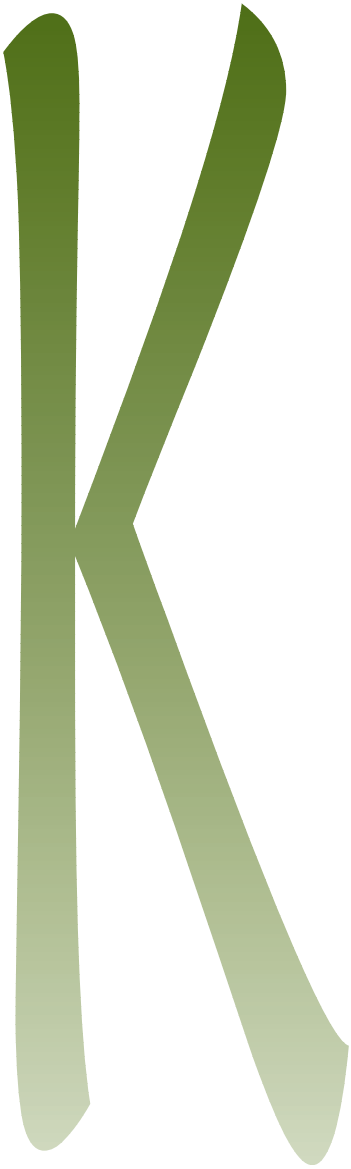

A Guide to Kansas Laws on Guardianship and Conservatorship

Kansas Guardianship Program

KGP

The act for obtaining a guardian or conservator, or both, is found in Kansas statutes annotated 59-3050 through 59-3096.

This publication reflects statutory revisions through the 2008 Kansas Legislative Session. It is intended to be an overview and general guide and the information contained herein should not be taken in lieu of specific advice.

The KGP is a partnership involving the State of Kansas and its citizen volunteers. The program recruits, trains and monitors volunteers who serve as court appointed guardians or conservators. Program eligibility criteria is applicable. Individuals served have limited financial resources (Medicaid recipients) and do not have family members willing or appropriate to assume guardianship or conservatorship responsibilities.

The program is seeking individuals interested in volunteering for this important advocacy work. To apply to become a volunteer, visit our website at www.ksgprog.org or contact us at 1-800-672-0086.

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1. INTRODUCTION

1.1 The Kansas statute on guardianship and conservatorship was substantially revised in the 2002 session of the Kansas Legislature and signed into law by Governor Bill Graves. The changes, which became effective July 01, 2002, revise the procedures for obtaining a guardian or a conservator, and specify duties and responsibilities of those appointed to serve as guardian or conservator.

1.2. This guide is an introduction to and an explanation of the major concepts and procedures of the current law.

2. THE GOAL OF GUARDIANSHIP OR CONSERVATORSHIP

2.1 Guardianship or conservatorship is an attempt by the state to provide a way to help and protect a person when that person is incapable of self-care or of acting in his or her own best interest. A guardianship or conservatorship, while intended to be helpful, may place the most severe restrictions on a person's freedoms that a court can impose. A guardianship or conservatorship should be used only as a method of last resort and be considered only after all other lesser restrictive alternatives have been explored.

2.2 These alternatives may include offering informal community intervention through family, friends, or volunteers with help in such things as shopping for food or providing banking assistance in paying bills. Professional assistance can be found through agencies offering social services, case management and home and community based services. Alternative help with financial affairs can be obtained through Social Security representative payeeships, durable powers of attorney, voluntary conservatorships and, durable power of attorney for health care decisions. The giving of durable powers of attorney and voluntary conservatorships requires that the person involved have capacity at the time he or she signs such agreements.

2.3 A guardianship or a conservatorship is not necessarily intended to be forever. The objective – no matter how unlikely it may seem – is to restore the person to complete decision-making capacity and to close the guardianship or conservatorship as expeditiously as possible. The intent should be to create minimal restrictions and to foster the greatest possible degree of comfort, dignity and self-sufficiency.

