

NATIONAL LEGISLATION: FINLAND

1. Integration of immigrants and reception of asylum seekers Act
2. Marriage Act
3. Child welfare Act
4. Guardianship Service Act

INTEGRATION OF IMMIGRANTS AND RECEPTION OF ASYLUM SEEKERS ACT

CHAPTER 5

Section 26

Representation and exercise of the right to be heard:

A representative may be assigned to a refugee child or a child applying for a residence permit or seeking asylum who is in Finland without a custodian or other legal representative.

The representative exercises a custodian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages his/her assets as laid down in chapter 12, section 1 and 2, of the Code of Judicial Procedure, section 16 of the Administrative Procedures Act (598/1982), section 17 and section 18, paragraph 3 of the Act on the Application of administrative Law, and the Guardianship Act (34/1898). (The latter have been reformed to Administrative Procedure Act 434/2003 sec. 14, and to Guardianship Services Act 442/1999).

The representative shall protect the child's interests, taking his/her ethnic, linguistic, religious and educational background into account.

Before making a decision in a matter pertaining to the child's person or assets, the representative must discuss the matter with the child if this is possible in view of the child's age and developmental level and the nature of the matter. When making decisions, the representative shall take the child's opinion and wishes into consideration.

It is not the representative's function to see the daily or other care or upbringing of the child.

Marriage Act

(234/1929; amendments up to 1226/2001 included)

Part I — **CONCLUSION AND DISSOLUTION OF MARRIAGE** (411/1987)

Chapter 1 — **General provisions** (411/1987)

Section 1 (411/1987)

- (1) A woman and a man who have agreed to marry each other shall be considered engaged.
- (2) Marriage shall be concluded by a marriage ceremony.
- (3) Before the marriage ceremony it shall be certified that there are no impediments to the marriage.

Section 2 (411/1987)

- (1) The spouses shall be equal. In the marriage, they shall display mutual trust and together work for the good of the family.
- (2) Each spouse shall, herself or himself, have the right to decide whether to engage in gainful employment and in societal and other activities outside the family.

Section 3 (411/1987)

Marriage shall dissolve when one of the spouses dies or when the spouses are granted a divorce.

Chapter 2 — **Impediments to marriage** (411/1987)

Section 4 (411/1987)

- (1) A person under 18 years of age shall not marry.
- (2) The Ministry of Justice may, however, for special reasons grant a person under 18 years of age a dispensation to marry. Before the matter is decided, the custodian of the applicant shall be reserved an opportunity to be heard if his or her whereabouts can be determined with reasonable measures.

Section 5 has been repealed.

Section 6 (1226/2001)

No person shall marry if his or her prior marriage is still in force. Likewise, no person shall marry if his or her registered partnership is in force.

Section 7 (411/1987)

- (1) No person shall marry her father, his mother, his or her grandparent or other direct ascendant, nor his or her child, grandchild or other direct descendant.
- (2) Siblings or half-siblings shall not intermarry.

Section 8 (411/1987)

An adoptive parent and an adopted child shall not intermarry. The Ministry of Justice may, however, for especially weighty reasons grant them a dispensation to marry.

Section 9 (411/1987)

Two persons, one of whom is a descendant of the other's brother or sister, shall not intermarry, unless the Ministry of Justice, for special reasons, grants them a dispensation to marry.

Chapter 3 — **Examination of impediments to marriage** (411/1987)

Section 10 (618/1998)

It shall be for the Register Office to examine that there are no statutory impediments to marriage (*examination of impediments to marriage*). The examination of impediments to marriage may also be carried out by a parish of the Evangelical Lutheran Church or the Greek Orthodox Church, if the engaged persons belong, or one of them belongs, to the parish.

Section 11 (411/1987)

- (1) The engaged persons shall together request an examination of impediments to marriage from the examiner referred to in section 10. (618/1998)
- (2) If a dispensation from the Ministry of Justice is required for the marriage, the dispensation shall at the same time be handed in to the examiner. (448/1999)
- (3) If an engaged person has no more than four months earlier been issued a certificate of an examination of impediments to marriage, this certificate shall also be handed in to the examiner in the original.

Section 12 (411/1987)

- (1) The engaged persons shall assure the examiner of impediments to marriage in writing that there is no impediment to marriage, as referred to in sections 7—9.
- (2) At the same time, both engaged persons shall state in writing whether he or she has concluded a prior marriage or registered partnership. If the information available to the examiner of impediments to marriage does not indicate that the prior marriage or registered partnership has been dissolved, the person in question shall provide the examiner with a certificate or another special account thereof. (1226/2001)

Section 13 (411/1987)

- (1) If the examiner of impediments to marriage finds no statutory impediment to the marriage, he shall issue a certificate thereof.
- (2) The certificate shall not be issued earlier than on the seventh day after the request for an examination of impediments to marriage was made. The certificate may, however, be issued earlier if there are weighty reasons for the same.

Chapter 4 — **Marriage ceremony** (411/1987)

Section 14 (411/1987)

- (1) A marriage ceremony shall be performed in the presence of relatives or other witnesses either as a religious or a civil ceremony.
- (2) A religious ceremony may be performed in an Evangelical Lutheran church or in a Greek Orthodox church or in another religious community to which the Ministry of Education has granted a license to perform marriage ceremonies.
- (3) Provisions on the registration of licenses to perform marriage ceremonies shall be issued by Decree. (417/1993)

Section 15 (411/1987)

The engaged persons shall be simultaneously present at the marriage ceremony. After both engaged persons have given the officiator of the ceremony an affirmative answer to the question whether he or she wants to marry the other, the officiator shall pronounce them husband and wife.

Section 16 (411/1987)

- (1) In addition to the provisions in section 15, the other conditions and forms of a religious marriage ceremony shall be laid down by the religious community in question.
- (2) Provisions on a civil marriage ceremony shall be issued by Decree.

Section 17 (411/1987)

- (1) A religious marriage ceremony may be performed by:
 - (1) in the Evangelical Lutheran church by a priest;
 - (2) in the Greek Orthodox church by a priest; and
 - (3) in another religious community by a person who, under the rules of the community, has the right to perform marriage ceremonies.
- (2) A civil marriage ceremony shall be performed by:
 - (1) the Chief Judge of a District Court, a District Judge, and
 - (2) a District Registrar. (1428/1992)

Section 18 (411/1987)

- (1) A marriage ceremony shall not be performed if the officiator is aware of a fact that forms an impediment to the marriage or if the officiator deems that an engaged person is evidently unable to understand the significance of marriage due to his or her disturbed state of mind.
- (2) Before performing the marriage ceremony, the officiator shall make sure that the examination of impediments to marriage has been carried out in accordance with the provisions in sections 11—13. If the certificate referred to in section 13 has been issued more than four months before, the marriage ceremony shall not be performed on the basis thereof.

Section 19 (411/1987)

- (1) A marriage ceremony shall be void if it has not been performed in accordance with the provisions of section 15 or if the ceremony has been performed by a person without the right to perform marriage ceremonies.
- (2) The President of the Republic may, however, for especially weighty reasons decide that a marriage ceremony void under paragraph (1) shall be deemed valid. A petition to this effect may be filed by either of the persons married or, if one of them is dead, by his or her heirs.

Chapter 5 — **Family mediation** (411/1987)

Section 20 (411/1987)

- (1) Disputes and legal matters arising in a family should primarily be settled in negotiations between the family members and decided by agreement.
- (2) There are family mediators who render assistance and support, upon request, when disputes arise in a family.
- (3) Mediators may render assistance and support upon request also in the event that disputes arise as to compliance with a court order or an agreement on child custody and right of access. (622/1996)

Section 21 (411/1987)

- (1) A mediator shall aim for a confidential and open discussion between the family members. He or she shall aim for a consensus as to how to solve the disputes in the family in the best possible way for all the persons concerned.

- (2) The mediator shall pay special attention to securing the position of the minor children in the family.
- (3) The mediator shall assist the persons concerned in concluding agreements and in other measures necessary for the settlement of disputes.

Section 22 (411/1987)

- (1) The general planning, monitoring and control of family mediation shall be a task of the State Provincial Offices, under the supervision of the Ministry of Social Affairs and Health. (101/1991)
- (2) The Municipal Board of Social Welfare shall be in charge of arranging family mediation in a municipality. Mediation may be rendered also by societies, associations and foundations, as well as individuals, authorised thereto by the State Provincial Office.
- (3) The Ministry of Social Affairs and Health shall issue more detailed instructions and guidelines on family mediation. (101/1991)

Section 23 (411/1987)

- (1) An authorisation to render family mediation may be granted, upon application, to a society, association or foundation considered capable of rendering it competently. An authorisation may be granted, upon application, also to an individual who is familiar with child welfare or family guidance work or with family law and who, by virtue of his or her previous experience and personal characteristics, is adequately competent to work as a mediator.
- (2) The authorisation shall be granted for a fixed period, not exceeding five years at a time. The authorisation may be revoked, if there is a reason for the same.
- (3) When granting the authorisation, the State Provincial Office may also issue more detailed instructions concerning the district and tasks, as well as the obligation to supply the Office with information necessary for monitoring the mediation.

Section 23a (411/1987)

The duty of secrecy of the mediator shall be governed by the provisions of sections 57(1), 58(1) and 58(3) of the Social Welfare Act (710/1982). The provisions in section 56 of the Social Welfare Act on the obligation to supply and to receive information do not apply to the mediator.

Chapter 6 — **End of cohabitation and divorce** (411/1987)

End of cohabitation

Section 24 (411/1987)

- (1) Upon the joint petition of the spouses or upon the petition of one of the spouses, a court of law may:
 - (1) order that the spouse who is in greater need of a residence shall have the right to continue to live in the common home;
 - (2) order the other spouse to vacate the common home; and
 - (3) give a spouse the right to use movables that belong to the other spouse and which form part of the household goods meant for common use or a tool of the other spouse or which are meant for the personal use of the other spouse or the children; this right of use shall not be restricted by an agreement concerning the said goods entered into by the owner and a third party.
- (2) *Paragraph has been repealed.*
- (3) The court order shall be immediately enforceable, even if it is not yet final, unless otherwise provided in the order.
- (4) The court order shall be in force until further notice. Upon the request of a spouse the order may be changed or revoked through a new court order, if the circumstances have changed after the order was issued. The orders referred to in paragraph (1) shall lapse when the distribution of matrimonial property or a

separation of property has taken place between the spouses and it has become final. The orders shall in any event lapse two years from the date of the order even if no distribution or separation of property has taken place.

Divorce

Section 25 (411/1987)

- (1) The spouses shall have the right to a divorce after a reconsideration period.
- (2) However, the spouses shall have the right to a divorce without a reconsideration period if they have lived separated for the past two years without interruption.

Section 26 (411/1987)

- (1) The reconsideration period shall begin upon the date when the joint petition of the spouses for the dissolution of the marriage is filed with the court or the court registry or the petition of one spouse is served on the other spouse.
- (2) After a reconsideration period of at least six months, the spouses shall be granted a divorce upon their joint request or upon the request of one of the spouses. The request shall be made within one year of the beginning of the reconsideration period.

Section 27 (411/1987)

- (1) The spouses shall be granted a divorce without a reconsideration period:
 - (1) if the spouses are each other's direct descendants or ascendants, siblings or half-siblings; or
 - (2) if their marriage was concluded while a prior marriage or registered partnership of one of the spouses was still in force, and the said prior marriage or registered partnership has not yet been dissolved.

(1226/2001)
- (2) The public prosecutor shall initiate proceedings for the divorce of the spouses upon grounds of paragraph (1).
- (3) If a marriage was concluded while a former marriage was still in force, each of the spouses in the said former marriage shall have the right to a divorce without a reconsideration period.

Court proceedings

Section 28 (411/1987)

- (1) Proceedings for a divorce or end of cohabitation shall be initiated by way of a petition which may be filed by both spouses jointly or one of the spouses alone.
- (2) If the petition has been filed by one spouse alone, the court shall reserve the other spouse an opportunity to be heard. The court shall serve the notice and the petition on the other spouse in accordance with the provisions on the service of summonses.

Section 29 (411/1987)

If the matter cannot be immediately decided because the spouses cannot be granted a divorce without a reconsideration period, the court shall suspend the proceedings with regard to the divorce. At the same time, the court shall issue instructions regarding the further handling of the matter after the reconsideration period. The court shall also inform the spouses of the availability of family mediation to them or their family, as referred to in section 20.

Section 30 (411/1987)

The court proceedings relating to divorce shall be reopened after the reconsideration period at the request of the spouses or one spouse, as provided in section 28.

Section 31 (411/1987)

- (1) In connection with proceedings relating to divorce or the end of cohabitation, the spouse(s) may request an order on maintenance and child custody and right of

access, as well as make other requests pertaining to the divorce or end of cohabitation.

- (2) In proceedings relating to divorce or the end of cohabitation, the court may issue an interim order regarding a request referred to in paragraph (1) or an order to end cohabitation.
- (3) The interim order shall not be subject to appeal.
- (4) The interim order shall be in effect until the court decides on the matter unless the order is changed or revoked prior to that.

Section 32 (411/1987)

- (1) In proceedings relating to divorce or the end of cohabitation, the court shall, upon its own initiative, consider how child custody and right of access should be arranged between the spouses, in the best interests of the child.
- (2) When considering child custody and right of access, the court shall pay special attention to the fact that the purpose of child custody and right of access is to ensure for the child a positive and close relationship to both parents.
- (3) On the request of a parent or the Municipal Board of Social Welfare, the court shall issue an order regarding child custody and right of access, in accordance with the provisions of the Act on Child Custody and Right of Access (361/1983).

Part II — **LEGAL RELATIONS BETWEEN SPOUSES**

Chapter 1 — **General provisions**

Section 33

- (1) Marriage shall not restrict the right of a spouse to enter into transactions unless otherwise provided in chapter 2, nor his or her right to sue and be sued.
- (2) Spouses may enter also into mutual transactions, taking into account the provisions in chapter 3.

Chapter 2 — **Property of spouses**

Section 34

The property that a spouse has when concluding marriage shall remain his or hers. He or she shall also own what he or she acquires during the marriage.

Section 35

- (1) Each spouse shall have a marital right to the property of the other spouse. Under this right, the surviving spouse and the heirs of the deceased spouse, or each of the spouses, shall acquire half of the net property of the spouses at the distribution of matrimonial property, as further provided in Part IV.
- (2) A spouse shall, however, not have a marital right to property excluded from the scope of the marital right by a marriage settlement, a gift deed or a will, nor to property acquired in lieu of such property. If it has further been stipulated that no marital right shall exist as to the proceeds of such property, the said stipulation shall be observed.
- (3) The provisions on marital right shall apply to a right which cannot be conveyed or which otherwise is of a personal nature only when this is not in contradiction with any specific provisions on such a right.
- (4) If the property of a spouse has been surrendered in bankruptcy, neither spouse shall have a marital right to the other spouse's property if the other spouse so requests in writing from the court referred to in section 43 within a year from the beginning of the bankruptcy. The provisions in section 43(2) on a marriage settlement apply to a written request referred to herein.

Section 36

Each spouse shall administer his or her property subject to the restrictions referred to in sections 37—39.

Section 37

Property subject to the marital right of the other spouse shall be administered so that it will not unnecessarily decrease to the detriment of the other spouse.

Section 38 (542/1995)

- (1) A spouse shall not convey real property intended for use as the common home of the spouses, unless the other spouse consents to the same in writing. However, the consent of the other spouse shall not be necessary, if the property to be conveyed is mainly intended for some other use and if the home and the property on which it stands cannot be excluded from the conveyance without causing a considerable reduction in the value of the real property. The provisions in this paragraph on real property apply also to a building located on the land of another and to the right of use of the land. The establishment of a leasehold over the real property or of another right of use thereof shall be deemed corresponding to a conveyance.
- (2) A transaction entered into by one spouse in violation of the provisions in paragraph (1) shall be declared void, if the other spouse brings an action to this effect within three months of becoming aware of the transaction. However, a conveyance of real property shall gain validity, if the title of the acquirer has been registered, and the acquirer did not know nor should have known at the material time that the conveyer was not entitled to convey the property in question. The provisions in this paragraph on the registration of title apply, in so far as appropriate, to the effects of the registration of a leasehold or of another right of use of the real property.

