guardian shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting guardian shall not be liable for the consequences of any majority decision even though he joins in carrying it out, if his dissent is expressed promptly to all the other co-guardians: Provided, That liability for failure to join in administering the estate or to prevent a breach of trust may not be thus avoided.

(b) When No Majority. When a dispute shall arise among guardians as to the exercise or non-exercise of any of their powers and there shall be no agreement of a majority of them, the court, upon petition filed by any of the guardians or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or non-exercise of the power as the court shall deem for the best interest of the incompetent.

Section 420. Inherent Powers and Duties.—Except as otherwise provided in this act, nothing in this act shall be construed to limit the inherent powers and duties of a guardian.

B. Sales, Mortgages, Leases, Options and Exchanges.

Section 441. Power to Sell Personal Property.—A guardian may sell, at public or private sale, any personal property of the incompetent.

Section 442. Power to Lease.—A guardian may lease any real or personal property of the incompetent for a term not exceeding five years after its execution.

Section 443. Order of Court.—Whenever the court finds it to be for the best interests of the incompetent, a guardian may, for any purpose of administration or distribution, and on the terms, with the security and after the notice directed by the court: (1) sell at public or private sale, pledge, mortgage, lease or exchange any real or personal property of the incompetent, (2) grant an option for the sale, lease or exchange of any such property, (3) join with the spouse of the incompetent in the performance of any of the foregoing acts with respect to property held by the entireties, or (4) release the right of the incompetent in the property of his spouse and join in the deed of the spouse in behalf of the incompetent.

Section 444. Restraint of Sale.—The court, on its own motion or upon application of anyone in behalf of the incompetent, in its discretion, may restrain a guardian from selling or carrying out any contract of sale of any personal property of the incompetent. The order may be conditioned upon the applicant giving bond for the protection of the incompetent's estate.

Section 445. Purchase by Guardian.—A guardian in his individual capacity may bid for, purchase, take a mortgage on, lease or take by exchange, real or personal property belonging to the incompetent, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to relatives of the incompetent or to persons having an interest in the welfare of the incompetent as the court shall direct. When the purchaser, mortgagee or lessee is the sole guardian, the court may make an order directing its clerk to execute a deed or other appropriate instrument to him.

Section 446. Title of Purchaser.—If the guardian has given the bond, if any, required in accordance with this act, any sale, pledge, mortgage or exchange by him, whether pursuant to a decree or to a power under this act, shall pass the full title of the incompetent therein free of any right of his spouse, unless otherwise specified. Persons dealing with the guardian shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the incompetent. Any sale or exchange by a guardian, pursuant to a decree under section 443, shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise pre-

served from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent removal of the guardian.

Section 447. Collateral Attack.—No decree entered pursuant to this act shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

Section 448. Record of Proceedings; County Where Real Estate Lies.—Certified copies of proceedings of any court of the Commonwealth relating to or affecting the real estate of any incompetent may be recorded in the office of the recorder of deeds in any county in which the real estate lies.

ARTICLE V.

PROPERTY RIGHTS AND OBLIGATIONS OF ESTATES OF INCOMPETENTS.

A. Control of Actions.

Section 501. Substitution of Guardian in Pending Action or Proceedings.—

(a) Voluntary Substitution. The guardian of the estate of an incompetent party to a pending action or proceeding in the orphans' court may become a party thereto by filing of record a statement of the material facts on which the right to substitution is based.

(b) Compulsory Substitution. If the guardian does not voluntarily become a party, the clerk, upon the praecipe of an adverse party setting forth the material facts, shall issue a citation upon the guardian to show cause why he should not be substituted as a party.

(c) Status of Guardian; Continuance. If the guardian voluntarily becomes a party to the action or proceeding, or if the citation upon him is made absolute, he shall have all the rights and liabilities of a party to the action or proceeding. The court may order such continuances and extensions as may be necessary to afford him a reasonable opportunity to appear and prosecute or defend the action or proceeding.

Section 502. Death or Removal of Guardian.—An action or proceeding in the orphans' court to which a guardian is a party is not abated by his death or resignation or by the termination of his authority. The successor of the guardian may be substituted in the action or proceeding in the same manner as though the incompetent were a party.

