

What You Need To Know About Guardianships

What is a Guardianship?

A guardianship is a legal proceeding conducted through the court system which in Kentucky requires a jury to find an individual (the ward) to be wholly or partially disabled and appoints an appropriate person to make personal, medical, financial, and legal decisions on the ward's behalf. Guardianship for disabled adults is governed by KRS 387.500 to 387.990.

When Are Guardianships Appropriate?

When a person never has been, or is no longer competent, and he or she, when able, did not execute powers of attorney for legal or medical affairs, the only alternative choice to provide the protection and service necessary to the individual is for a guardianship to be established. Guardianships and conservatorships for disabled persons of any age and situation are to be utilized only as is necessary to promote their well-being, including protection from neglect, exploitation, and abuse; are to be designed to encourage the development of maximum self-reliance and independence in each person; and are to be ordered only to the extent necessitated by each person's actual mental and adaptive limitations.

What are the disadvantages?

Guardianships are restrictive, time-consuming, and expensive. While they are often used to bring accountability to the management of a ward or his assets, the court is often reluctant to appoint a guardian in family conflict situations. The results do not always provide stability for the ward or family. The appointed fiduciaries will have to report to the court annually.

Can guardianship be avoided?

In many instances guardianship can be avoided by having robust durable powers-of-attorney that cover an individual's health care, financial, and legal affairs. A person with a power-of-attorney may still need guardianship if their documents do not contain necessary powers or

adequate legal language. If a respondent has an excellent power-of-attorney, guardianship may still be pursued where a respondent is acting erratically and irrationally.

Financial Costs

If you petition for guardianship, you will likely be responsible for a number of costs. If you are appointed, many of those can be paid from the ward's estate.

1. **Filing Fee.** As in any other court proceeding, the court requires the petitioner to pay a fee to file the petition.
2. **Respondent's Attorney.** The Respondent (the potentially disabled individual) is allowed to employ an attorney to represent him or her in court. If the Respondent is unable to select and employ an attorney of his or her choice, the court will appoint an attorney on his or her behalf. The cost of the attorney is paid from the respondent's funds if there are funds available.
3. **Evaluation Fees.** The proceedings require that the respondent be evaluated by a physician, a psychologist and a social worker. These evaluations will have to be paid for from the ward's assets if there are any. It is possible that the petitioner may need to pay these fees and seek reimbursement after being appointed.
4. **Attorney Fees.** The petitioner may want to have legal advice and guidance from a private attorney. If that individual is appointed the guardian, the legal fees he or she has incurred may be paid from the ward's assets. If there is a controversy over who is to be appointed the guardian, the unsuccessful petitioner will probably have to pay for his attorney from his own funds.
5. **Bond.** The court will establish a bond equal to the value of the Ward's financial estate to guarantee the performance of the conservator's services. The cost of this surety is usually paid from the ward's estate. If family members are in agreement, surety is typically waived.

Filing the Petition

Guardianship proceedings begin when a petition is filed. A petition for disability may be filed by any interested person and must include a description of the facts and reasons supporting the need for guardianship or conservatorship.

There are three primary documents necessary to initiate the proceedings, (1) a petition to determine disability, (2) a petition to be appointed guardian, and (3) a petition to appoint the interdisciplinary evaluation team.

Court Proceedings

The hearing to determine a disability may take place before a judge or a jury. A member of the evaluation team will appear before the judge and answer questions regarding the Respondent. The judge will make a determination about his or her disability.

If the respondent is found not to be disabled, the petition will be dismissed. If the respondent is found to be disabled or partially disabled, the court shall determine the type of guardian or conservator to be appointed, specify the respondent's legal disabilities, appoint the individual or entity as the limited guardian, guardian, limited conservator or conservator and specify the duration of the term of the guardianship or conservatorship.

A guardian has the following duties:

1. To take custody of the ward and to establish his place of abode within the state;
2. To make provision for the ward's care, comfort, and maintenance;
3. To give any necessary consent or approval to enable the ward to receive medical or professional care, counsel, treatment or service;
4. To act with respect to the ward in a manner which limits the deprivation of civil rights and restricts his personal freedom only to the extent necessary to provide needed care and services to him; and,
5. To expend sums from the financial resources of the ward, and, unless a separate conservator has been appointed, to manage the financial resources of the ward.

This is not an exhaustive summary of guardianship and conservatorship. Only an attorney can provide specific legal advice that is tailored to your situation.

These materials are for general informational purposes only. Consult an attorney for legal advice about guardianships and conservatorships.