

LEGAL PROCESS TO ESTABLISH GUARDIANSHIP OR CONSERVATORSHIP IN KANSAS

PROCEDURES FROM PETITION TO APPOINTMENT OF GUARDIAN OR CONSERVATOR

Kansas law intends to provide for orderly legal and judicial procedures that ensure the rights of proposed wards or conservatees. Some of these procedures are especially designed to safeguard the rights of minors, others are for those who may need voluntary conservatorships, while still others are to give due process to those who may become "an adult with an impairment in need of a guardian or conservator."

Petition (K.S.A. 59-3058)

For the appointment of a guardian or conservator the first step is the filing of a petition. The petition is a legal document prepared by an attorney that is filed by any adult asking that the district court appoint a guardian or conservator for an adult or for a minor. This petition includes but is not limited to the name and address of the proposed ward or conservatee, reasons why the need exists, names and addresses of nearest relatives, the extent of the estate of the proposed ward or conservatee, and the names and addresses of those who can provide testimony that the person needs a guardian or conservator.

The petition shall also include the name, age, date of birth, gender, address, place of employment, relationship to the petitioner, if any, of the individual or corporation whom the petitioner suggests the court appoint as the guardian or conservator, and any personal or agency interest of the proposed guardian or conservator that may be perceived as self-serving or adverse to the position or best interest of the proposed ward or conservatee.

Mandatory Orders (K.S.A. 59-3063)

A series of orders are issued by the court upon the filing of the petition. The court shall order the following:

- an order fixing the date, time, and place of the trial on the petition
- an order requiring that the proposed ward or proposed conservatee appear at the time and place of the trial (unless there is a court finding that the person's presence will be injurious to the person's health or welfare)
- an order appointing an attorney
- an order fixing the date, time, and a place for the proposed ward or proposed conservatee to consult with his or her court appointed attorney
- an order for an examination and evaluation if no report accompanies the petition, or if the court finds that the examination and evaluation does not meet statutory requirements.

Examination and Evaluation (K.S.A. 59-3064)

The examination and evaluation report should contain a description of the person's physical and mental condition, cognitive and functional abilities and limitations, adaptive behaviors, social skills, educational and developmental potential, prognosis for improvement and recommendation for treatment or rehabilitation as appropriate.

The professional completing the report must also state his or her opinion as to whether the person is impaired and in need of a guardian or conservator, or both, and whether the person could meaningfully participate in the proceedings.

Notices (K.S.A. 59-3066)

A series of notices are given by the court to those persons who are involved in the trial. A notice shall be given to the proposed ward or conservatee, to the attorney of the proposed ward or conservatee, and to any other persons whom the court believes it appropriate to notify. Certain persons may be ordered to serve the notice that states that a petition for a trial has been filed, the time and place of the trial, that the proposed ward or conservatee has a right to be present, etc. This notice must be personally served on the proposed ward or conservatee and the attorney of the proposed ward or conservatee not less than ten days prior to the date of the hearing.

Trial (K.S.A. 59-3067)

The trial may be held before a judge or a jury. If the proposed ward or conservatee asks in writing for the trial to be held before a jury, a jury of six persons shall be selected. Whether the trial is before a judge or a jury, the requirement is that the trial shall be conducted in as informal a manner as may be consistent with orderly procedure.

Findings

If at the completion of the trial, the judge or the jury may find that by clear and convincing evidence the proposed ward or conservatee has not been shown to be an adult or a minor with an impairment in need of a guardian or conservator, the court shall terminate the proceedings. If, however, the court or the jury finds by clear and convincing evidence that the proposed ward or conservatee is either an adult or a minor with an impairment in need of a guardian or conservator, the court shall set forth the findings of fact in the court's order and issue the appropriate letters.

Oath of Guardianship or Conservatorship (K.S.A. 59-3069)

Before the letters are actually issued, the individual or the nonprofit corporation that is to be appointed guardian(s) will be asked to file a written oath of guardianship reflecting the guardian will faithfully discharge all duties assigned by the court. The conservator, as a fiduciary, will also be required to file a written oath, that he or she will faithfully discharge all the duties that are assigned by the court.

Bond of Conservatorship (K.S.A. 59-3069)

If the conservator is to assume responsibility for some or all of the estate of the conservatee, the court requires the filing of a bond in such an amount as the court may direct.

Basic Instructional Program for Guardians or Conservators

Every individual appointed as guardian or conservator shall file with the court evidence 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.

Letters of Appointment

Following the filing of the oath the court shall grant letters of guardianship. Following the filing of an oath and the filing of the bond, the court shall grant letters of conservatorship.

Conservator Inventory

Within a thirty-day period after appointment, the conservator, as a fiduciary, shall file with the court an initial inventory of all the property and assets of the estate.