

# Everything You Need to Know About Adult Guardianships

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# Overview

# Overview: Who is Kansas Legal Services

# Overview: We Will Discuss

- Guardianship vs. Conservatorship
- When is an Adult Guardianship appropriate?
- Filing initial Guardianship cases
- Continuing obligations of guardians
- Expanded powers for guardians
- Limitations to Guardianships
- Alternatives to Guardianship in Kansas

# Stepping Into the Statutory Scheme of Guardianships & Conservatorships

K.S.A. 59 - 3050 through K.S.A. 59 - 3097

# Key Players



**Guardian:** A guardian is a person appointed by a court to act on behalf of a minor or impaired person, who is called a “ward.” A guardian manages a ward’s personal health, safety, and welfare.

**Conservator:** Conservator is a person appointed by a court to act on behalf of a minor or impaired person, who is called a “conservatee.” A conservator manages a conservatee’s property or “estate,” such as money, personal and real property.

**The Court:** The Court is the ultimate decision maker in determining the need for and then appointing a guardian or a conservator.

**Ward:** A ward is a person for whom a guardian has been appointed. A ward may be either a minor or an adult person with an impairment.

**Conservatee:** A conservatee is a person for whom a conservator has been appointed. A conservatee may be a minor, an adult person with an impairment, or a person who has voluntarily requested a conservatorship.

**Physician:** A physician is needed to assess the capacity of the Proposed Ward or Proposed Conservatee. They will serve an important role in any Guardianship Plan.

# Guardianship vs Conservatorship

## Guardianship:

- Court proceeding must prove that a person lacks sufficient intellectual capacity and needs a guardian to make personal decisions (i.e. medical and housing)

## Conservatorship:

- Court proceeding appointing someone to make financial decisions for a person who lacks the capacity to manage their financial resources
- Typically seen when there is a sufficient amount of assets to manage

The focus of this presentation is Guardianships, but it is important to know the difference between the two.

# When is an Adult Guardianship appropriate?

## STATUTE REQUIREMENTS - K.S.A. 59-3051(a)

1. 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](#), or upon whom the rights of majority have been conferred pursuant to K.S.A. [38-108](#);
2. 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;
3. 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
4. who is in need of a guardian or a conservator, or both.

## PRACTICALLY

- A person may be too impaired to execute a valid Durable Power of Attorney.
- If there is a valid Durable Power of Attorney, the scope of the document may not be broad enough to encompass the needs of the proposed ward OR it may not even be enforceable.
- It is necessary for someone to have authority to make decisions for the impaired adult or to prevent the impaired adult from making decisions that are not in their best interest



# What standards are used to determine whether a Guardianship/Conservatorship is appropriate?

Vague and Unsatisfactory Answer:

*It is in the best interest of the Proposed Ward.*

# What does that mean?!



In true lawyer fashion, *It depends.*

Based on the petition requirements it seems like the Court will do a “gut-check” based on the information the petitioner describes.

K.S.A. 59-3058 requires the petitioner to state “belief that the proposed ward or proposed conservatee is an adult with an impairment in need of a guardian or a conservator, or both” and to state the factual basis that leads them to believe that.

# Who Makes a Good Guardian?

A good Guardian is someone who is:

- Reliable
- Honest
- Communicative
- Organized
- Willing to act on behalf of the Ward's interests and not their own
- Comfortable making decisions
- Knowledgeable of the needs and wants of the Proposed Ward
- The list goes on . . .

Relatives don't always make the best Guardians

# Filing an Initial Guardianship Case

1. Provide the Proposed Guardian with the “Basic Instructions for Guardians” or the “Basic Instructions for Guardians and Conservators”. Reading this handbook counts as the “Required Training” for a Proposed Guardian.
2. The Proposed Guardian must then sign an affidavit upon reading the instructions.
3. Use K.S.A. 59-3058 as checklist to begin drafting a Petition for Guardian or Co-Guardians.
4. An examination of the Proposed Ward must be done to evaluate the proposed ward's or proposed conservatee's alleged impairment
5. Guardian(s) must file an Oath of Affirmation in writing, signed, in front of the judge or a notary.
6. There may be a bond set, but that is more common in Conservatorships.
7. Court issues Letters of Guardianship.
8. In some cases, the Court may require a Guardianship Plan, it may be a good idea to do so.
  - a. A guardianship plan might include provisions about where a ward will live and what kinds of decisions the ward will be allowed to make on their own.
9. A Guardian will file an annual report to update the Court on the condition of the Ward.

# Stand-By Guardian vs Co-Guardian

## Stand-By Guardian

A standby guardian assumes the guardianship duties if the current guardian dies, becomes disabled or resigns. A stand-by can also step in if the guardian is on vacation or unavailable.

Appointed via a paragraph in the Petition, must also sign the “Oath of the Stand-By Guardian”.

## Co-Guardian

A co-guardian can be appointed with a guardian as a person who equally shares in responsibility and role to the ward. They may be appointed to act independently or may choose to work together in concert.

Draft Petition using Co-Guardian instead of Guardian.

# Continuing Obligations of Guardian

Annual reporting (or an annual update) on the condition of the Ward, even if there are no changes.

