

FREQUENTLY ASKED QUESTIONS REGARDING GUARDIANSHIP

1). WHAT IS GUARDIANSHIP?

Guardianship is a legal relationship whereby the probate court gives one person (the "Guardian") the power to make personal decisions for another (the "Ward"). In Kansas and Missouri, a Guardian may be appointed when the court determines an individual is unable to meet the essential requirements for his or her physical health and safety.

2). WHEN IS A GUARDIANSHIP APPROPRIATE?

Guardianship will be deemed appropriate by a court when impaired judgment or capacity poses a major threat to an individual's personal welfare. A medical examination by a licensed physician is necessary to establish the condition of the proposed ward. The need for a Guardian is, however, a legal decision and can only be determined by a court of law.

3). IS THERE A DIFFERENCE BETWEEN GUARDIANSHIP AND CONSERVATORSHIP?

Yes. A Guardian is responsible for taking care of the ward's personal decisions. A Conservator protects and manages the financial estate of the Ward. A Guardian and Conservator may be the same person.

4). HOW CAN I BECOME GUARDIAN?

To obtain Guardianship, you may want to contact a lawyer who is familiar with this type of legal proceeding. A petition for the appointment of guardian must be filed with the court in the county of the proposed Ward's permanent residence or in the county where he or she currently resides. Thereafter, an attorney will be appointed by the court to represent the proposed Ward, and a trial to determine the capacity of the proposed Ward will then be scheduled. The trial is typically scheduled within 21 days of filing the petition. The judge will make the final decision at the trial. If a Guardian is appointed, the court will issue "Letters of Guardianship" upon the filing of a sworn oath. The Letters of Guardianship provide proof of the guardianship and gives the Guardian authority to exercise his or her duties.

5). ONCE I BECOME GUARDIAN, HOW LONG WILL MY APPOINTMENT LAST?

Depending upon the type of appointment, a Guardian may serve anywhere from a few weeks to an undetermined number of years. Generally, the Guardianship will terminate in one of the following four ways: (1) upon the death of the Ward or Guardian; (2) upon the restoration of capacity to the Ward; (3) upon the resignation of the Guardian; or (4) upon the removal of the Guardian by the court.

6). WHAT KIND OF AUTHORITY AND RESPONSIBILITY DO I HAVE AS GUARDIAN?

Unless limited by the court, the Guardian has the same rights, powers, duties and responsibilities over his Ward as parents have over their minor children.

A guardian shall generally have the power to take charge of the personal needs of the Ward and provide generally for the Ward's care, treatment, habilitation, education, support and maintenance. This includes deciding where the Ward will live and providing the required consents on behalf of the Ward (i.e., ordinary medical care).

The Guardian has the responsibility of promoting and protecting the care, comfort, safety, health and welfare of the Ward. Unless expressly waived by the court, the Guardian must file with the court an annual report detailing the Ward's condition. Upon the termination of appointment, the Guardian is required to file a final report with the court.

7). IS A GUARDIAN PERSONALLY LIABLE FOR THE DEBTS OF THE WARD?

No, a Guardian is not legally liable for the debts of the Ward. To ensure this, the Guardian should always indicate his or her status as "Guardian" when signing documents on behalf of the Ward.

8). ARE THERE ALTERNATIVES TO GUARDIANSHIP?

Depending on the situation, there may be several less restrictive alternatives to guardianship. These include durable powers of attorney for medical decisions and health care proxies. These options may avoid or delay the need for a court-ordered guardianship. These alternative documents, however, must be executed before the individual is incapable of doing so due to cognitive impairment.