

# FREQUENTLY ASKED QUESTIONS ABOUT GUARDIANSHIP AND CONSERVATORSHIP IN KANSAS

## What is a guardian or a conservator?

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

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 a conservatee's finances and estate (personal and real property).

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 ward including accessing and monitoring supports and services for physical, psychological and emotional care. The guardian provides informed consents 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 a ward.

A **conservator** makes legal decisions on behalf of the conservatee, manages a conservatee's financial affairs and advocates for and protects the conservatee's personal, civil, and human rights.

When making decisions, a guardian or conservator shall consider the expressed desires and personal values of the ward or conservatee; the authority of a guardian or conservator should be used only as needed; and the ward or conservatee 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 ward and conservatee 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 a ward or conservatee?

A guardian or conservator is not personally liable to a third person for the acts of the ward or conservatee solely 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 ward or conservatee shall not be liable for any injury to the ward or conservatee resulting from the wrongful conduct of that third person.

## Is a guardian or conservator required to use personal resources to care for the ward or conservatee?

The law does **not** require a guardian or conservator to use personal money or other assets for support of the ward or conservatee 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 a ward or conservatee. 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 ward's condition and actions taken on behalf of the ward. 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 conservatee. The report covers a 12-month period.

### What are Conflicts of Interest?

A conflict of interest happens when the personal or financial interest as guardian or conservator go against those of the ward or conservatee or where the actions of a guardian or conservator appear to be self-serving.

### 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 ward or conservatee restored to capacity?

The ward or conservatee may ask the court to find that he/she 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 for longer exists; 2) the ward or conservatee 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/](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. The Guide is available on the Kansas Guardianship Program website, [www.ksgprog.org](http://www.ksgprog.org). Contact us at 1-800-672-0086.

[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](http://www.kansasjudicialcouncil.org/legal_forms.shtml)

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