



# KGP

Legal advocacy with  
dignity and respect

## KANSAS GUARDIANSHIP PROGRAM

. . A partnership involving the State of Kansas and citizen volunteers.

Guardianship and Conservatorship Overview: April 25, 2023

# Guardianship Resources

## Basic Instructions for Guardians and Conservators

Required by KSA 59-3069(j)

Revised and Updated 2017 - Kansas Judicial Council

Guide to Kansas Laws on Guardianship and Conservatorship  
([www.ksgprog.org](http://www.ksgprog.org))

# Goal of Guardianship or Conservatorship

Attempt by the State to provide a way to help and protect a person when the person is incapable of self care or of acting in her or his own best interest.

Last resort and considered after all other lesser restrictive alternatives

Not intended to be forever. . . objective - is to restore the person to complete decision-making capacity.

# Alternatives – Less Restrictive

Informal community interventions (family/friends, bill payment assistance)

Social service involvement through DCF, KDADS, ADRC, CDDO, etc.

Social Security, Railroad Retirement, Veterans Administration payee

Durable Power of Attorney for Finances and/or Health Care

Supported Decision-Making Leg Intro (stand alone or used with G approval)

Voluntary Conservatorship

Guardianship or Conservatorship with guardianship or conservatorship plan

Full Guardianship or Conservatorship

# INFORMED CONSENT

**... a person's agreement to a particular course of action ... full disclosure of facts needed to make the decision intelligently.**

## **1. CAPACITY**

Ability to receive, evaluate, retain and communicate knowledge

### **Indicators of Capacity**

- Ability to manage affairs
- Capable of rational understanding (intellectual comprehension)
- Understand and appreciate the nature and consequences
- Ability to engage in a rational process of decision making

## **2. Information**

What information is provided

How is the information communicated

Full disclosure of information; understandable – pros/cons, risks/benefits, options/alternatives.

## **3. Voluntariness**

Person exercises free power of choice

Without force, fraud, duress, constraint or coercion

# DEFINITIONS

## **Ward**

A person found by a decision of the court to be unable to manage physical health and safety

## **Guardian**

A person appointed by the court to act on behalf of another person

## **Conservatee**

A person found by a decision of the court to be unable to manage personal property and financial resources

## **Conservator**

An adult appointed by the court to manage financial resources and estate

## **Representative Payee**

SSA designation of a person (or an approved organization) who receives SSA BENEFITS on behalf of another person

# Statute Definition

**Adult with an impairment in need of a guardian or conservator, or both . . .**

Means a person 18 years of age or older . . . . .

whose ability **to receive and evaluate relevant information, or to effectively communicate decisions**, or both, even with the use of assistive technologies or other supports, is impaired such that the person lacks the capacity to manage such person's estate, or to meet essential needs for physical health, safety or welfare, and who is in need of a guardian or conservator, or both.

# TYPES OF GUARDIANSHIP OR CONSERVATORSHIP

Guardianship

Conservatorship

Voluntary Conservator

Minor - Minor with an impairment

Temporary Guardian or Conservator

Successor Guardian or Conservator

Standby Guardian or Conservator

Co-Guardian or Co-Conservator



# GUARDIAN or CONSERVATOR

## Who can be appointed

Immediate or extended family member

Bank or financial institution (conservator)

Attorneys and other private individuals

Kansas Guardianship Program nominee

Arcare (non-profit corporation)

# CONFLICT OF INTEREST

A conflict of interest (COI) happens when personal or financial interests as guardian or conservator go against those of the person, or, where your actions appear to be self-serving (for your own benefit).