Section 39 (411/1987)

- (1) Without the consent of the other spouse, a spouse shall not convey or transfer:
 - (1) *Subparagraph has been repealed.*
 - (2) Stock, a leasehold or other rights entitling to the possession of an apartment which is intended solely or mainly to be used as the common home of the spouses;
 - (3) movable property which forms part of the common household goods used by both spouses;
 - (4) any necessary tools used by the other spouse; or
 - (5) movable property which is meant for the personal use of the other spouse or the children.
- (2) Consent of the other spouse is, however, not necessary with regard to property referred to in paragraph (1)(3)—(1)(5) if obtaining the consent would cause unreasonable inconvenience and delay due to the absence of the other spouse or other comparable reason.
- (3) A transaction concluded without complying with the provisions of paragraphs (1) and (2) shall be declared void and the acquirer of the property or right shall be ordered to restore the property or right if the other spouse brings an action thereon within three months after becoming aware of the transaction. The transaction shall, however, gain validity if the acquirer of the property or right has obtained possession of the apartment or other movable property and if he or she at the material time had reason to assume that:
 - (1) the other spouse had given his or her consent to the transaction or had approved it;
 - (2) the spouse was, under paragraph (2), entitled alone to dispose of the property; or
 - (3) the property in question was not property referred to in paragraph (1).
- (4) The above provisions on conveyance shall apply also to a transaction conveying the common home referred to in paragraph (1)(1)—(1)(2) as well as to a transfer of a right of usufruct or possession of property referred to in paragraph (1)(3)—(1)(5) to a

third party. The right of a spouse to give notice on a residential lease shall be governed by the provisions of the Act on Residential Leases.

Section 40 (411/1987)

A court may, upon petition, grant permission to a conveyance referred to in sections 38 and 39 or to another transaction if the other spouse has refused to consent or if, for some other reason, it has not been possible to obtain the said consent.

Section 40a (139/1964)

- (1) If a spouse, without due regard to the marital right of the other spouse, by donating property other than that referred to in section 38, has caused his or her property essentially to decrease and if, in the distribution of matrimonial property referred to in section 85, the other spouse cannot get full compensation therefor, and if the donee knew or should have known that the gift violated the right of the other spouse, the gift or its value shall be restored in so far as necessary to satisfy the right of the other spouse. The value of the gift shall be determined as of the date when it was fulfilled unless the circumstances require otherwise.
- (2) The action for restitution shall be brought within one year of the distribution of matrimonial property; however, no later than within ten years from the fulfilment of the gift.
- (3) If an obligation given in the form of a promise of a gift has not been fulfilled at the time of the distribution of matrimonial property, it shall not be fulfilled in so far as it violates the rights of the other spouse.

Chapter 3 — **Marriage settlements and gifts between spouses**

Section 41

- (1) In a marriage settlement concluded before or during the marriage, the engaged persons or spouses may exclude from the marital right any property owned or later acquired by a spouse. Likewise they may agree to restore the marital right of a spouse to property previously excluded from the said right by way of a prior marriage settlement.
- (2) Agreements between engaged persons or spouses may not effect other than the above exceptions to the provisions on the property relations between the spouses.

Section 42 (448/1999)

A marriage settlement shall be concluded in writing. If a spouse or engaged person is not competent to self conclude a marriage settlement owing to legal incapacity or a restriction of legal capacity, he or she shall obtain his or her guardian's written consent to the agreement.

Section 43 (308/1986)

- (1) A marriage settlement shall be submitted to the District Court of either spouse's place of residence. If neither spouse resides in Finland, the marriage settlement shall be submitted to the District Court of Helsinki.
- (2) The District Court shall register the marriage settlement. If the parties to the marriage settlement have notified a gift of movable property connected thereto, the Court shall further proceed in accordance with the separate provisions on the registration and publication of gifts in section 6 of the Act on Promises of a Gift. (391/1994)

Section 44 (308/1986)

- (1) For a marriage settlement to take effect it has to be submitted to the Court and properly registered. The agreement shall take effect even if the registration has been performed by a Court other than that referred to in section 43(1).
- (2) *Paragraph has been repealed.*

- (3) A marriage settlement shall not take effect if it has been submitted to the Court after the marriage has dissolved or at a time when proceedings relating to the divorce of the spouses are already pending. (765/1991)

Section 45 (765/1991)

- (1) If a spouse donates movable property to the other spouse, the gift shall be notified to a Court in accordance with the provisions in section 6 of the Act on Promises of a Gift, for the donee to be protected against recovery claims from the creditors of the donor in the event of bankruptcy or enforcement of debts.
- (2) However, a gift connected to a marriage settlement need not be separately notified, if the agreement has been submitted to the Court in accordance with the provisions in section 43 and if the parties have notified the gift, the donated property and the time of donation in the marriage settlement. (391/1994)
- (3) The provisions of the Act on the Recovery of Assets to a Bankruptcy Estate (758/1991) and in the Enforcement Act apply to the recovery of gifts between spouses.

Chapter 4 — **Maintenance** (411/1987)

Section 46 (411/1987)

- (1) Each spouse shall participate in the common household of the family and the maintenance of the spouses to the best of his or her abilities. The maintenance of the spouses means the fulfilment of the common needs of the spouses as well as the personal needs of each spouse.
- (2) The amount of maintenance payable to a spouse and the manner of its payment may be confirmed by agreement or by court order.
- (3) The right of a child to receive maintenance from his or her parents shall be governed by the Act on Child Maintenance (704/1975).

Section 47 (411/1987)

If a spouse neglects his or her maintenance obligation or if the spouses are separated, the court may order a spouse to pay maintenance to the other spouse in accordance with the principles laid down in section 46.

Section 48 (411/1987)

- (1) When the spouses are granted a divorce and a spouse is deemed to be in need of maintenance, the court may order the other spouse to pay him or her maintenance deemed reasonable with a view to his or her ability and other circumstances.
- (2) Maintenance may be ordered to be paid until further notice or until the end of a period determined in the order. The maintenance may, however, be ordered to be paid as a lump sum if necessary with a view to the financial and other circumstances of the spouse ordered to pay it.
- (3) The obligation to pay maintenance in periodic instalments shall lapse if the spouse to whom the maintenance is granted remarries.

Section 49 (411/1987)

- (1) Maintenance under sections 47 and 48 may be ordered to be paid retroactively for a period not exceeding the year prior to the bringing of the action.
- (2) A court order regarding maintenance is enforceable even if it is not yet final, unless otherwise stated in the order.

Section 50 (411/1987)

- (1) The spouses may conclude an agreement on the maintenance payable to a spouse under section 47 or section 48. The agreement shall be concluded in writing and it shall be presented for confirmation to the Municipal Board of Social Welfare in the municipality in which the spouses reside or one of them resides.

- (2) Before confirming the agreement, the Municipal Board of Social Welfare shall consider whether the agreement is to be deemed reasonable with a view to the spouse's need for maintenance, the ability of the other spouse to pay maintenance and other relevant circumstances.
- (3) An agreement confirmed by the Municipal Board of Social Welfare shall be enforceable like a final court order.

Section 51 (411/1987)

- (1) A court order on maintenance or a maintenance agreement concluded by the spouses can be changed if necessary due to changed circumstances. However, an order or agreement specifying a lump sum maintenance payment cannot be changed after the maintenance has been paid.
- (2) When changing the amount of a maintenance, the circumstances prevailing during the six months that precede the bringing of the action may also be taken into consideration.
- (3) A maintenance agreement concluded by the spouses may be changed if it is to be deemed unreasonable.
- (4) If a court order issued on the maintenance of a spouse or a maintenance agreement is changed or the order is quashed or the agreement is declared void, the court shall consider whether the spouse is to regain all or part of what he or she has paid.

Chapter 5 — **Debts of the spouses**

Section 52

- (1) Each spouse shall alone be liable for a debt he or she has incurred before or during the marriage.
- (2) Both spouses shall, however, be jointly and severally liable for a debt incurred by a spouse for the maintenance of the family.
- (3) The provisions of paragraph (2) shall not apply to a monetary loan taken out by a spouse nor if the creditor knew that the spouses were separated due to a breakdown of their relationship.

Section 53

The spouses shall be jointly and severally liable for a debt incurred by both spouses together during the marriage unless otherwise agreed.

Section 54

If a creditor wants to demand payment from a spouse for a debt referred to in section 52(2) and incurred by the other spouse, he or she shall bring an action within two years from the due date or, if the debt is payable upon demand, from the date it was incurred; if this time limit has expired, no action can be brought.

Section 55 has been repealed.

Section 56

- (1) If a spouse misuses his or her right to incur debts for which also the other spouse shall be liable, a Court may declare the said right forfeit. The order may be cancelled by the Court if the spouses agree thereon or if changed circumstances give rise thereto.
- (2) The court order shall be published forthwith in accordance with the provisions on the publication of court orders by which a person has been placed under guardianship. If the order is cancelled, this shall be similarly published.

Chapter 6 — **Miscellaneous provisions**

Section 57 has been repealed.

Section 58

If a spouse, without the consent of the other spouse, conveys or pledges joint property or property belonging to the other spouse, the other spouse shall have the right to redeem it. If the third party was not in good faith or if no consideration was paid, the other spouse shall regain the property without redemption.

Section 59

If a spouse has, through a criminal act, caused the death of the other spouse or been party to such an offence, he or she shall receive no part of the other spouse's property under the marital right. If the crime was petty, the court shall, however, deem whether it is to have the said consequence.

Section 60

A spouse shall have the right to demand that the other spouse co-operate in drawing up a list of the movable property belonging to each spouse and that, if a spouse does not have a marital right to certain property, this be recorded in the list. If the said demand is not complied with, a trustee shall, upon the request of the spouse, be appointed to represent the other spouse. The spouse shall have the right to have a notary public or a sheriff certify the date on which the list was presented to him or her. In case of a dispute over the property, the court shall decide the probative value of the list.

Sections 61 and 62 have been repealed.

Section 63

- (1) If a spouse permits the other spouse to administer his or her property, the latter spouse shall have the right to use the proceeds of the property for the maintenance of the family without a need to account therefor, unless otherwise agreed or unless it is otherwise to be presumed. The spouse shall, however, give to the other spouse what has not been spent on the maintenance of the family.
- (2) A spouse may at any time withdraw the permission referred to in paragraph (1) even if the contrary has been agreed.

Section 64

- (1) If a spouse assists the other spouse in the latter's business and wants to receive compensation therefor, he or she shall prove that compensation was agreed upon or meant to be paid, or that its payment, with a view to the nature of the work and the other circumstances, is to be deemed reasonable.
- (2) If no compensation was agreed upon, action therefor shall be brought within a year from the end of the calendar year during which the work was performed. Compensation paid thereafter shall be deemed a gift.

Section 65

Necessary articles acquired by a spouse for his or her personal use with funds given by the other spouse under the maintenance obligation shall be the property of the first-mentioned spouse.

Section 66

A gift deed, a written consent, a marriage settlement and a list, as referred to in section 35(2), 38, 42 and 60, shall be dated, properly signed and witnessed by two disinterested persons in order to be valid.

Part III has been repealed.

Part IV — **DISTRIBUTION OF MATRIMONIAL PROPERTY**

Chapter 1 — **General provisions**

Section 85 (411/1987)

- (1) When proceedings relating to divorce are pending or when the marriage has been dissolved, a distribution of matrimonial property shall be carried out if a spouse or an heir of the deceased spouse so demands.
- (2) If neither spouse has a marital right to the property of the other spouse, a separation of the property of the spouses shall be carried out instead of the distribution.
- (3) If the spouses have joint property, the said property shall be divided upon request when the matrimonial property is being distributed or the property of the spouses separated.

Section 86

- (1) Until the matrimonial property is distributed, the surviving spouse shall participate in the administration of the estate of the deceased spouse in accordance with the provisions of the Code of Inheritance (42/1965).
- (2) During the period referred to above, the surviving spouse shall have the right to alone administer his or her property. However, if the surviving spouse wishes to make a conveyance or enter into another transaction for which the consent of the other spouse would be required under section 38 or 39, he or she shall obtain a court permission or a written consent from the heirs, as provided in section 66, in order to do so. In the distribution of matrimonial property, the surviving spouse shall account for the administration of the property, and for the proceeds accruing therefrom, as from the death of the other spouse. (1152/1995)
- (3) If the marriage has been dissolved by a court order, a spouse shall, until the matrimonial property has been distributed, have the right to administer the property he or she had at the time of the dissolution as if the marriage still continued. The provisions in paragraph (2) on the account to be given at the distribution shall likewise apply. (411/1987)
- (4) *Paragraph has been repealed.*

Section 87

The distribution of matrimonial property shall not be carried out until all the known debts of the deceased spouse have been paid, or until assets needed for their payment have been set aside, unless the surviving spouse and the heirs of the deceased spouse unanimously agree thereon or unless the property of the deceased spouse has been surrendered into bankruptcy.

Section 88

- (1) If the spouses have joint debts, a spouse or the heirs of the deceased spouse have the right, at the distribution of matrimonial property, to demand that the share of the deceased spouse be paid or a security for its payment be given before the distribution.
- (2) The spouses shall be deemed liable for a joint debt incurred for the maintenance of the family in proportion to their liabilities to provide funds towards the maintenance of the family.

Section 89

If, in the separation of the property of the spouses, the circumstances do not indicate and it cannot be proved which spouse a movable object belongs to or that it

is joint property, the spouses shall be deemed to have acquired it jointly and with equal rights.

Section 90 (411/1987)

In the distribution of matrimonial property, the following shall be deemed property to which the other spouse has no marital right:

- (1) property that a spouse has earned or inherited or received as a gift or under a will after the marriage was dissolved through the death of the other spouse; and
- (2) property that a spouse has earned or inherited or received as a gift or under a will after court proceedings for the appointment of an estate distributor or for divorce have been instituted; property shall, however, be deemed subject to the marital right of the other spouse if the proceedings for the appointment of an estate distributor have lapsed or the divorce proceedings have lapsed for another reason than the death of the other spouse during their pendency.

Section 91

Before the distribution of matrimonial property, a spouse has the right first to take clothes and other articles belonging to him or her and meant for his or her personal use only; however, not more than can be deemed reasonable with a view to the circumstances of the spouses.

Section 92

If a spouse has used his or her other property to increase property subject to the marital right of the other spouse, the spouse or his or her heirs shall receive compensation from the property subject to the marital right.

Section 93 (411/1987)

If a debt referred to in section 99(2) or (3) has been deducted from the net property of a spouse in determining its value under the said section, the other spouse or his or her heirs shall receive compensation from net property subject to the marital right of one of the spouses.

Section 94

If a spouse, by mismanaging his or her financial affairs or by misusing his or her right to administer property subject to the marital right of the other spouse or through other action inappropriate to his or her circumstances, has caused the said property essentially to decrease, the other spouse or his or her heirs shall receive compensation corresponding to the said decrease in net property in accordance with section 93. Half of the compensation that cannot otherwise be paid may be taken also from property of the spouse not subject to the marital right, provided that the said property is not needed to cover a debt.

Section 94a (42/1965)

- (1) When an advancement given from property subject to the marital right of either spouse has to be deducted from the inheritance of the recipient after the death of either spouse, the value of the advancement or, if all of it cannot be deducted, the amount that can be deducted, shall, in the distribution of matrimonial property, be deducted from the share devolving on the heirs of the deceased spouse or on the beneficiaries under a will.
- (2) When, under paragraph (1), the advancement is to be deducted in the distribution of matrimonial property, the amount to be deducted shall, before the distribution, be added to the net property of the spouse who had given the advancement. If the said spouse left also other property, this property shall also be taken into account when deducting the advancement.

Section 95 (411/1987)

Compensation shall be given, in accordance with section 94, also if a spouse has used property subject to the marital right of the other spouse in order to acquire or

to improve property not subject to the said right or in order to pay off a debt referred to in section 99(2) and (3).

Section 96

A spouse or the heirs of the deceased spouse shall not have the right later to claim compensation which cannot be paid at the distribution of matrimonial property.

Section 97 has been repealed.

Chapter 2 — **Procedure in the distribution of matrimonial property**

Section 98

A distribution of matrimonial property shall be carried out according to the provisions on the distribution of a decedent's estate and according to the further provisions in this chapter.

Section 99 (681/1948)

- (1) After the property of the spouses has been separated and any compensation payable under section 92 to a spouse has been taken into consideration, the net property of each spouse to which the other spouse has a marital right shall be determined separately by deducting from the value of the property any private debts of the said spouse incurred prior to the dates referred to in section 90(1) and (2) as well as the said spouse's share of debts for which the spouses are jointly and severally liable. (411/1987)
- (2) If property not subject to the marital right of the other spouse was pledged as security, in the form of a mortgage or otherwise, for a debt when the marriage was concluded or when the said property was excluded from the marital right by way of a marriage settlement, a gift deed or will, the said debt shall be deducted from the value referred to in paragraph (1) only to the amount that it cannot be paid from the said property or from property acquired in lieu thereof. The same shall apply to a debt incurred by a spouse in order to acquire or to improve property not subject to the marital right of the other spouse.
- (3) If a debt is due to the careless administration by a spouse of his or her financial affairs or through other action inappropriate in his or her circumstances, the said debt shall be deducted from the value referred to in paragraph (1) only to the amount that it cannot be paid from property not subject to the marital right of the other spouse.
- (4) *Paragraph has been repealed.*

Section 100 (411/1987)

After the provisions of section 99 have been complied with and after the setting aside referred to in section 91 has, at the demand of a spouse, taken place, each spouse shall, in addition to any compensation payable to him or her under section 93, 94 or 95, receive half of the net value of any property subject to the marital right of either spouse, unless otherwise provided in section 59 or 103(2) or unless a spouse is to receive more under section 101 or 102.