B. Claims; Rights of Creditors.

Section 511. Effect of Determination of Incompetency.—An incompetent shall be incapable of making any contract or gift or any instrument in writing after he is adjudged incompetent and before he is adjudged to have regained his competency. This section shall not impair the interest in real estate acquired by a bona fide grantee of, or bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incompetency is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims.

Section 512. Specific Performance of Contracts.—

(a) Application to Court. If any person makes a legally binding agreement to purchase or sell real or personal estate and is adjudged incompetent before its consummation, his guardian shall have the power to consummate it, but if he does not do so, the court, on the application of any party in interest and after such notice and with such security, if any, as it may direct, in its discretion, may order specific performance of the agreement if it would have been enforced specifically had there been no adjudication of incompetency.

(b) Execution and Effect of Deed or Transfer. Any necessary deed or transfer shall be executed by the guardian or by such other person as the court shall direct. The title of any purchaser under an agreement in which the incompetent was the vendor shall be the same as though the incompetent had conveyed or transferred such property while competent.

(c) Indexing in Judgment Index. When any petition for specific performance of an agreement to purchase or sell real estate is filed, the prothonotary of the court of common pleas of the county where the real estate or any part of it lies, upon the receipt of a certificate of such fact by the clerk of the court where the petition was filed, shall enter the petition upon the judgment index against the defendants and shall certify it as lis pendens in any certificate of search which he is required to make by virtue of his office.

Section 513. Notice to Commonwealth and Political Subdivisions.—When the Commonwealth or a political subdivision thereof has a claim for maintaining an incompetent in an institution, the guardian within three months of his appointment, shall give notice thereof to the Department of Revenue or to the proper officer of such political subdivision, as the case may be.

ARTICLE VI.

ACCOUNTS, AUDITS, REVIEWS, DISTRIBUTION—
RIGHTS OF INCOMPETENT AND DISTRIBUTEES.

A. Accounts.

Section 601. Accounting Required.—A guardian shall file an account of his administration of real and personal property promptly at the termination of his guardianship, or at such earlier time or times as shall be directed or authorized by the court.

Section 602. Where Filed.—All accounts of guardians shall be filed in the office of the clerk.

Section 603. Notice to Parties in Interest.—The guardian shall give written notice of the filing of his account and of its call for audit or confirmation to the former ward if he has been declared competent, and otherwise to his succeeding guardian or personal representative and to such other persons as the court by general rule or special order shall direct.

B. Audits.

Section 611. Audits in Counties Having Separate Orphans' Court.—In any county having a separate orphans' court, the account of a guardian shall be examined and audited by the court without expense to the parties, except when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

Section 612. Audits in Counties Having No Separate Orphans' Court.—In any county having no separate orphans' court, the account of a guardian shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account, or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.

Section 613. Recognition of Claims.—Upon the audit of the account of the guardian of a person who has died during incompetency, the auditing judge or auditor passing on the account shall not pass upon any claims against the estate of the incompetent other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the incompetent's death shall be presented to the personal representative.

Section 614. Statement of Proposed Distribution.—A guardian filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules

may prescribe. The statement of proposed distribution shall be in such form, and such notice thereof shall be given by advertisement or otherwise and objections thereto may be made, as local rules prescribe.

Section 615. Confirmation of Account and Approval of Proposed Distribution.—No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed, in conformity with local rules, by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating, by reference to the statement of proposed distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

C. Review.

Section 621. Rehearing; Relief Granted.—If any party in interest shall, within five years after the final confirmation of any account of a guardian, file a petition to review any part of the account, or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That this section shall not authorize review as to any property distributed by the guardian in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

D. Distribution.

Section 631. Award Upon Final Confirmation of Account.—

(a) Guardian's Account. A guardian shall be relieved of liability with respect to all real and personal estate distributed in conformity with a decree of court or in accordance with a rule of court after confirmation of an account.

(b) Account of Personal Representative of Deceased Incompetent. A guardian shall be relieved of liability with respect to all real and personal estate distributed by him to the personal representative of a deceased incompetent and thereafter distributed by the personal representative in conformity with a decree of court, or in accordance with a rule of court upon an accounting of such personal representative and confirmation thereof.

Section 632. Recording and Registering Decrees Awarding Real Estate.—A certified copy of every ad-

judication or decree awarding real estate or an appropriate excerpt from either of them may be recorded, at the expense of the estate, in the deed book in the office of the recorder of deeds of each county where the real estate so awarded lies and, if recorded, shall be indexed by the recorder in the grantor's index under the name of the incompetent and in the grantee's index under the name of the distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no adjudication or decree awarding real estate subject to the payment of any sum by the distributee shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such sum.

