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**A Basic Guide**

**for Understanding**

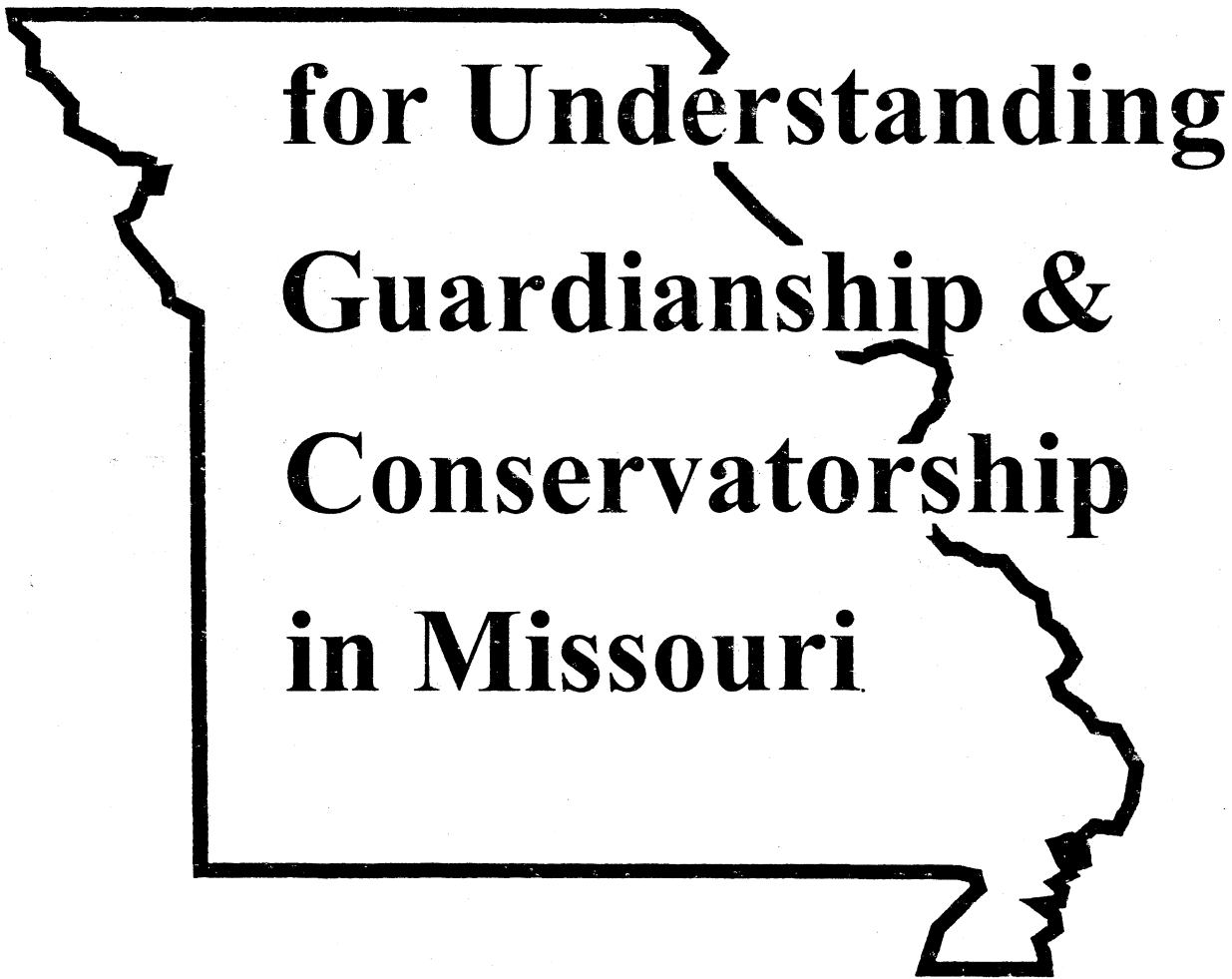
**Guardianship &**

**Conservatorship**

**in Missouri**

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## INTRODUCTION

Guardianship is the legal process of determining a person's capacity to make decisions for himself regarding his personal affairs (such as where he lives or the care he requires.) When a person has been adjudged to be incapacitated (unable to make decisions affecting his personal affairs), a guardian is appointed to make those decisions for him, based on that individual's own best interests.

Conservatorship is similar to guardianship, but differs in that it deals only with the financial affairs of an individual. A conservator is appointed by the court after it is found that an individual doesn't have the capacity to manage his finances, such as balancing his checkbook. A conservator has no authority to make decisions regarding another individual's personal affairs. Only a guardian has such power.

Even before Missouri became a state, residents of the territory recognized the need to make provisions for those persons described by an early newspaper as being "at large and furiously mad." This way of describing those with mental retardation, mental illness, developmental disabilities and, in some cases, those who were elderly or physically disabled, gave way to such terms as lunatic, idiot, imbecile, and senile when state laws were first enacted.

The first guardianship law, enacted when Missouri became a state, went basically unchanged from the early 1820's until 1983. The law assumed everyone for whom a guardian was appointed was incapable of making decisions on their own. It failed to take into account that those who are elderly, mentally retarded or mentally ill have different degrees of ability and may not need total guardianship.

The Missouri General Assembly, in 1983, passed a bill revising the guardianship law. The measure was the result of almost ten years of work by Jackson County Circuit Court Commissioner John Borron, members of the Missouri Bar Association and members of groups concerned with the rights and care of persons with mental retardation, mental illness or physical disabilities or who are elderly.

The Guardianship Revision Bill of 1983 eliminated the archaic terminology, replacing it with such terms as incapacitated and disabled to describe persons needing guardianship or Conservatorship. The measure also took into account the varying degrees of ability a mentally retarded, mentally ill, elderly or physically disabled person may have and that guardianship should be tailored to take care of only those needs a person is not capable of meeting himself. Other features of the bill, such as allowing out-of-state residents to become guardians of a Missouri resident and requiring an annual report by the guardian or conservator, will be covered later in this manual. The new law took effect September 28, 1983.

There are some costs involved in obtaining guardianship, but in most cases these costs are charged to the estate of the person for whom guardianship or conservatorship is being sought. The guardian of an adult is not responsible for the financial care of his ward.

Guardianship and/or conservatorship are efforts to protect those who are mentally ill, mentally retarded, physically disabled or elderly who are unable to make some decisions about their lives by themselves. The law contains many safeguards and reporting provisions designed to prevent someone from abusing the powers of guardianship or conservatorship. There is, however, no law that will completely prevent abuses or violations from occurring. It is hoped the new guardianship law will bring abuses that do occur to light and will act as a deterrent to those who would abuse their power.

This manual is intended to acquaint the reader with a general understanding of the guardianship law in Missouri. Persons thinking about obtaining guardianship for another individual may want to contact their attorney for more information and advice.

The reader will note the use of numbers in brackets throughout this manual. The brackets contain the sections of the law where particular provisions may be found. These sections are based on the Revised Statutes of Missouri (RSMo). When contacting an attorney, it may be helpful to use these numbers in discussing guardianship or conservatorship.

## TERMS USED IN GUARDIANSHIP/CONSERVATORSHIP

A wide variety of terms are used in the process of obtaining guardianship or conservatorship for an individual. Some of the terms defined in the statutes are difficult to understand. The definitions used here are designed to be easily understood.

**Adult** – A person who has reached the age of 18.

**Claims** – defined by the new law, claims apply only when a conservator has been appointed for an individual. (See *Conservator*, listed below.) Claims are the demands to pay debts which the protectee incurred before or after a conservator was appointed to assist with his financial affairs.

**Conservator** – A person or corporation appointed by the court to care for and have custody of the property and oversee the financial affairs of a minor or disabled person. A limited conservator is a person whose duties and powers are limited by the court.

**Disabled Person** – A person who is unable by reason of any physical or mental condition to receive and evaluate information or who lacks the ability to communicate decisions needed to manage his financial resources (as defined later). The term also applies to partially disabled.

**Guardian** – A person appointed by the court to care for and have the custody of a minor or an incapacitated person (a person judged to be unable to receive and communicate information. See definition later.) A limited guardian is a person whose powers as guardian are limited by the court to certain functions.

**Guardian ad litem** – A person appointed by the court to represent a minor, incapacitated person (as defined later), a disabled person, or an unborn person in a particular situation or lawsuit. The guardian ad litem is appointed for a limited period of time or for a specified purpose.

**Habilitation** – Habilitation is the instruction, training, guidance or treatment designed to enable and encourage a mentally retarded or developmentally disabled person to acquire and maintain those life skills needed to cope more effectively with the demands of his life and the lives of people around him.

**Incapacitate Person** – A person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person is unable to provide himself with food, clothing, shelter, safety, or other care that would prevent physical injury, illness, or disease from taking place. The term includes partially incapacitated person.