3. DEFINITIONS AND TERMINOLOGY
(K.S.A. 59-3051 et. seq.)

3.1 Adult with an impairment in need of a guardian or a conservator, or both
Means a person 18 years of age or older, or a minor who is considered to be of the age of majority pursuant to K.S.A. 38-101, and amendments thereto, or upon whom the rights of majority have been conferred pursuant to K.S.A. 38-108, and amendments thereto, 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 a conservator, or both.

3.2 Appropriate alternative
Means any program or service, or the use of a legal device or representative, which enables a person with an impairment to adequately meet essential needs for physical health, safety or welfare, or to reasonably manage the person's estate. Appropriate alternatives may include, but are not limited to: power of attorney, durable power of attorney, power of attorney for health care decisions, living will, trust, joint tenancy and representative payee.

3.3 In need of a guardian
A person who, because of both an impairment and the lack of appropriate alternatives for meeting essential needs, requires the appointment of a guardian.

3.4 Meet essential needs for physical health, safety or welfare
Means making those determinations and taking those actions which are reasonably necessary in order for a person to obtain or be provided with shelter, sustenance, personal hygiene or health care, and without which serious illness or injury is likely to occur.

3.5 In need of a conservator
A person who, because of both an impairment and the lack of appropriate alternatives for managing such person's estate, requires the appointment of a conservator.

3.6 Manage such person's estate
Means making those determinations and taking those actions which are reasonably necessary in order for a person to receive and account for personal or business income, benefits and property, whether real, personal or intangible and except for reasons of indigency; to purchase or otherwise obtain necessary goods or services; to pay debts and expenses; to sell, exchange or otherwise dispose of property; and to plan for future accumulation, conservation, utilization, investment, and other disposition of financial resources.

3.7 Conservator
An individual or a corporation who or which is appointed by the court to act on behalf of a conservatee.

3.8 Conservatee
A person who has a conservator.

3.9 Guardian
An individual or a corporation certified in accordance with K.S.A. 2002 Suppl. 59-

3070 and amendments thereto, who or which is appointed by a court to act on behalf of a ward.

3.10 Ward
A person who has a guardian.

3.11 Natural guardian
Means both the biological or adoptive mother and father of a minor if neither parent has been found to be an adult with an impairment in need of a guardian or has had parental rights terminated by a court of competent jurisdiction. If either parent of a minor is deceased, or has been found to be an adult with an impairment in need of a guardian or has had parental rights terminated by a court of competent jurisdiction, then the other parent shall be the natural guardian, unless also deceased, or found to be an adult with an impairment in need of a guardian, or has had parental rights terminated by a court of competent jurisdiction, in which case no person shall qualify as the natural guardian.

3.12 Minor - child under the age of 18
Minors are wards of their parents (or, in some cases, of court appointed adults) because they are under the age of 18. Parents (or a parent) are considered to be the "natural guardians" and, by implication, conservators of their minor child's life and personal money.

3.13 Minor with an impairment in need of a guardian or conservator, or both
Means a person under 18 years of age who otherwise meets the definition of an "adult with an impairment in need of a guardian or conservator, or both" and whose impairment is expected to continue beyond the age of 18. The adjudication and orders will follow the minor into adulthood. A parent is not automatically the guardian of a son or daughter when the child becomes 18 years old. If a parent wishes to become the guardian of his or her adult child, only by court order following a specific due process procedure can the child be made a ward and the parent be appointed the guardian.

3.14 Person who has been previously adjudicated as impaired in another state
Allows that, for a ward or conservatee who resides out-of-state, the out-of-state guardian or conservator may file a petition in Kansas asking the court to give full faith and credit to the other state's adjudication and to appoint a guardian or conservator in Kansas.

3.15 Person in need of an ancillary conservator
Means a conservatee who is not residing in Kansas and who has been adjudicated in need of a conservator in another state, and who has property in Kansas for which a conservator is required.

3.16 Voluntary Conservatee

A person who voluntarily requests a court appointed conservator to assist with managing his or her finances and property, and is not adjudicated as in need of a guardian or conservator under Kansas law (K.S.A. 59-3056 et. seq.).