E. Rights of Incompetent and Distributees.

Section 641. Liability of Guardian for Interest.—A guardian who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate on such assets.

Section 642. Transcripts of Balances Due by Guardian.—

(a) Filing in Common Pleas. The prothonotary of any court of common pleas shall, on demand of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court has adjudged an amount to be due by a guardian, and such transcript or extract shall constitute a judgment against the guardian from the time of its filing with the same effect as if it had been obtained in an action in the court of common pleas. If the amount adjudged to be due by the guardian shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly and, if the appellate court has increased the amount, the excess shall constitute a judgment against the guardian from the time when the records are so changed.

(b) Satisfaction and Discharge. If the orphans' court shall order the guardian to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.

Section 643. Disposition of Trust Income.—Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may

pay income distributable to an incompetent beneficiary for whose estate no guardian has been appointed directly to the incompetent, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.

Section 644. Distributions of Income and Principal During Incompetency.—All income received by a guardian of the estate of an incompetent, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incompetent without the necessity of court approval. The court, for cause shown, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent for the care, maintenance or education of the incompetent, his spouse, children or those for whom he was making such provision before his incompetency, or for the reasonable funeral expenses of the incompetent's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or for incidental expenses and may ratify payments made for these purposes.

ARTICLE VII.

FOREIGN GUARDIANS.

A. Powers and Duties.

Section 701. In General.—A foreign guardian may institute proceedings in the Commonwealth (subject to the conditions and limitations imposed on nonresident suitors generally) and may exercise all the other powers of a local guardian. Except in the case of powers with respect to securities, for which special provision is made in section 702, the maintenance of a proceeding or the exercise of any other power by a foreign guardian shall be subject to the following additional conditions and limitations:

(1) Copy of Appointment. The foreign guardian shall file with the register of the county where the power is to be exercised or the proceeding is instituted, or the property concerning which the power is to be exercised is located, an exemplified copy of his appointment or other qualification in the foreign jurisdiction.

(2) Affidavit. The foreign guardian shall execute and file an affidavit with the register of said county stating that, after diligent search and inquiry, the estate of which he is guardian is not, to his knowledge or so far as he has been able to discover, indebted to any person in the Commonwealth, and that he will not exercise any power which he would not be permitted to exercise in the jurisdiction of his appointment. The affidavit shall be attached to the copy of appointment.

(3) Taxes. When the foreign guardian exercises a power to sell or mortgage any Pennsylvania real estate, all taxes due thereon to the Commonwealth or to any subdivision thereof must be paid or provided for.

Section 702. Security Transfers.—When there is no guardianship in the Commonwealth, a foreign guardian, upon submission of a certificate of his appointment, shall have all the powers of a similar local guardian with respect to *stocks, bonds and other securities of a Pennsylvania corporation or a Federal corporation located in Pennsylvania and shall not be required to comply with the conditions and limitations of section 701.

Section 703. Service of Process.—The acceptance by a foreign guardian of the privilege extended by the laws of the Commonwealth of exercising any of his powers within the Commonwealth shall constitute the Secretary of the Commonwealth his attorney-in-fact upon whom service of process and notices may be made in any suit or proceeding instituted in the courts of the Commonwealth arising out of, or by reason of, the exercise of any of his powers or the performance or nonperformance of any of his duties as such fiduciary.

Section 704. Proof of Authority in Court Proceedings.—Upon commencing any proceeding in any court of the Commonwealth, the foreign guardian, in addition to the requirements of section 701, shall file with the court in which the proceeding is commenced, an exemplified copy of his official bond, if he has given a bond. If the court believes that he should furnish security or additional security in the Commonwealth or in the domiciliary jurisdiction, it may, at any time, order the action of proceeding stayed until sufficient security is furnished.

Section 705. Effect of Local Proceedings.—No person who, before receiving actual notice of local administration or of application therefor, has changed his position by relying on the powers granted to foreign guardians by this act shall be prejudiced by reason of the application for or grant of local administration.