**Least Restrictive Environment** – The residence of an incapacitated person (a person for whom a guardian has been appointed) which imposes on the ward only such restraints as are necessary to prevent him from injuring himself or others and which provides him with such

care, habilitation, and treatment as is appropriate considering his physical and mental condition and financial means.

**Manage Financial Resources** – The ability to either obtain, administer, dispose of real and personal property, business property, benefits, income or property; or to provide for the care and support of yourself or anyone under your care by ordinary skills and intelligence based on training and education.

**Minor** – Any person under the age of 18.

**Partially Disabled Person** – A person who lacks some, but not all, of the abilities necessary to manage his financial affairs.

**Partially Incapacitated Person** – A person who lacks some, but not all, of the abilities necessary to provide himself with food, clothing, shelter, and other essential care.

*\*Note the difference between partially disabled and partially incapacitated. "Partially disabled" applies only to financial resources, while "partially incapacitated" applies to the everyday life of an individual.*

**Protectee** – A person for whom a conservator or limited conservator as been appointed.

**Respondent** – A person who is alleged in a petition to be incapacitated or disabled. The term is used in written notices of hearing of guardianship or conservatorship and during the court proceedings.

**Treatment** – The prevention, cure, or improvement of a person's physical or mental illness or incapacities.

**Ward** – A minor or an incapacitated person for whom a guardian or limited guardian has been appointed.

*\*The exact language for all the terms described in this section and the remaining guide sections can be found in 475.010 RSMo and 1.202 RSMo. This will prove helpful when discussing guardianship with attorneys or judges.*

## **FILING FOR GUARDIANSHIP/CONSERVATORSHIP**

### **Filing for Guardianship [475.060]**

Any interested person may file a petition for the appointment of himself or some other qualified person as guardian of a minor or of an incapacitated person with the circuit court, probate division. The petition shall state:

1. The name, age, permanent residence, actual place of residence, and post office address of the minor or incapacitated person, if known. If the address is unknown, the kinds of efforts made to find out this information must be recorded;
2. The estimated value of the respondent's real and personal property. (Real property consists of land and buildings. Personal property consists of everything else a person may own... car, household goods, stocks, etc. The estimated value of real property may be obtained through the county assessor's office.);
3. If the minor or incapacitated person has no permanent residence or place of residence in Missouri, then the county in which he has property will be considered the place of residence. If there is no county of residence or county with property, then in any county where alleged incapacitated party may be found or served with a summons.
4. The name and address of the parents of the minor or incapacitated person, and whether they are living;
5. The name and address of the spouse and the names, ages, and addresses of all living children of the minor or incapacitated person.
6. The name and address of the person having custody of the minor or incapacitated person;
7. If a guardian or conservator has already been appointed for the person, either in Missouri or in any other state, the name and address of the guardian or conservator;
8. If appointment of guardianship is sought by an individual who is not a public administrator, the names and address of the wards and disabled persons for whom that person is already guardian or conservator;
9. In the case of an incapacitated person, the specific reason why the incapacitated person is unable by reason of any physical or mental condition to receive and evaluate information or lacks the ability to communicate decisions needed to meet essential requirements such as food, clothing and shelter, and;
10. The reasons why the appointment of a guardian is sought. (A sample of a petition can be found in Appendix A.)

### **Filing for Conservatorship [475.061]**

Just as in the case of a guardian, any interested person may file for appointment as conservator of another person in circuit court, probate division. The petition for conservator must state:

1. The name, age, permanent residence, actual place where the person for whom a conservator is sought lives and the post office address of the minor or disabled person, if known. If the address is not known, what kinds of efforts were made to find out this information;
2. If the appointment of conservator is sought by an individual who is not a public administrator, the names and address of the wards and disabled persons for whom that person is already conservator or guardian;
3. The reasons why the appointment of conservator is sought; and
4. The specific reasons why the person is unable by reason of some specific physical or mental condition to receive and evaluate information or communicate decisions to such an extent that the person cannot manage his financial resources or a statement providing the person is under 18 years old.

The petition for appointment of a conservator or limited conservator of the estate may be combined with a petition for appointment of guardian or limited guardian of the person.

### **Where to File the Petition [475.035]**

The petition for guardianship or conservatorship is filed in the circuit court, probate division, where:

1. The respondent has his official residence;
2. If the respondent has no official residence, the county in which the respondent actually resides or has property; or
3. In the county or on any federal reservation within the county where the respondent or his property is found.

### **Appointment of a Guardian or Conservator for More Than One Person [475.065]**

If guardianship or conservatorship is sought at the same time for persons who are children of a common parent, or who are parent and child, or who are husband and wife, it is not necessary to file a separate petition or bond for each person. The guardianship or conservatorship of all may be considered as one proceeding. There shall, however, be a separate accounting for each protectee's property.

### **Filing Fee**

The court may require the person filing the petition for guardianship or conservatorship to pay a filing fee. The amount of the fee is covered in the chapter on the Costs of Guardianship. The filing fee is combined with the cost of issuing the letters of guardianship or conservatorship [483.580].

The court must, however, accept and act upon a petition as to an indigent person (one who has no money or assets) without requiring a filing fee. The costs of the filing and proceedings shall be set after the court rules on the petition of guardianship or conservatorship [475.085.2].

### **Is an Attorney Needed to File a Petition for Guardianship or Conservatorship?**

The complexity of the issues involved in a particular guardianship/conservatorship proceeding may determine whether the petitioner chooses to be represented by an attorney.

However, since the petition is a legal process, and since an attorney must be appointed for the alleged incapacitated or disabled person [475.075.3], it may be advisable to consult an attorney at the point of preparing the petition.

## **TYPES OF GUARDIANSHIP/CONSERVATORSHIP AVAILABLE**

The Missouri Guardianship Code, enacted in 1983, is designed to tailor guardianship and/or conservatorship to meet the individual needs of a person. The law recognized that incapacitated and disabled persons have different abilities in different areas. For example, a person with mild mental retardation may forget about taking medication and need a limited guardian to help with this task, or an elderly person may have trouble balancing his checkbook and need a conservator to help manage his money. The law provides for limited guardianship and conservatorship, as well as total guardianship and conservatorship.

A probate judge decides whether an individual needs a guardian or conservator and the authority the guardian or conservator should have. The judge will base his decision on evidence that demonstrates the capabilities and disabilities of an individual. The evidence may address any of the following: Is the individual for whom guardianship is being considered capable of living somewhat independently? Can the individual cook and take care of himself? To what extent is an individual for whom conservatorship is being considered capable of handling money? In preparing for a hearing, these questions and many more may be asked by the judge.

There are numerous sources of information that persons wanting to petition for guardianship or conservatorship should investigate before initiating the proceedings. Relatives are usually the best resource because, in most cases, they are in a regular contact with an individual or know his past history. Another good information source is professionals who have treated or cared for the individual. Often these professionals are in daily contact with the individual and are familiar with the treatment prescribed for him. Remember, the petitioner has the burden of proving incapacity, partial incapacity, disability or partial disability by clear and convincing evidence [475.075.7].

### **Effect of Adjudication**

Before beginning this section, it is necessary to understand the term, "adjudication." The simplest way to define the term is to state that adjudication is a judgment by the court.

An adjudication by the court of partial incapacity or partial disability takes away only those legal rights specifically mentioned in the adjudication [475.078.1]

When a person is adjudicated to be incapacitated or disabled, he loses certain legal rights, unless the order specifies otherwise. Those rights could include the right to vote, enter into contracts, etc. [475.078.2].

A person who has been judged by the court to be incapacitated or disabled or both shall also be presumed to be incompetent. The term incompetent is used here because it may appear in other laws not changed by the Guardianship Revision Bill of 1983. It is also needed to accommodate those persons judged "incompetent" under the previous law. A person judged by the court to be partially incapacitated or disabled or both shall

be presumed to be competent. The court at any time after a hearing, may determine that an incapacitated, partially incapacitated, disabled or partially disabled person is incompetent for some purposes and competent for other purposes [475.078.3].

### **Appointment of a Guardian**

If it appears to the court that a guardian should be appointed for a minor who is not incapacitated or if the court or a jury, based on clear and convincing evidence, finds that a person for whom guardianship is sought is incapacitated as defined by this law, the court may appoint a guardian of this person. A person lacking the capacity to make decisions for himself regarding his well-being, such as one who is severely retarded, may need a guardian [475.079.1].

### **Appointment of a Conservator**

If the court finds that a person is a minor or is a disabled person, the court may appoint a conservator of the estate. The conservator of the estate may be the same person who has been appointed guardian [475.079.2].

### **Limited Guardianship**

If the probate judge, after holding a hearing, finds that a person is partially incapacitated (lacks some, but not all, of the abilities necessary to provide for himself), the court shall appoint a limited guardian of the person (ward). The court's order shall specify the powers and duties of the limited guardian so as to allow the partially incapacitated ward to care for himself to the extent of his ability to do so. The court order shall also specify the limitations to which the ward is subject (such as the right to make contracts). In establishing a limited guardianship, the court shall impose only such limitations and restraints on personal liberty as are necessary to promote and protect the well-being of the individual. Finally, the court order shall design the guardianship so as to encourage the development of maximum self-reliance and independence in the individual [475.080.1].