3.17 Temporary Guardian or Conservator

After a petition for a hearing on a proposed ward or conservatee has been filed, a situation may arise where there exists imminent danger to the physical health or safety of the person or that there exists imminent danger that the estate of the person will be significantly depleted while the details of the hearing procedure have not yet been satisfied. In these situations the court may appoint a temporary guardian or conservator (K.S.A. 59-3073). The court can decide if a guardianship or conservatorship is needed and can appoint an emergency appointee who shall be assigned specific duties and powers necessary to protect against the imminent dangers shown or the depletion of financial resources.

3.18 Standby Guardian or Conservator

The court may appoint another person to assume the duties and powers assigned to the guardian or conservator upon the resignation, disability, temporary absence or death of the guardian or conservator. This assures a ward or conservatee and those who care about them that adequate provision is made for ongoing supervision of the ward's welfare or conservatee's estate (K.S.A. 59-3074).

3.19 Successor Guardian or Conservator

Successor guardian or conservator is a person appointed to succeed an individual earlier appointed as guardian or conservator (K.S.A. 59-3088 et. seq.).

3.20 Co-Guardian or Co-Conservator

The court may appoint one or more individuals (or corporations) to serve as guardian or conservator for an individual and shall specify if the co-guardians or co-conservators may act independently or only in concert (K.S.A. 59-3087 et. seq.).

3.21 Adjudication

The trial process in which the court makes a finding of whether or not a person is determined to be legally in need of a guardian or conservator, or both.

3.22 Venue

Venue of guardianship and conservatorship provides that guardianship proceedings may be held in the proposed ward's county of residence or where the proposed ward may be found. Conservatorship proceedings may be held in the proposed conservatee's county of residence or if the proposed conservatee resides outside the state, in any county in which the proposed conservatee's property is located. In a combined guardianship and conservatorship proceeding, venue is exclusively in the county of residence of the proposed ward or conservatee.

3.23 Personal or Agency Interest

Personal or agency interest shall include, but not be limited to, details of any financial, agency or other transactions between a proposed guardian, guardian, proposed conservator or conservator and the proposed ward, ward, proposed conservatee or conservatee as applicable.

4. PRIORITY OF WHO MAY BE APPOINTED AS GUARDIAN OR CONSERVATOR (K.S.A. 59-3068 et. seq.)

4.1 The court in appointing a guardian or conservator shall give priority in the following order to:

(1) the nominee of the proposed ward or proposed conservatee, if the nomination is made within any durable power of attorney;
(2) the nominee of a natural guardian;
(3) the nominee of a minor who is the proposed ward or proposed conservatee, if the minor is over 14 years of age;
(4) the nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee; or
(5) the nominee of the petitioner.

4.2 Before appointing a guardian or conservator the court shall: consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator; give particular attention in making the appointment to the number of other cases in which the proposed guardian or conservator, other than a corporation, is currently serving as guardian or conservator, particularly if that number is more than 15 or more wards or conservatees. In appointing a guardian for a person who is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the court shall consider, but shall not be limited to, the appointment of an individual as guardian who is sympathetic to and willing to support this system of healing.

4.3 The court shall determine that the individual who is eligible for appointment is required to be a "fit and proper person" or a "suitable person." The court may order an investigation of the past history and character of a proposed nominee.

5. INDIVIDUAL OR CORPORATE GUARDIANS

5.1 K.S.A. 59-3070 provides that a guardian may be either an individual or a corporation. A corporation, in order to be eligible for appointment as a guardian, must be a private, nonprofit corporation that is suitable to perform the duties of a guardian as certified by the Secretary of Social and Rehabilitation Services (K.S.A. 59-3070 (c)).

6. GENERAL DUTIES, RESPONSIBILITIES, POWERS AND AUTHORITIES OF GUARDIANS (K.S.A. 59-3075 et. seq.)

6.1 The individual or corporation appointed by the court to serve as the guardian shall

carry out diligently and in good faith, the general duties and responsibilities; shall at all times be subject to the control and direction of the court; and, shall act in accordance with the provisions of any guardianship plan if one is filed with the court.