Section 101

If a demand to pay a joint debt or to give a security for it has been made in accordance with section 88(1) and the said demand is not complied with, a spouse or the heirs of a spouse shall, if he or she assumes or they assume liability for the whole debt and give a security for it, receive property worth the other spouse's share of the said debt out of property that would otherwise have devolved on the other spouse or his or her heirs in addition to property not needed to pay the said debt or out of other net property devolving on the said parties.

Section 102 (411/1987)

Maintenance payable by a spouse to the other spouse which has fallen due shall be paid at the distribution of matrimonial property, provided that the spouse under the obligation to pay the maintenance receives assets in the distribution or otherwise has assets not needed to cover a debt.

Section 103 (42/1965)

- (1) At the distribution of matrimonial property carried out by the surviving spouse and the other spouse's heirs or by the spouses, the party that has to hand over property may decide what to hand over. Instead of property which the party wants to retain, the party in question may hand over money to the value determined for the property at the distribution.
- (2) However, if the property of a spouse or the deceased spouse has been surrendered into bankruptcy, the other spouse or the heirs need not hand over property in the distribution of matrimonial property. In a distribution carried out owing to the death of a spouse, the surviving spouse need not hand over his or her property to the heirs of the deceased spouse. (765/1991)
- (3) If a spouse is to receive property from the other party, he or she may, irrespective of the provisions of paragraph (1), receive tools and other movables which he or she needs in order to carry on his or her business if this can take place without causing essential harm to the other spouse. (705/1975)

Section 103a (681/1948)

- (1) When the distribution of matrimonial property is carried out after the death of a spouse and the value of the property to be distributed is small, the surviving spouse may take from property not excluded from the marital right the necessary household goods and tools and other movables he or she needs in order to carry on his or her business even if the heirs of the other spouse do not therefore receive the property which they otherwise would be entitled to in the distribution.
- (2) *Paragraph has been repealed.*

Section 103b (411/1987)

- (1) The distribution of matrimonial property may be adjusted if the distribution would otherwise lead to an unreasonable result or to the other spouse receiving unjust financial benefit. When considering whether to adjust the distribution, special attention shall be paid to the duration of the marriage, the activities of the spouses for their common household and for the accumulation and preservation of the property, as well as to other comparable facts regarding the finances of the spouses.
- (2) When adjusting the distribution of matrimonial property it may be ordered:
 - (1) that a spouse is not, under the marital right, to receive any property of the other spouse or that the said right shall be restricted;
 - (2) that certain property which the spouse has earned or received while the spouses were living separated or which the spouse had when the marriage was concluded or which the spouse has received during the marriage as an inheritance or a gift or under a will shall totally or partly be excluded from the marital right of the other spouse;
 - (3) that all or part of property which has been excluded from the marital right of the other spouse by way of a marriage settlement, shall, in the distribution, be considered as property subject to the marital right of the other spouse.
- (3) A demand for the adjustment of the distribution of matrimonial property may be made either at the distribution or thereafter. When made after the distribution, the provisions on contesting a distribution and declaring it invalid shall apply.

Chapter 3 — **Miscellaneous provisions**

Section 104 (765/1991)

If, in the distribution of matrimonial property, a spouse has handed over property to the other spouse or the heirs of the other spouse to an amount considerably exceeding what he or she should have handed over, the distribution may be reversed into a bankruptcy estate in accordance with the provisions in the Act on the Recovery of Assets into a Bankruptcy Estate.

Section 105

When the distribution of matrimonial property has been carried out, a spouse or the heirs of the deceased spouse shall submit the distribution instrument to a Court; and the date of its submission shall forthwith be published in the Official Gazette.

Section 106

Should a spouse or the heirs of the deceased spouse want to contest the distribution of matrimonial property, the provisions on contesting the distribution of a decedent's estate shall apply.

Section 107 (411/1987)

If neither spouse has a marital right to the property of the other spouse, the provisions of sections 89, 98, 101, 102, 103b, 104, 105 and 106 apply, in so far as appropriate, to the separation of their property.

Section 107a (411/1987)

After the distribution of matrimonial property, neither spouse shall have a marital right to the property of the other spouse, unless the spouses otherwise state in a marriage settlement concluded after the distribution.

Part V — **RULES OF PRIVATE INTERNATIONAL LAW (1226/2001)**

Chapter 1 — **Conclusion of marriage (1226/2001)**

Right to marry

Section 108 (1226/2001)

- (1) The right of a woman and a man to marry before a Finnish authority shall be determined in accordance with the law of Finland.
- (2) If neither the woman nor the man is a Finnish citizen and if neither is habitually resident in Finland, they have the right to marry before a Finnish authority only if the marriage is permissible under the law of Finland and if each of them has the right to marry in accordance with the law of the state whose citizen he or she is or where he or she is habitually resident, or in accordance with the law applicable in one of these states on the examination of impediments to marriage. An engaged person shall present a credible account of his or her right to marry under the law of a foreign state.
- (3) If no information can be obtained on the legislation of a state that, under paragraph (2), would govern the right of an engaged person to marry, owing to a state of war or other comparable unstable conditions prevailing in that state, the right of the engaged person to marry may be examined under the law of Finland notwithstanding the provisions in paragraph (2), if the engaged person so requests and if marriage in Finland can be deemed justifiable in view of the links that the engaged persons have to Finland.

Section 109 (1226/2001)

A Finnish authority may grant a dispensation to marry regardless of an impediment to marriage, as referred to in sections 4, 8 and 9, if at least one of the engaged persons is a Finnish citizen or habitually resident in Finland.

Section 110 (1226/2001)

- (1) If a marriage is to be concluded before a Finnish authority in a foreign state, and the examination of impediments to marriage has not been carried out in Finland, the authority performing the ceremony shall examine that there are no statutory impediments to marriage.
- (2) If the marriage referred to in paragraph (1) is to be concluded in a foreign state whose law requires that its impediments to marriage or some of them are to be taken into account or that its provisions on banns are to be taken into account when the authority of another state is performing a marriage ceremony there, the provisions of that foreign state shall apply as well.

Section 111 (1226/2001)

- (1) If a Finnish citizen or a foreign citizen habitually resident in Finland wishes to conclude marriage before an authority of a foreign state abroad or in Finland, he or she shall have the right, upon request, to receive a certificate from an examiner of impediments to marriage to the effect that he or she has the right to conclude the said marriage under the law of Finland.
- (2) However, such a certificate shall not be issued, if the information needed for the examination of impediments to marriage is not available in the Population Information System and if the person requesting the certificate does not present any other credible account of the same.

Right of diplomatic representatives and certain clergy to perform marriage ceremonies

Section 112 (1226/2001)

- (1) The Ministry for Foreign Affairs may grant a public official serving in a Finnish diplomatic mission abroad the right to perform marriage ceremonies where at least one of the engaged persons is a Finnish citizen.
- (2) The Ministry of Education may, upon request and after having obtained an opinion from the Ministry for Foreign Affairs, grant a person who is competent to perform a marriage ceremony in a Finnish religious community the right to perform marriage ceremonies in a foreign state, where at least one of the engaged persons is a Finnish citizen. The right may be connected to a given office, position or commission, or granted to the person in question in his or her own right.
- (3) The Ministry for Foreign Affairs and the Ministry of Education may set restrictions or conditions to the right to perform marriage ceremonies, as is necessary on the basis of the legislation of the foreign state in question or the circumstances affecting the need for a right to perform marriage ceremonies.

Section 113 (1226/2001)

- (1) The Ministry of Foreign Affairs may, upon request, grant a diplomatic or consular representative of a foreign state in Finland a license to perform marriage ceremonies in Finland in accordance with the formal requirements of that state, where the engaged persons are foreigners and at least one of them is a citizen of the state which the performing official represents.
- (2) The Ministry of Education may, upon request and after having obtained an opinion from the Ministry for Foreign Affairs, grant a member of the clergy of a foreign religious community operating in Finland a license to perform marriage ceremonies in accordance with the formal requirements of the foreign state in question, where at least one of the persons to be married is a citizen of that state. The license to perform marriage ceremonies may be connected to a given office, position or

commission of the clergy, or granted to the said member of the clergy in his or her own right.

- (3) A marriage ceremony referred to in paragraphs (1) and (2) shall not be performed, if the performing authority is aware of a circumstance constituting an impediment to marriage under section 6 or 7.

Celebration of marriage

Section 114 (1226/2001)

A marriage ceremony before a Finnish authority in Finland or in a foreign state shall be performed in accordance with the formal requirements in the law of Finland.

Chapter 2 — **Recognition of a foreign marriage** (1226/2001)

Prerequisites for recognition

Section 115 (1226/2001)

- (1) A marriage concluded by a woman and a man in a foreign state before an authority of that state shall be valid in Finland, if it is valid in the state where it was concluded or in a state whose citizen either spouse was or where either spouse was habitually resident at the conclusion of the marriage.
- (2) A marriage performed in another foreign state or, under a license referred to in section 113, in Finland, by the diplomatic or consular representative of a foreign state, a member of the clergy of a religious community of a foreign state or another person entitled by a foreign state to perform marriage ceremonies in another state, shall be valid in Finland, if it is valid in the state which the performing authority represents or in state whose citizen either spouse was or where either spouse was habitually resident at the conclusion of the marriage.

Section 116 (1226/2001)

- (1) A marriage that has been concluded in a foreign state after the death of one engaged person or without one engaged person being present in person at the conclusion of the marriage, or that has been concluded merely by practice and without a ceremony or other formality, shall be valid in Finland only if:
 - (1) it is valid in a state referred to in section 115(1); and
 - (2) there is a special reason why the marriage should be deemed valid in Finland.
- (2) In the assessment of whether a marriage referred to in paragraph (1) is to be deemed valid, special attention shall be given to the links of the engaged persons to the state where the marriage was concluded and to the duration of the cohabitation of the spouses.

Jurisdiction of Finnish authorities as regards the validity of marriages

Section 117 (1226/2001)

- (1) A matter pertaining to the validity of a marriage may be ruled admissible in Finland, if a matter pertaining to the divorce of the spouses would under section 119 be admissible in Finland.
- (2) If the resolution of a matter depends on the validity of a marriage, a Finnish authority may determine the validity in connection with the resolution of the said matter, even if the matter of validity would otherwise be inadmissible under paragraph (1).

Section 118 (1226/2001)

For especially weighty reasons, the President of the Republic may decide that a marriage concluded in a foreign state and not recognised under section 115 or 116 is nevertheless to be deemed valid. A petition to this effect may be filed by either of the married persons or, if one of them is dead, by that person's heirs.

Chapter 3 — **Dissolution of marriage** (1226/2001)

Jurisdiction of Finnish courts

Section 119 (1226/2001)

- (1) A matter pertaining to divorce may be ruled admissible in Finland, if:
 - (1) either spouse is domiciled in Finland; or
 - (2) the petitioner has been domiciled in Finland or otherwise has a close link to Finland and he or she cannot institute divorce proceedings in the foreign state where either spouse is domiciled, or this would cause unreasonable inconvenience to the petitioner, and the admissibility of the matter in Finland is justified in view of the circumstances.
- (2) A public prosecutor in Finland may bring an action, as referred to in section 27(2), for the divorce of the spouses, if:
 - (1) the marriage ceremony has been performed by a Finnish authority; and
 - (2) either spouse is domiciled in Finland.
- (3) Moreover, a public prosecutor in Finland may bring an action for the divorce of the spouses if they have married while a prior marriage or registered partnership of either spouse has been in force and the prior marriage or registered partnership has not yet dissolved, provided that both spouses are domiciled in Finland.
- (4) A request for the end of cohabitation may be ruled admissible in Finland, if the spouses make their common home here.
- (5) The provisions in paragraphs (1)—(3) apply only in so far as not otherwise provided in Council Regulation (EC) No 1347/2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses or in an international agreement binding on Finland.

Choice of law

Section 120 (1226/2001)

The law of Finland applies to a matter pertaining to divorce or the end of cohabitation.

Recognition of foreign judgments

Section 121 (1226/2001)

- (1) Where a marriage has been cancelled or the spouses ordered to be separated or divorced by way of a judgment from a foreign state, the judgment shall be deemed valid in Finland without any specific validation:
 - (1) if, at the time of the judgment, both spouses were citizens of the state whose authority issued the judgment; or
 - (2) if the judgment pertains to spouses neither of whom was a Finnish citizen at the time of the judgment, and one or both of them are citizens of a state other than that whose authority issued the judgment, and the judgment is deemed valid in both spouses' home countries.
- (2) A judgment issued by the authority of a foreign state, as referred to in paragraph (1), shall be valid in Finland only if specifically validated, if it concerns:
 - (1) spouses at least one of whom was a Finnish citizen at the time of the judgment; or
 - (2) spouses referred to in subparagraph (1)(2), where the judgment does not meet the criteria laid down in that subparagraph.

Section 122 (1226/2001)

A judgment referred to in section 121(2) may be validated here, if either spouse, in view of his or her citizenship or domicile, has such a link to the foreign state in question that the authorities of that state can be deemed to have had adequate

grounds of being seised of the matter, and if the judgment is not in essential conflict with Finnish public policy (*ordre public*).

Section 123 (1226/2001)

A petition for validation, referred to in section 122, shall be filed with the Court of Appeal of Helsinki. The decision of the Court of Appeal in the matter shall be subject to appeal before the Supreme Court, if the Supreme Court grants leave to the same by virtue of chapter 30, section 3, of the Code of Judicial Procedure.

Section 124 (1226/2001)

The provisions in sections 121—123 apply correspondingly to a judgment of annulment of marriage issued by the authority of a foreign state.

Section 125 (1226/2001)

- (1) The provisions in sections 121—124 apply only in so far as not otherwise provided in the Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses or in an international agreement binding on Finland.
- (2) If it is requested, on the basis of Article 14(3) of the Regulation referred to in paragraph (1), that a judgment of a member state is to be recognised or not recognised in Finland, the matter shall be brought before the court referred to in chapter 10, section 10, of the Code of Judicial Procedure or, if only the validation of a judgment on child custody is sought, before the court referred to in section 13 of the Act on Child Custody and Right of Access.

Chapter 4 — **Legal relations of spouses** (1226/2001)

Jurisdiction of Finnish courts

Section 126 (1226/2001)

- (1) A matter pertaining to the personal legal consequences of marriage may be ruled admissible by a Finnish court, if the defendant is domiciled or habitually resident in Finland.
- (2) A matter pertaining to maintenance may be ruled admissible by a Finnish court also if the person entitled to maintenance is domiciled or habitually resident in Finland.
- (3) A Finnish court competent in a matter pertaining to divorce may at the same time hear an ancillary matter pertaining to the maintenance payable to a spouse or another matter pertaining to the personal legal consequences of marriage, if the resolution of the latter is necessary owing to the divorce.

Section 127 (1226/2001)

- (1) A matter pertaining to matrimonial property may be ruled admissible by a Finnish court, if:
 - (1) the defendant is domiciled or habitually resident in Finland;
 - (2) the plaintiff is domiciled or habitually resident in Finland and the law of Finland is to apply on the matter pertaining to matrimonial property;
 - (3) the last common domicile or habitual residence of the spouses was in Finland, and one of the spouses still is, or at the time of his or her death still was, domiciled or habitually resident here;
 - (4) the property to which the matter pertains is located in Finland; or
 - (5) the defendant accepts that the matter be admissible in Finland or undertakes to defend his or her substantive position without entering a plea of inadmissibility.
- (2) A Finnish court shall always be competent in a matter pertaining to measures undertaken by an estate distributor appointed by a Finnish court.

- (3) A Finnish court may register a marriage settlement or an agreement designating the law applicable to matrimonial property regime, even if it under paragraph (1) were not competent to rule a matter pertaining to matrimonial property admissible.
- (4) In a petitionary matter, the provisions in paragraph (1) on the plaintiff and the defendant apply to the petitioner and the opposing party.

Choice of law applicable to the personal legal consequences of marriage

Section 128 (1226/2001)

- (1) The law of the state where both spouses are domiciled applies to the personal legal consequences of marriage. If the spouses are not domiciled in the same state, the law of the state where both spouses last were domiciled during the marriage applies, if either of them is still domiciled there.
- (2) In situations other than those referred to in paragraph (1), the applicable law is the law of the state to which, taking all pertinent circumstances into account, the spouses have the closest link. However, in a matter pertaining to the right to maintenance, the applicable law is the law of the state where the person entitled to maintenance is domiciled.

Choice of law applicable to matrimonial property regime

Section 129 (1226/2001)

- (1) Unless otherwise agreed in accordance with the procedure laid down in section 130, the law of the state which became the state of domicile of both spouses after the conclusion of the marriage applies to their matrimonial property matters.
- (2) If the spouses have later moved their domicile to another state, the law of that state applies, if the spouses have resided there for at least five years. However, the law of that state applies immediately upon the spouses becoming domiciled there, if they have earlier during the marriage been domiciled there or if both are citizens of that state.
- (3) The law applicable to matrimonial property regime shall not change by virtue of paragraph (2), if:
 - (1) the spouses have agreed to designate the law applicable to matrimonial property regime in accordance with the procedure laid down in section 130; or
 - (2) owing to the dissolution of the marriage, separation or the pendency of divorce proceedings, a spouse has gained the right to demand the distribution of matrimonial property before the time when the law of the other state would become applicable.
- (4) If no state has become the state of domicile for both spouses, the applicable law is the law of the state to which, taking all pertinent circumstances into account, the spouses have the closest link.

