



KENTON COUNTY ATTORNEY
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KENTON COUNTY GUARDIANSHIPS FREQUENTLY ASKED QUESTIONS

Q: ***What is a guardianship?***

A: In Kentucky before someone can be declared legally disabled, there must be a determination by a judge or jury that the person can no longer care for his/her personal affairs. If a determination is made that the person lacks this capacity, then a guardian can be appointed to take care of his/her personal affairs.

Q: ***What is a conservatorship?***

A: If someone can no longer care for his/her financial resources, an individual, agency, or corporation may be appointed by the Court to manage his/her financial resources.

Q: ***Who is considered disabled?***

A: A person who is 17 years of age or older and unable to make informed decisions about his or her day-to-day activities (i.e. health care, food, shelter, clothing, personal hygiene) and/or is no longer able to manage his/her financial affairs. Every case is different, but the most frequent types of guardianship are:

- (1) a child with severe mental or physical disabilities turning eighteen;
- (2) an elderly individual with dementia or memory loss or some other mental or physical impairment that makes them incapable of executing a Power of Attorney or consenting to medical treatment;
- (3) an individual who has been involved in some trauma or medical emergency (i.e. coma, stroke, injuries from a car accident) that has rendered them unable to make any decisions as to their care; or
- (4) an individual with a chronic mental illness who has had multiple mental health hospitalizations and/or a history of non-compliance with prescribed medication causing them to behave in a way that places themselves or others at risk of harm.

Q: ***Where do I file for guardianship/conservatorship?***

A: In the county where the person you are seeking guardianship over resides or is domiciled, or the county where the parent resides in the case of a minor. For Kenton County residents, petitions are filed at the Kenton County Courthouse located at 230 Madison Avenue, Covington, Kentucky. Petitions are accepted on the third floor, at the probate counter.

Q: ***What do I need to file?***

A: You will need to file (1) **Petition to Determine if Disabled** (AOC-740); (2) **Verified Application for Appointment** (AOC-745); and (3) **Personal Identifier Data Sheet** (AOC-034). You will also need the name and address of the person's treating physician. These forms are available at the Kenton County Circuit Clerk's website: www.kentoncourtclerk.org.

Q: ***Do I have to be a family member to file?***

A: No. Any "interested" party can file, including family members or friends. An official or representative of a public or private agency, corporation, or association concerned with the person's welfare may also file.

Q: ***Can more than 1 person be the guardian?***

A: Anyone who is interested in being considered as a guardian should file an **Application for Appointment** (AOC-745). Many families have one person serve as the guardian, and another serve as the stand-by guardian to be available to act when the guardian is unavailable. Co-guardianship is allowed, but most families opt for the guardian/stand-by guardian option.

Q: ***How much does it Cost?***

A: For Kenton County, filing fee costs are available at the Kenton County Circuit Court Clerk's website: www.kentoncourtclerk.org or by calling 859-292-6523. Currently the filing fee is \$171.84 and the service of process fee is \$12-\$40 depending on the method of service. Call or visit the website for up-to-date fee amounts.

Q: ***What happens after I file for guardianship?***

A: The Court will appoint a 3-person Interdisciplinary Evaluation team comprised of a medical professional (physician, APRN, or PA), a psychologist, and a social worker. The team will evaluate the person and make a recommendation back to the Court as to whether the person is able to manage his/her personal affairs and financial resources. The Court will also set it for a trial, typically 30-60 days after filing.

Q: *What if my loved one can't wait that long for someone to be appointed. Is there an emergency guardianship or conservatorship?*

A: An emergency guardianship or conservatorship can be granted, but only where there is a danger of serious impairment to the individual, or risk of damage or dissipation to his/her property, respectively. A regular **Petition to Determine Disabled** (AOC-740) must be filed first, and then the petitioner can file a **Petition/Application for Emergency Appointment** (AOC Form 747). The hearing on the emergency petition will be heard within 7 days. Please contact the County Attorney's Office before filing for emergency guardianship to make sure the case qualifies.

Q: *Do I need to hire a lawyer to represent me?*

A: It may be helpful to understand the role of the County Attorney and Guardian Ad Litem (GAL) in the guardianship process. Petitions are brought in the name of the Commonwealth, and it is up to the County Attorney to present sufficient evidence for the jury to find that someone lacks the capacity to manage his/her personal and/or financial affairs. The Court will appoint a lawyer (the GAL) for the person you are filing over, and the GAL will represent their interests in the process. While the County Attorney does not represent the petitioner or any applicants, the County Attorney can assist you in the filling out of any necessary forms. A petitioner or applicant does not need a lawyer to file for guardianship but can hire legal counsel if they choose.

Q: *Does the person I am seeking guardianship/conservatorship over need to be in Court?*

A: The law requires that the respondent (who you are seeking guardianship or conservatorship over) must be present in Court unless it has been determined that his/her attendance would subject him/her to harm. The Interdisciplinary Evaluation team members must state an opinion on whether it would be harmful for the respondent to be present.