6.2 The court shall have the authority to appoint counsel for the guardian, and the fees of the attorney may be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

6.3 Mandatory Orders
The guardian shall:

- become and remain personally acquainted with the ward, the spouse of the ward and other interested persons associated with the ward and who are knowledgeable about the ward, the ward's needs, and the ward's responsibilities
- exercise authority only as necessitated by the ward's limitations
- encourage the ward to participate in making decisions affecting the ward
- encourage the ward to act on the ward's own behalf to the extent the ward is able
- encourage the ward to develop or regain the skills and abilities necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs

6.4 In making decisions on behalf of the ward, the guardian shall:

- consider the expressed desires and personal values of the ward to the extent known to the guardian
- strive to assure that the personal, civil, and human rights of the ward are protected
- at all times act in the best interests of the ward and exercise reasonable care, diligence and prudence
- file with the court reports concerning the status of the ward and actions of the guardian as the court directs

6.5 The guardian shall exercise all powers and discharge all duties necessary or proper to implement the following provisions:

- take charge of the person of the ward, and provide for the ward's care, treatment, habilitation, education, support and maintenance
- consider and provide on behalf of the ward necessary or required consents or refuse the same
- assure the ward resides in the least restrictive setting appropriate to the needs of the ward and which are reasonably available
- assure the ward receives any necessary and reasonably available medical care and, any reasonably available non-medical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities
- promote and protect the comfort, safety, health and welfare of the ward
- make necessary determinations and arrangements for and give necessary consents in regard to the ward's funeral arrangements, burial or cremation, the

performance of an autopsy upon the body of the ward, and anatomical gifts of the ward. Cremation, autopsies and anatomical gifts are subject to limitations and provisions in other areas of the law.

7. LIMITATIONS OF POWERS OF A GUARDIAN (K.S.A. 59-3075 et. seq.)

7.1 A guardian shall not have the power on behalf of the ward to:

- prohibit the marriage or divorce of the ward
- consent to the termination of the ward's parental rights
- consent to the performance of any experimental biomedical or behavioral procedure on the ward, or to the ward participating in any biomedical or behavioral experiment, without prior review and approval by an institutional review board or by a review committee established by the agency, institution or treatment facility where the procedure or experiment is to occur

7.2 Unless approved by the court, a guardian shall not have the power on behalf of the ward to:

- consent to the adoption of the ward
- place the ward in a treatment facility as defined in K.S.A. 2002 Supp. 59-3077 (h)
- exercise any control or authority over the ward's estate
- consent to any psychosurgery, removal of a bodily organ, or amputation of a limb, unless, the surgery, removal or amputation has been approved in advance by the court, except in an emergency and when necessary to preserve the life of the ward or to prevent serious and irreparable impairment to the physical health of the ward
- consent to the sterilization of the ward, unless approved by the court following a due process hearing where the ward is represented by a court appointed attorney
- consent to the withholding or withdrawing of life-saving or life-sustaining medical care, treatment, services or procedures, except in accordance with the provisions of any declaration of the ward making a Living Will pursuant to K.S.A. 65-28, 101 through 65-28, 109 and amendments thereto; or, if the ward, before the appointment of a guardian, executed a *durable power of attorney for health care decisions (DPOAHC)* and the document was not revoked by the ward and there is included any provision relevant to the withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures,
  - then the guardian *shall* have the authority to act as provided for in the *DPOAHC* - even if the guardian has revoked or amended the power of attorney, OR,
  - the guardian may allow the agent appointed by the ward to act on the ward's behalf if the guardian has not revoked or amended that power of attorney; OR
  - where the ward's treating physician shall certify in writing to the guardian that:
    - the ward is in a persistent vegetative state, or, is suffering from an illness

or other medical condition for which further treatment, other than for relief of pain, would not likely prolong the life of the ward other than by artificial means,

- nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward possesses, and,
- which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access, established for the purposes of reviewing the circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. The written certification shall be approved by a court order.