Section 130 (1226/2001)

- (1) Engaged persons and spouses are entitled to designate the law applicable to matrimonial property regime, as provided in paragraph (2). The agreement shall be in writing in order to be valid.
- (2) The law of the state where one spouse or both spouses are domiciled or whose citizen a spouse is at the time of the agreement may be designated as the law applicable to matrimonial property regime. If the domicile of one or both spouses has moved to another state during the marriage, also the law of the state where both spouses last were domiciled may be designated as the applicable law.
- (3) An agreement on the amendment or cancellation of an agreement referred to in paragraph (1) shall be in writing in order to be valid.

Section 131 (1226/2001)

- (1) Especially the following shall be resolved by reference to the law applicable to matrimonial property regime:

- (1) issues pertaining to the distribution of matrimonial property after the dissolution of the marriage or during the marriage;
 - (2) issues pertaining to transactions concerning matrimonial property and entered into by the spouses or the engaged persons;
 - (3) the right of a spouse to administer property; and
 - (4) the liability of a spouse for the debts of the spouses.
- (2) A change of the law applicable to matrimonial property regime shall not affect the validity of a transaction concluded before the change. However, the validity of provisions in a marriage settlement or an agreement on the future distribution of property shall be assessed in accordance with the law applicable to matrimonial property matters at the time when the issue becomes relevant.
- (3) In addition, a transaction concerning matrimonial property and entered into by the spouses or the engaged persons shall be deemed formally valid if it meets the formal requirements in the law of the state where the transaction was concluded or where the spouses were domiciled at the time of conclusion of the transaction. However, if spouses domiciled or habitually resident in Finland conclude a marriage settlement, the provisions in sections 43—44 shall always be observed for the agreement to be valid.

Restrictions in the application of foreign law

Section 132 (1226/2001)

In a matter pertaining to the assessment of maintenance or a change in assessed maintenance, the assessment shall always be based on the need for support of the person entitled to the maintenance and the means of the person liable to provide maintenance, notwithstanding any provisions in the applicable law.

Section 133 (1226/2001)

The provisions in sections 38—40 and 86 on the need for a consent or a permission where a spouse is making a conveyance or entering into another transaction apply even if the matrimonial property regime is governed by the law of a foreign state, if the property in question is located in Finland.

Section 134 (1226/2001)

- (1) A distribution of matrimonial property may be adjusted in accordance with section 103b(1) even if the distribution is otherwise governed by the law of a foreign state.
- (2) In a distribution of matrimonial property carried out owing to the death of one spouse, the surviving spouse shall have the right to retain possession of the common home of the spouses in Finland, or other housing and furniture in Finland belonging to the estate, as provided in chapter 3 of the Code of Inheritance, even if the distribution is governed by the law of a foreign state, provided that the same is to be deemed reasonable in view of the assets of the surviving spouse and the property that the spouse will acquire in the distribution or by way of inheritance or a will.

Section 135 (1226/2001)

- (1) A provision in the law of a foreign state to the effect that the right of a spouse to incur debt or to administer his or her property is more restricted than what is provided in this Act shall be without effect as against a third party, if:
 - (1) a transaction pertains to the administration of real property located in Finland or the right of use over such property; or
 - (2) the spouse who entered into the transaction and the third party were in Finland when the transaction was concluded and the third party was not aware and should not have been aware of the restriction.
- (2) An agreement by which the spouses have designated the law of a foreign state as applicable to matrimonial property regime shall be without effect as against the creditors of a spouse, if the spouses are domiciled or habitually resident in Finland,

except if the agreement has been submitted for registration, as provided in section 43.

- (3) If the spouses are domiciled or habitually resident in Finland, a marriage settlement concluded before both spouses became habitually resident in Finland shall be without effect as against the creditors of a spouse, except if the agreement has been submitted for registration, as provided in paragraph (2).
- (4) The registration referred to in paragraphs (2) and (3) shall be without effect as against a creditor whose claim against the spouse has arisen before the registration of the agreement in question.

Distribution of matrimonial property on the basis of separation

Section 136 (1226/2001)

- (1) If a foreign judgment on separation has been issued for spouses whose matrimonial property matters are governed by the law of Finland, a distribution of matrimonial property may be carried out on the basis of the separation. In this event, a spouse shall not have a marital right over property that the other spouses acquires after the judgment on separation, and any setting aside of property to cover debts shall be carried out in accordance with the conditions prevailing at the time when the judgment on separation was issued.
- (2) The provisions in paragraph (2) do not apply if the spouses resume cohabitation after the issue of the judgment on separation.

Distribution procedure

Section 137 (1226/2001)

- (1) Even if the law of a foreign state is applicable to matrimonial property matters, a distribution of matrimonial property may be carried out by agreement between the spouses or by an estate distributor, as provided in the law of Finland.
- (2) A distribution of matrimonial property shall comprise all of the property of the spouses regardless of its location, unless the spouses agree otherwise. When determining the property that is to devolve on one spouse, the provisions of the law applicable to matrimonial property matters may be derogated from, if necessary in order to secure a lawful share of the property to the spouse.

Separation of the property of the spouses

Section 138 (1226/2001)

The provisions in this chapter on the distribution of matrimonial property apply also to the separation of the property of the spouses.

Chapter 5 — **Miscellaneous provisions** (1226/2001)

Section 139 (1226/2001)

- (1) Unless specifically otherwise provided, a reference in this part to the law of a foreign state does not cover the provisions of Private International Law in the law of that state.
- (2) A provision in the law of a foreign state shall be disregarded, if its application would have an outcome contrary to Finnish public policy (*ordre public*).

Section 140 (1226/2001)

The provisions in this part apply only in so far as not otherwise provided in another Act or the international obligations binding on Finland.

Section 141 (1226/2001)

The Ministry for Foreign Affairs and the Ministry of Education may revoke a license granted on the basis of section 112 or 113, if the person in question violates the license conditions or otherwise breaks the law of Finland, or if there otherwise is a reason to do so.

Section 142 (1226/2001)

Where necessary, more detailed provisions on the implementation of this part may be issued by Decree of the Government.

TRANSITIONAL PROVISIONS

- (1) The date of entry into force of **Act 1226/2001** is 1 March 2002.
- (2) The provisions in force before that date continue to apply, notwithstanding Act 1226/2001, to:
 - (1) an examination of impediments to marriage, if requested before the entry into force of the Act;
 - (2) a transaction pertaining to matrimonial property, if concluded before the entry into force of the Act;
 - (3) the resolution of a matter other than the validity of marriage, if the court proceedings have been pending at the entry into force of the Act;
 - (4) the distribution of matrimonial property, if a spouse has died or another decisive event, in view of the distribution, has occurred before the entry into force of the Act.
- (3) If a marriage has been concluded before the entry into force of the Act and at least one of the spouses is habitually resident in Finland at the entry into force of the Act, the law applicable to matrimonial property matters shall remain unchanged, regardless of the entry into force, for the following calendar year, unless the spouses agree to designate the law applicable to matrimonial property matters as provided in section 130. The spouses referred to here may agree also on the applicability of the law of the state that was to govern the matrimonial property matters at the entry into force of the Act.
- (4) The provision under (3) applies also where neither spouse is habitually resident in Finland, if the marriage has been concluded before the entry into force of the Act and the matrimonial property matters were according to the provisions in force before the entry into force governed by the law of Finland.
- (5) A marriage concluded before the entry into force of the Act and valid according to the provisions in force before the entry into force shall be valid notwithstanding the Act. A marriage that had been found invalid by the judgment of a court before the entry into force of the Act shall not gain validity by virtue of the entry into force.

CHILD WELFARE ACT (683/1983)

Issued in Helsinki on 5 August 1983

Chapter 1 GENERAL PROVISIONS

Section 1 THE RIGHTS OF A CHILD

A child is entitled to a secure and stimulating growing environment and to a harmonious and well-balanced development. A child has a special right to protection.

Section 2 CHILD WELFARE

The purpose of child welfare is to ensure a child the rights mentioned in section 1 by providing a good general growing environment, by assisting the custodians in child upbringing and by providing family-oriented and individual child welfare.

Under all circumstances a child shall be provided such care as stipulated in the Child Custody and Right of Access Act (361/1983).

Section 3 CHILD AND YOUNG PERSON

A "child" within the meaning of this Act is a person under the age of eighteen; a "young person" is under twenty-one.

Section 4 PROVISION OF CHILD WELFARE

The local authority shall be responsible for providing child welfare of such content and extent as corresponds to the needs in its area.

The social welfare board of the local authority shall approve the general principles and directives for the provision and development of child welfare under its supervision.

Section 5 (3.8.1992/737) THE CHILD WELFARE ACT IN RELATION TO OTHER LAWS

The Act on Planning and Government Grants for Social Welfare and Health Care (733/92) shall be applied to activities of the local authority according to this Act, unless otherwise stipulated by law.

Section 5a (5.2.1999/123) SYSTEM FOR EVENING OUT HIGH CHILD WELFARE COSTS

All local authorities must be members of the system for evening out high child welfare costs (equalisation system) referred to in this Act in order to level out the financial burden entailed by high child welfare costs to a local authority and to direct resources so that child welfare clients obtain appropriate and well-timed services.

The implementation of the equalisation system is the responsibility of the joint municipal board for a special care district determined according to section 7 of the Act on Special Care for the Mentally Handicapped (519/1977), to which the state reimbursement referred to in section 5c is paid.

Section 5b (5.2.1999/123)

GROUNDS FOR THE EQUALISED REIMBURSEMENT

A local authority is entitled to receive from the equalisation system financial compensation up to 70 per cent for such high child welfare costs that are caused by child welfare measures recorded in the care plan referred to in section 11 of this Act and that exceed FIM 150,000 a year per family (*the limit on local authorities' own liability*) counted from the date of drawing up the first care plan.

The joint municipal board for a special care district may decide that the limit on a local authority's own liability shall be lower than that laid down in paragraph 1 or that a local authority shall be reimbursed for more than 70 per cent of the costs exceeding the own liability limit.

Provisions on the costs covered by the equalisation system and other grounds for the equalised reimbursement as well as on the implementation of the system are laid down by Decree, where necessary.

Section 5c (5.2.1999/123)

FINANCING OF THE EQUALISATION SYSTEM

Local authorities shall finance the equalisation of high child welfare costs as far as the state reimbursement referred to in para 2 does not cover it. Unless otherwise agreed, the local authorities' share of financing between the member local authorities of the joint municipal board is determined on the basis of their population aged under 21 years.

The state takes part in financing the equalisation by paying half of the estimated total amount of the costs that are to be evened out. Half of the state reimbursement is determined on the basis of the population aged under 21 of the member local authorities of the special care district referred to in section 5a and the other half of it on the basis of the amount of the equalised reimbursements paid to member local authorities. As the ground for calculating the state reimbursement is used the amount of the equalised reimbursements paid in the year that began two years before the year of operation.

When calculating the local authority's share of financing referred to in para 1 and the state reimbursement referred to in para 2 as the number of inhabitants has been used the local population according to section 8 of the Population Information Act (507/1993) at the beginning of the year preceding the year of operation.

Where applicable, the Act on Planning and Government Grants for Social Welfare and Health Care (733/1992) shall be applied to granting and paying the state reimbursement, as well as to any claim for its rectification.

Chapter 2

DEVELOPMENT OF THE GROWING ENVIRONMENT AND

ASSISTANCE IN CHILD UPBRINGING

Section 6

DEVELOPMENT OF THE GROWING ENVIRONMENT

The social welfare board and other local authorities shall follow the development of children's growing environment, rectify any defects in it and prevent such from arising.

The social welfare board shall provide information and expert assistance on growing environment and social problems of children and young persons to other authorities and to citizens and organisations operating in its area.

Section 7

DEVELOPMENT OF SERVICES AND ASSISTANCE IN CHILD UPBRINGING (9.2.1990/139)

In developing social welfare and health care, education and other services for children, young persons and families with children the local authority shall ensure that these services assist custodians in child upbringing and help to clarify the need for special assistance of children, young persons and families with children. In developing services, special attention shall be paid to the needs and wishes of children and young persons.

Local authorities are required to provide adequate support and guidance for pupils in the local school district and to take other measures necessary to eliminate any social and psychic difficulties related to school attendance and personal development, and to promote co-operation between home and school. Local authorities may employ school psychologists and counsellors for this purpose as stipulated by Decree. (9.2.1990/139)

Where an adult is given social welfare and health services such as welfare for alcoholics or drug abusers or mental health care, the need for care and assistance of a child in his custody shall also be taken into account. (9.2.1990/139)

Chapter 3

PRINCIPLES AND MODES OF FAMILY-ORIENTED AND INDIVIDUAL CHILD WELFARE

Section 8

MODES OF CHILD WELFARE

Family-oriented and individual child welfare comprises assistance in open care, taking into care, substitute care and after-care.

Section 9

PRINCIPLES

In family-oriented and individual child welfare, the first and paramount consideration shall be the best interests of the child and parents and others caring for him shall be assisted in his upbringing to establish a favourable growing environment for him on permanent basis.

Where substitute care is needed and is in the best interests of the child, it shall be provided without delay, as stipulated in chapters 5 and 6.

Any action taken in the family-oriented and individual child welfare shall be performed tactfully and in such a way that no harm will be caused to the development of the child.

Section 10 ASCERTAINMENT OF THE BEST INTERESTS OF A CHILD AND HEARING OF A CHILD

In ascertaining the best interests of a child, his wishes and views shall be taken into account, his growing environment shall be studied and due consideration shall be given to the probable effects of alternative child welfare measures applicable to him.

Besides custodians, a child who has attained the age of 15 is entitled to a say in child welfare cases concerning himself. A child who has attained the age of 12 is entitled to be heard in child welfare cases as stipulated in section 15 of the Administrative Procedures Act (598/82). A child who has attained the age of 12 is also entitled to demand social services and other support referred to in section 13. (9.2.1990/139)

Social workers responsible for child welfare must see to it that the child's best interests are realised, assist a child in their official capacity and advise him in obtaining sufficient aid when necessary. (9.2.1990/139)

Section 11 PROCEDURES

A care plan shall be made for each case of family-oriented and individual child welfare, unless it is question of temporary counselling or guidance. The care plan shall be revised when necessary.

Within the framework of family-oriented and individual child welfare, health care authorities must provide expert assistance and treatment for the child, when necessary, as well as the services needed for the special protection of pregnant women. (9.2.1990/139)

Chapter 4 ASSISTANCE IN OPEN CARE

Section 12 DUTIES OF THE SOCIAL WELFARE BOARD

The social welfare board shall provide such assistance as is prescribed in this chapter without delay,

- 1) if the health or development of a child or young person are endangered or not safeguarded by his growing environment; or
- 2) if a child or young person endangers his own health or development by his behaviour.

Section 13 SOCIAL SERVICES AND OTHER ASSISTANCE

When the need for child welfare is caused primarily by inadequate income, deficient living conditions or lack of housing, or when these factors constitute a serious obstacle to the rehabilitation of a child and family, or a young person in the process of becoming independent who had been a social welfare client before attaining the age of 18, local authorities must provide

adequate financial support without delay, and correct deficiencies in housing conditions or provide housing according to need. (9.2.1990/39)

In addition to what is stipulated in the Social Welfare Act (710/1982) the social welfare board of the local authority must, where necessary (9.2.1990/139)

- 1) arrange for a lay helper or supporting family and adequate therapy; (9.2.1990/139)
- 2) assist a child or young person in his education and training, in job and house finding and in his leisure activities and other personal needs, by helping him financially and otherwise; and
- 3) organise holiday and recreational activities.

The assistance referred to in point 2 shall be provided in co-operation with the child or young person and his parents or other persons caring for him.

Section 14 (9.2.1990/139)

FOSTER CARE AND RESIDENTIAL CARE AS ASSISTANCE

Foster or residential care can be provided for a child as assistance in open care together with his parents, custodians, or with the person responsible for his care and upbringing. Such care can also be arranged individually for a child who has attained the age of 12 if the child himself has so requested or has given his consent. For a child under the age of twelve such individual care can be provided for a maximum of three months when the care cannot be arranged otherwise due to illness of the custodian or of the person responsible for his care and upbringing, or for similar reasons. Such care can be extended for a maximum of three months if there are special grounds.

Section 15

WATCHING OVER THE INTERESTS OF A CHILD

If necessary, a representative of the social welfare board shall be present when the expulsion from school of a child of compulsory school age is being considered by the education board of the local authority.

