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Guardianships and Conservatorships

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Disclaimer

- This is not legal advice
 - When faced with a specific legal question, ask your attorney
 - If you don't have an attorney, I know one
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Topics

- Introduction
- Definitions
- Process of Appointment
 - Intake, Petition, Procedure
- Powers and Duties of Guardians/Conservators
- Termination of Guardianship/Conservatorship
 - Final Report/Accounting

Introduction

- Need for guardians and conservators
- Who may serve as Guardian/Conservator
 - Natural Guardian Right to Nominate
 - Nomination by Will or Other Document



Definitions

- Adult or Minor with Impairment: person who lacks capacity to manage their property or meet essential needs for health, safety, or welfare
- Guardian: heath, safety, welfare
- Conservator: money, personal property, real property

Intake

- Ward/Conservatee Information
 - Name, DOB, permanent residence, present whereabouts, assets, court proceedings, etc
 - Family
 - Parents, adult siblings, adult children, adult grandchildren
- Proposed Guardian/Conservator
 - Name, address, whether under contract with KS Guardianship Program, etc.



Petition

- Information required
- Allege that proposed Ward/Conservatee is adult or minor with impairment
- Report of Examination and Evaluation
 - Voluntary/Involuntary
- Temporary Guardian/Conservator
 - Optional; must allege that there is imminent danger to assets of conservatee and/or health of ward

Procedure

- Notice
- Oath/ Affidavit of Basic Instruction
- Bond
- Hearing
 - Contested
- Letters



Powers of Guardian

May, without court order

- Protect health, safety, welfare
- Provide for care, treatment, housing, education, support, maintenance
- Least restrictive setting to meet Ward's needs
- Make final arrangements
- Revoke power of attorney

May not, without court order

- Consent to adoption
- Consent to psychosurgery, limb removal, etc. unless life threatening
- Consent to sterilization
- Consent to experimental procedures
- Consent to DNR
- Have control over property, unless authority provided in Letters, or appointed as Conservator
- Place Ward in psychiatric facility
- Pay guardian fees or reimburse expenses (including atty fees)
- Dispose of property after Ward's death

Duties of Guardian

- Act in best interest of Ward, and exercise reasonable care, diligence, and good sense.
 - Includes only using powers as Guardian when necessary to protect Ward's health, safety, welfare.
- Signs release and Medicaid/Disability applications
- File annual report about the Guardian's actions and the Ward's condition



Powers of Conservator

May, without Court order

- Pay reasonable charges for support, care, clothing, housing and education of Conservatee
- Pay debts of Conservatee
- Control and manage assets of Conservatee and collect debts and asserts claims in favor of Conservatee
- Insure property
- Pay premium for bond

May not, without Court order

- Settle any claim than less than full value
- Sell/Transfer property of any ongoing business or Conservatee's homestead or other real estate
 - Managing ongoing business requires Court Order
- Sell personal property
- Lease or convey possession in any real estate for more than 3 years
- Sell, lease, convey any oil, gas, other mineral interests
- Make a gift on behalf of Conservatee
- Pay the conservator or the conservator's attorney a fee

Duties of Conservator

- Know the Conservatee's needs and support, and involve the Conservatee in decision-making, if possible
- Avoid conflicts of interest
- Open bank account File inventory within 30 days of appointment
- May need to obtain a bond
- File annual accounting



Guardianship/Conservatorship Plans

- May be required in some cases, or may be suggested by attorneys/parties.
 - Includes provisions about duties/powers of Guardian/Conservator, and what decisions the Ward/Conservatee will have input on.
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Termination of Guardianship/Conservatorship

- Petition to Terminate
 - If Ward/Conservatee is no longer in needs of G/C
 - Reasons:
 - Restoration to Capacity
 - Death of Ward/Conservatee
 - Other
- Wrapping up Guardianship/Conservatorship
 - Final Accounting/Report
 - Other Issues

Questions?

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