- to exercise any control or authority over the ward's estate, except if the court shall specifically authorize such. The court may assign such authority to the guardian, including the authority to establish certain trusts as provided in K.S.A. 2002 Supp. 59-3080, and amendments thereto.

8. GUARDIAN LIABILITY

8.1 The guardian shall not be personally liable to a third person for the acts of the ward solely by virtue of the guardian's appointment, nor shall a guardian who exercises reasonable care in selecting a third person to provide any medical or other care, treatment or service for the ward be liable for any injury to the ward resulting from the wrongful conduct of that third person (K.S.A. 59-3075 (d)).

9. GENERAL DUTIES, RESPONSIBILITIES, POWERS AND AUTHORITIES OF A CONSERVATOR (K.S.A. 59-3078 et. seq.)

9.1 The individual or corporation appointed by the court to serve as the conservator:

- shall carry out diligently and in good faith, the general duties and responsibilities
- shall at all times be subject to the control and direction of the court
- shall act in accordance with the provisions of any conservatorship plan if one is filed with the court

9.2 The court shall have the authority to appoint counsel for the conservator, and the fees of the attorney may be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

9.3 Mandatory Orders

A conservator shall:

- become aware of the conservatee's needs and responsibilities
- exercise authority only as necessitated by the conservatee's limitations
- encourage the conservatee to participate in making decisions affecting the conservatee

- encourage the conservatee to act on the person's own behalf to the extent the conservatee is able
- encourage the conservatee to develop or regain the skills and abilities necessary in order for the conservatee to be able to manage the conservatee's own estate

9.4 Conservators in making decisions on behalf of the conservatee shall:

- consider the expressed desires and personal values of the conservatee to the extent known to the conservator
- strive to assure that the personal, civil, and human rights of the conservatee are protected
- at all times act in the best interests of the conservatee and exercise reasonable care, diligence and prudence
- file with the court an initial inventory of all of the property, assets and any sources of regular income of the conservatee's estate
- file with the court annual accountings and other reports concerning the status of the estate and the actions of the conservator

9.5 In fulfilling the general duties and responsibilities the conservator shall:

- pay the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee in a manner suitable to the conservatee's station in life and value of the conservatee's estate
- pay all just and lawful debts of the conservatee and the reasonable charges for the support, maintenance, care, treatment, habilitation and education of the conservatee's spouse and minor children
- possess and manage all the assets of the estate and collect all debts and assert all claims in favor of the conservatee, and, with the <u>approval of the court</u>, compromise the same
- conservator shall keep any property of the conservatee's estate insured against theft, other loss or damage, in reasonable amounts based on the value of the estate, and for the benefit of the conservatee or the conservatee's estate
- prosecute or defend all actions in the name of the conservatee or as necessary to protect the interests of the conservatee
- sell assets of the conservatee's estate when the interests of the conservatee or the conservatee's estate require the sale thereof
- possess or manage any ongoing business that the conservatee was managing and operating prior to the appointment of the conservator, and divest the conservatee's estate of any interest therein, with the <u>approval of the court</u>, when the conservator deems it in the best interests of the conservatee or the conservatee's estate

10. LIMITATIONS ON CONSERVATOR POWERS

10.1 A conservator shall have the power <u>with court approval</u> to:

- use the assets of the minor's estate to pay any obligation imposed by law upon the minor's natural guardian or guardians [must show extreme hardship]