The social welfare board shall be represented in the preliminary and court hearings of a case in which a child is accused of an illegal act, unless this is obviously unnecessary.

In matters referred to in paras 1 and 2, the board shall watch over the interests of the child and shall, together with his custodians, support his growth to responsibility.

Chapter 5

TAKING A CHILD INTO CARE

Section 16

DUTY TO TAKE A CHILD INTO CARE AND PROVIDE SUBSTITUTE CARE

The social welfare board shall take a child into care and provide substitute care for him,

if his health or development is seriously endangered by lack of care or other conditions at home, or if the child seriously endangers his health or development by abuse of intoxicants, by committing an illegal act other than a minor offence, or by any other comparable behaviour,

if the measures stated in chapter 4 are not appropriate or have proved to be inadequate, and

if substitute care is considered to be in the best interests of the child.

Section 17 (9.2.1990/139)

HEARING OF EXPERTS AND THE PARTIES CONCERNED.

SUBMISSION OF THE DECISION

Before taking a child into care, arranging substitute care or terminating care, the local social welfare board must always, taking the age and developmental level of the child into account whenever possible, ascertain the child's own wishes and opinions concerning the decisions to be made, and provide a child who have attained the age of twelve, his parents, custodians and the persons currently in charge of his care and upbringing or who were in charge immediately prior to the case in question, an opportunity to be heard, as stipulated in section 15 of the Administrative Procedures Act. Persons who are entitled to be heard in the manner mentioned above must also be notified of any decisions concerning taking into care, placement in substitute care or termination of care according to the stipulations on special notification of the Act (232/1966) on Notification in Administrative Matters. Wherever necessary, the procedure for appeal must be explained. The board may also hear experts on child growth and development.

If a child who has attained the age of 12 or his custodians oppose taking into care or related placement in substitute care, or if the hearing required by para 1 could not be arranged, the decision must be submitted within thirty days to the Provincial Administrative Court for approval. Decisions need not, however, be submitted to the Provincial Administrative Court for approval if it was impossible to hear the persons concerned because their residence or domicile could not be determined by reasonable means, or if lack of contact between the child and the person to be heard was considered sufficient justification for not holding a hearing.

The Provincial Administrative Court must immediately inform the Ministry of Social Affairs and Health of its decision to place the child in a state residential home or in a comparable private child welfare institution as referred to in para 2 above.

Section 18

EMERGENCY CARE ORDER

If a child is in imminent danger for reasons mentioned in section 16 or otherwise in need of an immediate care order and substitute care, the social welfare board may take him into care without submitting the decision to the Provincial Administrative Court for approval.

An emergency care order shall expire within 14 days of the decision unless it is taken up as normal care order referred to in section 17 during the said period. Such a care order must be handled without delay, and at the latest within thirty days of the emergency order. Otherwise the care order will become void. On special grounds the period can be extended to a maximum of 30 days. (9.2.1990/139)

Section 19

CUSTODY OF A CHILD IN CARE

When the social welfare board takes a child into care, it shall be empowered to decide on his care, upbringing, supervision, other welfare, and residence. The board shall, however, make every effort to co-operate with the parents or other custodians of the child.

The social welfare board or the director of a residential home shall decide on contacts between the child and his parents or other persons close to him in accordance with sections 24 and 25 of this Act.

When a child is in care, a court may decide who shall have custody and guardianship of the child as stipulated in the Child Custody and Right of Access Act and the Guardianship Act.

Section 20 TERMINATION OF CARE

The social welfare board shall discharge a child from care, when the need for care or substitute placement stated in section 16 no longer applies, unless such discharge is clearly contrary to the best interests of the child. In determining what is in the best interests of the child, the duration of the substitute care, the relationship between the child and the persons providing the substitute care, and the contacts between the child and his parents shall be taken into account. A care order shall expire when the child attains the age of eighteen years or concludes marriage.

Section 21 NON-VALIDITY OF A CARE ORDER

If a care order is not implemented within three months of the date on which it acquires the force of law, it shall cease to be valid.

Chapter 6 PROVISION OF SUBSTITUTE CARE AND AFTER-CARE

Section 22 SUBSTITUTE CARE

Substitute care means providing care and upbringing away from a child's own home. Substitute care can be given only to a child taken into care by the social welfare board. Supervision of care for children placed privately is dealt within section 41.

Substitute care can be foster care, residential care, or some other appropriate form of care. A child under the age of twelve can be placed in a community home or comparable private child welfare institution only together with his parents, custodians or with the person responsible for his care and upbringing. (9.2.1990/139)

A child can also be placed temporarily with his parents or other custodians to be cared for and brought up by them.

Section 23 HEARING OF FOSTER PARENTS OR A RESIDENTIAL HOME DIRECTOR

When the child is placed in substitute care, the persons with whom the social welfare board has signed an agreement for foster care, or the director of the residential home, shall be heard on questions relating to the custody of the child, unless such a hearing is not necessary for deciding the case.

Child's status in substitute care

Section 24 HUMAN RELATIONS AND ACCESS

In substitute care a child shall be ensured the continuous and secure human relations that are important for his development. He is entitled to meet his parents and other persons close to him and to keep in touch with them.

The social welfare board shall support and facilitate the child's access to his parents and to other persons close to him.

Section 25

RESTRICTION OF ACCESS

The social welfare board or the director of a residential home may restrict the right of access of a child in substitute care to his parents or other persons close to him, as stipulated in detail by Decree,

- 1) if such access clearly endangers the development of safety of the child; or
- 2) if such restriction is necessary for the safety or security of the parents, or the children or staff in the residential home.

By virtue of para 1, the social welfare board may decide that a child's whereabouts shall not be disclosed to his parents or custodians while he is in care.

Section 26

DISCLOSING INFORMATION TO A CHILD

The social welfare board shall take the initiative of informing a child in substitute care in a manner appropriate to his age and level of development, basing on documents and other material, why he has been taken into care and of explaining the measures that are being or will be taken in his case.

The child shall not be given such information as will endanger his development or is contrary to some very important private interest.

Foster care

Sections 27 and 28 have been repealed by Act of 3.4.1992/315.

Residential care

Section 29

CHILD WELFARE INSTITUTIONS

Children's homes, youth homes and community homes and other comparable institutions are the types of child-welfare institution in which substitute or residential care can be provided.

Section 30

GROWING ENVIRONMENT AND CONDITIONS IN RESIDENTIAL HOMES

Section 1 of the Child Custody and Right of Access Act shall apply to the upbringing of a child and the organisation of his growing environment in a residential home.

A residential home shall have adequate and suitable space and facilities, and the necessary number of qualified welfare and other staff. The number of beds and qualified employees in a residential home shall be specified by Decree.

Section 31 SANCTIONS AND RESTRICTIONS

If a child is in possession of intoxicants or equipment for their use, or substances or objects that are harmful, these shall be confiscated by the residential home.

If there are adequate grounds to suspect that a child has intoxicants or equipment for their use in his possession, the director of a residential home can order him to be searched. If there are sufficient grounds to suspect that mail or other delivery addressed to a child contains such intoxicants or equipment or anything else that constitutes a danger, the director of the residential home may order his mail or delivery to be inspected.

Section 32 SPECIAL RESTRICTIONS

If it is necessary for his care in a residential home and otherwise in his best interests, a child may, for a given period, be forbidden to leave the grounds of the home, or his freedom of movement may be otherwise restricted, as stipulated in detail by Decree,

- 1) if the child has been committed to the care of the social welfare board on the grounds of having seriously endangered his health or development by consuming intoxicants, committing an illegal act other than a minor offence, or by other comparable behaviour;
- 2) if the child behaves in the manner stated above in point 1 while he is in the home; or
- 3) if there are special grounds for considering such prohibition or restriction otherwise necessary for his care.

A child may be isolated from the other children in the home if he is a danger to himself or others, or if the isolation is otherwise necessary for his care. The isolation shall not continue for more than 24 hours without a new decision and it shall be supervised continuously by staff members. The isolation can not be continued except on special grounds stipulated by Decree. Under no circumstances may it exceed 48 hours.

The conditions and enforcement of isolation shall be stipulated by Decree.

Section 33 (17.1.1991/94) ESTABLISHMENT AND SUPERVISION OF A PRIVATE RESIDENTIAL HOME

The Provincial State Office shall give permission for the establishment, enlargement or essential change in the activities of a private residential home.

After-care

Section 34 (9.2.1990/139) DUTIES OF THE SOCIAL WELFARE BOARD IN ARRANGING AFTER-CARE (9.2.1990/139)

After termination of substitute care, the social welfare board shall always provide after-care for a child or young person who has been in substitute care, for his parents and custodians, and for the

person who has been responsible for his care and upbringing as stipulated in chapter 3 and in sections 13, 14 and 24. This obligation ends when the young person has attained the age of 21.

The social welfare board may pay compensation for care of a child to persons who make a foster care agreement under section 27, and otherwise support his care and upbringing after this responsibility has been entrusted to the persons making the foster care agreement in lieu of the parents. Before submitting an application or making a report to the court concerning transfer of custody of the child to the persons who made the agreement, the social welfare board shall agree with them on the financial support and compensation mentioned in this para.

Chapter 7 APPEALS

Section 35 (9.2.1990/139) APPEALS

The relevant provisions of chapter 7 of the Social Welfare Act shall be applicable to any appeal from a decision made under this Act, unless otherwise stipulated below. A child who has attained the age of 12 may also appeal in the cases referred to in section 13, para 1.

A child who has attained the age of 12, his parents, his custodians, and the person responsible for his care and upbringing or who was responsible immediately prior to the case in question, may appeal in cases concerning taking into care of a child, placement in substitute care or termination of the care.

Section 36 (9.2.1990/139) APPEAL FROM AN ORDER SUBJECT TO A SUBMISSION

Decisions concerning taking into care or placement in substitute care, as referred to in section 17, para 2, can be appealed to the Provincial Administrative Court within 30 days of notification of the decision. During that time, such an appeal may also be lodged to the local authority social welfare board, which shall forward it to the Provincial Administrative Court together with its own statement within 14 days.

Section 37 APPEAL TO THE SUPREME ADMINISTRATIVE COURT

Appeals from a decision on care orders, on placement in substitute care, on termination of care, and on a matter concerning housing as stated in section 13 para 1 of this Act, made by the Provincial Administrative Court in pursuance of this Act may be lodged with the Supreme Administrative Court as stipulated in the Appeals from Administrative Proceedings Act (154/1950). The petition of appeal with its appended documents may also be lodged with the Provincial Administrative Court to be forwarded to the Supreme Administrative Court. (9.2.1990/139)

Other decisions than those stated in para 1 relating to family-oriented and individual child welfare rendered by the Provincial Administrative Court in pursuance of this Act cannot be appealed.

Section 38 ENFORCEMENT OF AN ORDER SUBJECT TO APPEAL

A care order and decision relating to substitute care are enforceable although they are subject to appeal or submission, if their implementation cannot be referred without endangering the health or development of the child and if an authority has ordered their immediate implementation.

After a submission or appeal has been made, the appellate court may prohibit the implementation of the decision or order it to be discontinued.

Section 39 EXPEDITIOUS HEARINGS

An appeal or submission relating to family-oriented or individual child welfare made in pursuance of this Act shall be heard and decided expeditiously.

Chapter 8 MISCELLANEOUS PROVISIONS

Section 40 DUTY OF NOTIFICATION

If, in the course of his activities, an employee or elected official in health care, social welfare, education, the Police or the Church of Finland gets to know about a child in evident need of family-oriented or individual child welfare, he shall notify the social welfare board without delay.

Persons other than those mentioned in para 1 may also make such notification.

Section 41 SUPERVISION OF CARE OF CHILDREN PLACED PRIVATELY

The social welfare board shall be notified without delay of a child that has been placed permanently in a private home by instance other than the social welfare board. Both the child's custodian and the person put in charge of his care shall be responsible for making such notification.

Upon the receipt of such notification, the social welfare board shall ascertain whether the private home is properly qualified for child care and upbringing, whether the person in charge of the care is capable of looking after the child, and whether the placement is in the best interests of the child.

If the private home and the care and upbringing given there are found to be unsuitable or inadequate, the social welfare board shall endeavour to remedy the situation there. If this is not possible, the social welfare board shall prohibit this home from caring for the child.

Section 42 ADVISORY GROUP

A local authority may set up an advisory group for child welfare, comprising representatives of social welfare, experts on child upbringing and development, and others, to assist the social welfare board in the provision of family-oriented and individual child welfare services and to issue opinions on custody, taking into care, and substitute care.

Section 43 (17.1.1991/94) PROVISION OF SUBSTITUTE CARE WITH THE AID OF A PRIVATE ORGANISATION OR OTHER AGENCY

The social welfare board may provide substitute care for a child with the aid of a child welfare agency or other organisation rendering welfare services.

Section 44

EXPERIMENTATION AND DEVELOPMENT

The local authority shall carry on such experimental activity as is needed for the development and improvement of the growing environment for children and young persons and of family-oriented and individual child welfare.

Additional state subsidies may be granted within the limits of the national budget to promote activities pursuant to sections 6 and 7 that are important for national or regional experiments, research or development.

Section 45

LOCAL AUTHORITY RESPONSIBLE FOR FAMILY-ORIENTED AND INDIVIDUAL CHILD WELFARE

The duty of the local authority to provide family-oriented and individual child welfare is laid down in section 14 and in section 15, para 1, of the Social Welfare Act. Section 15 para 2, section 42 and section 49 para 2, of the said Act also apply to foster and residential care provided under this act. Despite what is said above, where the need arose to take the child into care and to provide substitute care, the local authority is responsible for arrangement of substitute care for the child and for the costs incurred. The local authority responsible for arrangement of substitute care is obligated to provide after-care as stipulated in section 34. (9.2.1990/139)

The Ministry of Social Affairs and Health shall decide which local authority shall be responsible for providing family-oriented and individual child welfare for a child or young person whose parents, or one of them, has or has had Finnish nationality but who, according to investigations made by the Ministry of Social Affairs and Health, has no domicile or place of residence in Finland and who, according to the opinion of the Ministry of Social Affairs and Health based on preliminary information of the matter received by the said Ministry, is not receiving the necessary care in his country of residence. (17.1.1991/94)

Through the intermediary of the Ministry for Foreign Affairs, the local authority involved may request assistance in ascertaining abroad the child's need for welfare. Such ascertainment can also be made abroad by an official who according to section 16 of the Administration of Foreign Affairs Act (1129/1977), is empowered to administer the duties of Notary Public.

The local authority where the child or young person is placed in substitute care or after-care as a form of assistance in open care or by care order shall, together with the local authority responsible under paras 1 and 2, arrange the services and provide the assistance needed for the care and upbringing of the child or young person. The local authority where the services and assistance are provided is entitled to collect payment for them from the local authority responsible. (9.2.1990/139)

Section 46 (3.8.1992/737)

FEES AND DISPOSABLE FUNDS

Fees for family-oriented and individual child welfare can be collected as laid down in the Act on Client Fees in Social Welfare and Health Care (734/1992)

When the care and upbringing of a child or young person is arranged away from his own home in accordance with section 14 or chapters 5 and 6 of this Act or as after-care in accordance with section 34, a sufficient amount of disposable funds shall be provided for his studies, interests and personal needs, as well as a sufficient amount of funds for promoting his independence, as stipulated in greater detail by Decree.

Section 46a (31.1.1995/123)
FURTHER PROVISIONS

The Ministry of Social Affairs and Health will issue further provisions concerning when the services provided in virtue of this Act are counted as open care.

Section 47
POWERS TO ISSUE DECREES

Further provisions on the implementation and application of this Act shall be issued by Decree.

Chapter 9
ENTRY INTO FORCE

Section 48
ENTRY INTO FORCE

This Act shall enter into force on 1 January 1984.

This Act repeals the Child Welfare Act of 17th January 1936 (52/1936), and all its subsequent amendments.

Where reference is made in other laws to the provisions of the Child Welfare Act of 1936, the provisions of this Act shall be applied instead.

Measures necessary for the implementation of this Act may be taken before its entry into force.

Section 49
APPLICATION OF THE CHILD WELFARE ACT OF 1936

Where proceedings based on the Child Welfare Act of 1936 are pending or where the appeal period expires after the entry into force of this Act, the provisions enforceable at the time this Act enters into force shall be applied.

The provisions that were enforceable in pursuance of former laws shall be applied to the compensation of foster care given to the child prior to the entry into force of this Act.

Section 50
TRANSITIONAL PROVISIONS

If notification according to section 26, para 1, of the Child Welfare Act of 1936 has been made of a child who can be regarded as privately placed by virtue of this Act, it is not necessary to notify the social welfare board again in accordance with this Act.

Where a child has been taken into the care of the social welfare board under an enforceable decision by virtue of the Child Welfare Act of 1936, the care shall continue without a new decision in accordance with this Act.

Section 51
FIXED PERIODS FOR TRANSITION

Where a fixed period prescribed in section 41, para 2, of the Child Welfare Act of 1936 has not expired before the entry into force of this Act, the fixed period prescribed in section 45, para 1, of this Act shall be counted from the date this Act enters into force.

