

# Taking Care of Loved Ones: Guardianship and Conservatorship in Kentucky

Article By:

Brittany Blackburn Koch

---

Legal guardianship is designed to protect a legally disabled adult who can no longer meet his/her personal needs. The decision to pursue guardianship of an individual is never an easy decision. Often, such a decision emerges at the end of the road - e.g., when a family or friend has exhausted all other options and has no choice but to take legal action to ensure the proper care for and well-being of a loved one. The circumstances are never ideal, as common scenarios may involve a severely disabled child who has just reached the age of majority, or an elderly adult who is fighting Alzheimer's.

An individual for whom the Court appoints a guardian may lose some or all of his/her civil rights. In instances where a full guardianship is granted, for example, a person may lose basic rights that we typically take for granted, including the right to marry or divorce, hold office, make a contract or will, own or sell property, or obtain a drivers' license. In effect, the person is treated by law as a minor child without power to make his or her own substantive decisions. While the process can be emotionally painful, it is comforting that Kentucky courts recognize that guardianship is a serious, often life-changing issue. As a result, Kentucky generally has the most stringent guardianship statutes in the nation.

Any person concerned with the welfare of a person may initiate the guardianship process. First, a person must complete two forms: the Petition to Determine if Disabled and Application for Appointment of Fiduciary for Disabled Persons. These forms must be filed with the appropriate district court. The person asking for guardianship is referred to as the Petitioner, and the allegedly disabled person is designated as the Respondent.

***Kentucky is the only state that requires a jury trial before a guardian can be appointed.*** Other states have provisions to provide for a jury if the disabled person requests it; however, the problem with this is evident -- if a person is believed to lack the ability to care for one's self, then it is possible he or she will not understand or comprehend the need for a jury.

Prior to trial, three professionals will generally examine the Respondent: a physician, psychologist, and social worker. This team will examine the Respondent at separate times to assess his/her abilities and needs. The findings are documented in a report, and include recommendations about if, and to what extent, guardianship is needed. These reports help to confirm and reassure a Petitioner

---

that guardianship is the appropriate path or, alternatively, open his/her eyes to less-intrusive options.

Kentucky recognizes four different options for the care of a legally disabled person:

- (1) A full guardianship, in which case a person is unable to take care of any of his needs;
- (2) A limited guardianship, in which case a person can meet some, but not all, of his needs;
- (3) A conservatorship, in which case the person only needs help with his finances; or
- (4) A guardianship and conservatorship.

Pursuant to KRS 387.550, the professionals' reports can be filed with the initial Petition. If this occurs, then the district court will hold a hearing within 30 days. If these reports are not filed with the Petition, then the court will order the evaluations and schedule a hearing within 60 days of the filing date. All interested parties, including the Petitioner, Respondent, and the proposed guardian (if different from the Petitioner), must receive notice of the hearing date at least two weeks before the hearing. If additional time is needed before the hearing occurs, any party may file a motion with the court to request an extension.

The hearing is held before a six-person jury. The allegedly disabled person is generally required to be at the hearing. In some circumstances, exceptions may be made if the attendance will subject the person to a risk of harm. It is the jury, and not the Judge, who is vested with the power to determine an individual's fate with respect to guardianship. Kentucky not only requires a jury trial, but also vests the jury with explicit responsibilities to determine the extent of a person's disability, if any. KRS 387.580 requires a jury to:

- (1) Inquire into the nature and extent of the general intellectual functioning of the respondent;
- (2) Inquire into the respondent's capacity to make informed decisions concerning his personal affairs and financial resources;
- (3) Determine whether the respondent is disabled, partially disabled, or has no disability in relation to the management of his financial resources; and
- (4) Determine whether the respondent is disabled, partially disabled, or has not disability in relation to the management of his personal affairs.

The foregoing factors often help alleviate the emotion and bias of any individual juror involved in these matters. If the jury finds that the Respondent is not disabled, then the Petition is dismissed. If there is a finding of partial or full disability, then the Judge, without the aid of a jury, determines what kind of care the person (who will now legally be referred to as a "ward") should receive, what powers a guardian or conservator will have, and the duration of his/her appointment.

The Court helps ensure that wards receive proper care by requiring annual reports from a guardian, which detail information such as the ward's residence and location and the activities in which he or she is involved. When a conservator is appointed, the conservator has 60 days from appointment to assess the ward's assets and income and report such information to the Court. A bi-annual financial report is thereafter required to help ensure that a ward's assets are properly dispensed and accounted.

A person's assumption of a guardianship or conservatorship role should not be taken lightly. The primary purpose of Kentucky's guardianship laws is to protect citizens from harm. The Court recognizes, however, that guardianship or conservatorship is often necessary as a result of a particular individual's circumstances. If you are considering applying for guardianship or conservatorship, we can help. Our attorneys are experienced in every step of the way - from the decision of whether to apply for guardianship/conservatorship through trial.

© 2024 by McBrayer, McGinnis, Leslie & Kirkland, PLLC. All rights reserved.

---

National Law Review, Volumess III, Number 199

Source URL:<https://natlawreview.com/article/taking-care-loved-ones-guardianship-and-conservatorship-kentucky>