Examples whereby limited guardianship could be most appropriate are for individuals who are mildly mentally retarded and are capable of some independent decision making, and for elderly persons suffering varying degrees of mental incapacity or physical disability.

### **Limited Conservatorship**

Limited conservatorship is much like limited guardianship, except that conservatorship deals strictly with a person's financial affairs. If after holding a hearing, the probate judge finds that a person is partially disabled (lacks some, but not all, of the abilities to manage his financial affairs), he shall appoint a limited conservator of the estate. The order shall specify the powers and duties of the limited conservator so as to permit the partially disabled person to manage his financial resources according to his ability to do so [475.082.2].

An example whereby limited conservatorship might be appropriate would be for a person with mental illness who goes through episodes where he is capable of handling financial

matters and other episodes where he isn't capable of handling such matters. Another example would be a person who has experienced a stroke and who gradually works himself back from a condition of not being able to make financial decisions to a point of decision-making again.

### **Increasing Powers**

At any time, the guardian or conservator may petition the court to increase his powers. When a petition is filed to increase powers, the same procedures that must take place for the initial appointment must be followed [475.083.7].

## **WHO MAY SERVE AS A GUARDIAN OR CONSERVATOR**

Ideally relatives make the best guardians or conservators in most cases. A relative usually has a better knowledge of the needs and history of the incapacitated persons, can best judge their capabilities. There have been incidents when members of the same family do not agree on what is best for the incapacitated person or where relatives have mistreated or misused funds from an incapacitated or disabled person. These cases are not representative of the majority of situations in which relatives serve as guardians or conservators.

The law even states that the court shall consider certain persons as guardians or conservators which tends to create certain preferences. The court is directed by the statutes to first consider persons designated by the incapacitated person at the hearing, a person previously named as an attorney-in-fact in a durable power of attorney at a time when the person was not incapacitated, or a relative [475.050].

Parents are the guardians of minors, unless the parents are deceased, refuse to serve or are judged unfit to serve; then a guardian is appointed [475.045]. Parents who are minors may also serve as guardians of their children [475.055.1]. Parents may, for a period no longer than three months, delegate to another individual any of their powers (except permitting marriages and adoptions) regarding the care or custody of a minor child. Parents who must travel abroad for any length of time may find this section useful, as may parents anticipating a prolonged hospital stay who wish to arrange for a child's care [475.024].

Remember, once a person reaches his 18<sup>th</sup> birthday, he becomes an "emancipated person," an individual free to make choices for himself, regardless of his mental or physical capabilities. Only if a person is adjudged in court to be incapacitated or disabled is some form of guardianship or conservatorship granted for that individual.

A parent may designate a guardian in his/her will, but a court appointment is still needed, because the judge must determine if that person is capable of performing the duties of a guardian [475.045.1(3)].

There are restrictions on who may or may not serve as guardians or conservators, but basically the law permits any adult person to be appointed guardian or conservator of another individual.

### **Choosing a Guardian or Conservator**

Before appointing any other person as guardian or any corporation, individual, or organization as conservator, the probate court is required to consider the suitability of the following persons who appear willing to serve.

1. If the incapacitated or disabled person is, at the time of the court hearing, able to make and communicate a reasonable choice of who he would like to serve as his guardian or conservator, and if that selected person is eligible to serve in such a position, then that nominee should be given first consideration;

2. Any eligible person, or with respect to estates only, any eligible organization or corporation, who the incapacitated person has nominated in writing and the nomination is witnessed by two persons. The nomination in writing by the incapacitated person must take place before the start of the person's incapacity or disability when the person was capable of making and communicating a reasonable choice. The nomination must have taken place within five years before the hearing on the person's incapacity; and
3. The spouse, parents, adult children, adult brothers and sisters, and other close adult relatives of the incapacitated or disabled person and any other eligible person. With respect to estates only, any eligible organization or corporation nominated in a duly probated will of a spouse or relative and executed within five years of the hearing judging the person's capacity.

A judge is required to consider appointing these individuals prior to appointing anyone else [475.050.1,,2,,3].

### **Charitable Organizations Serving as Guardians**

Any charitable organization organized and incorporated as a not-for-profit corporation under Missouri laws prior to January 1, 1902, is qualified to continue serving as guardian of the person for whom the corporation was appointed prior to enactment of the new guardianship code. Such corporations are also permitted to continue being appointed guardians of person judged to be incapacitated [475.055.2].

### **Corporations Serving as Conservators Only**

Any corporation authorized to do business in Missouri, which is empowered by its charter to act as conservator of an estate, or any national banking association may be appointed by the court as conservator of the estate of a minor or disabled person. A corporation may not serve as guardian of an individual [475.055.3].

### **Non-Resident Guardians**

A person does not have to be a resident of Missouri to be a guardian or conservator for someone residing in this state. The law passed in 1983 expressly repealed a provision in the previous law that prohibited the appointment of an out-of-state guardian or conservator. This provision in the guardianship law should help Missourians who only have relatives living outside of the state [475.055].

The non-resident guardian is subject to the same requirements and duties that guardians and conservators living in the state have to meet.

Before appointing a non-resident, the court shall consider where the non-resident lives and whether the non-resident will be able to effectively perform the duties of guardian or

conservator. Again, this is done in the best interest of the ward or protectee to ensure these persons are cared for in a proper manner.

The guardianship or conservatorship status remains in effect, regardless of the location of the guardian or conservator or the ward or protectee, until it is terminated.

### **Restrictions on Who May Serve as Guardian or Conservatorship**

No person or corporation other than the public administrator shall be appointed guardian or conservator unless the appointee (the person wanting to be guardian or conservator) has filed a consent to act with the probate court.

The law also prohibits certain individuals and groups from serving as guardians or conservators. Those prohibited from serving in either function are:

1. Any employee of the Department of Mental Health (unless the employee is related to the fourth degree, first cousin) or business licensed as a facility by the Missouri Department of Mental Health (except charitable organizations as described in [475.055.2]).;
2. Any employee of the Department of Social Services (unless the employee is related to the fourth degree, first cousin) or corporation licensed as a facility by the Missouri Department of Social Services (except charitable organizations as described in [475.055.2]).;
3. No administrator, owner, operator, manager, or employee of facilities licensed by the Department of Mental Health or Social Services may serve as guardian or conservator of the estate or any resident of that facility unless the employee is related to the individual as first cousin, and exception to charitable organizations as previously mentioned;
4. No judge, clerk or deputy of any court may serve as guardian or conservator;
5. No one under the age of 18, unless that person is married and needs to give consent for a minor or incapacitated spouse;
6. No incapacitated or disabled person may serve;
7. No habitual drunkard shall be appointed;
8. No person whose letters of guardianship have been revoked may serve as guardian or conservator within two years after the revocation; and
9. No one (person or corporation) shall be appointed guardian or conservator unless he is qualified to perform the duties of the position. [475.055.2]

## **THE GUARDIANSHIP/CONSERVATORSHIP HEARING**

The first step in establishing guardianship or conservatorship for an incapacitated or disabled person is to petition the court. This procedure was covered in a previous chapter. The next step, and perhaps the most important, is the court hearing on the petition. During the hearing, evidence is presented to the judge as to why a person needs a guardian or conservator to look after him or his estate and the degree to which the person is disabled or incapacitated. The judge, based on the evidence presented, will make his decision on the capabilities of the person and decide whether guardianship or conservatorship for the individual is necessary, and, if so, what type of guardianship or conservatorship is appropriate.

### **Prompt Hearing**

After the petition for appointment of a guardian, conservator, or guardian ad litem has been filed, the court, if satisfied that there are good grounds for such an action, shall promptly set a hearing. There is no mention in Missouri's law when the hearing must take place. "Prompt" means as soon as reasonably possible and will probably mean, as a practical matter, a week to ten days [475.075.1].

### **Where to Hold the Hearing**

The court where the guardianship or conservatorship hearing takes place has to be in one of the following areas:

1. The Missouri county where the minor or alleged incapacitated or disabled person has his official residence;
2. If the minor or alleged incapacitated or disabled person has no domicile (official residence) in Missouri, then the county in which the minor or alleged incapacitated or disabled person actually resides. If the minor or alleged incapacitated or disabled person doesn't reside in any Missouri county, then the county where the respondent has property; or
3. In the county, or on any federal reservation within the county where the respondent or his property is found [475.035.1].

### **Changing Jurisdiction of the Court**

If it appears to the court that the proceeding began in the wrong county or that the ward or protectee has moved to another county, the court may order the proceeding with all papers, files and a transcript of the proceedings transferred to the probate division of the circuit court of another county [475.040].

If the alleged incapacitated or disabled person has resided in a county other than the county of his official residence for more than one year, then the court of that county may assume venue for the purpose of appointment of a guardian or conservator [475.035.2].