An interim care order prescribed in section 9, para 2, point 3, and a temporary placement of a child to be brought up away from his home pursuant to section 19, para 1, of the Child Welfare Act of 1936 shall expire not later than three months after the date this Act enters into force.

NB: Unofficial translation

Guardianship Services Act

(442/1999)

Chapter 1 — General provisions

Section 1

- (1) The objective of guardianship services is to look after the rights and interests of persons who cannot themselves take care of their financial affairs owing to incompetency, illness, absence or another reason.
- (2) If the interests of someone need to be looked after in a non-financial affair, this shall be a task for guardianship services in so far as provided below.

Section 2

For the purposes of this Act, an *incompetent* person is defined as a person under 18 years of age (*minor*) or a person who has attained the age of 18 years (*adult*) but who has been declared incompetent.

Section 3

- (1) The financial affairs of an incompetent person and his/her other affairs referred to in this Act shall be managed by a guardian.
- (2) A guardian may be appointed in accordance with this Act also to a person who is not incompetent, if the person needs support in managing his/her affairs. If the appointment of a guardian is not sufficient in order to safeguard the person's interests, his/her competency can be restricted as provided below.

Chapter 2 — **Guardians**

Eligibility

Section 4

- (1) The custodians of a minor shall also be his/her guardians, unless otherwise provided below. However, a court may dismiss a custodian from his/her task as guardian and, where necessary, appoint another person as the guardian of the minor.
- (2) An adult's guardian shall be the person who has been appointed to the task by a court or a guardianship authority.
- (3) A court or guardianship authority may appoint several guardians and, where necessary, decide on the division of task among them.

Section 5

A suitable person who consents to the appointment shall be eligible as a guardian. In the assessment of suitability, *inter alia* the skill and experience of the nominee and the nature and extent of the task shall be taken into account.

Section 6

- (1) An incompetent person shall not be eligible as a guardian.
- (2) If the custodian of a child is a minor at the birth of the child, the custodian shall become the guardian of the child upon attaining the age of 18 years.

Preconditions for the appointment of a guardian

Section 7

- (1) If a minor or a person whose competency has been restricted lacks a guardian owing to the death of his/her guardian or another reason, a court shall appoint a guardian for him/her.

- (2) Where necessary, a guardianship authority shall file a petition with a district court for the appointment of the guardian.

Section 8

- (1) If an adult, owing to illness, disturbed mental faculties, diminished health or another comparable reason, is incapable of looking after his/her interests or taking care of personal or financial affairs in need of management, a court may appoint a guardian for him/her. Where necessary, a guardianship authority shall file a petition with a district court for the appointment of the guardian.
- (2) The guardian may be appointed if the person whose interests need to be looked after does not object to the same. If he/she objects to the appointment of the guardian, the appointment may nonetheless be made if, taking his/her state and need for a guardian into account, there is no sufficient reason for the objection.
- (3) The task of the guardian may be restricted to cover only a given transaction, matter or property.

Section 9

A guardian may be appointed for a minor in accordance with section 8 as from the time when the minor attains the age of 17 years. In this event, the task of the guardian shall begin when the minor attains the age of 18 years.

Section 10

A court shall appoint a guardian, if:

- (1) a deceased person has left an inheritance, and the identity or whereabouts of the heir or beneficiary under a will is unknown, or the heir or beneficiary otherwise is not in a position to look after his/her interests;
- (2) it is otherwise necessary to look after the rights or manage the property of an absent person;

- (3) the ownership of given property depends on a future event, or the possession and ownership of given property reverts to someone only later, so that a guardian is needed to look after the rights of the future owner or manage the property on his/her behalf; or
- (4) it is stipulated in a deed of gift or a will that the property reverting to the beneficiary shall be managed by someone else than the guardian of the beneficiary, and the appointment of a guardian to manage the said property is in the best interests of the beneficiary.

Section 11

- (1) If the guardian is temporarily prevented from performing his/her task owing to illness, a reason referred to in section 32(2) or (3), or another reason, a court may appoint a substitute guardian.
- (2) The provisions in this Act on a guardian apply also to a substitute guardian.

Section 12

- (1) In addition to a court, also a guardianship authority may appoint a guardian:
 - (1) for a person whose competency has been restricted, if he/she has no guardian owing to the death of the guardian or another reason; and
 - (2) for a person who is in need of a guardian under section 8 or 9.
- (2) In cases referred to in paragraph (1), it shall be a prerequisite for the appointment of the guardian that the person whose interests are to be looked after understands the significance of the matter and that he/she requests that a named person be appointed as the guardian.
- (3) In addition, under the circumstances referred to in section 11, the guardianship authority may appoint a substitute guardian upon the request of the guardian.

Section 13

- (1) The petition for the appointment of a guardian in accordance with section 12 shall be filed with the guardianship authority which supervises the activities

of the guardian under section 46 or 47. If the guardianship authority holds that the petition cannot be allowed, it shall upon the request of the petitioner transfer the matter to a district court, except if the petition is obviously ill-founded.

- (2) The decision of a guardianship authority concerning a petition referred to in paragraph (1) shall not be subject to appeal. However, a decision allowing the petition shall be subject to appeal on the grounds that the petitioner did not understand the significance of the matter when filing the petition.

Status of the ward

Section 14

The appointment of a guardian shall not disqualify the ward from self administering his/her property or entering into transactions, unless otherwise provided elsewhere in the law.

Termination of the task of a guardian

Section 15

- (1) The appointment of a guardian shall be valid for the time being or for a period set in the appointment. If the guardian has been appointed for a given task, the appointment shall be valid until the task has been performed.
- (2) Where necessary, the task of a guardian or the period of validity of the appointment can be altered.

Section 16

- (1) A court shall dismiss a guardian from his/her task, if the guardian proves to be unfit or unsuitable, or if there is another specific reason for the dismissal.
- (2) The guardian shall be dismissed also if he/she so requests. However, a parent who is the guardian of his/her minor child can be dismissed on request only if there is a specific reason for the same.

Section 17

- (1) The task of a guardian shall be terminated when:
 - (1) the appointment of the guardian ceases to be valid, as provided in section 15;
 - (2) the ward dies;
 - (3) the guardian is dismissed from the task or declared to be incompetent; or
 - (4) when the ward attains the age of 18 years, if the guardianship is based on the fact that the ward is a minor.
- (2) The task of a substitute guardian shall be terminated when, after the preventing circumstances cease to apply, the guardian and the substitute together notify the same to the guardianship authority referred to in section 46 or 47. If the guardian and the substitute do not agree on whether the task of the substitute is terminated, a district court shall rule on the matter upon a petition by either of them.
- (3) Upon a petition, a court shall terminate the task of a guardian when the ward no longer needs one.
- (4) If the guardian has been appointed on the basis of section 8 or 9, the guardianship authority shall on its own initiative, during the fourth calendar year after the appointment of the guardian, inquire as to the continued need for guardianship and, where necessary, file a petition with a district court for the termination of the task of the guardian. The inquiry shall be repeated every fourth calendar year.

Chapter 3 — **Restriction of competency**

Section 18

- (1) If an adult is unable to take care of his/her financial affairs and his/her property, livelihood or other important interests are thereby endangered, and

the appointment of a guardian is not alone sufficient to safeguard his/her interests, a court may restrict his/her competency by ordering that:

- (1) he/she may enter into given transactions or administer given property only in conjunction with the guardian;
 - (2) he/she is not competent to enter into given transactions or to administer given property; or
 - (3) he/she is declared incompetent.
- (2) No one shall be declared incompetent if the other options available under paragraph (1) are sufficient to safeguard his/her interests.
- (3) Also, the competency of a person shall not otherwise be restricted more than what is necessary for the safeguarding of the interests of that person. The restriction shall not be extended to transactions which an incompetent person is by law entitled to enter into. However, for important reasons, a court may restrict the competency of a person to decide on the proceeds of his/her own work earned after the order has been issued.

Section 19

The competency of a minor may be restricted, as provided in section 18, as from the time when the minor attains the age of 17 years. In this event, the restriction shall take effect when the minor attains the age of 18 years.

Section 20

When a court issues an order on the restriction of someone's competency, it shall at the same time, where necessary, appoint a guardian for that person.

Section 21

If a person has entered into a transaction which was beyond his/her competence owing to a restriction, the binding effect of the transaction, the restitution of performances and the compensation for the value of the performance or for loss shall be subject to the provisions in sections 26—28.

Section 22

- (1) A court order on the restriction of someone's competency shall be valid for the time being or for a period set in the order.
- (2) The restriction or its period of validity may be altered if changes in circumstances or other reasons so require. A restriction shall be lifted when it is no longer necessary.
- (3) The provisions in section 17(4) apply also where someone's competency has been restricted.

Chapter 4 — **Status of the incompetent person**

Section 23

- (1) An incompetent person cannot self administer his/her property or enter into contracts or other transactions, unless otherwise provided elsewhere in the law.
- (2) Unless otherwise provided elsewhere in the law, a person who has been declared incompetent may self decide on matters pertaining to his/her person, if he/she understands the significance of the matter.

Section 24

- (1) An incompetent person may enter into transactions which, in view of the circumstances, are usual and of little significance.
- (2) A gift or the promise of a gift of movable property given to an incompetent person without the co-operation of the guardian shall nonetheless be binding on the donor if the incompetent person has understood the significance of the matter.

Section 25

- (1) An incompetent person has the right to decide on the proceeds of his/her own work earned during the incompetency, as well as on property given to his/her administration by the guardian in accordance with section 38 of this

Act. In addition, the incompetent person may decide on the revenue arising from the property referred to above and on the property that has come as a substitute for the said property.

- (2) If the incompetent person exercises this right in a manner that is obviously contrary to his/her best interests or if there is an imminent danger of the same, the guardian may take the property referred to in paragraph (1) into his/her administration in so far as necessary in order to safeguard the interests of the incompetent person. If the measure is directed at the proceeds of the work of the incompetent person, the consent of the guardianship authorities shall be obtained for the same.

Section 26

- (1) A transaction beyond the competency of the incompetent person shall not be binding on him/her, unless the guardian has consented to the same.
- (2) A transaction entered into by an incompetent person shall become binding on him/her, if the guardian or, after the end of incompetency, the person himself/herself ratifies the same.
- (3) The provisions of the Code of Inheritance apply to the competency of an incompetent person to make a will.

Section 27

- (1) If an incompetent person has entered into a transaction without the required consent of the guardian, the counterparty shall have the right to renounce the transaction as long as it has not been ratified or appropriately performed.
- (2) However, if the counterparty knew that the other party was incompetent, he/she shall not have the right to renounce the transaction during the period agreed for the procurement of the consent or the reasonable time needed for the procurement of the consent. Nevertheless, the counterparty shall have the right to renounce the transaction in accordance with paragraph (1) if he/she had reason to believe that the incompetent person was competent to enter into the transaction regardless of the incompetency.

- (3) The renouncement shall be notified to the incompetent person or the guardian.

Section 28

- (1) If a transaction entered into by an incompetent person without the necessary consent does not become binding, both parties shall restore what they have received under the transaction or, if this is not possible, give compensation as to its value. However, the incompetent person's liability in compensation shall not exceed what has been used for his/her reasonable maintenance or which otherwise has come to his/her benefit.
- (2) If both parties to a transaction are incompetent and one party cannot restore what he/she has received under the transaction, that party shall give compensation as to a value that can be deemed reasonable for both parties. When assessing the quantum of the compensation, due consideration shall be given to the position of the parties when the transaction was made, the subsequent circumstances and any other relevant factors.
- (3) If an incompetent person has accomplished the transaction by a deliberate act which carries criminal liability, the compensation for the resulting loss shall be subject to the provisions of the Damages Act (412/1974) notwithstanding the provisions on criminal accountability or the provisions in paragraphs (1) and (2).

Chapter 5 — **Status and task of the guardian**

Representation

Section 29

- (1) The guardian shall be competent to represent the ward in transactions pertaining to the ward's property and financial affairs, unless the appointing court has otherwise ordered or unless it has been otherwise provided elsewhere in the law.

- (2) If the court has so ordered, the guardian shall be competent to represent the ward also in matters pertaining to his/her person, if the ward cannot understand the significance of the matter. However, the guardian shall not have such competence in matters subject to provisions to the contrary elsewhere in the law.
- (3) The guardian shall not be competent to give a consent to marriage or adoption on the behalf of the ward, nor to acknowledge paternity, consent to an acknowledgement of paternity, make or revoke a will or represent the ward in other matters of a comparably personal and individual nature.
- (4) Separate provisions apply to the competence of the guardian to exercise the ward's right to be heard before a court or another authority.

Section 30

- (1) If a ward has several guardians, they shall perform the task of guardian together, unless the court has decided on a division of the task among the guardians.
- (2) If a guardian cannot participate in a decision owing to a journey, illness or another reason, and a delay in the decision would be harmful, the consent of that guardian shall not be required. However, a decision on a matter of considerable significance to the ward may be made only by the guardians together, unless the best interests of the ward obviously require otherwise.
- (3) If the guardians cannot agree on a matter that they must decide together, and a delay in the decision would be harmful, a guardian may request a decision from the guardianship authority as to whose opinion is to prevail. The decision shall be requested from the guardianship authority which supervises the activities of the guardian under section 46 or 47.

Section 31

- (1) A receivable that belongs to property that is being managed by the guardian may be repaid only to the guardian or an account of the ward designated by the guardian. However, the repayment shall be effective even if made to the

ward, if the debtor did not know and, under the circumstances, could not be expected to know, that the repayment should have been made to the guardian.

- (2) If the ward has an account with a credit institution, the guardian shall notify the institution as to who has the right to withdraw funds from the account.

Section 32

- (1) The guardian shall not donate the property of the ward.
- (2) The guardian shall not represent the ward, if the counterparty is the guardian himself/herself, the spouse of the guardian or another person close to the guardian, or another person represented by the guardian. However, if siblings have the same guardian, he/she may represent all of them in the distribution of a decedent's estate, provided that the interests of the wards are not in conflict owing to claims made at the distribution or to other related circumstances.
- (3) The provision in paragraph (2) applies also in situations where the interests of the guardian and the ward may for another reason come to be in conflict.

Section 33

- (1) A guardian appointed for an absent person in accordance with section 10 shall not sell the property of the absent person before three years have elapsed since the last information pertaining to that person was received, unless the sale is necessary in order to repay a debt, settle the estate, prevent damage to the property or for another similar reason. A guardian appointed to look after the interests of a future owner in accordance with section 10 shall not sell the property that he/she is looking after, unless there is a reason for the same, as referred to above.
- (2) A guardian referred to in paragraph (1) may represent the heir or beneficiary under a will in a matter pertaining to service of notice of the will or contesting the will, but the guardian is not competent to interrupt the

limitation period pertaining to the right of the heir or beneficiary on their behalf.

- (3) Transactions entered into by a guardian appointed for an absent person or a future owner in accordance with the appointment shall be valid even if the property reverts to someone else than the person represented by the guardian.

Section 34

- (1) Unless otherwise provided elsewhere in the law, a guardian shall not be competent to do the following on the behalf of the ward, unless so permitted by the guardianship authority:
 - (1) convey or purchase real property or a leasehold over land and buildings "attached to it" which can be transferred to a third party without hearing the titleholder;
 - (2) hand property over as a lien or otherwise raise a lien on the property;
 - (3) lease out real property or other property referred to in subparagraph (1) for the use of a third person for longer than five years or for longer than one year after the ward becomes an adult;
 - (4) take out a loan, other than a student loan guaranteed by the state, or assume liability for a bill of exchange or the debt of another person;
 - (5) begin to pursue a business in the name of the ward;
 - (6) commit to the establishment of a general or limited partnership or to accession to such a partnership;
 - (7) renounce an inheritance or convey the share of the ward in a decedent's estate;
 - (8) enter into an agreement on the joint administration of a decedent's estate;
 - (9) enter into an agreement on the separation or distribution of assets that is to be carried out without a distributor, as referred to in chapter 23 of the Code of Inheritance;

- (10) convey or purchase shares or certificates which give the right to possess an apartment or a right of residence, as referred to in the Act on Rights of Residence (650/1990);
 - (11) convey, for an agreed term, an apartment possessed by virtue of a right referred to in subparagraph (10) for the use of another person for longer than five years or for longer than one year after the ward becomes an adult;
 - (12) sell logs or undertake logging for the purpose of sale, extract stone, gravel, sand, peat or soil from the lands of the ward for the purpose of sale, or convey a right of extraction, unless the same is based on a property management plan approved by the guardianship authority; nor
 - (13) purchase investment targets as referred to in section 2 of the Act on Investment Firms (579/1996), or shares in companies, with the exception of:
 - (a) bonds issued by the State, a municipality or a federation of municipalities;
 - (b) securities that are publicly traded, as referred to in chapter 1, section 3 of the Securities Markets Act;
 - (c) shares in mutual funds, where at least three fourths of the capital of the fund is invested in bonds and securities referred to in points (a) and (b);
 - (d) investment targets that correspond to those referred to in points (a)—(c), where so provided by Decree; and
 - (e) shares or certificates that mainly entitle the holder to receive normal domestic goods or services, if the share or certificate does not render the holder personally liable for the debts of the corporation.
- (2) The permit shall be requested from the guardianship authority which supervises the activities of the guardian under section 46 of 47. If the permit is being requested for a transaction to be entered into on the behalf of a

minor, the guardianship authority shall reserve a minor who has attained the age of 15 years an opportunity to be heard, if his/her opinion cannot be credibly ascertained from the documents. Otherwise, the provisions of the Administrative Procedure Act (582/1982) apply to such hearings.

