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Jurisdiction - Encroachment on Estates

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Jurisdiction - Encroachment on Estates

Private Acts of 1935 Chapter 182

SECTION 1. That Chapter No. 86 of the Acts of the General Assembly of 1870 be and the same is hereby amended by adding thereto the following, to-wit: The Probate Court of Shelby County is granted jurisdiction to authorize encroachments by guardians upon the estates of minors and persons non compos for the purposes of his or her support, maintenance and/or education, by proceedings in the following manner:

(1) The guardian shall file in the office of the Clerk of the Probate Court a petition in writing, duly verified, containing a statement of the nature and amount or value of the estate of the ward, including income on hand, and also of the purpose and necessity of the desired encroachment and any other relevant matter.

(2) After the petition shall have been filed, the Court, if in session, or the Judge, in chambers, shall, upon the application of the guardian, appoint a time and place for the hearing; in all cases wherein the appointment of a guardian ad litem is required or is made through the exercise of the discretionary power of the Court, the hearing may be had and the matter determined at any time designated by the Court or Judge; provided that if the estate of the person under disability which is sought to be encroached on be composed in whole or part of compensation or pension awards of War Risk Insurance payments made pursuant to Federal Law, the date of the hearing shall in all such cases be not earlier than fifteen days from the date of the filing of the petition, and the Clerk shall promptly forward a copy of the petition, with notice of the date of the hearing, to the office of the Federal Bureau having jurisdiction over the area within which the court is located.

(3) If it appears from the petition that the amount or value of the corpus of the estate of the ward exceeds Twenty Thousand Dollars (\$20,000), a guardian ad litem shall be appointed for the ward, otherwise the appointment of such guardian ad litem shall not be necessary, but may be made, in the discretion of the Court or Judge.

(4) If, upon any hearing without guardian ad litem, it shall appear to the Court from evidence presented that, notwithstanding the recitals of the petition otherwise, the amount or value of the corpus of the state of the ward exceeds Twenty Thousand Dollars (\$20,000), a guardian ad litem shall thereupon be appointed and further proceedings in the matter be suspended and the cause be reset for hearing at a later date, not earlier than fifteen days therefrom.

(5) It shall be the duty of every guardian ad litem appointed pursuant to the provisions of this Act to make an investigation into the matters embraced in the petition and on or before the day fixed for the hearing to file in writing a report to the Court containing a statement of the results of such investigation, with his recommendations in the premises.

(6) At the time and place appointed for the hearing the guardian shall attend in person or through counsel. The Court may also require the attendance of the ward, if practicable, and of the guardian ad litem and may cause a subpoena to be issued for any witness whose testimony is desired. If it appears that the testimony of any witness should be produced and such witness, for any cause, cannot attend in person, the Court may order his deposition taken.

(7) It shall not be necessary in such proceedings for any order of reference to be made, but the Court may do so if such course seems advisable. Nor shall service of process upon the ward be required and the proceeding may be in ex parte form.

(8) The hearing upon the petition may be had either before the Court, in session, or before the Judge, at chambers in vacation and the Court or the Judge, as the case may be, shall make such orders and decrees relative to an encroachment upon corpus assets of the ward as may be deemed proper. All such orders and decrees shall be entered upon the minutes of the Court, and those made and entered in vacation shall have the same force and effect as if made and entered in term.

(9) Guardians ad litem appointed hereunder shall be allowed such fees for their services as to the Court shall seem proper and the same shall be taxed as a part of the costs of the proceeding.

As amended by: Private Acts of 1965, Chapter 155

Private Acts of 1976, Chapter 220

SECTION 2. That all laws and parts of laws in conflict herewith be and the same are hereby repealed, provided, that nothing herein contained shall be construed as having the effect to oust or to alter the present jurisdiction of Courts of Chancery to hear and determine applications for encroachments.

SECTION 3. That this Act shall take effect and be in force from and after its passage, the public welfare requiring it.

Passed: February 19, 1935.

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