- sell, convey, lease or mortgage the conservatee's interest in the homestead of the conservatee, and no conservator's deed or other instrument executed by virtue of the court's approval shall be valid unless the spouse, or conservator of the spouse, shall join therein as one of the grantors thereof
- lease the possession or use of any real estate within the conservatee's estate for any period greater than three years
- sell, convey or mortgage any real estate within the conservatee's estate
- sell, convey, lease or mortgage any oil, gas or other mineral interest within the conservatee's estate
- sell, convey, lease or mortgage, the inchoate interest of the conservatee in any real estate the title to which is in the spouse of the conservatee
- extend an existing mortgage in favor of the conservatee or conservatee's estate, for a period of more than five years
- extend an existing mortgage which obligates the conservatee or conservatee's estate, unless the extension agreement contains the same prepayment privileges, the rate of interest does not exceed the lowest rate in the mortgage extended, and the extension does not exceed five years
- make any gift on behalf of the conservatee
- set up an irrevocable trust to enable the ward to qualify for public benefits
- extend distribution of all funds and assets to the minor until no later than the minor's 25th birthday

11. CONSERVATOR LIABILITY

11.1 The conservator shall not be personally liable:

- for the wrongful conduct of a third person whom the conservator selects to provide any service to the conservatee's estate, if the conservator exercises reasonable care in making that selection
- on a mortgage note executed by the conservator in his or her representative capacity as authorized by the court
- on a contract entered into by the conservator in his or her representative capacity unless the conservator fails to disclose the fiduciary relationship
- for obligations arising from ownership or control of the estate or other acts or omissions occurring during its administration, unless the conservator is personally at fault
- for any environmental condition on land owned or acquired by the estate; or
- for retaining until maturity any investment which was a part of the conservatee's estate at the time the conservatorship was established even though the investment may not be considered prudent or reasonable

12. CONFIDENTIALITY OF MEDICAL RECORDS AND OTHER REPORTS

12.1 The court upon request of any party or the court's own motion, may issue a written order directing that any medical or treatment records, evaluations or investigative reports filed with the court, attached to any pleading, produced in response to any

order issued by the court, or introduced in evidence, shall be separately maintained in a confidential manner, and to be disclosed only in certain circumstances as specified in K.S.A. 59-3093 et. seq.

13. PROCEDURES FROM PETITION TO APPOINTMENT OF GUARDIAN OR CONSERVATOR

13.1 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."

13.2 Petition

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.

13.3 Mandatory Orders (K.S.A. 59-3063 et. seq.)

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

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

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.

13.5 Notices (K.S.A. 59-3066 et. seq.)

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.

13.6 Trial (K.S.A. 59-3067 et. seq.)

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.

13.7 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.

13.8 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.

13.9 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.

13.10 Basic Instructional Program for Guardians or Conservators

Every individual appointed as guardian or conservator on or after January 1, 2009,

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.

13.11 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.

13.12 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 conservatee's estate.

14. GUARDIANSHIP AND CONSERVATORSHIP PLANS (K.S.A. 59-3076 and 59-3079)

14.1 At any time the court may require the guardian or the conservator, or the guardian or conservator may at any time choose to develop and file with the court a plan of care of the ward.

14.2 A guardianship or a conservatorship plan may not be required in every case, however, in those cases where the person is capable of making some decisions, the plan can set out which decisions should be left to the individual.

14.3 The guardianship plan may provide for, but need not be limited to provisions regarding where the ward will reside, what restrictions may be placed upon the persons with whom the ward may associate and how much autonomy the ward will have to make decisions regarding, for example, employment, education and travel. The plan may also contain provisions regarding use of the ward's financial assets if no conservator has been appointed.

14.4 A conservatorship plan may include provisions regarding the type and amount of funds over which the conservatee may have control, and how the conservator may protect the eligibility of the conservatee for public benefits.

14.5 Once a plan is filed, the court may order notice to all interested parties, and may also order a hearing if requested. The court may order a plan to be withdrawn or amended.

15. RESTORATION TO CAPACITY PROCEDURES (K.S.A. 59-3090 et. seq.)

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

15.2 When a petition is filed, the court must review it to determine whether probable cause exists to warrant further proceedings.

15.3 If not, the court may dismiss the petition, or, may order an examination and evaluation of the person.

15.4 Once the court finds probable cause, the court shall set the petition for hearing and may appoint an attorney for the ward or conservatee.