- (3) If the guardian has been permitted to undertake an activity or measure referred to in paragraph (1)(5) or (6), he/she may enter into the transactions required by the nature of the business in question notwithstanding the provisions in paragraph (1).

Section 35

The guardianship authority may grant the permit referred to in section 34 if the pertinent transaction or measure is in the best interests of the ward. In this event, the provisions in sections 37—41 on the management of the property shall be taken into account.

Section 36

- (1) A transaction beyond the competence of the guardian shall not be binding on the ward.
- (2) A transaction entered into by the guardian without the required permit shall not be binding on the ward, unless the guardianship authority from whom the permit should have been requested grants a *post facto* permit on the request of the guardian. In this event, the provisions in section 27(2) apply, in so far as appropriate, to the right of the counterparty to renounce the transaction.
- (3) If a transaction entered into by the guardian is not binding by virtue of paragraph (1), the provisions of section 25 of the Contracts Act (228/1929) apply, in so far as appropriate, to the liability of the guardian in damages to the injured counterparty.

Property management

Section 37

- (1) The guardian shall manage the property of the ward in a manner allowing for the property and the revenue to be used for the benefit of the ward and for the satisfaction of his/her personal needs. In this task, the guardian shall take conscientious care of the rights of the ward and promote his/her interests.
- (2) The guardian shall assume the administration of the property of the ward in so far as necessary for the safeguarding of the ward's interests. Where necessary, the guardian has the right for executive assistance from the police, as provided in section 40 of the Police Act (493/1995). However, as regards property that the ward can decide on, such property shall not be taken into administration against the will of the ward.

Section 38

- (1) The property that the ward needs for personal use shall be left to him/her. A reasonable amount of money, in view of the needs and other circumstances of the ward, shall be left to the administration of the ward. The guardian may leave also other property to the administration of the ward, if this is in the best interests of the ward.
- (2) If the ward wishes to make a gift which, in view of the circumstances, is normal and of little financial significance, the guardian shall see to it that the wish of the ward can be fulfilled.

Section 39

- (1) The guardian shall retain the property that the ward needs during the guardianship or afterwards for accommodation or business, or that is otherwise of special value to the ward.
- (2) Other property, not to be used for the maintenance or other needs of the ward, shall be invested so that it is sufficiently safe and yields a reasonable return.

- (3) Upon the request of the ward, the guardian shall explain to him/her the financial situation and the property management measures that the guardian has taken.

Section 40

- (1) A guardianship authority may order that the guardian is to draw up a management plan for the management and use of the property, and to present it for approval to the guardianship authority, if this is to be deemed necessary in view of the nature and amount of the property and the other circumstances. The management plan shall be drawn up taking into account the provisions in sections 37—39 on the management of the property.
- (2) The management plan may be altered or supplemented, where necessary.

Section 41

- (1) If a person has given property to another by way of gift or testament, and at the same time issued instructions for the management of the property, said instructions shall apply notwithstanding the provisions in this chapter.
- (2) However, a court may decide, on the petition of the guardian, that the property is to be managed in accordance with the provisions in this Act, if it is evident that, owing to a change in circumstances or otherwise, the application of the instructions for the management of the property will not fulfil the purpose of the donor or testator.

Caring for the ward

Section 42

A guardian appointed for an adult shall see to it that the ward is provided with the treatment, care and therapy that are to be deemed appropriate in view of the ward's need of care and other circumstances, as well as the ward's wishes.

Hearing the ward

Section 43

- (1) Before the guardian makes a decision in a matter falling within his/her task, he/she shall inquire the opinion of the ward, if the matter is to be deemed important from the ward's point of view and if the hearing can be arranged without considerable inconvenience.
- (2) However, no hearing shall be necessary if the ward cannot understand the significance of the matter.
- (3) If the ward is a minor, also the opinion of his/her custodian shall be inquired, as provided in paragraph (1).

Fee and expenses of the guardian

Section 44

- (1) The parent of a minor and the custodian of a minor acting also as the guardian shall have the right to compensation for his/her necessary expenses from the assets of the minor.
- (2) The guardian of an adult and the guardian appointed for a minor, other than one referred to in paragraph (1), shall have the right to compensation for his/her necessary expenses from the assets of the ward, as well as to a fee that is reasonable in view of the nature and extent of the task and the assets of the ward.
- (3) The Ministry of Justice may issue more detailed guidelines on the basis for the determination of guardians' fees.

Liability

Section 45

- (1) The guardian shall be liable in damages for the loss that he/she has deliberately or negligently caused to the ward in the performance of his/her task.

- (2) The provisions in chapters 2 and 6 of the Damages Act apply to the adjustment of the liability and the division of liability among two or more liable persons. If a public guardian, as referred to in the Act on Public Guardianship Services (443/1999), has caused the loss, also the provisions in chapters 3 and 4 of the Damages Act apply to the liability.
- (3) The ward shall not be liable for loss caused by the guardian acting on the behalf of the ward.

Chapter 6 — **Supervision of the activities of the guardian**

Supervisory authority

Section 46

- (1) The guardianship authority shall supervise the activities of the guardian. The supervision shall be a task for the guardianship authority in whose district the ward resides, as provided in the Act on the Municipality of Residence (201/1994).
- (2) If the ward is not resident in Finland, the supervision shall be a task for the guardianship authority in whose district the ward usually stays.
- (3) If the guardianship concerns the right of an absent person or a future owner in a decedent's estate, the supervision shall be a task for the guardianship authority which, under paragraph (1), would have been competent to supervise the activities of a guardian appointed for the decedent. If the interests of someone else are to be looked after under section 10, the guardianship authority in whose district the need for guardianship is apparent shall be the competent authority.
- (4) If no supervising guardianship authority can be determined under paragraphs (1) and (2), the Registry Office of Helsinki shall supervise the activities of the guardian.

Section 47

- (1) If the guardianship has been entered into the register of guardianship matters, the supervising guardianship authority, notwithstanding the provisions in section 46, shall be that authority whose task the supervision was under section 46 at the time when the pertinent entry was made into the register.
- (2) The guardianship authority whose task the supervision is under paragraph (1) may assign the supervision to another guardianship authority, if the ward resides in the district of the latter authority or if the assignment is otherwise necessary for the supervision. Before the supervision is assigned, the guardian and the prospective assignee authority shall be heard.
- (3) A decision on the assignment of supervision shall not be subject to appeal.

Property inventory

Section 48

- (1) Within three months of the commencement of his/her duties, the guardian shall provide the guardianship authority with an inventory of the assets and liabilities of the ward that are to be managed by the guardian. The inventory shall indicate also the property that has been left to the administration of the ward under section 38(1). If the ward later acquires property that is to be managed by the guardian, an inventory of the acquired property shall be provided within one month of the acquisition. However, the duty to provide an inventory shall not apply to such recurring payments that derive to the ward on the basis of a right entered into the inventory.
- (2) When the ward becomes a shareholder in a decedent's estate, the guardian shall provide the guardianship authority with a copy of the estate inventory within one month of the inventory being compiled.
- (3) The provisions in paragraph (1) do not apply to the parent of a minor, acting as the guardian, if the minor has only little property. Upon a petition of the guardian, the guardianship authority may grant an extension to the deadline

set in paragraph (1), if this is necessary owing to the amount of the property or for other reasons.

Section 49

The guardian shall declare, in the inventory referred to in section 48, that the information provided therein is correct and that he/she has not deliberately omitted any information. A court may oblige the guardian to reaffirm the declaration under oath before the court, if the guardianship authority so requires.

Accountability

Section 50

- (1) A guardian charged with the management of property shall keep accounts of the assets and liabilities of the ward and of the transactions during the accounting period.
- (2) A guardian appointed to a task other than the management of property shall keep such notes that he/she can provide an account of the measures taken in the performance of his/her task.

Section 51

- (1) A guardian referred to in section 50(1) shall provide the guardianship authority with a statement of accounts every year (*annual statement*). The guardianship authority may decide that the accounting year is to be a year's period other than a calendar year, if this is appropriate in view of the management of the property, accounting or the auditing of the accounts.
- (2) The annual statement shall be given within three months of the end of the accounting year. If the guardianship has begun during the latter half of an accounting year, the guardianship authority may decide that the statement be given together with the annual statement for the following year.
- (3) If the guardian has not been able to give an annual statement in the time provided, owing to illness, the extent of the task or another comparable

reason, the guardianship authority may, upon request, grant an extension to the deadline.

- (4) The guardian shall not be required to give an annual statement for the guardianship of a minor which was not to be entered into the register of guardianship affairs.

Section 52

A guardian whose task is terminated or whose task has been restricted shall without delay provide the guardianship authority with a statement of accounts relating to the property no longer managed by the guardian, for the period that has not yet been accounted for (*final statement*). However, the guardian shall not be required to give a final statement for the guardianship of a minor which was not to be entered into the register of guardianship affairs.

Section 53

If it is evident, on the basis of the property inventory or an annual statement, that the ward has no property or that there is only little property in the management of the guardian, the guardianship authority may grant a temporary or standing release to the guardian from the duty to provide annual statements, or decide that the accounting period be longer than one year. However, no release or extension shall be granted if the ward has considerable liabilities and the guardian is to see to the service of the liabilities. The guardianship authority may alter a decision referred to above, if this is deemed necessary.

Section 54

- (1) When the annual statement or final statement is given, the pertinent, necessary receipts shall be appended thereto. After the audit, the receipts shall be returned to the guardian.
- (2) The guardian shall retain the receipts pertaining to the statement until the deadline for bringing an action has passed, as referred to in section 61(1), or,

if an action has been brought, until the matter has been decided by a final judgment. Thereafter, the ward, his/her heirs or the new guardian shall be entitled to get possession of the receipts.

Section 55

- (1) The annual statement and the final statement shall indicate the assets and liabilities of the ward in the beginning and at the end of the accounting period, the changes that have occurred during the accounting period, the significant transactions entered into on behalf of the ward, as well as the other corresponding measures that the guardian has taken in the management of the property. The information shall be presented in a form allowing for the guardianship authority to supervise the management of the property and the guardian's compliance with the management plan.
- (2) The statement shall indicate also the property that the guardian has given to the administration of the ward during the accounting period.
- (3) If the guardian is the ward's parent, spouse, child or other person close to the ward, the guardianship authority may decide that a generalised statement on the property in management or a part thereof can be given, if this is deemed sufficient in view of the nature of the property in management. In any event, the statement shall indicate the changes that have occurred during the accounting period.

Section 56

- (1) Upon receipt of the annual statement or final statement, the guardianship authority shall without delay audit the management of the property, the adequacy of the funds given to the use of the ward and the correctness of the statement.
- (2) Upon request, the guardian shall provide the guardianship authority with all necessary information pertaining to his/her task, receipts and documents, as well as present the securities in his/her management for inspection.

Coercive measures available to the guardianship authority

Section 57

- (1) If the guardian fails to provide an appropriate statement of accounts, inventory, receipt or other requested information, or fails to draw up a management plan that the guardianship authority has ordered to be drawn up, the guardianship authority may oblige the guardian to rectify the situation, reinforcing said order by the threat of a fine or a threat that the failure be rectified by someone else at the expense of the guardian.
- (2) When the guardianship authority decides that the threat of rectification by someone else be enforced, it may at the same time oblige the guardian to provide, under threat of a fine, the other person with the receipts and documents necessary for the performance of the task.
- (3) Otherwise, the provisions in the Act on Threats of a Fine (1113/1990) apply to the threat of a fine and the threat of rectification by someone else.

Safeguarding the interests of the ward

Section 58

If the safeguarding of the interests of the ward requires measures that the guardian has failed to take, the court may appoint another guardian to see to the measures on the petition of the guardianship authority, the ward himself/herself or another person referred to in section 72(1) and (2). Likewise, the court may appoint another guardian if there is reason to bring an action against the guardian before his/her task is terminated.

Measures at the termination of a guardian's task

Section 59

- (1) At the termination of his/her task, the guardian shall without delay hand over the property in his/her management to the ward, the new guardian or another person entitled to the same.

- (2) When the task of a guardian is terminated because of the death of the ward, and the property cannot without delay be surrendered to the joint administration of the shareholders in the ward's estate, the guardian may surrender the property to a shareholder who is capable of taking care of the estate, as provided in chapter 18, section 3, of the Code of Inheritance. The guardian shall notify the surrender of the property to all shareholders whose whereabouts and identity are known.

Section 60

- (1) When the task of the guardian is terminated and the guardianship authority has audited the final statement, it shall notify its remarks concerning the statement, and provide a copy of the statement, to the person who is entitled to take charge of the property. Upon request, that person has the right of access to the guardian's receipts pertaining to the annual statements and final statement.
- (2) The guardian may be obliged, under threat of a fine, to provide access to the receipts, as provided in section 57.

Section 61

- (1) An action for damages based on the activities of the guardian shall be brought within one year of the provision of the guardianship documents, in accordance with section 60, by the guardianship authority to the person entitled to the same. However, if the guardian is one referred to in section 50(2), the deadline for bringing the action shall be counted from the time when the guardian has given the accounts referred to in that provision to the person entitled to the same.
- (2) However, the deadline referred to above shall not apply if the action for damages is based on circumstances not appearing in the accounts.
- (3) If the guardian has caused loss to the ward by a criminal offence and the deadline for bringing a charge for the offence is longer than that provided in

paragraph (1), the action for damages may be brought within the deadline for bringing the charge.

Section 62

- (1) An action for damages based on circumstances appearing in the accounts shall not be brought if the person entitled to receive the accounts has, after receiving the documents referred to in section 60, notified in writing that he/she accepts the activities of the guardian or otherwise declared in writing that no damages are going to be sought.

Section 63

- (1) If the guardian is dead, the provisions in this chapter on a guardian apply, in so far as appropriate, to the shareholders and administrator of his estate and bankruptcy estate.
- (2) The person in charge of the administration of the decedent's estate shall without delay notify the death of the guardian to the guardianship authority and take care of the property of the ward for as long as it remains in the possession of the estate.
- (3) However, the provisions in paragraphs (1) and (2) do not apply if a public guardian has acted as the guardian.

Chapter 7 — **Registration of guardianship**

Section 64

- (1) The register of guardianship affairs is a nation-wide register controlled by the guardianship authorities and the Population Register Centre for the supervision of the activities of guardians and the safeguarding of third parties' rights. Identification data and contact information on the guardian and the ward may be entered into the register. In addition, the following information may be entered into the register: the restriction of a person's competency, the contents of said restriction, the task of the guardian and the basis for his/her appointment, the submission and auditing of a property

inventory, a statement and a management plan, a decision on a permit referred to in section 34 and the measures of a guardianship authority referred to in sections 57 and 60. Moreover, information useful in view of the purpose of the register, other than personal data, may also be entered into the register.

- (2) A guardianship authority shall be responsible for the updating of the data in the register as regards the activities of the guardians supervised by that authority. The guardianship authority shall decide on the granting of access to the register. A demand for the rectification of information in the register shall be made to the guardianship authority supervising the activities of the guardian in question.
- (3) The Population Register Centre shall be responsible for the general functionality of the register of guardianship affairs and the consistency of the register operations.
- (4) The personal and other data necessary for the maintenance of the register of guardianship affairs, as well as the changes to said data, may be transferred thereto from the population register.

Section 65

- (1) A guardianship or a restriction of competency shall be entered into the register of guardianship affairs, where:
 - (1) a guardian is appointed for an adult;
 - (2) the competency of an adult is restricted;
 - (3) a person other than the parent of a minor is appointed as the guardian of the minor;
 - (4) a guardian is appointed for a minor in accordance with section 9 or the competency of a minor is restricted in accordance with section 19;
 - (5) a guardian is appointed for an absent person or a future owner.

- (2) However, the guardianship shall not be entered into the register of guardianship affairs if the task of the guardian does not involve the management of property or attending to a share in an undivided estate.
- (3) When a court issues an order which entails the entry of the guardianship into the register of guardianship affairs, it shall notify the same to the guardianship authority supervising the guardian in question.

Section 66

- (1) The guardianship shall be entered into the register of guardianship affairs also when the guardianship authority becomes aware of the following:
 - (1) a minor is a shareholder in a decedent's estate and his/her share of the assets of the estate is not insignificant; or
 - (2) a minor has property in the management of a guardian, and the amount of the property is not insignificant.
- (2) The guardianship referred to in paragraph (1) shall be entered into the register of guardianship affairs even if amount of the property or the assets in the share is insignificant, if there is a specific reason for the same.
- (3) Provisions may be issued by a Decree on when the amount of assets is to be deemed insignificant.