A Guardian must file a special report with the Court if circumstances have changed, such as:

- Change of address, phone number, email address of the guardian
- Change of residence or placement of the ward
- Significant change in the health or impairment of the ward (is the Guardianship still needed?)
- If the ward acquires any real property, or if the ward receives or accumulates other property or income which causes the total value of the ward's estate to equal or exceed \$10,000
- Change in the circumstances of the guardian or ward that may constitute a conflict of interest
- Death of the ward (a Final Report should be submitted)

# Powers/Duties of a Guardian

K.S.A. 59-3075

- Take charge of the Ward;
- Provide for the ward's care, treatment, housing, education, support and maintenance;
- Consider/provide on behalf of the ward necessary or required consents or refusals;
- Assure that the ward lives in the least restrictive setting that meets the ward's needs and is reasonably available;
- Assure that the ward receives all necessary and reasonably available medical care to preserve the ward's health;
- Consent to experimental procedures only if approved by an institutional review board or committee
- Protect the health, safety and welfare of the ward
- Revoke a durable power of attorney for health care decisions
- Make necessary arrangements for the ward's funeral, burial or cremation

# Limited Powers: Needs Written Court Approval

- Consent to adoption of the ward;
- Consent to any psychosurgery, organ or limb removal except in a life threatening emergency or to prevent lasting impairment to the ward's physical health;
- Consent to sterilization of the ward;
- Consent to withholding or withdrawal of life-saving medical care unless the ward previously made a written advance directive (living will, durable power of attorney for health care decisions, or similar document) that meets legal requirements;
- Have any control over the ward's property, unless the Letters of Guardianship authorize you to do so AND the value of the ward's property is less than \$10,000;
- Place the ward in a psychiatric treatment facility;
- Access digital assets of the ward, such as online accounts, pictures and music stored electronically, social media accounts, etc.;
- Pay the guardian or the guardian's attorney a fee; or
- Dispose of property after the ward's death.



# A Guardian Can NEVER

- Prohibit the marriage or divorce of the ward; or
- Consent to termination of the ward's parental rights.

# Are There Any Alternatives?



There is no crystal ball that can tell you when, if or how you will become incapacitated to the point of needing a Guardian . . .

The best “preventative measure” against a Guardianship that our clients, both young and old, can take is to make sure they have a legal General Durable Power of Attorney, a Healthcare Power of Attorney, and a Living Will.

# Big Picture



Petitioning the Court for a Guardianship is a BIG deal and it should not be entered into lightly.

A Guardian should always be able to act in the best interest of the Ward and encourage them to make decisions, develop skills for daily living, and do as much as the ward can on his or her own. Guardians do not have ultimate control over the Ward.

Guardianships don't have to be forever. When they are no longer necessary, the Court just needs to be updated.

Sometimes family members don't make the best Guardians, and sometimes they do. Generally when kiddos with a disability become adults, parents are often the best bet as they have cared for their child with a disability throughout their childhood.

# You be the Judge!

If you were a judge and the following Guardianship Petitions came across your desk, would you grant a guardianship or not?

# Janet



Janet is 85 years old and has recently been diagnosed with Dementia. She has started to grow fond of the neighborhood cats. She loves them so much she now leaves her doors and windows open all the time so they can access her house as they please. She feeds them by leaving out multiple bowls of food and she keeps the water bowls filled as well. She gets her kitty cats the best food available and spends her entire Social Security Check on their food and treats. She has some litter boxes for them but she often forgets to clean them, and when she remembers, she often can't lift the heavy bag of litter. Other critters are starting to take notice of her hospitality, including, mice, opossums, flies, maggots, etc.

Janet never got a POA. Her son Johnny is starting to get worried and so he finds Addie the Attorney to help him file a petition to be his Mom's Guardian. Would you grant the guardianship?

# Britney



Britney has been diagnosed with Generalized Anxiety and a Mood Disorder. She has been working with a therapist for three years now to manage symptoms using therapeutic techniques and previously managed symptoms with medicine. Britney didn't enjoy the side effects of her medication so she decides to begin to wean off the medicine with the help of her therapist.

Her job is super demanding and she is also having some relationship troubles with her partner. She starts missing her therapy appointments. She starts to make impulsive purchases, like denim dresses and large yellow snakes. Britney becomes withdrawn, and hostile, she begins suffering from more frequent panic attacks, and it seems like her panic attacks are becoming more violent. Britney then has a large public outburst, which damages property and puts others in physical danger.

Britney is really busy, and never had time to get a POA. Her dad, Richard, is starting to get worried and so he finds Addie the Attorney to help him file a petition to be his daughter's Guardian. Would you grant the guardianship?

# Mike



In the first grade, Mike was diagnosed with Autism. He is high functioning and has performed daily activities independently as appropriate for his age. However, he does not drive, gets overwhelmed in crowded areas, and has trouble building relationships with others. He just got into Monsters University! He is looking forward to living in the dorm and eating all the dining hall food.

Mike does not have a POA. His Mom is starting to get worried about her little Mike and so she finds Addie the Attorney to help her file a petition to be Mike's Guardian. Would you grant the guardianship?

# Carl



Carl just turned 86 years old. He has lived alone since his wife passed away. He doesn't leave his house very often and is known in the neighborhood as kind of grumpy. He is generally in good health, and he gets around pretty good with his cane. He no longer drives, and his friend Russell takes him to any doctors appointments and will drop off groceries for him. There has been construction around his home, and he recently got into an altercation with a worker when they almost ran over the mailbox his late wife painted. He got so angry that he hit the worker over the head with his cane. The worker was fine, but Russell is worried that he shouldn't live at home anymore.

Carl's wife was his POA and he did not have a back-up. Russell finds Addie the Attorney to help him file a petition to be his friend's Guardian. Would you grant the guardianship?



Thanks!