15.5 At the conclusion of the hearing, if the court does not find by clear and convincing evidence, that the ward or conservatee is impaired, the court shall order that the ward or conservatee is restored to capacity and shall proceed to terminate the guardianship or conservatorship, or both.

16. REVIEW PROCEDURE BY THE COURT (K.S.A. 59-3083, K.S.A. 59-3084 and 59-3085 et. seq.)

16.1 Upon the filing of any guardian report or conservator accounting, the court will review that report or accounting, any prior orders in the case, any guardianship or conservatorship plan which has been filed, and, any previous reports or accountings.

16.2 The court is to determine whether the report or accounting shows reasonable administration of the guardianship or conservatorship, whether the fiduciary is performing his or her duties and responsibilities, and whether the fiduciary's powers should be expanded or limited or any other modifications made.

16.3 The court may then set a hearing on the matter.

16.4 In addition to the usual annual reports and accountings, there are other specific circumstances which would trigger the filing of a special report or accounting with the court: change of address of the guardian or conservator; change of residence or placement of the ward or conservatee; significant change in the health or impairment of the ward or conservatee; the acquisition, receipt or accumulation of property or income by the ward which would cause the value of the ward's estate to equal or exceed $10,000; or the death of the ward or conservatee; a change in the circumstances of the guardian, or conservator, ward or conservatee that may constitute a conflict of interest.

17. TERMINATION OF GUARDIANSHIP AND CONSERVATORSHIP (K.S.A. 59-3092)

17.1 As statutes do not provide that a guardianship or conservatorship shall last for any specific length of time, the court at any time may enter an order summarily terminating a guardianship or a conservatorship in any of the following circumstances:

- the ward or conservatee is deceased
- the ward who was a minor and not adjudicated to be a minor with an impairment which would otherwise make that minor an adult with an impairment in need of a guardian, has become18 years of age, has had the rights of majority conferred upon them pursuant to K.S.A. 38-108, and amendments thereto, or is now

considered to be of the age of majority pursuant to K.S.A. 38-101, and amendments thereto; or

- no further need for the guardianship or conservatorship exists

17.2 At any time the court may enter an order summarily terminating the voluntary conservatorship in any of the following circumstances:
- the conservatee has filed a verified petition requesting the termination of the conservatorship and the court has issued orders as applicable
- the conservatee has been adjudicated an adult with an impairment in need of a conservator and the court has issued orders as applicable
- no further need for the conservatorship exists and the court has issued orders as applicable, or
- the conservatee is deceased and the court has issued orders as applicable

18. COSTS AND FEES (K.S.A. 59-3094)

18.1 K.S.A. 59-3094 addresses the issue of costs and fees involving guardianship or conservatorship matters. By statute, K.S.A. 60-2001 requires the payment of a docket fee to the clerk of the district court when filing a petition with the court. A "poverty affidavit" as provided for in the code of civil procedure may be filed with the court when a person is unable to pay by reason of indigence. Upon the filing of a petition, the court may allow and order payment for various costs and fees related to the case.

18.2 Costs and fees may be allowed for the following:
- any professional services ordered performed by the court
- counsel for the proposed ward or proposed conservatee when counsel is appointed by the court
- counsel for the petitioner and any respondent
- other costs and fees may be allowed and paid as are allowed by law for similar services in other cases.

18.3 The costs shall be taxed to the estate of the proposed ward or conservatee, to those bound by law to support the proposed ward or conservatee, to other parties whenever it would be just and equitable to do so, or to the county of residence of the proposed ward or conservatee. In the event of any contested proceeding or matter, the court, in its discretion, may require one or more parties to give security for the costs.

19. COURT

19.1 In Kansas, the district courts are central in the matter of guardianship or conservatorship. District judges, associate district judges, and district magistrate judges conduct the hearings for appointments of guardians or conservators.

19.2 Guardianship and conservatorship, in Kansas, is a public trust and a team task. Judges, individuals and corporations are charged, through Kansas statutes with making decisions on behalf of those individuals who are not able to manage life in their own best interests.

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