

GUARDIANSHIP IN KENTUCKY

Kentucky Protection and Advocacy
2008

What is Guardianship?

- Guardianship is a legal tool that grants a parent or other adult the legal authority to make decisions for a legally disabled adult.

Legally Disabled

- A legally disabled person is a person who has been found by a court to be unable to care for personal needs or unable to manage financial resources.

Partially Disabled

- A partially disabled person is a person who has been found by a court to lack the capacity to manage some of his personal affairs or financial affairs.

Guardian vs. Limited Guardian

- A guardian has complete responsibility for the ward's personal needs and financial affairs
- A limited guardian doesn't have all the legal powers and duties of a full guardian

Guardian vs. Conservator

- A conservator has complete responsibility for the ward's financial affairs
- A limited conservator has some responsibility for the ward's financial affairs

When to Consider

- Until a child reaches the age of majority, parents are the "natural" guardians
- The age of majority is 21 for the care and treatment of children with disabilities (KRS 2.015)

Questions to Ask

- Look at the abilities of each individual
- Can they take care of their own personal needs for physical health, food, clothing, or shelter?
- Can they manage personal financial resources?
- Are they going to be taken advantage of?
- Are there alternatives available?

Alternatives

- Providing skills training develops skills in areas of weakness
- Having a bank account co-signer helps with money management skills
- Setting up a trust fund allows one person to manage property and money for the benefit of another person

Alternatives

- Setting up a Power of Attorney gives one person the ability to make certain decisions on behalf of another person
- Durable Power of Attorney continues in the event that the person later becomes disabled
- Designating a Representative Payee allows someone else to manage SSI and VA funds for another person

Alternatives

- Signing Advanced Directives allows adults who can communicate health care decisions to provide directions about what they want when they aren't able to do it any more

The Division of Guardianship

- It's administered under the Health and Family Services Cabinet, Department for Aging and Independent Living
- The Division of Guardianship can function as guardian, conservator, limited conservator, limited guardian, or any combination assigned by the court

When Will Guardianship Help?

- Only when there is no other suitable person or entity willing to be the guardian
- Courts can force the Division of Guardianship to accept an appointment

How is a Person Declared Disabled?

- The proceedings take place in District Court
- File a petition
- File an application for appointment
- If the person doesn't have a lawyer, the court will appoint them an attorney
- The court will schedule a hearing before a jury of 6 individuals

Examinations

- The person must be examined by at least 3 people: a physician, a psychologist, and a social worker
- At least one of the examiners must be a professional qualified in mental retardation or mental health if that's an issue

What is a Testamentary Guardian?

- A guardian may nominate someone to serve as successor guardian in a will
- It's not legally binding, but generally courts will honor it

How Long Does the Appointment Last?

- Courts can appoint a guardian or conservator for an "unlimited duration" if the ward is totally disabled
- A limited guardian or a limited conservator can't be appointed for more than 5 years

What are the Guardian's Duties?

A guardian has responsibility for the care and custody of the ward

What are the Guardian's Duties?

- Managing the financial resources of the ward
- Reporting to the court
- Making sure the ward's civil rights and personal freedoms aren't restricted too much, only to the extent necessary to provide care and services

What are a Conservator's Duties?

- Within 60 days after being appointed, the conservator must file a list the ward's property with the court
- The conservator must report every 2 years to tell the court how much money the ward received and how it was spent

How to Change or End Guardianship

- At any time, a ward, the ward's guardian or conservator, or any person interested on behalf of the ward may ask the court to
 - Terminate
 - Change
 - Remove
 - Renew

Voting Rights

- People no longer automatically lose the right to vote if a guardian is appointed
- The judge must make specific finding depriving a person of the right to vote
- If a person loses the right to vote, they can petition the court to get it back
- Watch voter registration deadlines, and start early

Guardianship Resources

- Go to www.kypa.net
- Click on "Legal Rights"
- Click on "Guardianship"

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