If the guardianship or conservatorship proceedings are initiated in more than one county, the proceedings shall be halted except in that county where the proceedings first began until a determination is made as to which proceeding began first [475.035.3].

### **Notice of Hearing**

The person for whom guardianship or conservatorship is sought (called the respondent) has to be served, in person, with a written notice stating the time and place of the court hearing, the names and addresses of his appointed lawyers and names and addresses of the witnesses who may be called to testify in support of the petition. Each notice must also contain the respondent's rights as set forth in law (those rights are listed on pages 15 and 16). The notice must be signed by either the judge or clerk of the court and served in person on the respondent a reasonable time before the hearing date [475.075.2].

Such service is normally performed by a member of the county sheriff's office.

### **Appointment of Attorney**

After filing the petition, the court shall immediately appoint an attorney to represent the respondent in the hearing. The attorney is required to visit his client prior to the hearing. If the respondent is capable of understanding what is going on regarding the hearing on guardianship or conservatorship and is able to answer questions posed by his attorney, the attorney shall use this information in the respondent's best interest in the hearing. If the respondent is so incapacitated or disabled that he or she is not able to understand or answer questions posed, the respondent's attorney must make decisions for his client. In making decisions for his client, the attorney shall act with care to safeguard and advance the interests of the respondent.

The court allows reasonable fees for attorneys appointed to represent a person in the guardianship or conservatorship hearings. These fees shall be set as costs of the court proceeding. The court appointed attorney may be permitted to withdraw if the respondent employs private counsel to represent him during the hearing [475.075.3].

### **Court-Ordered Examinations**

The court may direct that a respondent be examined by a physician or licensed psychologist or other appropriate professional designated by the court. The court allows reasonable fees for these services, which are to be taxed as costs in the proceeding. The costs will be explained later in the manual.

The court-appointed physician, licensed psychologist, or other professional has to explain to the respondent, prior to the examination, in simple language, the following:

1. The meaning of incapacity or disability as stated in the guardianship law;

2. That the examination is being held to produce evidence which may be used to determine whether the respondent is incapacitated, disabled, partially incapacitated or partially disabled;
3. That the respondent has the right to remain silent; and
4. That anything the respondent says may be used during the court hearing to decide whether the respondent is incapacitated or disabled, and to what degree [475.075.4].

### **The Court-Ordered Report**

The court-appointed physician, licensed psychologist or other professional must submit a report in writing to the court and to the lawyers representing all parties in the hearing [475.075.5].

### **Privileged Information**

If initial evidence at the hearing indicates there is partial or complete incapacity or disability, a physician or licensed psychologist, court-appointed or non-court-appointed, may be compelled to testify in the proceedings and release information usually held in confidence as part of the doctor/patient privileges of nondisclosure. Evidence received under this subsection, which would otherwise be privileged information, may not be used in any other civil action, or criminal proceeding without the consent of the respondent or the guardian [475.075.6].

### **Burden of Proof**

The petitioner, the person filing the petition or petitions, has the burden of proving incapacity, partial incapacity, disability, or partial disability by clear and convincing evidence. This statement must be included in the written notice of the hearing delivered to the respondent [475.075.7].

### **Due Process Protections**

In order to insure that the rights of the respondent are protected, a number of protections are built into the law. The respondent shall have the rights to:

1. Be represented by an attorney;
2. Have a jury trial;
3. Present evidence in his behalf;
4. Cross examine witnesses who testify against him;
5. Remain silent;

6. Have the hearing opened or closed to the public, whichever he selects;
7. A hearing conducted in accordance with the rules of evidence in civil proceedings, except as otherwise modified by this law; and
8. Be present at the hearing [475.075.8].

These rights must also appear on the notice delivered to the respondent.

### **Findings**

If the court finds that the respondent has the capacity to meet his essential requirements for living or that the respondent is capable of handling his financial resources in cases of conservatorship, the court shall deny the petition for guardianship or conservatorship.

Should the court, however, find the respondent incapable of receiving and evaluating information or to communicate decisions and unable to meet some or all of the essential requirements for living or does not have the ability to receive and evaluate information or communicate decisions needed to manage his financial resources, the court shall detail these in its findings of fact.

The findings of fact shall state:

1. The extent of the respondent's physical and mental incapacity to care for himself;
2. The extent of the respondent's physical and mental disability to manage his financial resources;
3. Whether the respondent requires placement in a supervised living situation, and if so, the degree of supervision needed; and
4. Whether the respondent's financial resources require supervision, and if so, the nature and extent of supervision needed [475.075.9].

### **Least Restrictive Environment Doctrine Applied**

If the court finds the respondent to be in some degree incapacitated or disabled, or both, the court, in determining the degree of supervision necessary, shall apply the least restrictive environment principle as defined in the guardianship law. The supervision ordered by the court shall not restrict the respondent's personal liberty or his freedom to manage his financial resources to any greater extent than is necessary to protect the respondent and his financial resources. The court must also consider whether the respondent may be fully protected by the use of temporary protective services provided by a private or public agency or agencies; the appointment of a guardian or conservator ad litem; appointment of a limited guardian or conservator; or as a last resort, the appointment of a guardian or conservator.

The limitations imposed upon the authority of the guardian or conservator as set forth in the findings of the court shall be stated in the letters of guardianship or conservatorship. The limitations shall be set forth in the first published notice of letters of guardianship/conservatorship granted [475.075.10].

### **Right to a New Hearing**

The court may, if there is just cause, set aside the judgment in a guardianship/conservatorship hearing within 60 days of the initial hearing and order a new hearing. If the result of the new hearing is the same as that of the first, then the judgment shall be not set aside [475.077].

### **Appealing a Guardianship/Conservatorship Ruling**

Appeals of a probate court decision regarding the finding of a person being incapacitated or disabled are made to the appropriate appellate (appeals) court. The appeal may be made by the petitioner (the person who petitioned the court to be guardian/conservator), the person alleged to be incapacitated or disabled, the relatives of such a person, any reputable citizen of the county in which the hearing took place or by an attorney representing any of the previously mentioned persons. In any of the circumstances, an attorney will be needed.

The filing of the appeal does not necessarily have the effect of staying the proceedings determining whether a person is incapacitated or disabled. The probate division of circuit court must order such a stay, unless it is found that the alleged incapacitated or disabled person may endanger himself or others because of his mental condition [472.170.1].

A guardian ad litem may be appointed by the probate court to collect, protect, and preserve the alleged disabled person's assets or provide for the person's family if that individual is found to be incapable of doing so for himself or family [472.170.2].

### **Letters of Guardianship/Conservatorship**

When a duly appointed guardian or conservator is approved by the court, letters of guardianship or conservatorship are issued to him. Such letters shall specify whether they are of guardianship or limited guardianship of the person or conservatorship or limited conservatorship of the estate, or both. The original or duly certified copies of the letters of guardianship are considered evidence when needed in other court proceedings [475.105.1,.2,.3].

Samples of what the letters of guardianship and conservatorship may look like are contained in the appendices.

## **DUTIES AND POWERS OF GUARDIANS/CONSERVATORS**

A guardian appointed by the court has a duty to protect and look after an incapacitated person who is unable to provide for himself. A conservator is appointed to protect the financial interests of a disabled person. There are specific powers a guardian and conservator has over his ward or protectee. This chapter will explain the limitations faced by both, and the extent of their power.

### **Guardian of a Minor**

The guardian of a minor is entitled to the custody and control of the minor ward. The guardian, in this case, is responsible for the ward's education, support and maintenance [475.120.1].

### **Guardian of an Incapacitated Person**

The guardian or limited guardian of an incapacitated person is required to act in the best interest of the ward. (This does not include being financially responsible for the cost of care of an adult ward). The limited guardian of an incapacitated person has only those powers and duties specified by the court order in the guardianship hearing or any later modifying order of the court [475.120.2].

### **General Powers and Duties of a Guardian**

The general powers and duties of a guardian of an incapacitated person are to take charge of the ward and to provide for the ward's care, treatment, habilitation, education, support, and maintenance. The powers and duties shall include the following, but are not limited just to these:

1. Assure the ward resides in the best and least restrictive setting reasonably available;
2. Assure that the ward receives medical care and other needed services;
3. Promote and protect the care, comfort, safety, health, and welfare of the ward;
4. Provide required consents on behalf of the ward; and
5. Exercise all powers and discharge all duties necessary or proper to insure all of the above functions are carried out [475.120.3].

### **Financial Responsibility for an Adult Ward**

The guardian of an adult ward is not obligated by his appointment as guardian to use his own financial resources for the support of the ward [475.120.4].

If the estate and available public benefits of the ward are not sufficient to provide for his needs, his guardian or conservator may apply to the county commission for an appropriation of county funds for that purpose [475.370].

### **Mental Health Admissions Restrictions**

No guardian has the authority to seek admission of his ward to a mental health or mental retardation facility for more than thirty days for any purpose without first securing a court order to do so [475.120.5].