Q: *What happens at the Trial?*

A: If the interdisciplinary team members unanimously find that the respondent is partially or fully disabled and the respondent, respondent's counsel and the Commonwealth agree, the case may be tried to the judge instead of to a jury. If the respondent or another interested party objects, the case will be set before a jury. The County Attorney will present the case to the judge or jury and may call on the petitioner to testify. The judge or jury will also hear from a member of the Interdisciplinary Evaluation team, and the judge or jury will review the reports filed by all three team members. The judge or jury will then decide whether the person is wholly, partially, or not disabled as to his/her personal affairs and/or financial resources.

Q: *Who appoints the guardian/conservator?*

A: While a judge or jury decides whether an individual needs a guardian/conservator, only the Judge determines who will be appointed to serve in those roles. In the case where there are multiple applicants, the Court will look at factors including any preferences given in a Power of Attorney, family relationship, experience, and other qualifications.

Q: *I have a Power of Attorney over my family member. Do I need to file for guardianship/conservatorship?*

A: It depends. If you are able to use the power of attorney to meet all of the ward's needs, then you may not need to go through the process. However, the existence of a power of attorney does not prevent a guardianship from being filed. If the person is declared disabled, any power of attorney will be void, and the Court will decide who will take care of the ward's affairs from that point forward.

Q: *How long does a guardianship/conservatorship last?*

A: If the person is found fully disabled, the guardian/conservator may be appointed for a period of unlimited duration. If the person is found partially disabled, the limited guardian/conservator may be appointed for up to 5 years, the term which may be renewed by the Court.

Q: *What are my duties as guardian?*

A: A guardian's main responsibility is to care for their ward's care, comfort, and maintenance. This includes making sure medical care is provided and ensuring their health and safety needs are met. Certain medical procedures must be approved by the Court before the Guardian can consent (i.e. removal of a bodily organ or amputation of a limb).

Q: *Are there any reporting requirements for a guardian or conservator?*

A: Yes. Generally the guardian must file an annual report with the Court giving an update on the health and welfare of the ward. There are also financial reporting requirements, which will be determined by the Court after the trial. These forms are available on the Kenton County Circuit Court Clerk's website: www.kentoncourtklerk.org. Questions on forms may be directed to clerk staff at 859-292-6523.

Q: *Who can get a copy of the guardianship/conservatorship case?*

A: Guardianship/conservatorship cases are confidential by law. All determinations of disability, orders of appointment, modification and terminations are public records, but any other records are confidential. Any person seeking to obtain the confidential records may file a written motion requesting the information and the Court may allow disclosure, if appropriate. Parties

should be prepared to present ID to the clerk before obtaining copies, and clerk staff may not answer questions about the guardianship over the phone due to confidentiality concerns and inability to verify identification by phone.

Q: *I am the guardian (or conservator) for a ward. Am I entitled to compensation for my services?*

A: The law allows a guardian or conservator reasonable compensation for services, in addition to reimbursement for reasonable and necessary expenses incurred in the exercise of the guardian's duties. There are some limitations, so always review the specific laws for more details.

Q: *Can the guardianship/conservatorship be modified or terminated down the road?*

A: Yes. The petitioner, the ward, or another interested party can file a Petition for Relief, Modification, or Termination (AOC-795). This form is available at the Kenton County Circuit Court Clerk's website: www.kentoncourtclerk.org. The Court will schedule the matter for a hearing and make a decision on the motion. A guardian can request that the guardianship be modified, such as having another family member appointed, or that a guardianship be terminated where the ward has made a full recovery and wants to be restored his/her rights.

Q: *Does a finding of guardianship impact the individual's driver's license?*

A: If someone is found to be fully disabled the clerk will notify the Department of Transportation (DOT) of this finding and the individual's driving privileges will be suspended. If someone is under partial guardianship his/her driver's license will not be automatically suspended. In cases where some or all of the individual's rights are restored, the clerk will notify DOT and the medical review board will send correspondence to the individual if he/she previously held a driver's license. Additional steps such as a medical review by a certified driver's evaluator may be required before driving privileges are restored depending upon the underlying medical condition for which the guardianship was granted.

Q: *Can a person under guardianship vote?*

A: After a finding of disability the court will inquire as to the appropriateness of the person retaining his/her right to vote and the judge will make a determination as to the ability to exercise this right.

Q: *My child has a severe mental illness (SMI). Will this guardianship allow me to place him/her at a mental health hospital?*

A: While a guardian may present the person under guardianship to the mental health hospital, the hospital is not required to take the individual if the medical team does not feel he/she meets criteria for involuntary hospitalization. In other words, the guardian can't force

the mental health hospital to take the person if the hospital doesn't feel placement is appropriate.

Q: *Are there any resources available to help me better understand the guardianship/conservatorship process?*

A: The Kentucky Guardianship Association has materials available for guardians and conservators. Please visit their website at www.kyguardianship.org. You may also review the applicable sections of KRS 387.500-387.990 by visiting the Kentucky Legislative Commission's website at www.legislature.ky.gov.