**Guardianship**

**What rights do guardians really have?**

**Who can be a guardian?**

**Guardianship**

Guardianship can be an intricate term for different individuals. Lets break it down. A guardian is a person appointed by a probate court to care and have custody of a minor or adult person who is legally determined to be incapacitated. A conservator is a person or corporation, such as a bank or trust company, appointed by probate court to manage the property of a minor or adult considered to be legally disabled.

1 Guardianship is the legal responsibility for either a minor child or adult person who is consider incapacitated. This can be a parent of a child, or and adult child, or an elderly person with disabilities. It could also be a family member, friend or designated by a probate court.



**What are the requirements?**

A person must submit at their own expense to a background screening that shall include the disqualification lists of the department of mental health, social services, and health and senior services; the abuse and neglect registries for adults and children; a Missouri criminal record review; and the sexual offender registry.  Individuals seeking appointment as a conservator shall also submit, at their own expense, to a credit history investigation. This is not needed if the petitioner is the person’s spouse, parents, children over eighteen years of age, or siblings over eighteen years of age.

**Statutes that govern guardianship**

Chapter 475 of the Missouri Revised Statutes highlights guardianship responsibilities. At its most basic level, this statute outlines the responsibilities, requirements, process, and limits in place for someone who takes legal responsibility for another person in this state. Prior to August 2018, this section of the law had not been revised since 1983. The new modifications include

1 Appointment of guardian or conservator of disabled or incapacitated persons — order of priority, Mo Stat. § 475.050 (2018)

allowances for all family members to be involved in the guardianship decision, a requirement for background checks for some potential guardians, new planning requirements, and more.

With modifications to the state’s guardianship laws in 2018, many experts predicted there would be more lawsuits because the changes broadened the meaning of an “interested individual.” This meant a greater number of “interested parties” were given the right to weigh in on the care of another. 2 Prior to SB 806, just those people who might show a monetary interest in the ward/protectee’s estate were considered interested individuals withstanding to object to the procedures at any phase. Now, the meaning has been significantly widened to consist of all relatives.

**What rights do guardians have?**

The rights a guardian poses depends on if the court found this person to be totally disabled or incapacitated or partial disabled or incapacitated. Further, if it is partially incapacitated, there may only be rights loss to the specified order. If the person is totally incapacitated, they may be presumed to be incompetent for all legal purposes. 3To understand better, if a person is considered disabled, they are referred as a “protectee.” 3 If a person is considered incapacitated, they are referred to as a “ward.” In such cases, the guardian can make decisions on where the person lives and determine medical decisions for the person.

**Guardian responsibilities**

Guardians must always act with the best interest of the person. They make decisions relative to the ward’s care, treatment, shelter, education, support, and maintenance. Guardians must ensure that the ward resides in the least restrictive setting reasonably available. They must ensure all medical care is received that is needed. Give legal consent to treat. 4 They cannot admit to a mental health facility for more than 30 days without a court order, except in certain cases provided under the law. 475.120, RSMo (2000). Further, they must report annually on physical condition to the court.

**Rights**

3 Rights must be specifically addressed if taken away. Otherwise, the ward keeps all rights unless specifically given to guardian. State laws may restrict ward’s rights. State Constitution could deny the ward right to vote. Individuals have the right to the least restrictive guardianship suitable to his or her needs and conditions. Guardians have affirmative duty to advise the ward of their rights and to attempt to maximize the wards self-reliance and independence.

2 Appointment of guardian or conservator of disabled or incapacitated persons, Mo Stat. § 475.050 (2018)

3 Guardians and conservators under Missouri law (2015)

4 General powers and duties of guardian of the person, Mo Stat. § 475.120, (2000)

**Client Rights**

1. The right to be treated with dignity and respect.

2. The right to privacy, which includes the right to privacy of the body, and the right to private, and uncensored communication with others by mail, telephone, or personal visits.



3. The right to exercise control over all aspects of life that the court has not delegated to the guardian.

4. The right to appropriate services suited to the ward’s needs and conditions, including mental health services.

5. The right to have the guardian consider the ward’s personal desires, preferences, and opinions.

6. The right to safe, sanitary, and humane living conditions within the least restrictive environment that meets the ward’s needs.

7. The right to procreate.

8. The right to marry.

9. The right to equal treatment under the law, regardless of race, religion, creed, sex, age, marital status, sexual orientation, or political affiliations.

10. The right to have explanations of any medical procedures or treatment. This includes information about the benefits, risks, and side effects of the treatment, and any alternative procedures or medications available.

11. The right to have personal information kept confidential. This may include withholding certain information the ward may not want his or her family to know. The guardian may have to provide personal information to apply for benefits, or in emergency situations where the ward or others may be in danger, or if the information is required by law to be shared with agencies or health departments. Personal information may also be contained in the reports the guardian makes to the court, and which may be available for others to see.

12. The right to review personal records, including medical, financial, and treatment records.

13. The right to speak privately with an attorney, ombudsman, or other advocate.

14. The right to petition the court to modify or terminate the guardianship. This includes the right to meet privately with an attorney or other advocate to assist with this legal procedure.

15. The right to bring a grievance against the guardian, request the court to review the guardian’s actions, request removal and replacement of the guardian, or request that the court restore rights if it can be shown that the ward has regained capacity to make some or all decisions. The guardian also has a responsibility to request that the ward’s rights be restored when there is evidence that the ward has regained capacity.

**What rights may a person lose?**

Individuals may have little or no say about where they live, who their doctor is, or how their property and money are handled. They may lose power to consent, or object, to medical care. They may lose their right to vote. Additionally, they could lose the right to marry without guardian/court permission, the right to make enforceable contracts. Further, they could lose the right to hold public office and obtain a driver’s license or drive a motor vehicle.

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Description automatically generated**When should you consider guardianship?**

**When should you consider terminating guardianship?**

4 Guardianship can terminate only when the protectee is found to be competent by the court or upon the death of the protectee. Conservator may be discharged by the court upon filing a final accounting.

4 A petition asking the court to review the guardianship can be filed in the clerk of court’s office by the ward, the ward’s attorney, the ward’s family, or any concerned party. It should state the reasons a review is being requested. It is strongly recommended that the petitioner seek legal assistance when considering whether to file such a petition. There may be quicker, more effective, and/or less costly remedies available, such as writing a letter to the guardian or asking an ombudsman or other advocate to intervene with the guardian. Where it can be shown that the ward has regained the capacity to make decisions in some or all areas, the court may dismiss or modify the guardianship. Individuals should always have the least restrictive setting that makes sense for the person.