### **Placement of Ward in Mental Health Facility**

A guardian may request that the court approve placement of his ward in a particular mental health or mental retardation facility, with an assurance that such placement is appropriate and in the best interest of the ward. The court may then authorize the guardian or limited guardian to admit the ward to such facility. The request by the guardian must be accompanied by a physician's statement setting forth the basis for the need for continued admission, including the ward's current diagnosis, plan of care, treatment or habilitation and the probable duration of the admission [475.121.1].

If the court finds, without the necessity for further evidence, that the placement requested is necessary, it shall direct the guardian to proceed with the admission of the ward [475.121.2].

The court may, in its discretion, appoint an attorney to represent the ward. The attorney must meet with the ward and may request a hearing on the application. If a hearing is requested, the court must schedule one. If there is no request for a hearing, the court may rule on the application for placement without a hearing. The attorney for the ward shall be allowed a reasonable fee for his services, to be assessed as costs [475.121.3].

### **General Powers of Conservators**

The conservator of a minor or disabled person shall, under court supervision:

1. Protect, preserve and manage the estate;
2. Invest the assets (money in the estate) prudently;
3. Account for the property of the estate;
4. Perform all other duties required of him by law; and
5. At the termination of conservatorship, deliver the assets of the protectee to the persons entitled to them.

In protecting, preserving, managing, and investing the estate, the conservator of the estate is under duty to use a degree of care, skill, and prudence which any ordinary man or woman uses in managing property of and conducting business for other persons.

If a conservator of the estate has special skills or is appointed on the basis of having special skills or expertise, the conservator is under duty to use those skills in managing the protectee's affairs. The conservator is also under duty to act in the interest of the protectee and avoid conflicts of interest which might prevent him from doing so [475.130.1].

### **Court Ordered Powers of the Conservator**

The conservator must invest the money of the protectee, from whatever source derived, unless it is required for other lawful purposes [475.190.1].

No investment, other than those made by the conservator in U.S. Government guarantees (such as savings accounts insured by the FDIC), shall be made without prior court order [475.190.2].

The conservator may invest in any other real or personal property which the court finds is a reasonable and prudent investment. An order made for an investment of this type does not relieve a conservator of his responsibilities and liability if the investment is not a reasonable and prudent one [475.190.3].

### **Court Powers**

The court has some powers it may exercise directly or through a conservator regarding the estates of minors and disabled persons.

While a petition for appointment of a conservator of the estate of a minor or disabled person is pending in court, the court may appoint a conservator ad litem after a preliminary hearing in which the court finds cause to take such action. The attorney representing the minor or alleged disabled person must be notified before the appointment of the conservator ad litem. The conservator ad litem may collect, protect, and preserve the assets of the minor or disabled person and by order of the court disburse funds necessary for the support and maintenance of the minor or alleged disabled person and those members of his family who are dependent upon him [475.091.1].

Upon finding that a transaction was or is beneficial to the protectee, the court may approve, ratify, confirm, and validate any transaction entered into by a conservator of the estate without court authorizations. This power ranges from the sale of property to the dissolution of the protectee's marriage. The key phrase in this section, however, is that the transaction was or is beneficial to the protectee. [475.091.2].

The court may authorize any arrangement needed for the security or care of a minor or disabled person without appointing a conservator when it is deemed necessary. This must be done through court proceedings [475.092.1].

If it is established that there is a need, the court may, without appointing a conservator, authorize, direct or ratify any contract or other transaction relating to the minor or disabled person's financial affairs or involving the estate of a minor or disabled person. The court may take such action if it is deemed in the best interests of the minor or disabled person and if such action would otherwise be within the powers of the court [475.092.2].

Before approving a protective arrangement or other service provided in the aforementioned sections, the court must consider the interests of creditors and dependents of the minor or disabled person, and whether the person needs the continuing protection of a conservator. The court may appoint a special conservator to assist with the arrangements described in the aforementioned sections. The special conservator's authority is stated in the court order and may be discharged by the court after the special conservator has completed his duties and makes a report to the court [475.092.3].

### **Conservator Takes Possession of Property**

The conservator of an estate takes possession of all the protectee's real and personal property and rents, income, and profits resulting from those properties. The conservator also takes possession of the income derived from the sale, mortgage, lease or exchange of the protectee's real and personal property. The title to all property and the proceeds derived from that property are in the protectee's name, not the conservator's.

If federal funds are available or payable for the benefit of the protectee and are being applied for the benefit of the protectee, but the federal agency has refused to recognize the authority of the conservator to administer those funds on behalf of the protectee, the court may waive, by order, the duty of the conservator to account for those funds [475.130.2].

The court has full authority under the rules of civil procedure to issue an injunction preventing interference with the conservator's right to possess the assets of his protectee [475.130.3].

### **Conservator Charged to Collect and Make Payments for Protectee**

The conservator of the estate shall handle all legal actions instituted on behalf of or against the protectee. This is in addition to collecting all debts due or becoming due to the protectee; giving written discharge to free a person for an obligation to pay money or perform a duty; and adjust, settle, and pay all claims due or becoming due from the protectee so far as his estate and effects will extend [475.130.4].

A conservator does not have the authority to alter the protectee's estate plan except to the extent necessary to pay claims or provide support for the protectee. This is in addition to collecting all debts due or becoming due to the protectee; giving written discharge to free a person for an obligation to pay money or perform a duty; and adjust, settle, and pay all claims due or becoming due from the protectee so far as his estate and effects will extend [475.130.4].

## **Powers and Duties of the Conservator Not Specified in a Court Order**

A conservator of an estate has the power, without court authorization or approval, to:

1. Settle or compromise a claim against the protectee or the estate agreeing to a payment of not more than \$1,000;
2. Settle, abandon, or compromise a claim in favor of the estate which does not exceed \$1,000;
3. Sell, or agree to sell, personal property of the protectee's or investment securities reasonably worth no more than \$1,000 for cash or upon reasonable terms of credit;
4. Exchange or agree to exchange personal property or investment securities for other such property of equal value. The transaction may not involve personal property or securities worth more than \$1,000 (if the amount exceeds \$1,000 the court must approve such a transaction.);
5. Insure the estate's property against fire, theft, or other hazards;
6. Insure the protectee and conservator against any liability as to third parties or persons;
7. Contract for needed repairs and maintenance of the estate's property;
8. Rent the protectee's real property for one-year terms and renewing such leases;
9. Vote corporate stock for the protectee; and
10. Enter into contracts to provide board, lodging, education, medical care, or other necessities for the protectee. The contracts shall be for one-year periods or less. The conservator is also permitted to renew such contracts [475.130.5, subsections 1-10].

## **Liabilities of the Conservator**

The conservator is individually liable for obligations arising from ownership or control of property of the estate or for damages committed in the course of the conservator administering the estate only if he is personally at fault [475.132.2].

If a conservator is exonerated (cleared from liability), it does not automatically mean the estate is also exonerated [475.132.3].

## **Negligence of a Conservator**

Personal negligence of a conservator may be determined in a probate court action [475.132.4].

## **Conservator Inventory**

When a conservator of the estate has been appointed, an inventory and appraisal of the estate of the protectee must be made within 30 days after the letters of conservatorship are granted by the court. Extensions on the time limit may be obtained from the court. The inventory must include a statement and description of all property of the protectee. If appraisers are authorized, the court shall approve a reasonable payment for their services [475.145].

## **Person Who Assists a Conservator**

A person who, in good faith, either assists a conservator or deals with him for value in any transaction other than those requiring a court order, is protected and may retain the benefits of the transaction, even though the transaction proved not to be beneficial to the protectee.

## **Court-Ordered Sale of Real and Personal Property**

The protectee's real or personal property or any part of it may be sold, mortgaged, pledged, leased, or exchanged by the conservator upon such terms as the court may order for the purpose of providing for the protectee's care, education, treatment, habilitation, support, and maintenance or for the care and maintenance of his family or education of his children. Such action may also take place to pay for the protectee's debts, the costs of administering his estate, or in any case, for the best interest of the protectee [475.200.1].

## **Petition to Sell Property**

To obtain a court order to sell, lease, or exchange the protectee's real or personal property, the conservator must present to the court a petition containing a description of the property and the reasons why it must be sold, leased, etc. If after reviewing the petition and hearing any testimony needed, the court finds such action to be in the best interests of the protectee, the court may issue an order allowing the sale, leasing, etc. [475.200.2].

If a conservator doesn't file such a petition with the court, a creditor or other person interested in the estate may file a like petition, giving 20 days notice to the conservator [475.200.3].

If on a conservator's settlement, the court finds there is not enough money to pay for the protectee's care, education, treatment, habilitation, support, and maintenance or that of his family, the court may require a hearing to determine if real or personal property should be sold, leased, etc. [475.200.4].

## **Payment of Claims**

All claims against the estate of a protectee, whether they occur before or after the appointment of a conservator, or liabilities incurred by the conservator for the benefit of the protectee or his estate, must be filed in the probate division of circuit court. The

probate court may, after a hearing, allow payment of the claim in part or whole or disallow the payment of the claim. An order allowing payment of the claim has the effect of a judgment and allows interest to be collected [475.205].

