

**CHAPTER 551**  
**GUARDIANS AND WARDS**

General Provisions

Section

551-1 Jurisdiction

551-2 Guardian ad litem; next friend; appointment

Guardian of Minors

551-11 to 13 Repealed

Testamentary Guardians of Minors

551-16, 17 Repealed

Guardians and Disposition of Small Estates

551-21 Small estates; clerk of the court to act when

551-22 Estates less than \$100

Guardians of Insane Persons and Spendthrifts

551-26 to 34 Repealed

551-35 Natural guardian and conservator of person alleged  
to be incapacitated or in need of protective  
proceedings

Guardians of Nonresidents

551-41 to 43 Repealed

Conservator for Absentee

551-46 to 48 Repealed

General Powers and Duties of Guardians

551-51 to 64 Repealed

Sale of Real Estate

551-71 to 91 Repealed

## **Cross References**

Uniform disclaimer of property interests act, see chapter 526.

## **Rules of Court**

See Hawaii Probate Rules.

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(a)(2), (f), (g), (h), (j).

Proceedings not governed by Hawaii Rules of Civil Procedure, see RCC rule 31.

## **"GENERAL PROVISIONS**

**§551-1 Jurisdiction.** Family courts shall have exclusive jurisdiction to appoint guardians for minors, and circuit courts shall have exclusive jurisdiction to appoint conservators for both adults and minors. The family and circuit courts shall have concurrent jurisdiction over guardianships for incapacitated adults. Either a guardian or conservator, or both, may be appointed. [CC 1859, §1343; am L 1903, c 16, §1; RL 1925, §3064; am L 1925, c 42, §1; RL 1935, §4850; RL 1945, §12500; RL 1955, §338-1; HRS §551-1; am L 1972, c 145, §1(e); am L 1976, c 200, pt of §1; am L 2004, c 161, §16]

## **Cross References**

Jurisdiction to appoint guardian: Minors, see §571-11; adults, see §571-14.

Jurisdiction of circuit court, see §§603-21.6, 603-36.

## **Case Notes**

Powers, inherent powers of a court of chancery. See 13 H. 257, 262; 26 H. 337, 340-41.

Jurisdiction at chambers. See 16 H. 13, 15; 16 H. 242, aff'd 197 U.S. 348; 16 H. 412.

Under this section, even before family court constituted, court could appoint guardian of person or estate without appointing both, whether for a minor, insane person or spendthrift. 34 H. 935, 941.

" **§551-2 Guardian ad litem; next friend; appointment.**

Nothing in this chapter impairs or affects the power of any court to appoint a guardian to defend the interests of any minor or person not in being impleaded in such court, or interested in any matter there pending, or its power to appoint or allow any

person as next friend for a minor, to commence, prosecute, or defend any action or proceeding in the minor's behalf; provided that in all proceedings for annulment, divorce, or separation, except in the case of annulment on the ground of nonage, either spouse, although a minor, may sue or be sued in the minor's name without a guardian or next friend. [CC 1859, §1349; am L 1903, c 16, §2; RL 1925, §3070; RL 1935, §4857; RL 1945, §12507; am L 1947, c 78, §1; RL 1955, §338-8; HRS §551-2; am L 1972, c 145, §1(f); gen ch 1985]

### **Rules of Court**

Probate, see HPR rule 28.

### **Case Notes**

Power to appoint next friend or guardian ad litem is inherent in every court, including district courts. 11 H. 279, 281; 21 H. 160, 162; 23 H. 623, 624. Purpose of this section was to make it clear that this power, already existing, was not taken away by provisions for appointment of guardians of person and estate. 11 H. 279, 280; 21 H. 160, 162; see 16 H. 13, 15.

Appointment of guardian ad litem for minor not mandatory in adoption proceeding. 42 H. 250, 262. But is mandatory in custody or support proceeding if parentage at issue. See §571-47.

#### **Minors.**

Under rule requiring sanction of court for issuance of process in suit instituted on behalf of minor, no formal order necessary. 8 H. 93; 11 H. 279, 281. Same as to guardian ad litem for minor defendants. 21 H. 160; 34 H. 232, 235; 35 H. 682, 683.

#### **Adult incompetents.**

Guardian ad litem, next friend, may be appointed for incompetent or weak-minded adult, but when alleged incapacity is denied issue raised must be determined before further steps can be taken in the suit. 23 H. 457, 475; 24 H. 82, 84; see 24 H. 558.