## Examples of COI

- GC to get a loan from or buy property belonging to the person
- GC to work in the same facility (provider of supports and services) where the person lives

# DECISION MAKING

In making decisions the guardian or conservator shall

K.S.A. 59-3075 et seq

- Exercise authority only as necessitated by the person's limitations
- Encourage the person to participate in making decisions affecting them, and, to act on their own behalf to the extent able
- Encourage the person to develop or regain the skills and abilities necessary to meet their own essential needs and to otherwise manage their own affairs or finances (estate)



# DECISION MAKING

In making decisions the guardian or conservator shall

K.S.A. 59-3075 et seq

- Consider the person's expressed desires and personal values to the extent known
- Strive to assure the personal, civil and human rights of the person being protected
- Act in the best interests of the person, and exercise reasonable care, diligence and prudence



# GUARDIAN DUTIES AND RESPONSIBILITIES



- Provide for care, treatment, habilitation, education, support and maintenance
- Consider and provide necessary or required consents or refuse the same
- Assure the person resides in the least restrictive setting appropriate to the needs and which are reasonably available
- Assure the person receives any necessary and reasonably available medical care and any reasonably available non-medical care of other services

# RGUARDIAN DUTIES AND ESPONSIBILITIES

- Promote and protect the comfort, safety, health welfare
- Make necessary determinations and arrangements for and give necessary consents for funeral arrangements and burial or cremation -
  - the performance of an autopsy upon the body of the person, and anatomical gifts are subject to limitations and provisions in other area of the law

# Guardian Limitations

(Powers Guardians **DO NOT** have)

- ▶ prohibit the marriage or divorce of the person 
- ▶ consent to the termination of parental rights 
- ▶ consent to the performance of any experimental biomedical/behavioral procedure without prior approval of a review committee
- ▶ to exercise any control over the person's estate unless authorized by court (\$10,000 or less)
- ▶ court may give authority to establish certain trusts

# Guardian Limitations

## Guardian Authority **WITH** Court Approval

consent to the adoption of the person

place the person in a treatment facility as defined in K.S.A. 2002 Supp. 59-3077 (h)

exercise any control/authority over the person's estate

consent to any psychosurgery, removal of a bodily organ, or amputation of a limb - except in an emergency and when necessary to preserve the life of the person or to prevent serious and irreparable impairment to the physical health of the person



# Guardian Limitations

Powers Guardians have **with** Court Approval

consent to the sterilization of the person

consent to the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services or procedures requires **written certification approved by a court order.**

# Conservator Duties and Responsibilities

Prosecute and defend for the person

Pay reasonable charges for the support, maintenance and education

Pay all just and lawful debts and the reasonable charges incurred for the support, maintenance and education of person's spouse and children

Possess and manage the estate, collect all debts and claims in favor of the person (certain actions require court approval)

Possess and manage any business which would be in person's best interest

# Conservator Actions Requiring Court Approval

sell assets of the estate

make any gift on behalf of the person

set up an irrevocable trust to enable the person to qualify for public benefits

extend distribution of all funds and assets to the minor until no later than the minor's 25th birthday

# RESTORATION TO CAPACITY

An adult who has been found to have an impairment and in need of a guardian or conservator may be restored to capacity.

When a petition is filed, the court must review it to determine whether or not probably cause exists to warrant further proceedings.

- If not, the court may dismiss the petition, or order an examination and evaluation.
- If court finds probably cause for restoration, the court shall set the petition for hearing and may appoint an attorney for the ward or conservatee.

Standard – clear and convincing evidence

- Either restored to capacity, or,
- Proceed to terminate the guardianship or conservatorship



# ACCOUNTABILITY TO COURT

## Subject to control and direction of the Court

- Annual Guardian Report
- Conservator Inventory and Valuation
- Annual Conservator Accounting
- Special Reports and Accountings



# PETITION TO APPOINTMENT

Petition

Mandatory Orders

- Date, time and place of trial

- Court appointing attorney for proposed ward

- Date, time and place to meet with attorney

- Examination and evaluation

Examination and Evaluation

Notices

Trial

Findings

Oath and Bond

Basic Instructions for Guardians and Conservators

Letters of Appointment

A friend is to the lonely what sunshine is to a flower



Become A Volunteer in the  
Kansas Guardianship Program  
Serve as a Court Appointed Guardian or Conservator

**KGP**

1-800-672-0086    [www.ksgprog.org](http://www.ksgprog.org)

## Volunteers Needed

Who are our volunteers?

- Kansas Citizens who have:
  - The desire to advocate for others
  - Willingness to visit a fellow citizen
  - Ability to work independently

What would our volunteer receive?

- Ongoing support from KGP
- Assistance with annual court reports
- A small monthly stipend
- [www.ksgprog.org](http://www.ksgprog.org)