## EMERGENCIES

What would happen if an emergency developed concerning a ward and the guardian couldn't be found? For example, a patient in a state hospital needed an appendectomy, but the patient's guardian couldn't be located to approve the surgery.

Although the law prohibits any medical or surgical procedure to be performed on a ward unless consent is obtained from the ward's guardian [475.123.1], there is a provision which covers just such an incident. If the life of the ward is threatened and there is no time to obtain consent from the guardian, the medical or surgical procedure may take place without the guardian's consent. Such a procedure must be documented in the medical record of the ward. [475.123.2].

### Life of a Person Threatened

If the life of a person who has no guardian is threatened and the person's consent to a necessary medical or surgical procedure cannot be obtained, the court on a petition of guardianship and after a hearing, may authorize consent for the surgery or medical procedure to be performed. In the majority of cases of this type, a petition and hearing can be held quickly and should pose no threat to the person [475.123.3].

Any hearing conducted concerning a life threatening condition of a person may take place in the medical facility where the person is a patient. Part of the record of the hearing shall note that attempts were made to notify those individuals interested in the welfare of the person before the surgery or medical procedure was authorized [475.123.4].

### Other Options

Senior citizens of the state may take advantage of the Protective Services Act passed in 1980. Provisions of the law provide assistance to persons 60 years of age and older who are unable to protect themselves, cannot care for themselves, or who are likely to suffer serious harm. A toll-free number, 1-800-392-0210, is available for persons seeking assistance from the Missouri Department of Health and Senior Services.

The Protective Services Act requires the Department of Health and Senior Services to investigate all reports of abuse. During the investigation, if it is determined there is likelihood of serious harm to the adult (age 60 or older), the Department shall provide protective services. Those services can range from counseling to finding alternative living arrangements for a person [600.205 to 660.295].

Another law that is useful in protecting anyone over the age of 18 is the Household Abuse Law passed in 1980. This law is intended to provide protection against the infliction of physical injury by a spouse, relative, or other household member. The abused person can file a petition in court and if cause is shown, the court can immediately issue an order of protection. The order of protection may include keeping the abusing party from entering the home as well as restraining the party from abusing, threatening, molesting, or disturbing the person requesting the order.

A court hearing on the petition is held within 15 days of the filing. The accusation of abuse must be proven at the time of the hearing. The order of protection can be effective for up to six months. A person violating the order of protection may be arrested [Chapter 455].

### **Emergency Detentions**

If a petition for appointment of a guardian or conservator is filed, but the court finds that the respondent presents a likelihood of serious harm to himself or others because of his mental disorder or mental retardation, the court may order the person detained pending a hearing [475.355].

There are nine regional Access Crisis Intervention (ACI) offices that can assist in filling out the application for the 96-hour detention. The ACI offices are listed on the next page.

An adult person may file an application with the court seeking the detention of a person for evaluation and treatment. A form for this purpose is provided by the court. The applicant must, under oath, state the reasons he believes the person should be detained [632.305].

If the court, in considering an application for detention, finds there is reasonable cause to believe the person may cause serious harm to himself or others, the court shall direct a peace officer to take the respondent into custody and transport him to a mental health facility for evaluation and treatment. The detention may not exceed 96 hours, unless further detention is authorized pursuant to a court order after a hearing on the need for detention [632.305.2].

### **Appointment of Guardians/Conservators Ad Litem**

If an alleged incapacitated or disabled person has no guardian or conservator and an emergency develops which presents a substantial risk that serious harm will occur to the alleged incapacitated or disabled person or irreparable damage will occur to his property, the court, after holding a hearing, may appoint a guardian ad litem or conservator ad litem to protect the alleged incapacitated or disabled person or his property. The court before taking such action, must notify the alleged incapacitated or disabled person and his attorney.

The guardian or conservator ad litem is appointed for a specified period of time not to exceed 30 days. After a hearing and a showing that an emergency need still exists, the court may extend the time the guardian or conservator ad litem may serve. Each extension may only last 30 days.

A guardian or conservator ad litem may be removed at any time and has to make any report required by the court.

Court action initiated under this section of the law shall not be used to avoid mental health proceedings. [475.075.11].



The guardian or conservator ad litem is appointed for a specified period of time not to exceed 30 days. After a hearing and a showing that an emergency need still exists, the court may extend the time the guardian or conservator ad litem may serve. Each extension may only last 30 days.

A guardian or conservator ad litem may be removed at any time and has to make any report required by the court.

Court action initiated under this section of the law shall not be used to avoid mental health proceedings. [475.075.11].

## **ANNUAL REVIEWS OF GUARDIANSHIP/CONSERVATORSHIP**

The guardianship law requires guardians and conservators to make annual reports to the court on how they have performed their duties in the past year and to check the status of the ward or protectee to determine whether the incapacity or disability has ceased or diminished [475.082.1]. This is for the best interest of the ward and protectee. There have been cases in the past where a guardian of an individual has been dead for several years, but because no inquiry was made, no one knew this. There have also been cases where a guardian or conservator was appointed, but never saw the ward or protectee after the appointment.

While the law cannot insure that the guardian or conservator will effectively perform his duties, it will hopefully show the court when a guardian or conservator is not effectively carrying out his duties. It is the court's duty to immediately correct such situations when called to the court's attention.

### **The Review Format**

In order for the court to conduct its annual review, each guardian or limited guardian is required to file on the anniversary date of the guardianship letters, a report concerning the personal status of each ward he is responsible for. Such a report may be combined with the settlement of accounts if the guardian also acts as conservator for the ward's estate. The report must contain the following information:

1. The present address of the ward;
2. The present address of the guardian;
3. The number of times the guardian has been in contact with the ward and the nature of such contacts (telephone calls, personal visits, letters). The last time the guardian saw his ward;
4. If the ward is institutionalized, whether the guardian has received a copy of the treatment or habilitation plan and whether the guardian agrees with the plan's provisions;
5. The date the ward was last seen by a physician and the reason for it;
6. Any major changes in the ward's physical or mental condition as observed by the guardian;
7. The guardian's opinion as to the need for the continuation of guardianship or whether it is necessary to increase or decrease the powers of guardianship; and
8. The guardian's opinion as to the adequacy of care the ward is presently receiving [475.082.2].

An example of an annual report is found in the Appendix D.

### **Mental Evaluation**

The court may, as part of its review, order a mental status evaluation of a ward and may require any hospital, physician, or custodial facility to submit copies of their records relating to the treatment, habilitation, or care of the ward [475.082.3].

### **Termination of Guardianship as a Result of the Annual Review**

If it appears to the court, by examining the annual review, that the incapacity or disability of the ward or protectee has ceased, the court shall appoint an attorney to file on behalf of the ward or protectee a petition for termination of guardianship or conservatorship [475.082.4].

### **Reports by Conservators**

Every conservator shall make an annual accounting of the protectee's money or assets. The report shall include reports on securities and descriptions of property when necessary. If the court finds such a report insufficient, it shall make such orders as are necessary to protect the interest of the protectee. If money has not been invested by the conservator as ordered by the court, the conservator shall state that fact and give reasons why the conservator failed to do so [475.190.4].

### **Failure of a Conservator to File a Report**

If any conservator refuses or neglects to file an accounting or makes a false report, the conservator is liable for all losses or damages to the protectee and may be relieved from his duties at the discretion of the court [475.190.5].

## **TERMINATION OF GUARDIANSHIP/CONSERVATORSHIP**

In the preceding chapter, the circumstances involved in terminating a guardianship or conservatorship were mentioned. The previous sections touched only briefly on this matter and only in one circumstance. There are other ways for ending a guardianship or conservatorship.

### **When the Authority of the Guardian or Conservator Ends**

The authority ends:

1. When a minor becomes 18 (unless guardianship/conservatorship was created because of physical or mental condition prior to age 18);
2. Upon a finding by the court that an incapacitated or disabled person has been restored to his capacity or ability;
3. Upon revocation of the letters of guardianship or conservatorship by the court;
4. Upon the court accepting the guardian or conservator's resignation;
5. Upon the death of the ward or protectee (if there is no other person other than the estate of a ward or protectee to pay for the funeral and burial expenses, the guardian or conservator may continue to serve in order to contract for the funeral and burial of the ward or protectee);
6. When the order appointing a guardian or conservator ad litem expires, unless the court orders an extension; or
7. Upon a court order terminating the guardianship or conservatorship [475.083.1].

### **Court Terminated Guardianship/Conservatorship**

If it appears to the court during its annual review of guardianship or conservatorship or if a petition is made to the court by any person, ward, protectee, or anyone acting on the ward's or protectee's behalf, indicating the guardian or conservator is not performing his job, the court may order a hearing on the matter. The court shall direct the guardian or conservator to appear.