B. Distribution to Foreign Fiduciaries.

Section 711. To Foreign Personal Representatives.—When a share of an incompetent's estate administered in the Commonwealth is distributable to a deceased non-resident creditor or other distributee, the court may award it to his domiciliary personal representative or to some other person performing the function of a personal representative, unless it shall appear that the rights of any resident of the Commonwealth may be ad-

* "stock" in original.

versely affected or the court shall determine that, for any reason, ancillary administration within the Commonwealth is advisable.

Section 712. To Foreign Trustee, Guardian or Committee.—When a share of an incompetent's estate administered in the Commonwealth is distributable to a nonresident minor, a trustee subject to the jurisdiction of a foreign court, or a nonresident incompetent, the court may award it to the guardian or committee of the nonresident appointed in the foreign jurisdiction, or to such trustee: Provided, That the court shall be satisfied that adequate security or other protection has been provided in the domiciliary jurisdiction by the domiciliary law for the protection of the persons beneficially interested in the share so awarded.

C. Transfer of Administration.

Section 721. Award to Foreign Guardian When Incompetent Becomes Nonresident.—When the incompetent for whose estate a guardian has been appointed by the court is or becomes a nonresident of the Commonwealth, the court, upon satisfactory proof that it will be for the best interests of the incompetent and that no rights of a resident of the Commonwealth will be adversely affected and that removal of the property will not conflict with any limitations upon the right of the incompetent to such property, may direct the locally appointed guardian to transfer the assets of the incompetent within his control to a duly qualified guardian or guardians in the jurisdiction where the incompetent resides.

ARTICLE VIII.

REPEALER.

Section 801. (a) Repeal.—The act of June twenty-eight, one thousand nine hundred fifty-one (P. L. 612), known as the "Incompetents' Estates Act of 1951," and its amendments, are repealed, [except as to Philadelphia County and] except as to estates of incompetents [in other counties] of which a Pennsylvania court of common pleas has acquired jurisdiction before [the effective date of this act] *April 1, 1956, in counties other than Philadelphia, and in Philadelphia County before September 1, 1957.*

(b) Saving Clause.—This act shall not repeal or modify any of the provisions of the following acts, or parts of acts, or any of their amendments:

(1) The act of April eleven, one thousand eight hundred sixty-six (P. L. 780), entitled "An act authorizing persons, whose wives, or husbands, are non compos mentis, to sell, mortgage, lease for years and convey, upon ground rent, real estate held in their own right."

(2) The act of April six, one thousand nine hundred twenty-one (P. L. 99), entitled "An act relating to the jurisdiction, powers, and procedure of the court of common pleas as to sale, mortgage, conveyance upon ground rent, and lease for years of real estate, where the legal title is held by a married person whose spouse is an habitual drunkard, and providing for the disposition of the proceeds thereof."

APPROVED—The 11th day of July, A. D. 1957.

GEORGE M. LEADER

No. 380

AN ACT

Authorizing the Supreme and Superior Courts of Pennsylvania to prescribe general rules of practice and procedure in all criminal actions in certain courts of this Commonwealth; authorizing certain courts to prescribe and adopt local rules, not inconsistent with such general rules of the Supreme and Superior Courts of Pennsylvania; authorizing the Supreme and Superior Courts of Pennsylvania to appoint a Criminal Procedural Rules Committee, and fixing and defining its powers and duties; imposing duties on judges and other officers of every court of record; fixing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The Supreme and Superior Courts of Pennsylvania shall have the power to prescribe by general rule the forms of process, writs, pleadings, and motions, and the practice and procedure prior to and including verdict or plea of guilty and motions in respect thereto in all criminal cases and proceedings in the courts of oyer and terminer and courts of quarter sessions of every county and for all other courts having jurisdiction in criminal actions. Such rules shall be consistent with the Constitution of this Commonwealth and shall neither abridge, enlarge nor modify the substantive rights of any party nor the jurisdiction of any of the said courts, nor affect any statute of limitations. At the time of the adoption, promulgation, and publication of its general rules, the Supreme and Superior Courts shall fix the effective date thereof, which shall not be less than six months from the date of the adoption thereof. As soon as promulgated, a copy of all rules shall be sent to the prothonotaries or clerks of all courts which may be affected thereby, and shall be published by such prothonotaries or clerks in the same manner as local rules adopted by such courts.

Criminal Procedural Rules Committee.

Power to prescribe general rules and forms.

Limitation.

Effective date to be fixed.