Section 67

- (1) Unless otherwise provided in section 68, everyone shall have access to the register of guardianship affairs in order to find out whether a given person is subject to guardianship, who is the guardian of a given person, what is the task of the guardian and whether, and how, the competency of the person has been restricted. However, a personal identification number may be disclosed only to a person who needs it in order to enforce his/her rights or interests or to perform his/her duties.
- (2) Everyone shall have access to the information on himself/herself in the register of guardianship affairs, as specifically provided elsewhere.

- (3) A guardian shall have access to the entries in the register that pertain to his/her guardianship task or his/her ward.
- (4) A state and municipal authority and the Social Insurance Institution shall have access to the information in the register of guardianship affairs that they need for the performance of their task.

Section 68

- (1) The information entered into the register of guardianship affairs shall be retained for a period of ten years after the guardianship has been terminated.
- (2) After the guardianship has been terminated, access to the register of guardianship affairs shall be granted on the basis of section 67(1) only to such persons that need it in order to enforce his/her rights or interests or to perform his/her duties.

Chapter 8 — **Procedural provisions**

Section 69

A matter pertaining to the appointment of a guardian or the restriction of someone's competency shall be brought before a district court by way of a petition.

Section 70

- (1) Unless otherwise provided below, a matter pertaining to the appointment of a guardian or the restriction of someone's competency shall be brought before the district court in whose district the prospective ward resides or, if the prospective ward is not resident in Finland, in whose district he/she usually stays.
- (2) A matter pertaining to the appointment of a guardian to look after the interests of an absent person in a decedent's estate shall be brought before the district court which is competent in matters pertaining to the estate. If a guardian is to be appointed otherwise by virtue of section 10, the matter shall

be brought before the district court in whose district the absent person has property or in whose district the need for guardianship is otherwise apparent.

- (3) If no district court in Finland can otherwise be deemed competent to deal with the matter, the matter may be brought before the District Court of Helsinki.

Section 71

If the appointment of a guardian is sought for a trial, the matter may be brought also before the district court in which the trial is or will be pending.

Section 72

- (1) A petition for the appointment of a guardian or the restriction of someone's competency may be filed by a guardianship authority, the person whose interest is to be looked after, as well as the guardian, parent, spouse, child or other person close to him/her.
- (2) A matter pertaining to the appointment of a guardian for a minor may be brought also by the custodian of the minor and a body referred to in section 6 of the Social Welfare Act (710/1982).
- (3) If a guardian is needed to look after the interests of an absent person or a future owner in a decedent's estate, the administrator, other caretaker, distributor or shareholder in the estate shall file a petition with the district court for the appointment of the guardian. The administrator or distributor of the estate may also otherwise file the petition if the appointment of the guardian is necessary for the distribution of matrimonial assets or a decedent's estate. If the affairs of the absent person otherwise need looking after, the petition may be filed, in addition to the persons referred to in paragraph (1), by a person whose right or interest is affected by the matter.

Section 73

- (1) In a matter pertaining to the appointment of a guardian to a minor, the custodian of the minor, and a minor who has attained the age of fifteen years, shall be reserved an opportunity to be heard.

- (2) In a matter pertaining to the appointment of a guardian to an adult, the person whose interests need looking after and, unless it under the circumstances is manifestly unnecessary, his/her spouse shall be reserved an opportunity to be heard.
- (3) However, no opportunity to be heard need be reserved, if the summons to the hearing would have to be delivered by way of a public announcement referred to in chapter 11, section 9 of the Code of Judicial Procedure.

Section 74

- (1) In a matter pertaining to the restriction of someone's competency, the court shall hear, in person, the person whose interest needs looking after. However, the matter can be decided without hearing the person if the petition is at once rejected as ill-founded or if the hearing is impossible because of the condition of the person to be heard, or causes undue inconvenience to that person.
- (2) If the person to be heard cannot appear in court without considerable inconvenience, or if there is another special reason for the same, the hearing can be arranged outside the main hearing of the court.

Section 75

- (1) The guardianship authority shall be reserved an opportunity to be heard in a matter pertaining to the appointment of a guardian or the restriction of someone's competency, if the position of the authority does not appear in the petition documents.
- (2) However, the hearing of the guardianship authority can be waived in a matter pertaining to the appointment of a guardian, if the hearing is not necessary for a decision in the matter.

Section 76

If, in a matter pertaining to the appointment of a guardian or the restriction of someone's competency, there is the need to hear, in person, a person with the right to be heard under section 72, the provisions in chapter 12 of the

Code of Judicial Procedure on the obligation of a party to a civil matter to appear in court in person apply to that person.

Section 77

In a matter pertaining to the appointment of a guardian, the court may entrust the guardian with task not included in the petition and, in a matter pertaining to the restriction of someone's competency, restrict said competency more or otherwise in derogation of the petition, if the same is to be deemed necessary, under section 8 or 18, for the safeguarding of the interests of the ward.

Section 78

In a matter pertaining to the appointment of a guardian or the restriction of someone's competency, the court shall on its own initiative procure all necessary information for a decision in the matter.

Section 79

- (1) In a matter pertaining to the appointment of a guardian or the restriction of someone's competency, the court may issue an interim order. The interim order may be issued without hearing the person whose interests need looking after, if the matter does not admit of delay. The interim order shall be in effect until the court issues an order in the matter, unless it is revoked or altered before that time.
- (2) An interim order shall not be subject to appeal.

Section 80

Everyone who has the right to bring the matter before a court under section 72 shall have standing to appeal against a court order on the appointment of a guardian or the restriction of someone's competency.

Section 81

- (1) In so far as appropriate, the provisions in sections 69—80 apply also to matters pertaining to the dismissal of a guardian or the alteration of a guardian's task, as well as to matters pertaining to the revocation or alteration of the restriction of someone's competency.
- (2) When a matter referred to in paragraph (1) is being considered in court, the guardian shall be reserved an opportunity to be heard. However, no opportunity to be heard need be reserved, if the summons to the hearing would have to be delivered by way of a public announcement referred to in chapter 11, section 9 of the Code of Judicial Procedure.

Section 82

In matters referred to in this chapter, the court may on its own initiative appoint a counsel or guardian for trial for the person whose guardianship is involved, if this is necessary in view of the legal safeguards due to that person.

Section 83

- (1) The order of a district court on the appointment of a guardian or the restriction of someone's competency shall be complied with even if it has not yet become final.
- (2) The order of a court of appeal on a matter referred to in this chapter shall be complied with even if it has not yet become final, unless the court of appeal has otherwise ruled in the order.
- (3) If the court of appeal or the Supreme Court returns the matter to the lower court for reconsideration, it may order that the appointment of the guardian or the restriction of competency remains in effect until the said lower court has decided the case or issued an interim order.

Chapter 9 — **Administration of guardianship services and appeals against the decisions of guardianship authorities**

Administrative provisions

Section 84

- (1) The material rules of guardianship services and the development thereof shall be in the purview of the Ministry of Justice. The administrative guidance and development of the guardianship authorities shall be in the purview of the Ministry of the Interior.
- (2) The registry offices shall function as guardianship authorities.
- (3) In the Åland Islands, the Government of Åland shall function as the guardianship authority.

Section 85

- (1) A matter pertaining to the appointment of a guardian or a permit or obligation referred to in this Act shall be decided in the guardianship authority presentation on the basis of a reasoned draft decision. Other matters shall be decided in the guardianship authority in accordance with the specific provisions on decision-making in matters within the competence of the registry offices.
- (2) Unless otherwise provided by this Act, the Administrative Procedure Act applies to the consideration of a matter and the disqualification of officials.
- (3) The services of the guardianship authorities shall be subject to a charge, as provided in the Act on the Charge Criteria of the State (150/1992).

Section 86

Where a guardianship authority has been petitioned to appoint a guardian on the basis of section 12(1), the authority shall hear, in person, that person whose interests need looking after. The guardianship authority may require that the petitioner supply it with a medical statement on the matters that are of consequence for a decision in the matter.

Appeal against the decision of a guardianship authority

Section 87

- (1) The decisions of a guardianship authority shall be subject to appeal in an administrative court, as provided in the Act on Administrative Judicial Procedure (586/1996).
- (2) The decisions of a guardianship authority on the resolution of a dispute between guardians, under section 30(3), the extension of a time limit referred to in section 48(3) or the time of filing a statement, as referred to in section 53(1)—(3), shall not be subject to appeal.

Chapter 10 — **Miscellaneous provisions**

Section 88

A person under guardianship shall have access to the information on himself/herself in the documents of the guardianship authority, as specifically provided elsewhere. After the death of the person under guardianship, the heirs shall have the same access to information that could have been granted to the person himself/herself.

Section 89

- (1) In matters pertaining to his/her task, the guardian shall have the same access to information that the ward would have, unless specifically otherwise provided.
- (2) In the absence of the consent of the ward, the guardian shall only be entitled to open such letters or comparable closed messages addressed to the ward that can on the basis of the sender's name or other specific circumstances be expected to pertain to a matter that is to be taken care of by the guardian.

Section 90

- (1) Notwithstanding any provisions on secrecy, a state authority, a municipal authority, another public corporation, the Social Insurance Institution, a

pension fund, another pensions institute, an insurance company, a bank, another financial company, an operative unit of the social welfare or health services, a health care professional and a private provider of social welfare services shall grant to a guardianship authority and a court access to the information and accounts that are necessary for a decision in a pending matter.

- (2) A guardianship authority or a court may request a statement from a municipal social welfare or health authority, if it is necessary to obtain information on the circumstances of the person in question in a matter referred to in this Act. The request shall be addressed to the social welfare or health authority of the municipality of residence of the person or, if the person is not resident in Finland, of the municipality where he/she normally stays.
- (3) If the provision of information or a statement other than that referred to in paragraph (2) causes considerable costs or significant extra work to the person obliged to provide it, a reasonable fee may be levied for the provision of the information.

Section 91

A person who has become aware of someone being in need of guardianship, may notify the same to the guardianship authority regardless of any duty of confidentiality. The notification shall be made to the guardianship authority in whose district the person concerned resides or, if the person is not resident in Finland, to the guardianship authority in whose district he/she normally stays. Upon receipt of the notification, the guardianship authority shall take measures to determine the need of guardianship and, where necessary, file a petition with the district court for the appointment of a guardian.

Section 92

- (1) A person in the service of the state, the municipality or a provider of guardianship services, a public representative, a guardian and an expert

providing guardianship advice shall not without the consent of the person concerned disclose matters that they have learned in the course of their guardianship duties, if the matter is to be kept secret in order to protect the financial interests or privacy of an individual.

- (2) The duty of confidentiality provided in paragraph (1) shall not restrict the other duties of confidentiality imposed by law on public servants.
- (3) The provisions in paragraphs (1) and (2) shall not prevent the disclosure of the matter:
 - (1) to state or municipal authorities or other persons for the performance of task under this Act;
 - (2) to prosecutors or the police for the investigation of crime;
 - (3) to a court, if necessary in a matter under this Act, or
 - (4) to a person entitled by law to the same.

Section 93

The penalty for a breach of the duty of confidentiality is provided in chapter 38, section 1 or 2, of the Penal Code, unless the act is punishable under chapter 40, section 5 of the Penal Code or more severely punishable elsewhere in the law.

Section 94

- (1) A person who refuses to provide information that he/she should provide under section 90 shall be sentenced for a *breach of the duty to provide information under the Guardianship Services Act* to a fine.
- (2) The public prosecutor shall not bring charges for an act referred to in paragraph (1) unless the guardianship authority has reported it for prosecution.

Section 95

More detailed provisions on the implementation of this Act shall be issued by Decree.

Chapter 11 — **Entry into force and transitional provisions**Section 96 — *Entry into force and repeal of provisions*

- (1) This Act shall enter into force on 1 December 1999.
- (2) This Act repeals the Act on Guardianship of 19 August 1898 (34/1898), as later amended.

Section 97 — *Consideration of pending matters*

- (1) Matters that are pending in a municipal guardianship board at the entry into force of this Act shall be transferred to the guardianship authority in whose district the municipality is located.
- (2) A court shall deal with cases pending in the court at the entry into force of this Act, even if the case would not under this Act be a matter for the courts.

Section 98 — *Application of the Act*

This Act shall apply to matters deriving from before its entry into force as follows:

- (1) *Incompetent persons.* Persons who are incompetent at the entry into force of this Act shall be subject to the provisions of this Act on incompetent persons. As regards persons declared under guardianship and supervised by a guardianship authority, the authority shall without delay determine whether the incompetency should continue and, where necessary, file a petition for the arrangement of the guardianship in accordance with this Act.
- (2) *Guardians and trustees.* Guardians and trustees appointed under the Act on Guardianship shall after the entry into force of this Act be subject to the provisions of this Act on guardians.

- (3) *Certain pending matters.* If a matter concerning the declaration of a person incompetent, on the appointment of a guardian or a trustee, or the release of the same is pending in a court at the entry into force of this Act, the matter shall be considered as a petition for the restriction of competency, the appointment of a guardian or the dismissal of a guardian, respectively. If a matter concerning the declaration of a person incompetent is pending on appeal in the Supreme Court or a court of appeal, it shall be returned to the lower court for reconsideration, unless the appeal is at once ruled inadmissible. When a court orders that the matter be returned, it may at the same time order that the decision on declaring a person incompetent shall remain in effect until the lower court has made its decision.

Section 99 — *Application of the previous Act*

The Act in force at the entry into force of this Act (*previous Act*) applies after the said entry into force as follows:

- (1) *Pending applications for a permit.* If an application is pending at the entry into force of this Act for the consent of a guardianship board or a court for a transaction already completed or to be completed later, the provisions of the previous Act apply to the application. However, the application shall lapse if no consent of the guardianship authority for the transaction is necessary under this Act.
- (2) *Validity of transactions.* The provisions of the previous Act apply to the assessment of the validity of a transaction entered into by a guardian or a trustee before the entry into force of this Act.
- (3) *Filing of accounts.* An account of guardianship covering the financial year 1999 or an earlier financial year shall after the entry into force of this Act be filed with the guardianship authority. However, the account and the filing thereof shall otherwise be governed by the provisions of the previous Act. If, under section 51(1) of the Act on Guardianship, the court has extended the financial period to over one year, the extension

shall remain in force regardless of the entry into force of this Act, unless the guardianship authority orders otherwise.

- (4) *Terminated guardianships.* If the task of a guardian or a trustee has been terminated before the entry into force of this Act, the previous Act applies thereto.

Section 100 — *References to the previous Act*

If an Act or a Decree contains a reference to the previous Act, the reference provision applies after the entry into force of this Act as follows:

- (1) *Provisions on guardians and trustees.* A provision on a guardian or a trustee appointed under the Act on Guardianship applies also to a guardian, unless otherwise provided in section 50(3) of the Act on Child Custody and Right of Access (361/1983).
- (2) *Legal effects of the measures of guardians and trustees.* A provision in an Act or a Decree on the legal effects of a measure or omission by a guardian or a trustee appointed under the Act on Guardianship applies also to a guardian.
- (3) *Provisions on persons declared under guardianship.* A provision applying on a person declared under guardianship applies also to a person who has been declared incompetent.
- (4) *Provisions on incompetent persons and persons under guardianship.* A provision in an Act or a Decree on an incompetent person or a person under guardianship applies also to incompetent persons as referred to in this Act.
- (5) *Provisions requiring full competency.* If, in an Act or a Decree, the obtainment of a permit, the performance of a task, the pursuit of an activity or the carrying out of a measure is dependent on the person being fully competent and in charge of his/her person and property, a restriction of the person's competency under section 18(1)(1) or (2) shall nonetheless allow the same, unless otherwise follows from the contents of the restriction.

- (6) *Provisions on the guardianship board.* A provision in an Act or a Decree on the guardianship board applies, in so far as appropriate, to the guardianship authority.
- (7) *Other references to the Act on Guardianship.* If an Act or a Decree otherwise contains a reference to a provision superseded by the provisions of this Act, the provision of this Act applies, in so far as appropriate, to the same.

Section 101 — *Transfer of information in the guardianship ledger*

A registry office shall before the entry into force of this Act transfer into the register of guardianship affairs all information on the guardianships and trusteeships that have been entered into the guardianship ledger and that are to be supervised by the registry office after the entry into force of this Act. The district court where the guardianship ledger is kept shall supply the necessary information to the registry office and make sure that the information supplied is correct.

Section 102 — *Transfer of the documents of the guardianship boards*

The documents of the guardianship boards on guardianships and trusteeships that are necessary for the guardianship authority for the performance of task referred to in chapter 6 of this Act shall be handed over to the guardianship authority in whose jurisdiction the municipality is located. The municipality shall see to the delivery of the documents.

Section 103 — *Authorisation for implementing measures*

Measures necessary for the implementation of this Act may be taken before it enters into force.