

FREQUENTLY ASKED QUESTIONS ABOUT GUARDIANSHIP OR CONSERVATORSHIP IN KANSAS

What is a guardian or a conservator?

A **guardian** is a person appointed by the court to make legal decisions affecting personal health, safety and welfare of another person.

A **ward** is a person for whom the court has appointed a guardian.

A **conservator** is a person appointed by the court to make legal decisions affecting finances and estate (personal and real property) of another person.

A **conservatee** is a person for whom the court has appointed a conservator.

Why is guardianship and conservatorship put in place?

Guardianship or conservatorship is a legal tool used to provide advocacy and protection for an individual unable to make or communicate sound decisions about self-care or take actions in their own best interest leaving them vulnerable to abuse, neglect and exploitation. Guardianship or conservatorship should only be considered after less restrictive alternatives have proven ineffective or unavailable.

What are the responsibilities of a guardian or conservator?

A **guardian** makes legal decisions on behalf of the person including accessing and monitoring supports and services for physical, psychological and

emotional care. The guardian provides informed consent and maintains communication with service providers including case managers, facility staff and medical providers. A guardian advocates for and protects the personal, civil and human rights of the person for whom they serve as guardian.

A **conservator** makes legal decisions on behalf of another person, manages financial affairs, and advocates for and protects the personal, civil, and human rights of the person.

When making decisions, a guardian or conservator shall consider the expressed desires and personal values of the person; the authority of a guardian or conservator should be used only as needed; and the person should be encouraged to make decisions, develop skills for daily living, and do as much as the person can on his or her own.

The law requires a guardian or conservator act in the best interest of the person and exercise reasonable care and diligence in decision making. A guardian or conservator is always subject to the control and direction of the court.

Is a guardian or conservator legally liable for the actions of the person?

A guardian or conservator is not personally liable to a third person for the acts of the person by virtue of the legal appointment. A guardian or conservator who exercises reasonable care in selecting a third person to provide any medical or other care, treatment or service for the person shall not be liable for any injury to the person resulting from the wrongful conduct of that third person.

Is a guardian or conservator required to use personal resources to care for the person?

The law does **not** require a guardian or conservator to use personal money or other assets for support of the person solely because of the court appointment as guardian or conservator. The law provides a guardian or conservator shall not be liable for the debts of the person. Also the guardian or conservator is not responsible for payment of medical, nursing home care, clothing, food and necessities from the personal resources of the guardian or conservator.

What are the reporting responsibilities of a guardian or conservator?

Guardian Report - Each year a guardian is required to file a report informing the court about the person's condition and actions taken on behalf of the person. The report covers a 12-month period.

Accounting Report – Each year a conservator is required to file a detailed accounting of income, payments and financial actions taken by the conservator on behalf of the person. The report covers a 12-month period.

What are Conflicts of Interest?

The role of a guardian or conservator is to advocate for and protect the rights of the person. In this role, the guardian or conservator must be free of any appearance of personal or employer conflict of interest, self-serving gain, compromising influences and loyalties when advocating on behalf of the person. The guardian and conservator must be free to challenge inappropriate or poorly delivered services and to advocate and exercise judgment solely for the benefit of the person for whom they serve as guardian or conservator.

What training is required for a guardian or a conservator?

Basic Instructional Program

Every individual appointed as guardian or conservator on or after January 1, 2009, must file with the court an affidavit of completion of a basic instructional program concerning the duties and responsibilities of a guardian or conservator prior to the issuance of letters of guardianship or conservatorship.

How is a person restored to capacity?

The person may ask the court to find that she/he is no longer impaired and request to be restored to capacity. A petition must be filed with the court and other legal procedures may be required.

How and when does a guardianship or conservatorship end?

The court may end a guardianship or conservatorship in any of the following situations: 1) the need no longer exists; 2) the person has turned 18 (and was not determined to be a minor with an impairment); or, 3) the person died. If the court ends the guardianship or conservatorship, it will enter appropriate orders to close the case.

Resources

The Act for obtaining a guardian or conservator, or both is found in Kansas Statutes Annotated, Chapter 59, Probate Code, Article 30.

http://www.kslegislature.org/li/b2013_14/statute/059_00_0000_chapter/059_030_0000_article/

The [Guide to Kansas Laws on Guardianship and Conservatorship](#) provides an overview of definitions, duties, responsibilities and limitations of guardians or conservators. Available at www.ksgprog.org.

Basic Instructional Program and the related guardian and conservator reporting forms may be found on the Kansas Judicial Council website:

www.kansasjudicialcouncil.org/legal_forms.shtml or KGP website www.ksgprog.org.

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