#### **Duties and powers.**

No power to surrender substantial rights. 28 H. 310, 328; 35 H. 262; 42 H. 586, 610; 46 H. 475, 521-30, 382 P.2d 920; 198 F. Supp. 78, 83. Duty to take appeal in proper case. 27 H. 132. As to election of remedies, see 32 H. 928.

**Compensation, expenses, right to.**

26 H. 623; 27 H. 132; 34 H. 854; 35 H. 262; 35 H. 682; 46 H. 475, 521-30, 382 P.2d 920; 47 H. 216, 385 P.2d 828.

**"GUARDIAN OF MINORS**

**§§551-11 to 13 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.

**"TESTAMENTARY GUARDIANS OF MINORS**

**§§551-16, 17 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.

**"GUARDIANS AND DISPOSITION OF SMALL ESTATES**

**§551-21 Small estates; clerk of the court to act when.**

Whenever so requested as provided in section 560:5-403, the court may appoint the clerk of the court of that circuit as conservator of the protected person whose estate is of a value of less than \$10,000 who shall serve in such capacity, with the full powers of and under like obligations as other conservators appointed under this chapter and chapter 560, except that the clerk shall not be required to give any bond; nor shall the clerk be entitled to any commission or compensation except for expenses necessarily and actually incurred, nor shall the clerk or the protected person or the estate of the protected person be liable for any court costs arising out of the guardianship, except the actual cost of any advertising found necessary. The right of the clerk to act as the conservator shall not be affected by reason of any increase of the estate to an amount in excess of \$10,000 as the result of any accumulations of income accruing from the original principal of the estate or by the increase in value of the principal; provided that if the estate reaches in value the sum of \$16,250, a conservator shall then be appointed under the preceding sections of this chapter or the court, in its discretion, may allow the conservator appointed under this section to continue to act even though the total assets exceed \$16,250. [L 1927, c 168, §1; RL 1935, §4854; am L

1939, c 119, §1; am L 1943, c 193, §2; RL 1945, §12504; am L 1947, c 96, §1; RL 1955, §338-5; am L 1965, c 6, §1; HRS §551-21; am L 1976, c 200, pt of §1; gen ch 1985; am L 1987, c 327, §1; am L 1998, c 44, §2; am L 2004, c 161, §17]

### Rules of Court

Small conservatorships, see HPR rule 112.

" **§551-22 Estates less than \$100.** When the whole estate of a person over the age of eighteen for whom a conservator could be appointed does not exceed the value of \$100, the court, in its discretion, without the appointment of a conservator or the giving of bond, may authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court shall direct. [L 1965, c 6, §2; Supp, §338-5.5; HRS §551-22; am L 1976, c 200, pt of §1; am L 1977, c 144, §55; am L 2004, c 161, §18]

### "GUARDIANS OF INSANE PERSONS AND SPENDTHRIFTS

**§§551-26 to 34 REPEALED.** L 1976, c 200, pt of §1.

### Cross References

For present provisions, see Uniform Probate Code, chapter 560, Article V.

" **§551-35 Natural guardian and conservator of person alleged to be incapacitated or in need of protective proceedings.** The father and mother of an incapacitated or protected person are jointly and severally the person's natural guardians and conservators. They shall have equal powers and duties with respect to the person and neither shall have any right superior to that of the other concerning the person's custody or control or any other matter affecting the person; provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian or conservator, or both, the guardianship or conservatorship, or both, devolves or devolve upon the other parent, and that when the parents live apart, the court may award the guardianship or conservatorship to either of them, having special regard to the interests of the incompetent adult person. [L 1957, c 173, §1; am L Sp 1959 2d, c 1, §20;

Supp, §338-9.5; HRS §551-35; am L 1976, c 200, pt of §1; am L 2004, c 161, §19]

**"GUARDIANS OF NONRESIDENTS**

**§§551-41 to 43 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.

**"CONSERVATOR FOR ABSENTEE**

**§§551-46 to 48 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.

**"GENERAL POWERS AND DUTIES OF GUARDIANS**

**§§551-51 to 64 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.

**"SALE OF REAL ESTATE**

**§§551-71 to 91 REPEALED.** L 1976, c 200, pt of §1.

**Cross References**

For present provisions, see Uniform Probate Code, chapter 560, Article V.