At the conclusion of the hearing, if the court finds the guardian or conservator is not discharging his duties and responsibilities as required by the guardianship code, or is not acting in the best interest of the ward or protectee, the court shall take whatever action it deems appropriate. Such action may include the removal of the guardian or conservator and the appointment of a successor guardian or conservator. The court action may also involve termination of guardianship or conservatorship on a finding that the ward has recovered his capacity or the protectee is no longer disabled [475.082.5].

## **Removal of Guardian/Conservator and Appointment of Guardian/Conservator Ad Litem**

If it is found by the court that a natural or appointed guardian or conservator is not effectively performing his duties and that the welfare of the incapacitated or disabled person is in jeopardy and requires immediate attention, the court may, with or without notice, appoint a guardian or conservator ad litem for a minor, incapacitated, or disabled person.

The appointment of a guardian or conservator ad litem is for a limited time serving until a hearing is held by the court on the appointment of a guardian or conservator or the removal of one. A guardian or conservator ad litem may serve in this capacity up to six months.

The guardian ad litem is in charge of the care and custody of the ward. A conservator ad litem is in charge of the protectee's property.

The authority of the permanent guardian or conservator originally appointed by the court and suspected of negligence in performing this duties is suspended so long as a guardian or conservator ad litem has authority. A guardian or conservator ad litem may be removed at any time. A guardian or conservator ad litem is required to make any report required by the court. Such a person is entitled to reasonable compensation just as are person serving as guardians or conservators [475.097.1].

## **Restoration**

A guardian, conservator or any person acting individually or jointly with the ward or protectee or the ward or protectee himself may petition the court at any time to restore the ward to his capacity or the protectee to his ability, or decrease the powers of the guardian or conservator. However, if the court determines that the petition is frivolous, the court may summarily dismiss the petition without hearing [475.083.4].

Upon the joint filing of a petition by the guardian or conservator and his ward or protectee, the court may order restoration of the ward to his capacity or protectee to his ability or may adjust the powers of the guardian or protectee without the necessity of holding a hearing. The court, before taking such action, must consider if it is in the best interest of the ward or protectee to do so [475.083.5].

If a petition seeking to restore an incapacitated or disabled person to his capacity or ability is filed for the ward or protectee without the guardian or conservator joining in, the court must set a hearing on the petition and the guardian or conservator notified. If a ward or protectee is not represented by an attorney in such a hearing, one must be appointed to represent him. The petitioner in this situation has the burden of proving that the petition for restoration is in the best interest of the ward or protectee. A petition of this type may not be filed more than once every 180 days [475.083.6].

### **Increasing Powers**

At any time, the guardian or conservator may petition the court to increase his powers. When a petition is filed to increase powers, the same procedures that must take place for the initial appointment of a guardian must be followed [475.083.7].

### **Conflict of Interest**

If the court detects there is a conflict of interest between the guardian or conservator and the ward or protectee, the judge may appoint a guardian or conservator ad litem to represent the ward or protectee in any proceeding to judge both parties. Such a guardian or conservator ad litem will have only such authority as provided in the court order of appointment and shall serve until discharged [475.097.2].

### **Conservator's Report**

If any conservator refuses or neglects to make an accounting on the settlement of any property of the protectee or makes a false report on such a settlement, not only is the conservator liable for all losses incurred by the protectee, but he is also subject to removal by the court [475.190.5].

## **COSTS OF GAURDIANSHIP/CONSERVATORSHIP**

How much does it cost to seek guardianship or conservatorship for another person or to become guardian or conservator? The costs vary, especially when a conservator is involved because he must post a bond before being issued the letters of conservatorship.

### **Fees charged by the Court [483.580]**

The court charges the following fees in connection with guardianship or conservatorship. These fees are established by law:

In issuing guardianship letters for the person of a minor, the fee is \$25.00;

To issue guardianship letters for an incapacitated person, the fee is \$50.00; (Note: This fee is charged regardless of whether the letters are for guardianship or limited guardianship.)

When letters of guardianship and conservatorship are sought together for a minor, the fee is \$60.00. An additional fee of \$25.00 is charged for each succeeding year;

When letters of guardianship and conservatorship are sought together for an incapacitated person or letters or conservatorship are sought for a disabled person, the fee is \$75.00. An additional fee of \$30.00 per year for each succeeding year is also charged;

(These fees also include the cost of filing a petition.)

For court proceedings concerning the involuntary hospitalization of a person, the cost of the proceeding is \$35.00;

The fee for the court proceeding to dispense with conservatorship is \$20.00 [483.580].

Other costs are also charged by the court for such things as copies and serving of notice in guardianship and conservatorship proceedings. It should also be noted that none of these fees cover the cost of a court appointed attorney when the court deems it necessary to have an attorney represent an alleged incapacitated or disabled person in a proceeding. The cost of appointment such an attorney is paid for through the estate of the incapacitated or disabled person, if a court ruling of incapacity or disability is made. If not, the costs may be assessed against the petitioner. The judge determines reasonable attorney's fees.

### **Estate to Pay for Costs**

If the court finds that a person is incapacitated or disabled, the court costs are paid by the respondent's estate. If the estate does not contain enough money, the county commission is required to pay those costs.

If a person is found after the court proceedings not to be incapacitated or disabled, the person who files the petition is required to pay the court costs. If a public employee, acting in his official duty, initiates a guardianship or conservatorship proceeding, but the person is not found incapacitated or disabled, the public employee is not responsible for the court costs. Those costs must be paid for by the county [475.085.1].

### **Waiver of Filing Fee**

The court must accept and act upon a petition concerning an indigent person (person who lacks any financial resources) without requiring a filing fee. The costs of the proceeding shall be set after the court rules on the petition [475.085.2].

### **Compensation of Guardians**

The court determines the compensation the guardian or conservator receives for performing his duties. When an attorney is needed and the guardian or conservator is not a lawyer, the attorney may also be allowed compensation.

In all cases, the court shall fix the compensation rate and may allow payment at any annual or final accounting. At any time, the guardian or conservator may apply to the court for an allowance on his compensation or for additional funds to cover an added expense...like the hiring of an attorney.

If the court finds the guardian or conservator has failed to perform his duties in any respect, it may deny him any compensation or may reduce the compensation [475.265].

### **Bonding**

Every conservator of a minor or disabled person is required to file a bond approved by the court. The amount of the bond must be enough to cover losses to the minor or disabled person's estate should the conservator fail to properly perform his duties. The court determines the amount of the bond and may increase or decrease it from time to time [475.100].

No bond is required by law for a guardian or limited guardian before beginning his duties. The amount of the bond, and therefore its costs, may be reduced by placing unneeded funds or securities in restricted custody to be approved by the court to be released only on order of the court.

## RESOURCES

This chapter is included in the manual to give the names and addresses of persons who may be helpful in understanding guardianship and conservatorship.

Your own private attorney may be your best source of help in understanding guardianship/conservatorship. An attorney will probably be needed in the proceedings.

The probate division of your county circuit court may have some information to help you. The court will have the necessary forms and may have other materials available.

Other agencies to whom you could turn to for help in understanding the law are:

Missouri Protection and Advocacy Services  
925 S. Country Club Drive  
Jefferson City, MO 65109  
1-800-392-8667

Missouri Department of Mental Health  
P.O. Box 687  
Jefferson City, MO 65102  
1-573-751-4122

Legal Services Developer  
Missouri Department of Health and Senior Services  
P.O. Box 570  
Jefferson City, MO 65102  
1-573-751-3082

**Missouri Department of Mental Health/Division of Retardation-Developmental Disabilities  
Regional Centers and Facilities**

Albany Regional Center  
13 & Maple, Route 1  
Albany, MO 64402  
660-726-5246; TDD 660-726-5844  
FAX 660-726-5612

Bellefontaine Habilitation Center  
10695 Bellefontaine Road  
St. Louis, MO 63137  
314-340-6000; TDD 314-340-6290  
FAX 314-340-6199

Central Missouri Regional Center  
101 Park DeVillie Drive, Suite B  
Columbia, MO 65203  
573-882-9835; TDD 573-882-9835  
FAX 573-884-4294

Hannibal Regional Center  
805 Clinic Road, P.O. Box 1108  
Hannibal, MO 63401  
573-248-2400; TDD 573-248-2415  
FAX 573-248-2408

Higginsville Habilitation Center  
Morris Drive, P.O. Box 517  
Higginsville, MO 64037  
660-584-2142; TDD 660-584-3935  
FAX 660-584-6244

Joplin Regional Center  
3600 East Newman Road, P.O. Box 1209  
Joplin, MO 64802-1209  
417-629-3020; TDD 417-629-3020  
FAX 417-629-3026

Kansas City Regional Center  
821 East Admiral Blvd., P.O. Box 412557  
Kansas City, MO 64108  
816-889-3400; TDD 816-889-3326  
FAX 816-889-3325

Kirksville Regional Center  
1702 East LaHarpe  
Kirksville, MO 63501  
660-785-2500; TDD 660-785-2500  
FAX 660-785-2520

Marshall Habilitation Center  
Salter Street, P.O. Box 190  
Marshall, MO 65340  
660-886-2202; TDD 660-886-6929  
FAX 660-886-3047

Nevada Habilitation Center  
2323 North Ash  
Nevada, MO 64772  
417-667-7833; TDD 417-448-1302  
FAX 417-448-1138

Poplar Bluff Regional Center  
2351 Kanell Blvd.  
Poplar Bluff, MO 63901  
573-840-9300; TDD 573-840-9312  
FAX 573-840-9311

Rolla Regional Center  
105 Fairgrounds Road, P.O. Box 1098  
Rolla, MO 65402  
573-368-2200; TDD 573-368-2200  
FAX 573-368-2206

Sikeston Regional Center  
112 Plaza Drive, P.O. Box 966  
Sikeston, MO 63801  
573-472-5300; TDD 573-472-5391  
FAX 573-472-5308

Southeast MO Residential Services  
2351 Kanell Blvd., P.O. Box 460  
Poplar Bluff, MO 63902  
573-840-9370; TDD 573-840-9312  
FAX 573-840-9373

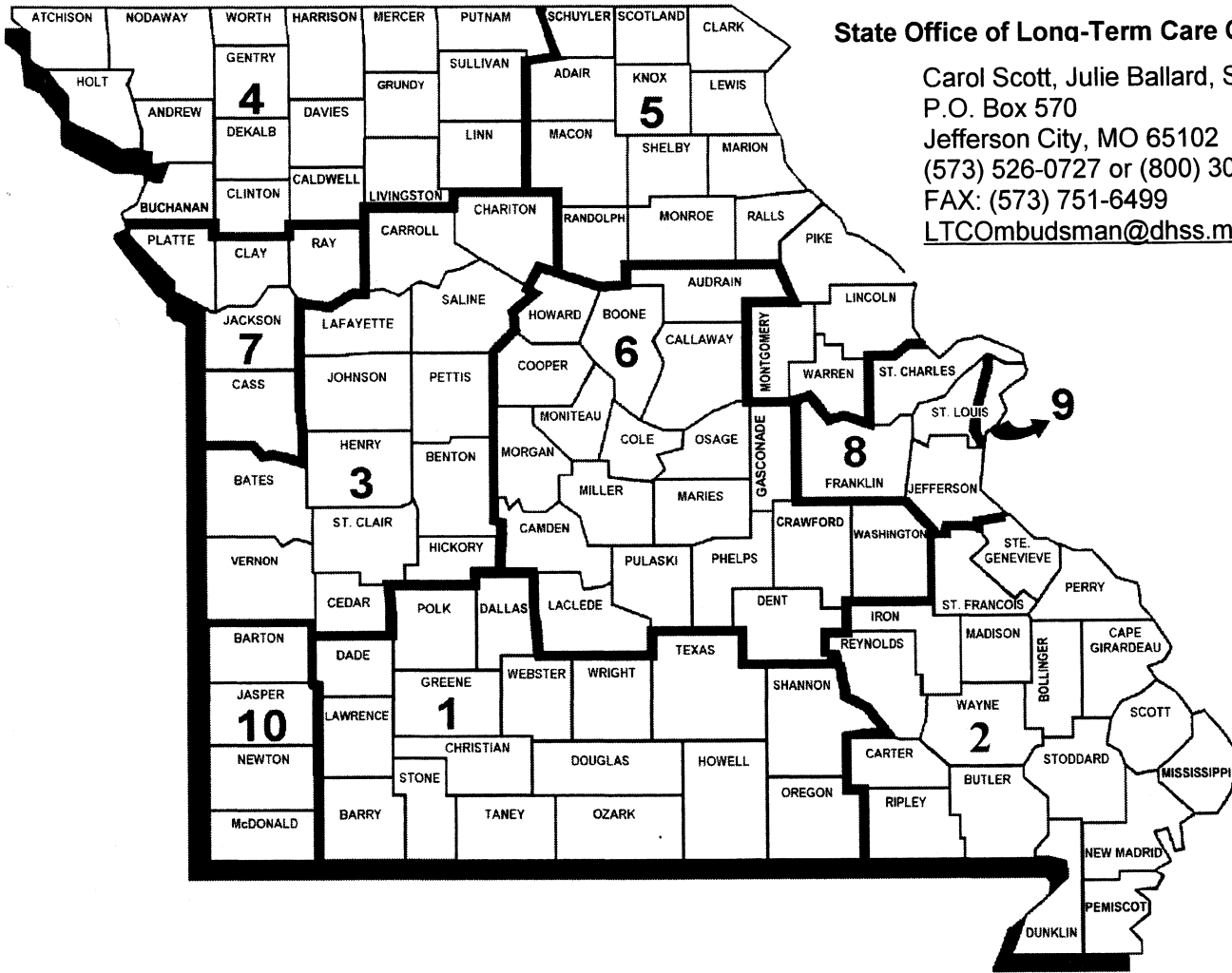
Springfield Regional Center  
1515 East Pythian, P.O. Box 5030  
Springfield, MO 65801-5030  
417-895-7400; TDD 417-895-7430  
FAX 417-895-7412

St. Louis DDTC  
211 North Lindbergh  
St. Louis, MO 63141-7809  
314-340-6702; TDD 314-340-6659  
FAX 314-340-6724

St. Louis Regional Center - South  
59 Campbell Plaza, 59 & Arsenal St., Suite 1B  
St. Louis, MO 63139  
314-301-3900-; TDD 314-877-0081  
FAX 314-877-0080

St. Louis Regional Center - North  
211 North Lindbergh  
St. Louis, MO 63141  
314-340-6500; TDD 314-340-6659  
FAX 314-340-6666

# Missouri Long-Term Care Ombudsman Program



## State Office of Long-Term Care Ombudsman

Carol Scott, Julie Ballard, Susan Tonarely  
 P.O. Box 570  
 Jefferson City, MO 65102  
 (573) 526-0727 or (800) 309-3282  
 FAX: (573) 751-6499  
[LTCOmbudsman@dhss.mo.gov](mailto:LTCOmbudsman@dhss.mo.gov)

1. Connie Payne, Pat Felton  
 Council of Churches of the Ozarks  
 627 N. Glenstone  
 P.O. Box 3947 G.S.  
 Springfield, MO 65808  
 (417) 862-3598 FAX: (417) 862-2129  
[www.ccozarks.org](http://www.ccozarks.org)

2. Jan McFerron, Sandra, O'Loughlin  
 Southeast MO Area Agency on Aging  
 1219 N. Kingshighway, Suite 100  
 Cape Girardeau, MO 63701  
 (573) 335-3331 or (800) 392-8771  
 FAX: (573) 335-3017  
[www.semoaaa.org](http://www.semoaaa.org)

3. Kathy Ray Smith  
 Care Connection for Aging Services  
 106 W. Young St., P.O. Box 1078  
 Warrensburg, MO 64093  
 (660) 747-3107 FAX: (660) 747-3100  
[www.goaging.org](http://www.goaging.org)

4. Freda Miller, Kelly Hopkins  
 Northwest MO Area Agency on Aging  
 211 South Polk, P.O. Box 265  
 Albany, MO 64402  
 (660) 726-3800 or (888)-844-5626  
 FAX: (660) 726-4113  
[www.nwmoaaa.org](http://www.nwmoaaa.org)

5. Uva Booher  
 Long Term Care Ombudsman  
 Program (LTCOP)  
 8702 Manchester Road  
 Brentwood, MO 63144  
 (866) 918-8222 FAX: (314) 918-9188

6. Beth Simpson, Alice Jackson,  
 Linda Daugherty  
 Central MO Area Agency on Aging  
 1121 Business Loop 70 E. Suite 2A  
 Columbia, MO 65201  
 (573) 443-5823 FAX: (573) 875-8907  
[www.cmaaa.net](http://www.cmaaa.net)

7. Michelle Brown  
 Mid-America Regional Council  
 600 Broadway, Suite 200  
 Kansas City, MO 64105-1536  
 (816) 474-4240 FAX: (816) 421-7758  
[www.marc.org](http://www.marc.org)

8/9. Maureen Hill, Cheryl Wilson  
 Marilyn McCormick, Eric Setzer  
 Long Term Care Ombudsman  
 Program (LTCOP)  
 8702 Manchester Road  
 Brentwood, MO 63144  
 (314) 918-8222 or (866) 918-8222  
 FAX: (314) 918-9188  
[www.ltcop-stl.org](http://www.ltcop-stl.org)

10. Angie Gentry  
 Area Agency on Aging  
 PO Box 3990  
 Joplin, MO 64803  
 (417) 781-7562 Fax: (417) 781-1609



# **APPENDIX**

**\*A note of explanation about the appendix.**

**The items listed in the appendix are just examples of what the guardianship/conservatorship forms may look like. The forms are not uniform across the state; and thus, those in your county may be different from the ones appearing in this manual.**



## **APPENDIX A**

